

### Sentencing Exercise – Judge Instructions

You are about to preside over the sentencing hearing of *State v. Stephen Winslow*. The defendant has just plead guilty to one count of Felony Death by Motor Vehicle, because he was driving while impaired and got into a crash resulting in the death of another driver. At this point, you don't know any of the facts of the case. All you know is that the defendant is a record level one, with a clean record, and is pleading guilty to a class D felony. Felony Death by Motor Vehicle does allow you to sentence a defendant to probation, if you wish, even though class D felonies are typically active sentences only. Also, the defendant has agreed to one aggravating factor, number 8, that due to his high speeds in excess of 90 miles per hour, he created a risk of serious injury or death to others on the road.

You can start by asking the prosecutor to give a quick summary of the evidence and then ask if the prosecutor would like to be heard as to sentencing. When the prosecutor is done, you then ask if the defense attorney would like to be heard. It is in your discretion whether to give the parties any opportunity to respond to each other or to your follow up questions. As defense counsel makes any arguments, you may choose to find as many mitigating factors as you would like that they have suggested. It will then be up to you to decide whether those outweigh the aggravating factor or not. Just because there may be more factors in mitigation, you are not required to find that they outweigh the aggravating factor. You are, however, required to sentence within the range appropriate for how you weighed the factors. So if you decide that the mitigators and aggravator balance out, you must sentence in the presumptive range.

Finally, you will announce a sentence. Remember, you will start with a range in the mitigated, presumptive, or aggravated ranges for a class D, level 1 offender. For example, the bottom of the presumptive range is 51-74 months. If you choose to suspend this sentence and impose probation, you may impose a split sentence of up to a quarter of the total sentence to be served in jail. If you give probation with or without a split sentence, you must give a length of probation such as "I am sentencing you to 51-74 months I prison, but that sentence is suspended and you are placed on supervised probation for 24 months. As a condition of probation, you must complete long term substance abuse treatment, etc." Consult your sentencing grid and feel free to be creative.