

VIDEO GAMES - SCRIPTED JUDGE'S GUIDE

You Be the Judge Sentencing Exercise - Judge's Guide **When Players Gotta Pay**

How Aggravating and Mitigating Factors Affect Sentencing Decisions

INSTRUCTIONS

Judge: After listening to a volunteer read a fictional scenario, you will be the judges on this case.

1. We'll start with the scenario just as it is, and you will determine the sentence within the parameters I will set out for you.
2. Then I will add in aggravating factors that would argue for a stiffer sentence and mitigating factors that would argue for a lighter sentence.
3. After I give you a new factor, I'll ask: Who would give a more severe sentence based on that factor and who would give a more lenient sentence?
4. To wrap up the exercise, I will ask you to weigh the totality of **all** the factors, and determine your ultimate sentencing decision. Then we will discuss.
5. We will start with a volunteer reading the scenario. Who will read the paragraph to us?

FICTIONAL SCENARIO

Brandon Barnes is an 18-year-old high school student. He steals several games from the gaming store where he works part time. He sells the stolen goods online. Brandon promotes his new business on Craigslist. Sales take off and soon he is selling stolen games in six states. Brandon ultimately is charged with and convicted of a federal offense. He could face years in prison.

Judge: Now that you've heard the scenario, each of you is the judge. When deciding on an appropriate sentence, the judge looks to the facts and circumstances of the case. I'd like to remind you that aggravating factors would favor making the sentence more severe, and mitigating factors would favor making the sentence less severe. After I give you a factor, you can raise your hand and tell me if it is aggravating or mitigating and how that factor would affect your sentencing decision.

How would you sentence Brandon if:

AGGRAVATING FACTORS

1. This is not a one-time offense. Brandon stole and sold games over a period of three weeks.
2. He stole games from the warehouse he was trusted to co-manage for his employer.
3. He also used money from selling games to buy a new gaming system for himself.
4. His offenses involved a significant amount of money. The merchandise retailed for \$20,500. He sold the games for \$10,000 and he did not pay taxes on the income.

MITIGATING FACTORS

1. His mother died this year and Brandon has to stay home from school frequently to take care of his wheelchair-bound sister when the home nursing care worker cancels.
2. He initially stole and sold the games to help pay his sister's medical bills when his dad filed for bankruptcy.
3. He came forward and told his boss before he was found out and he voluntarily turned himself in at the police station.

Judge: To wrap up the exercise, I will ask you to work with the person next to you and weigh the totality of all of the factors and decide what your ultimate sentencing decision is. Then we will discuss.

Note: This exercise is loosely based on an alleged violation of, among other things, 18 U.S.C. § 659 (theft from interstate shipments).