

**DANE COUNTY DISTRICT ATTORNEY'S OFFICE**

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**CASE SETTLEMENT GUIDELINES FOR ADULT CRIMINAL CASES  
EFFECTIVE DATE: APRIL 3, 2017**

**INTRODUCTION**

These Case Settlement Guidelines ("Guidelines") are being promulgated to assist you in meeting your obligations to the public in the discharge of your duties as prosecutors. Although sentencing is the prerogative of elected judges, the vast majority of criminal cases in Dane County – and elsewhere – are resolved by plea agreement. Although a judge is not obligated to accept a plea agreement, the recommendations of prosecutors, in court or in plea negotiations, should generally reflect the same considerations judges apply at sentencing, including: (i) the nature and gravity of the offense(s); (ii) the character of the offender; and, (iii) the protection of society. In a more expansive way, a prosecutor should consider the objectives of any sentence such as:

- Protection;
- Punishment;
- Rehabilitation;
- Deterrence; or,
- Restorative Justice and Victim Restitution.

Among the highly relevant factors a prosecutor may need to consider are:

- The defendant's character (including but not limited to age, prior record, behavioral history, remorse, employment history);
- The nature of the crime(s) and the impact on the victim(s);
- The nature of any treatment needs a defendant may have and whether they can be addressed in the community or in prison;
- The need to incapacitate a defendant by confinement;
- The desirability of a community-based sentence versus a sentence that removes a defendant from the community;

- The rights of the public; and,
- The root cause(s) of the defendant's criminal conduct.

The National District Attorneys' Association has also promulgated National Prosecution Standards 5-3.1 (3<sup>rd</sup> Edition) regarding plea agreements:

### **5-3.1 Factors to Consider**

*Prior to negotiating a plea agreement, the prosecution should consider the following factors:*

- a. The nature of the offense(s);*
- b. The degree of the offense(s) charged;*
- c. Any possible mitigating circumstances;*
- d. The age, background, and criminal history of the defendant;*
- e. The expressed remorse or contrition of the defendant, and his or her willingness to accept responsibility for the crime;*
- f. Sufficiency of admissible evidence to support a verdict;*
- g. Undue hardship caused to the defendant;*
- h. Possible deterrent value of trial;*
- i. Aid to other prosecution goals through non-prosecution;*
- j. A history of non-enforcement of the statute violated;*
- k. The potential effect of legal rulings to be made in the case;*
- l. The probable sentence if the defendant is convicted;*
- m. Society's interest in having the case tried in a public forum;*
- n. The defendant's willingness to cooperate in the investigation and prosecution of others;*

- o. The likelihood of prosecution in another jurisdiction;*
- p. The availability of civil avenues of relief for the victim, or restitution through criminal proceedings;*
- q. The willingness of the defendant to waive his or her right to appeal;*
- r. The willingness of the defendant to waive (release) his or her right to pursue potential civil causes of action arising from his or her arrest, against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his or her staff or agents;*
- s. With respect to witnesses, the prosecution should consider the following:*
  - 1. The availability and willingness of witnesses to testify*
  - 2. Any physical or mental impairment of witnesses;*
  - 3. The certainty of their identification of the defendant;*
  - 4. The credibility of the witness;*
  - 5. The witness's relationship with the defendant;*
  - 6. Any possible improper motive of the witness;*
  - 7. The age of the witness;*
  - 8. Any undue hardship to the witness caused by testifying.*
- t. With respect to victims, the prosecution should consider those factors identified above and the following:*
  - 1. The existence and extent of physical injury and emotional trauma suffered by the victim;*
  - 2. Economic loss suffered by the victim;*
  - 3. Any undue hardship to the victim caused by testifying.*

As it relates to victims and witnesses, prosecutors must consider the importance of prosecution even when faced with a lack of cooperation from those victims or witnesses. In many cases, such as those involving domestic violence, intra-family violence or sexual abuse, gang-related violence, or human trafficking, victims and witnesses may not be cooperative. The art and challenge of being a prosecutor in those cases requires a prosecutor to understand and overcome those challenges.

Unlike judges, prosecutors also have the discretion to decide what charges to file in the first place. Although a detailed discussion of charging is beyond the scope of these guidelines, this office's expectation is that prosecutors will charge cases based on what they reasonably anticipate can be proven beyond a reasonable doubt at trial and that adequately encompass a defendant's criminal conduct. This means that prosecutors will endeavor to charge appropriate penalty enhancers and to prosecute violations of bail conditions when those violations occur. In light of this charging policy,

the amendment, reduction, or dismissal of criminal charges, penalty enhancers, or criminal cases implicates plea negotiations and is addressed within these guidelines.

### **GUIDELINES**

- a. **Preliminary Hearing Waiver Offers:** No prosecutor may make an offer to induce the waiver of a preliminary hearing without the approval of the District Attorney or a Deputy District Attorney. Prosecutors may discuss potential settlement of the case prior to a preliminary hearing, but must explicitly indicate that the waiver of a preliminary hearing does not bind this office to any specific offer.
- b. **Pre-Charging Diversion:** All decisions regarding pre-charging diversion will be made by the District Attorney, a Deputy District Attorney, or the Intake Unit acting under the supervision of the District Attorney or a Deputy District Attorney.
- c. **Post-Charging Diversion:** The District Attorney, a Deputy District Attorney, or the Intake Unit acting under the supervision of the District Attorney or a Deputy District Attorney (i) offers for participation into diversion programs at the charging stage; or, (ii) will indicate conditional eligibility in case notes at the charging stage. Assistant District Attorneys may not make offers for participation in DPU programs without approval of the District Attorney or a Deputy District Attorney. This includes participation in DPP-Opiates. Assistant District Attorneys may not make offers for participation in Drug Diversion Court, Drug Treatment Court, OWI Court, or Veteran's Court without the approval of the District Attorney or a Deputy District Attorney.
- d. **Homicide and Attempted Homicide Cases:** The District Attorney or a Deputy District Attorney must approve any plea agreement in a case involving a homicide or attempted homicide charge.
- e. **Felony Cases:** The District Attorney or a Deputy District Attorney must approve any offer to amend felony charges to non-felonies or to dismiss any felony charges as part of a plea agreement. In cases where a defendant is charged with at least a Class D Felony and is pleading to that felony, a prosecutor may dismiss and read-in other felony charges in that case without District Attorney or Deputy District Attorney Approval.
- f. **Reduction of Criminal Charges to Non-Criminal Offenses:** The District Attorney or a Deputy District Attorney must approve any offer to reduce any criminal offense to an ordinance or non-criminal offense.

- g. **Dismissal of Criminal Cases:** The District Attorney or a Deputy District Attorney must approve any offer or motion to dismiss a criminal case, including hold-open agreements and dismissals (read-in or not) of entire cases as part of plea agreements for defendants with multiple pending cases.
- h. **OWI/PAC/RCS Offenses:** The District Attorney or a Deputy District Attorney must approve any dismissal of an OWI/PAC/RCS offense, except in situations in which the OWI, PAC, or RCS offense is being dismissed as result of a plea of guilty or no contest to the companion OWI, PAC, or RCS Charge.
- i. **Penalty Enhancers:** Prosecutors should not dismiss criminal repeater enhancers when recommending a probation or diversion outcome.
- j. **General Criteria for Conferring With the District Attorney or a Deputy District Attorney:** Prosecutors seeking approval for plea agreements under these guidelines should be prepared to address the following issues using a form that will be available in PROTECT. Email the form to your direct supervisor. If your direct supervisor is not available and has not directed you to a specific person in his or her absence, speak to the District Attorney and provide him the required information. In some cases, not all questions will apply.
  - i. What circumstances have changed since charging the supports an amendment, reduction, or dismissal of charges?
  - ii. What evidence or information supports that change in circumstances?
  - iii. Have you conferred with the victim or the case detective?
  - iv. How does your proposed plea agreement address the defendant's conduct and any identified root case?
  - v. Why do you believe this disposition protects the public?
- k. **Suppression Motions:** The District Attorney or a Deputy District Attorney must approve the concession of any suppression motion.
- l. **Immigration Issues and Other Collateral Consequences to Defendants:** Prosecutors may consider collateral consequences to a defendant as part of the plea negotiation process but must still adhere to the same guidelines as they would in any case.

- m. Discretionary Postconviction Relief:** Any requests by defendants to reopen and amend or dismiss prior criminal convictions or juvenile adjudications should be forward to the District Attorney or to a Deputy District Attorney.

## **DISPOSITIONS**

Under these guidelines, prosecutors will retain significant discretion regarding case dispositions. In negotiating case dispositions, prosecutors should bear in mind:

- DPU, Drug Diversion Court, Drug Treatment Court, OWI Court, and Veteran's Court provide significantly greater accountability and interventions than private counseling a defendant might obtain on his own. Informal diversion agreements that require a defendant to complete his own selected course of treatment are strongly disfavored.
- Fines and short time-served sentences are unlikely to ever address the root cause of a defendant's behavior or deter him from future criminal conduct.