



OFFICE OF THE HENNEPIN COUNTY ATTORNEY
MARY F. MORIARTY COUNTY ATTORNEY

Title: Negotiations Policy for Cases Involving Adult Defendants

Effective Date: April 28, 2025

Purpose

The purpose of this policy is to achieve safe, equitable, and just outcomes that center the healing of victims while improving community safety through individual and system accountability.

Policy

It is the policy of the Hennepin County Attorney's Office that assigned prosecutors on cases involving adult defendants have full authority to negotiate a resolution consistent with the law, except for the following situations:

1. Senior Attorney, Managing Attorney, Criminal Division Director or Deputy County Attorney support is required to:
 - a. Dismiss the entirety of a criminal complaint (except in the case of a "one-for-one" disposition)
 - b. On a case involving domestic violence or sexual assault against a victim: offer a dispositional departure or a durational departure or amend a complaint to a gross misdemeanor or misdemeanor from a felony
 - c. Seek consecutive sentences due to eligible crimes or the presence of multiple victims
 - d. Seek an upward departure at sentencing based on *Blakely* factors
2. Managing Attorney, Criminal Division Director or Deputy County Attorney support is required to:
 - a. Convene a Grand Jury to investigate or indict
 - b. Convey an offer in a case involving death or civil unrest
 - c. Request a prison sentence following trial where the offer on the same charge was a dispositional departure prior to trial
 - d. Make an offer to resolve any case specifically identified by the County Attorney, Deputy County Attorney, Criminal Division Director, or a Managing Attorney in Procasse

Procedural Considerations

1. Encouraging collaboration and coaching.

This policy reflects the expectation and belief that all prosecutors are charged with seeking a just outcome in each matter that they work on. However, no individual can be expected to do this alone and seeking just outcomes will require prosecutors to engage in dialogue, collaboration and consultation with colleagues and other stakeholders.

As such, in exercising their discretion and authority, assigned prosecutors on cases are expected to consult with Senior Attorneys and Managers, as well as their colleagues. Offers on some cases are easy to discern while others are more complex. Attorneys should be talking to colleagues and supervisors about crafting safe, equitable, and just resolutions. The greatest resource this office has is the people in it – and collaboration and consultation are some of the best ways to tap into it.

To support effective implementation of this policy, supervision will shift to focus on coaching and support, moving away from permissions-based engagement under prior policy and practice. Senior Attorneys and Managers will be expected to meet regularly with prosecutors on their teams to discuss cases.

2. Incentivizing early acceptance of responsibility.

Offers should be made that best reflect the strength of a case and a safe, equitable, and just outcome as early as possible. While cases may later deteriorate, offers should not “improve” over time merely to avoid litigation. Conversely, there is no expectation that an early offer that was rejected be reopened, particularly in situations where litigation has occurred. Seeking early acceptance of responsibility, where appropriate, saves significant resources for the State and may prevent further trauma to victims.

3. Victim input on offers should be considered and incorporated where appropriate.

While prosecutors do not represent victims, it is important to comply with victims’ rights and for offers to consider what may center a victim’s healing throughout the case. Prosecutors should communicate early and often with victims so they remain informed, even if and especially when victims do not agree with the State’s legal approach. Any victim input must be balanced against the other ideals of rehabilitation and public safety.

4. Resolutions should be based on individualized analyses that consider sentencing guidelines and departure grounds (both mitigating or aggravating).

The Minnesota Sentencing Guidelines serve as the starting point in developing an offer in any case. However, there are times when a departure from the guidelines is warranted. These departures should be based on the unique analysis of the case and the person charged, including what would serve long-term public safety. For example, this may include a situation where, although the person charged has previously been to prison on a different matter, it is appropriate to dispositionally depart to a non-incarceration option to achieve public safety. In other words, past criminal history should inform decision making, but not control it.

While racial identity and age are not appropriate grounds for departures, proposed resolutions should consider the person charged as a whole person, including their racial identity and age. While these factors should not be controlling, they should be part of the overall analysis. Racial disparities harm our community, lead to distrust, and have a negative impact on community safety. Prosecutors should be identifying and addressing racial disparities at decision points, as appropriate. Similarly, brain development science confirms that human brains are generally not fully formed until the mid-20s, and that among the last areas of the brain to fully develop is the pre-frontal cortex. This impacts many important functions including impulsivity, ability to consider risk and consequences, empathy and susceptibility to peer pressure. Prosecutors should be informed by science, research, and evidence-based practices in reaching conclusions about their cases.

5. A broader range of dispositional options should be considered.

Previous practice in making offers within the HCAO followed a continuum. For example, a drug offender may be offered diversion on the first offense, a 152.18 stay of adjudication on the second, followed by a stay of imposition, then a stay of execution and so on. There may be occasions where additional opportunities to participate in diversion or consecutive stays of adjudication or imposition are appropriate. Stays of adjudication should be considered available for use when appropriate. Offers should be narrowly tailored to the person charged at this point in their life, as well as taking into consideration what is necessary to prevent future harm to the community.

It is important to remember that, regardless of the stay type or charged crime, probation assesses the person charged to determine the appropriate level of supervision.