City of St. Louis Circuit Attorney's Office
Policies and Procedures

Overview

These policies are among efforts the Circuit Attorney's Office (CAO) is making to end mass incarceration and use the power of our decisions as prosecutors to promote fairness, justice, and safety in our city. They also seek to establish greater clarity and consistency in decision-making across the CAO in an effort to ensure that all individuals who have contact with the justice system (whether as an individual accused of a crime, victim, or witness) are treated fairly and that CAO staff are working toward a shared vision of safety and justice.

If an Assistant Circuit Attorney (ACA) or other CAO staff member believes particular circumstances of a case suggest an exception may be appropriate, the ACA or staff member must:

1. Seek approval from their supervisor/team leader or the appropriate division chief.
2. Record the date of approval/disapproval and by whom in the paper casefile and PBK. Approvals and disapprovals may be communicated verbally or via email.

Intake & Charging

Our discretion at charging provides a significant opportunity to promote fairness, justice, and safety in our city. Traditionally, charging decisions have focused on whether there was probable cause to prosecute an offense, without serious consideration of the impact or effectiveness of a criminal prosecution. This traditional approach has led to an over reliance on incarceration and further deepened division between law enforcement and the St. Louis community.

The CAO charging policies detailed here provide a more effective response to crime. These policies seek to preserve our limited resources for viable cases that pose a threat to public safety. These policies also prioritize treatment, not incarceration, for people suffering from substance abuse or mental health issues who have committed nonviolent offenses.

If an ACA has any questions regarding the charging policy, they should consult with the Chief Warrant Officer, Deputy Chief Warrant Officer, or their team leader. ACAs should interpret this policy to provide the least punitive response necessary to protect the community.

Marijuana Possession

ACAs shall not issue charges on the possession of less than 100 grams of marijuana unless there is evidence of a significant risk to public safety.

Misdemeanor Charges

ACAs shall presumptively decline misdemeanor charges unless physical injury is an element of the offense and the charge poses a threat to public safety.

Note: The presumption to decline does not apply to domestic violence, sexual assault, or child endangerment offenses, which merit special consideration.

Standard of Proof

ACAs should only issue charges when there is a good-faith belief that there is adequate evidence known at the time of charging to prove the case beyond a reasonable doubt to a City of St. Louis jury. In making this assessment, ACAs should consider the credibility of all witnesses and rely only on the admissible evidence.

ACAs should also consider whether the case involves a pretextual stop influenced by implicit racial bias. ACAs should not consider any evidence obtained as a result of such stops in their assessment of whether to issue charges.

ACAs should refuse a case if there is insufficient evidence to prove the case beyond a reasonable doubt. If the case impacts public safety, however, the ACA may instruct the presenting officer to conduct additional investigation for further consideration of the charges. If the ACA directs the officer to conduct further investigation, the case should still be refused and not taken under advisement.

ACAs should not refer declined cases to Municipal Court.

Diversion

ACAs shall consider every non-pager misdemeanor, Class E offense, and Class D offense for diversion. ACAs shall also consider all Tampering in the First Degree cases for diversion. ACAs should take a broad approach towards diversion, and err towards inclusion.

Cases should only be considered for diversion, however, if there is sufficient evidence to prove the case beyond a reasonable doubt.

Note: Though pager cases will generally not be appropriate candidates, ACAs should consider misdemeanor child endangerment cases for diversion where a traditional prosecution is not in the best interests of the child.

Overcharging

ACAs should not overcharge to pressure a person to subsequently plead to a lesser charge. To further this policy, ACAs should presumptively file only one charge per crime, and refrain from adding unnecessary enhancements, aggravating factors, or charges that will likely be dismissed in plea negotiations. This policy precludes adding armed criminal action in a fleeing case. This policy also precludes adding prior and persistent to a non-victim case.

This policy further precludes ACAs from adding, or threatening to add, additional/harsher charges in response to a person exercising their constitutional rights. For example, this policy would preclude threatening to add additional counts if a person exercises their right to a preliminary hearing.

Notifying Victims and Witnesses
ACAs, Victim Advocates, and Investigators should make a good faith documented effort to promptly inform any victims and witnesses of a charging decision and the rationale.

Bail Recommendations
"Too many who are arrested cannot afford bail even for low-level offenses and remain in jail awaiting a hearing. Though presumed innocent, they lose their jobs, cannot support their families and are more likely to reoffend. We all share a responsibility to protect the public – but we also have a responsibility to ensure those accused of crime are fairly treated according to the law, and not their pocket books." - Supreme Court of Missouri Chief Justice Zel M. Fischer[1]

The Supreme Court Rules of Criminal Procedure that went into effect on July 1, 2019, mandate that each person charged with a "bailable offense shall be entitled to release" on personal recognizance.[2] The rules further require, among other things, that the court "first consider non-monetary" release conditions, and only detain a person accused of an offense where there is clear and convincing evidence of dangerousness or flight.[3] The following bail policies are consistent with these rules and the rationale supporting them: justice cannot depend on a person's pocket book. For additional guidance, see the Charge-Specific Pretrial Memorandum.

Misdemeanor, Class D, and Class E Offenses
ACAs should presumptively request a summons for all misdemeanor, Class E, and Class D offenses unless special circumstances exist (for example, the person accused is under investigation for a more serious offense and there is clear and convincing evidence the person is a danger to the community or a flight risk). In addition to a summons, ACAs may request the least restrictive non-monetary release conditions necessary to assure the person's appearance in court and to protect the community (for example, an order of protection).

Note: Misdemeanor, Class D, and Class E domestic violence and sexual assault offenses are excepted from this policy. For these offenses, it will often be necessary to request initial pretrial detention to allow time for a victim to make arrangements to ensure his or her safety. However, to balance the time necessary to make such arrangements with an accused person's right to release, ACAs should presumptively request recognizance, with any non-monetary conditions necessary to assure a victim's safety, at a Rule 33.05 hearing where the lead charge is a misdemeanor.

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[1] Chief Justice Zel M. Fischer, State of the Judiciary Address delivered January 30, 2019, *available at* https://www.courts.mo.gov/page.jsp?id=136253.
[2] *See* Rule 33.01(a)-(b).
[3] *See* Rule 33.01(c)-(d).

Misdemeanor, Class D, and Class E Offenses - Exceptions
ACAs may only request a warrant if there is a clear and convincing evidence that there are no release conditions that will reasonably address public safety concerns and/or the person's appearance in court. If an ACA is inclined to ask for "nominal" bail—such as $500 or $1,000—the ACA should instead request a summons with the least restrictive non-monetary release conditions.

Before requesting a warrant, ACAs shall:

1. Seek approval from the Chief Warrant Officer or his or her designee.
2. Record the date of approval/disapprovals and by whom in the paper casefile and PBK. Approvals and disapprovals may be communicated verbally or via email.

Ongoing Review
All bail decisions shall be based upon finding the most effective means to ensure a person's appearance in court and to ensure public safety.

In the case of low-level non-violent offenses, ACAs should continue to evaluate whether a person is detained solely because they cannot afford the cash bail. ACAs should review the file at every court appearance to see if detention is based on cash bail. If so, the ACA should request that the person be released with the least restrictive non-monetary conditions necessary to assure the safety of the community and the person's appearance in court.

Violation of Conditions of Release - Failing to Appear
In the case of low-level non-violent offenses, ACAs should request the original release conditions after a failure to appear unless there is clear and convincing evidence that the person intentionally failed to appear. If so, ACAs should ask for the least restrictive non-monetary release condition necessary to assure the person's appearance in court. ACAs should not ask for cash bond after a failure to appear without seeking approval from a supervisor/team leader and recording the decision in PBK.

Notifying Victims and Witnesses
ACAs, Victim Advocates, and Investigators should make a good faith documented effort to consult with victims and witnesses before the office makes a bail recommendation or modification.

<u>Discovery</u>
ACAs should practice "open file" discovery, and disclose all materials as soon as practicable. If an ACA has difficulty obtaining evidence from the police, the ACA should consult with a supervisor to contact the officer's superior. If the evidence remains outstanding, the ACA should request a court order requiring the officer to provide it.

Plea Offers and Sentencing Recommendations

We incarcerate people at an alarming rate. Our country is the world leader in incarceration, with an incarceration rate of 1,049 people per 100,000 - nearly 10 times higher than most countries.[4] Our city, however, incarcerates people at a rate of 2,564 per 100,000 - more than double the national average- as of 2015.[5] These rates reflect our reliance on incarceration as a primary tool, rather than a finite resource reserved for individuals who pose a risk to public safety that cannot be mitigated by community services.

Our over-reliance on incarceration comes at a great cost. For example, in 2018, our city spent 37.6 million dollars to incarcerate people at the City Justice Center and Medium Security Institution (the Workhouse).[6] Further, in 2015, the state spent just over $100 million dollars to house people sentenced from St. Louis.[7] These expenditures on jails and prisons shift resources away from services better suited to support rehabilitation such as substance abuse treatment, mental health care, affordable housing, and economic development.

Moreover, our over-reliance on incarceration is not making us safer. As 19 states have demonstrated, we can reduce the rate at which we incarcerate people without seeing an increase in crime.[8] The results from these states are consistent with research on deterrence, which shows that incarceration is not an effective tool to deter crime.[9] Instead, rather than reducing crime, incarceration can increase the risk that a person will commit future crimes.[10]

It is time to take a new approach, one that no longer relies on incarceration as the default solution. To that end, the following policies reflect the CAO's new plea and sentencing

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[4] *See Incarceration Trends*, Vera Institute of Justice, http://trends.vera.org/rates/st-louis-city-mo (last visited June 14, 2019) (the most recent national data available capturing prisons and jails is from 2015).

[5] *Id*. (the most recent national data available capturing prisons and jails is from 2015)

[6] St. Louis City Public Safety Budget (Fiscal Year 2020), *available at* https://www.stlouis-mo.gov/government/departments/budget/documents/upload/FY20-AOP-Dept-600-2.pdf (2018 expenditures are detailed on page 3).

[7] The most recent data available for state prison expenditures for those sentenced in St. Louis is from 2015, when the state spent $22,000 per person, and 4,533 people from St. Louis were in state prisons.

For the average cost to house a person in prison, *see* Chris Mai and Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010-2015*, Vera Institute of Justice (May 2017), *available at https://storage.googleapis.com/vera-web-assets/downloads/Publications/price-of-prisons-2015-state-spending-trends/legacy_downloads/the-price-of-prisons-2015-state-spending-trends.pdf.*
For the number of people housed in prison, *see supra* note 1.

[8] Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, Vera Institute of Justice (July 2017), *available at* https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-prison-paradox-incarceration-not-safer/legacy_downloads/for-the-record-prison-paradox_02.pdf

[9] *Five Things About Deterrence*, Office of Justice Programs: National Institute of Justice, https://nij.gov/five-things/pages/deterrence.aspx (last visited June 14, 2019).

[10] *Supra* note 5.

philosophy: incarceration as a last resort. Though there will be instances where incarceration is required to keep the community safe, where violent crimes account for only 5% of arrests and 30% of our disposed cases, those instances should be the limited exception.[11]

Process

ACAs must complete a Plea Offer Sheet before proposing a plea offer to a supervisor. Plea offers must be reviewed by the appropriate team leader during bi-weekly team meetings. Offers should be communicated to defense counsel at the first court date after arraignment.

Plea Offer vs. Sentencing Recommendation

Too often our criminal justice system pressures people to accept a plea offer, whether they are guilty or not, rather than exercising their constitutionally guaranteed right to a trial. Our system typically exerts that pressure through plea offers that become increasingly severe over time, and sentencing recommendations that are significantly more punitive than previous plea offers.

Our office will take a different approach based on the following principle: if we believed that a previous plea offer was an appropriate resolution of the case, then a substantially higher sentencing recommendation primarily serves to punish the person accused for exercising a constitutional right.

In practice, with one exception noted below, ACAs may not substantially increase the harshness of a plea offer over time, or request a sentence that is substantially higher than any previously made plea offer.

The “substantially” higher standard is meant to provide ACAs with a guiding principle to exercise their discretion. As a helpful framework, this policy precludes requesting an incarceration sentence where a previous plea offer was limited to probation. This policy also precludes requesting a sentence near the top of a sentencing range where a previous plea offer was limited to the bottom of the range.

Note: Though each person has a constitutionally guaranteed right to trial, our office has a responsibility to balance that right with a duty to safeguard victims from continued trauma when possible. As such, ACAs may depart from this policy when necessary to protect a victim from further harm (i.e. avoiding a victim’s testimony in court).

Conviction Consequences

People convicted of a criminal offense may face a range of significant consequences including deportation and restrictions on employment and housing. The remainder of this policy specifically focuses on adverse immigration consequences. However, ACAs are encouraged to

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[11] For arrest data *see Arrest Trends*, Vera Institute of Justice, https://arresttrends.vera.org/arrests?year=2014&location=1656&fragment=arrest-volume&estimated=1#arrest-volume (last visited June 14, 2019). The 30% statistic is based on internal CAO data analysis conducted by the Vera Institute of Justice on cases spanning October 2016 - October 2017.

employ similar reasoning and discretion to avoid other conviction consequences related to housing, employment, and education.

As the Supreme Court recognized in *Padilla v. Kentucky*, "deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes."[12] The Court, consequently, encouraged consideration of immigration consequences in plea bargaining because "informed consideration of possible deportation can only benefit both the State and noncitizen."[13]

ACAs shall carefully consider adverse immigration consequences presented by the defense and potential alternative dispositions. If a defense attorney provides such information, ACAs shall determine, based upon the totality of the circumstances, if an appropriate disposition can be reached that neither jeopardizes public safety nor leads to disproportionate immigration consequences.

Though ACAs must consider adverse immigration consequences, ACAs do not have an obligation to independently research potential immigration consequences. Further, there is no requirement that the defense attorney provide copies of documents that reflect the defendant's immigration status (i.e. Visa, Green Card, etc.).

In determining an appropriate plea offer, appropriate sentencing recommendation after trial, or appropriate posture in a post-conviction relief motion, every case must be evaluated on its merits so that justice is served. Among the factors that should be considered are the severity of the crime, the crime's impact on the victim and community, the history and character of the person convicted, the impact of the disposition on present and potential immigration consequences, the effect the person's deportation would have on the community, and the sentence exposure and priorability of any immigration neutral alternative dispositions.

Examples of alternative considerations include, but are not limited to:

- Devising an alternative plea agreement that is factually honest and of a similar nature and penal consequence to the originally charged offense, but minimizes the person's exposure to adverse immigration consequences;
- Allowing a person to enter a pre-plea diversion program where post-plea diversion would result in adverse immigration consequences;
- Allowing language to be stricken from a charging document or plea colloquy while maintaining the truthfulness of the remaining charging language;
- Community service hours;
- Successful completion of rehabilitative program or programs to address underlying issues behind the problematic conduct as an additional condition of probation not in lieu of jail time;

[12] *Padilla v. Kentucky*, 599 U.S. 356, 364 (2010).
[13] *Id*. at 373.

- Stipulating to a motion to vacate in post-conviction proceedings, if it is determined that, had the consequences been raised affirmatively in the initial proceedings, a different resolution would have been reached pursuant to this policy.

Presumptive SIS probation

There are about 700 consequences of a conviction in Missouri.[14] In recognition that these consequences can limit a person's successful reintegration into the community, ACAs should presumptively request a Suspended Imposition of Sentence (SIS) probationary term - as an SIS term allows a person to avoid these consequences if they successfully complete probation. ACAs should apply this presumption even where a person has previously received an SIS sentence.

Note: This presumption does not apply to domestic violence, sexual assault, or child endangerment offenses, which merit special consideration.

Presumptive Two-Year Maximum Probationary Terms

Lengthy probationary terms consume valuable city resources. Further, research has demonstrated that probation violations are most likely to occur in the first year of supervision.[15] As such, whether recommending SIS or SES, probationary terms should presumptively be limited to two years.

Reduce Reliance on Incarceration for Probation Violations

ACAs should not recommend incarceration solely based on technical violations (i.e. where there is no allegation that the person committed a new offense). For the vast majority of technical violations, a different response will be more appropriate and productive than incarceration.

Further, ACAs should only request incarceration for an alleged new crime on probation if the new crime warrants an incarceration sentence. In other words, if the CAO would not pursue an incarceration sentence for the alleged new crime, then ACAs should not request incarceration for the probation violation.

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[14] National Inventory of Collateral Consequences of Conviction Inventory - https://niccc.csgjusticecenter.org/database/results/?jurisdiction=250&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1

[15] *See generally* James Austin, *Reducing America's Correctional Populations: A Strategic Plan*, Justice Research and Statistics Association: Special Issue on Sentencing and Corrections in the States (2010), *available at* http://www.jfa-associates.com/publications/reduce/How%20to%20Reduce%20Mass%20Incarceration.pdf (noting that there is "little, if any, evidence" that extending or reducing probationary terms has an impact on recidivism, and that probation failure "is most likely to occur within the first 12 months of supervision").