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**STATE OF VERMONT
OFFICE OF THE CHITTENDEN COUNTY STATE'S ATTORNEY**

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To: CCLE and CCSAO Staff
Memo Re: Charging Decisions re: False Information to Police Officers
From: Sarah George, Chittenden County State's Attorney

- I. **The presumption is that the State will not pursue FIPO charges unless there are certain extraordinary circumstances.** "Extraordinary circumstances" includes criminal investigations involving violence, an active crime scene concerning death, sexual assault, or serious bodily injury; criminal investigations concerning children; criminal investigations concerning kidnapping; criminal investigations concerning the illegal sale of narcotics or other banned substances; criminal investigations where the false statement is essential and concerns any other, specified, underlying crime, and investigations that lead to the actual issuance of a ticket, citation, or charging, against the wrong individual due to an individual giving a false name.
- II. **The State will not pursue FIPO charges related to traffic violations and other underlying misdemeanors, or other minor crimes involving non-violent or unextraordinary circumstances.** The policy purpose of this presumption is that the State will focus its prosecutorial resources on underlying crimes rather than potential false statements. For example, consider the circumstance where law enforcement stops an individual for speeding and it is discovered that the individual is has a criminally suspended license or an active warrant, so they provide a false name. It is the policy of the State that a speeding ticket could be issued, or the underlying charges related to the DLS could be pursued, but that the FIPO charge would not be. (* *Unless, as stated above, that false name is not corrected, and an actual ticket or criminal citation is issued or charges processed*).
- III. **In serious cases as outlined in (I), and law enforcement believe an individual is giving false information, law enforcement shall provide notice of the basic elements of a FIPO charge to the individual.** Specifically, law enforcement should inform individuals that it is a crime, which may result in prosecution, when a person: "knowingly" provides "false information" to "any law enforcement officer" "with [a] purpose to implicate another or to deflect an investigation from the person or another person." For example, if an individual is being questioned by law enforcement concerning a burglary and the individual appears to be giving false information, law enforcement should give them notice, as outlined above, that any false statement, related to the crime in any way, may constitute a distinct crime with sentencing implications. Even if the State still decides not to bring FIPO charges, at least the individual has been notified of the basic elements of the law.

IV. Prosecutors shall not charge or use FIPO cases for the sole purpose of a future plea negotiation or plea offer. In other words, if the reason for including or pursuing a FIPO charge is for the purpose of later offering to remove it, and not for another reason such as merit or substance, then the charge should not have been included in the first place. If the State is willing to remove the FIPO charge during the course of a plea negotiation then the FIPO charge should not be charged in the first place. The focus of the State and law enforcement, in the FIPO context, according to the Vermont Supreme Court, should be on the underlying offense rather than statements – unless the statements are essential and related to another offense.

Conclusion:

In light of COVID-19, and in the interest of reducing cumulative sentencing impacts, and as expressed in the discussion of the FIPO statute in Vermont, the State's Attorney will only pursue FIPO charges under certain extraordinary and essential circumstances, rather than statements that are general or merely inconsistent, nonessential or unrelated to an underlying offense, or when such false statements are quickly corrected.