

DEPUTY STATE'S ATTORNEY'S

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CASE SCREENING PROCESS (ATTORNEYS)

1. Verify that data in Justware is correct:
  - a. Assigned attorney (it should be YOU)
  - b. Make sure Ward is at minimum assigned as co-counsel if:
    - i. Serious injury/death
    - ii. Embezzlement over \$50k
    - iii. Anything else that you have previously flagged and discussed together
  - c. Defendant name and DOB
  - d. Victim name and DOB
  - e. Offense location
  - f. Offense date or offense range
  - g. Charge(s) and charge code(s)
2. Check case packet for completeness:
  - a. PC affidavit
  - b. Record check(s) including case dispositions
  - c. MV check(s)
  - d. Sworn statements.
  - e. Citation or AW request
  - f. Arrest/custody sheet
3. Review sworn documents for probable cause:
  - a. Your charging decision is guided by the facts, not by the charges listed by the officer.
  - b. Keep in mind that the officer may have omitted a charge that is appropriate and provable.
  - c. Re-acquaint yourself with the elements of the offense as listed in statute.
  - d. Be mindful that there are offense "modifiers" that could apply:
    - i. Accessory before ...
    - ii. Aiding in the commission of ....
    - iii. Attempting to ...
    - iv. Conspiracy to ...
    - v. .... While a Habitual Criminal.
  - e. Verify that you are within the statute of limitations.
  - f. Verify that you are applying the law that was in effect on the date(s) in question.
  - g. Do you have jurisdiction?
    - i. Did the offense occur in Windsor County?
    - ii. Was the offense committed via a communication sent or received in Windsor County?
    - iii. Is the offense a violation of a court order that was issued in Windsor County?
4. Generate "Primary Case Fact" in Justware. It should include:
  - a. All facts necessary to prove each element of the crime(s) charged.

- b. All facts necessary to address obvious suppression or 12(d) issues.
  - c. Summary of prior criminal history.
  - d. Summary of 13 VSA 7554 factors.
5. Select charge(s) in Justware
- a. Minimum ethical standard: do not bring a charge that you know is not supported by probable cause.
  - b. WCSA standard: only bring a charge that is supported by probable cause and you believe you could prove at trial.
6. Add Reason for Non-Referral to Diversion/Tamarack:
- a. Under "Related Cases and Attributes" in Justware, add a "Case Attribute" of either:
    - i. **"Diversion Referral"**: If the case is being referred to Diversion at arraignment
    - ii. **"No Diversion Referral"**: If the case is not being referred to Diversion at arraignment.
      1. If no referral is being made, add a "Case Attribute Code" that indicates why no referral is being made. Note: This may need to be manually edited on the face of the information if none of the drop down options fit.
7. Generate documents:
- a. Defendant/Juvenile Face Sheet (select from JustWare list)
    - i. It should prominently state the rationale for any bail or unusual COR requested.
  - b. Information (select from JustWare list)
    - i. Do not assume the auto-generated charging language is correct.
    - ii. Do not assume the auto-generated charging language is legible or grammatically sufficient.
    - iii. Do eliminate unnecessary disjunctive language from the Information.
    - iv. Do not add unnecessary surplusage to the Information.
    - v. Add "Proposed Conditions of Release and Bail" to the bottom of the Information:
      1. General rule: less is more
      2. General rule: treatment conditions are better than substance abstinence conditions
    - vi. Add "Offer" to the bottom of the Information to guide the judge in determining whether to assign a public defender. Options:
      1. **"Fine"**: This means the State's offer is a fine of \$1,000 or less
      2. **"TBD"**: This means the State is offering another form of lawful sentence (fine of more than \$1,000, a deferred, work crew, incarceration, etc).
      3. **"Diversion"**: this means the case is ready for diversion without any conditions precedent.
      4. **"Tamarack"**: this means the case is ready for the Tamarack Program without any conditions precedent.
    - vii. Confirm that reason for non-referral to Diversion is included and written on the face of the information as necessary.
  - c. Discovery Notice and Offer Sheet (use your own template)
    - i. Disclose the items presently in your file.
    - ii. Disclose the items that you anticipate receiving based upon your review of the case.
    - iii. Disclose witnesses. Be mindful to identify all witnesses known to the State even if they are missing from an officers' witness list. Do not forget:
      1. Officers from arresting agency
      2. Officers from assisting agency
      3. Civilian witnesses
      4. Expert witnesses (lab analyst, DRE, DUI chemist, etc.)
      5. Records custodians (docket clerk, bank security person, etc.)
    - iv. Make an offer (where appropriate). In a victim case, it is best to wait for the victim impact statement to come in first.
      1. For serious felonies (5 years or more potential imprisonment), follow standardized offer format involving disclosure of sentencing data and weighing of aggravating and mitigating factors
  - d. Complete Discovery Request to Police
    - i. This gets sent to the police after the defendant pleads NG at arraignment.