

## ADDISON COUNTY PROSECUTORIAL FUNCTION

1. Addison County State's Attorney's primary objectives are to assure the public safety and tranquility while appropriately addressing individual criminogenic needs of offenders. Meeting these objectives requires us, at times, to balance competing interests. Assuredly, we are to consider how our work impacts victims. However, we must also strive to limit the restrictions placed upon the personal liberty of offenders to those limitations reasonably related to achieving these objectives. Put plainly, our goal is not to simply obtain convictions, but instead to assure that justice is served in a way that does not impede our core objectives of limiting recidivism and upholding the welfare of the public.
2. All cases being considered for purpose of charging shall be upon affidavit of probable cause of a certified law enforcement officer, or as a result of a grand jury indictment. We do not pursue criminal cases by affidavit before a judicial officer as allowed under Vermont Rule of Criminal Procedure 4(a) Foundationally, we are to charge a case based upon something more than mere probable cause. That is not to say that we will only charge cases where there is a high likelihood of successful prosecution, because that standard would not adequately achieve the goal of protecting public safety and tranquility. A charge should reflect the minimum necessary means to achieve the overarching goals of maintaining the public peace and tranquility while addressing the needs of the offender in an attempt to forestall future offending.
  - 2.1. In making a charging decision we should never consider bargaining position. In other words, we should not be considering a charge as a means of coercing a future plea to a lesser offense. Instead, we should base our charging decisions on whether we reasonably can expect the evidence to be admissible at trial and to meet the essential elements of the crime.
  - 2.2. Second, we must determine the criminogenic needs of the offender. This process may be, or may not be, based upon objective data. We are to review, to the extent possible, an offender's personal characteristics, such as criminal history, police involvements, socio-economic and educational background, the presence of substance use disorder or unmet mental health needs, as well as the facts of the individual case. This is not intended to be an exhaustive list.
  - 2.3. Third, after having determined the criminogenic needs of an offender, in making a charging decision, we should analyze the case as follows:
    - 2.3.1. Are precharge options available to address these needs? If so, determine whether the facts of the case warrant a precharge referral. Of course, this option is limited by the access to services in Vermont and Addison County, as well as the criminogenic needs of the individual and the severity of their offense.
    - 2.3.2. If pretrial options are insufficient, then charge the case and determine whether diversion, Tamarac (treatment diversion), or reparative board are appropriate options. In making this determination be aware that these options are limited based upon the severity of an offense. As a baseline, if this is an offender's first or second misdemeanor, a first non-violent felony, or a driving offense where there was no serious bodily injury or death to another person, seriously consider whether these forms of pretrial diversion may meet the offender's risks and needs or adequately address victim's concerns and the interests of the community.
    - 2.3.3. If pretrial diversion cannot meet the offender's risks and needs, or adequately address victim's concerns or the interests of the community, or an offender's criminal history is beyond that referenced above, then a criminal case should be referred for prosecution.

3. Youthful offender status shall be considered as an option in every case wherein a defendant qualifies. Nevertheless, referrals shall follow confirmation that the risk of reoffending and the needs of the defendant can be met. At times, to determine whether risks and needs can be met may require a case be filed initially in criminal court followed by a motion by defendant for youthful offender consideration. We shall stipulate to a transfer to family court should a defendant's evaluation provide assurances that risks and needs can be met so long as the interests of individual and public safety can also be adequately addressed.
4. Juveniles accused of committing a crime shall be reviewed as soon as practicable for findings of probable cause, ideally within the next business day. Once probable cause has been found the individual shall be referred for evaluation utilizing the Youth Assessment and Screening Instrument (YASI).
  - 4.1. Except for those cases where initial filing in family court is not statutorily permitted, all juveniles who score low or low-to-moderate for risk shall be referred to diversion unless there is a history of failing diversion on two prior occasions. Ideally, diversion shall be initiated and completed within thirty days of the offense.
  - 4.2. Cases where juveniles score moderate, moderate-to-high, or high risk shall be referred to family court for delinquency proceedings. Diversion may still be considered as a means of resolving these cases after the preliminary hearing when it is apparent that the criminogenic needs of the offender may be met, and the interests of public safety and tranquility may be addressed through restorative practices.
  - 4.3. Juveniles whose cases do not permit initial filing in family court shall be arraigned in criminal court. We shall orally move at arraignment for transfer to family court except when flight from prosecution is threatened, a history of flight from prosecution is evident, or individual or public safety demands the case proceed in criminal court.
5. Plea offers should reflect undertaking the same considerations, with rehabilitation as the first and foremost objective, and incarceration sought either as a last resort or as a means of protecting the public. Where the law requires a mandatory minimum, our offers shall reflect that minimum and we should only stray from that minimum where the severity of an offense and the exacerbating history of the individual, to include the extent and breadth of convictions as well as supervisory history, justifies such a departure. Please also consider victim input, as set forth below.
  - 5.1. To achieve goals referenced above, in victim cases, we must have open and consistent communication with victims and attempt not to impose upon them our own personal judgment of what is best for them. This objective must be weighed against the interest in protecting them from future harm at the hands of their offender. Please keep in mind that we are not victims' attorneys; that civil redress may also be available; and that incarcerative resolutions have been shown to negatively impact recidivism in certain circumstances.
  - 5.2. In every case where on its face the immigration status of an individual may be at issue, please consider whether the criminogenic needs of the defendant and the safety of the public can be met through amendment of the charged offense to one less likely to lead to deportation or whether precharge options may adequately address risks and needs of the individual while also considering the safety and wellbeing of any victims or the community in general. Please also consider whether alternative resolutions that result in a case dismissal may result in addressing these overarching objectives.

- 5.3. Although we are to charge cases not aspirationally but based upon the above criteria, always balance the interest in swift resolution of cases against the need for conviction on the initial charge.
6. Requested bail conditions shall reflect the least restrictive means of mitigating risk of flight from prosecution while protecting the safety of the public and the integrity of the judicial process.
  - 6.1. Cash bail shall only be requested in the rarest of circumstances wherein an offender has threatened flight from prosecution or has a recent history of flight from prosecution. If set, we shall move to quash cash bail when a defendant is charged with a non-violent misdemeanor and/or has illustrated a consistent history of court appearances, the extent to which a person has ties to the community, their criminal history, as well as the seriousness of the offense. The amount of cash bail requested shall only reflect an amount necessary to mitigate a risk of flight from prosecution and shall not be used to solely accomplish pretrial detention.
  - 6.2. In cases where a defendant may be lawfully held without bail, we shall only resort to a request to hold without bail when the severity of the offense mandates; when the protection of an individual or the community is tantamount due to the nature of the offense or a defendant's repeated violent criminality; and/or when a risk of flight from prosecution is evident.
  - 6.3. Revocation of bail shall be sought in only the most extreme cases where a defendant has shown a persistent inability to abide by conditions of release as they relate to contact with a complainant, are charged with a crime of violence and have been newly accused of a subsequent crime of violence, and/or have fled from prosecution.
7. Children In Need of Care and Supervision (CHINS) cases shall be evaluated with an eye toward reunification as the goal in every case. There are times, however, when the best interests of the child are inconsistent with reunification. Nevertheless, we shall engage every available effort to create a framework for a successful reunification as a matter of first resort. Our partner, the Department of Children and Families (DCF), are the experts when it comes to the investigation of these matters. However, just as we apply our own discretion in whether to pursue a criminal case, we should similarly apply discretion in whether a CHINS case should be pursued.
  - 7.1. Where safety, educational, medical treatment, and general welfare needs can be met through a conditional custody order, that avenue shall be attempted as a first order.
  - 7.2. Temporary custody shall be sought only after exploring the feasibility of a conditional care order.
  - 7.3. Seeking termination of parental rights shall be a matter of last resort and in only the most extreme cases wherein as a matter of certainty the best interests of the child cannot be met by the custodial parent(s).
  - 7.4. As it relates to educational neglect, we should strive to address chronic truancy through CHINS, as opposed to criminal court, to ensure DCF involvement in the case and to take advantage of the confidential environment within family court.
8. Post-conviction relief cases shall be reviewed based upon the merits of a petitioner's claims. Where merited, settlement may include an amendment of the charge, reduction of a sentence, or dismissal of a case. Please do not consider the merits of a claim upon their face. However, do not also presume that a petitioner's trial defense was adequate, that a conviction was warranted for the crime charged, or that the sentence was appropriate. Please also consider whether our overarching objectives set forth above have already been met and whether there is present a historical sentencing disparity when determining how a post-conviction case should resolve. Of course, where

merited, we shall aggressively defend the work done by the prosecution, defense, and court through the court process.

9. Similarly, where applicable, appeals should be analyzed through the same lens as post-conviction relief.
10. Other than as mentioned above and as they relate to the nature of an offense; consideration of an offender's or victim's immutable or perceived personal characteristics, to include but not to be limited to one's race, religion, gender, sexual orientation, or nation of origin, shall never be the basis for making a charging decision or a plea offer. Evidence of decisions influenced by an offender's or victim's immutable or perceived personal characteristics shall be subject to the process set forth in the collective bargaining agreement.