

## **NEW POLICIES ANNOUNCED FEBRUARY 15, 2018**

These policies are an effort to end mass incarceration and bring balance back to sentencing. All policies are presumptive, not mandatory requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term "supervisory approval" is used, it means that:

- (1) An Assistant District Attorney must obtain approval of the unit's supervisor, and
- (2) The supervisor must then obtain approval from the District Attorney, or in his absence, the approval of First Assistant Carolyn Temin or Robert Listenbee
- (3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including the date of approval and identity of the requesting Assistant District Attorney and the supervisor who obtained approval or disapproval from the District Attorney.

### **DECLINE CERTAIN CHARGES**

1. Do not charge possession of marijuana (cannabis) regardless of weight.
2. Do not charge any of the offenses relating to paraphernalia or buying from a person (BFP) where the drug involved is marijuana.
3. Do not charge prostitution cases against sex workers where a person who has been arrested has two, one or no prostitution convictions. Withdraw all pending cases in these categories that would be declined for charging under this policy.
4. Individuals who have three or more prostitution convictions will be charged with prostitution and immediately referred to DAWN Court.

### **CHARGE LOWER GRADATIONS FOR CERTAIN OFFENSES**

**Rationale: summary gradation greatly reduces pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedites Municipal Court and Common Pleas dockets.**

1. Charge and dispose of Retail Theft cases as summary offenses unless the value of the item (s) stolen in a particular case exceeds \$500.00 or where the defendant has a very long history of theft and retail theft convictions.
2. You must seek supervisory approval to charge and dispose of retail theft cases at misdemeanor or felony levels.

3. Remember, that a summary conviction permits a sentence of 90 days incarceration, fines of up to \$250, and full restitution. These penalties are sufficient to hold a retail thief accountable.
4. In all cases, seek full restitution.

### **DIVERT MORE**

All attorneys are directed to approach diversion and re-entry with greater flexibility and an eye toward achieving accountability and justice while avoiding convictions where appropriate. For example:

1. An otherwise law-abiding, responsible gun owner who is arrested because he does not have a permit to carry a firearm may apply for individualized consideration for diversion.
2. An otherwise law-abiding, first DUI (driving under the influence) defendant who has no driver's license (regardless of whether or not that defendant's immigration status interferes with obtaining a license under Pa. law) may apply for individualized consideration for diversion with a requirement of efforts to overcome license impediments where possible as an aspect of any diversionary program.
3. A defendant charged with marijuana (cannabis) delivery or PWID (Possession with the Intent to Deliver) may apply for diversion.

This is not a comprehensive list.

### **INCREASE PARTICIPATION IN RE-ENTRY PROGRAMS**

In general, some effective re-entry programs have failed to attract more candidates due to rewards and incentives of the program that are minor compared with the major effort required of re-entering Philadelphians. Effective re-entry programs prevent crime and should apply to more re-entering Philadelphians. ADAs and staff involved in re-entry are directed to discuss and formulate suggestions to improve this situation by May 1, 2018.

### **PLEA OFFERS**

**Note: This policy does not apply to Homicides, Violent Crimes, Sexual Assault Crimes, Felon in Possession of a Weapon (6105), and Economic Crimes with a loss of \$50,000 dollars or more or cases involving attacks on the integrity of the judicial process (e.g. false reports to police, perjury, obstruction of the administration of justice, witness intimidation, etc. All of these cases require supervisor approval as stated above.**

1. Make plea offers below the bottom end of the mitigated range of the PA Sentencing Guidelines for most crimes.
2. Where an Individual ADA believes an offer below the bottom end of the mitigated range is too low due to specific factors, that ADA must seek supervisory approval of a higher offer.
3. Where the applicable sentencing guidelines range is between 0 and 24 months, ADAs should seek more house arrest, probationary, and alternative sentences in appropriate cases.

## **SENTENCING**

### **AT SENTENCING, STATE ON THE RECORD THE BENEFITS AND COSTS OF THE SENTENCE YOU ARE RECOMMENDING**

The United States has the highest rate of incarceration in the world. It has increased 500% over a few decades. Pennsylvania and Philadelphia have been incarcerating at an even higher rate than comparable U.S. states and cities for decades--a 700% increase over the same few decades in Pennsylvania; and Philadelphia in recent years has been the most incarcerated of the 10 largest cities. Yet Pennsylvania and Philadelphia are not safer as a result, due to wasting resources in corrections rather than investing in other measures that reduce crime. Pennsylvania's and Philadelphia's over-incarceration have bankrupted investment in policing, public education, medical treatment of addiction, job training and economic development--which prevent crime more effectively than money invested in corrections. Over-incarceration also tears the fabric of defendants' familial and work relationships that tend to rehabilitate defendants who are open to rehabilitation and thereby prevent crime. As a result, a return to lower rates of incarceration for those defendants who do not require lengthy sentences is necessary in order to shift resources to crime prevention. Ultimately, the highest goal of sentencing must be to seek justice for society as a whole (the Commonwealth includes victims, witnesses, defendants, and those not directly involved in an individual case) while effectively preventing crimes in the future via methods that work. Each case, each defendant, and each sentence is unique and requires your careful consideration.

At sentencing, ADAs must state on the record their reasoning for requesting a particular sentence, and must state the unique benefits and costs of the sentence (e.g. consider where applicable the safety benefits, impact on victims, interruption of defendants' connections to family, employment, needed public benefits, and the actual financial cost of incarceration). In each case, place the financial cost of incarceration on the record as part of your explanation of the sentence recommended.

In talking about the financial cost to the taxpayer, use the following, arguably low, but much-repeated cost of:

\$42,000.00 per year to incarcerate one person (\$3,500 per month or \$115.00 per day).

The actual cost (including pension and other benefits to correctional employees, health care for incarcerated individuals, etc.) arguably is close to \$60,000.00 per year to incarcerate one person in the Philadelphia County prison system.

### **FACTS YOU SHOULD KNOW AND CONSIDER IN MAKING YOUR RECOMMENDATION**

1. The actual cost (including pension and other benefits to correctional employees, health care for incarcerated individuals, etc.) arguably is close to \$60,000 now to incarcerate one person for a year in Philadelphia County prison system. (\$5,000 per month at \$164.00 per day).
2. As of March 1, 2018, Philadelphia County incarcerates approximately 6,000 people at a total annual cost of around \$360 Million per year.
3. The cost of one year of unnecessary incarceration (at \$42,000.00 - \$60,000.00) is in the range of the cost of one year's salary for a beginning teacher, police officer, fire fighter, social worker, Assistant District Attorney, or addiction counselor. You may use these comparisons on the record.
4. The average family's total income in Philadelphia in 2017 was approximately \$41,000.00—which paid their housing, food, utilities, transportation, clothing, educational expense and taxes.

### **EXAMPLES OF HOW THIS INFORMATION CAN BE USED AT SENTENCING**

1. If you are seeking a sentence of 3 years incarceration, state on the record that the cost to the taxpayer will be \$126,000.00 (3 x \$42,000.00) if not more and explain why you believe that cost is justified.
2. In a very serious matter, where for example, 25 years incarceration are sought and is appropriate, state on the record that the cost to the taxpayer is \$1,050,000.00 (25 x \$42,000.00) if not more and explain why you believe that cost is justified.
3. When recommending a sentence of probation, compare the cost of incarceration to the cost of probation [need to insert the cost of probation per year]. Emphasize the positive rehabilitative factors of a probationary sentence such as permitting the defendant to continue working and paying taxes, permitting the continuation of family life, education and community inclusion.

**REQUEST SHORTER PROBATION TAILS (I.E. CONSECUTIVE PERIOD OF PROBATION) OR NO PROBATION TAIL AFTER A SENTENCE OF INCARCERATION.**

Criminological studies show that most violations of probation occur within the first 12 months. Assuming that a defendant is violation free for 12 months, any remaining probation is simply excess baggage requiring unnecessary expenditure of funds for supervision. In addition, County Probation is overwhelmed with more than 44,000 supervisees, which makes supervising people who are more likely to commit serious crimes more difficult. There is no reason to assume a probationary tail must be two years or more in every single case. Carefully evaluate what, if any, probationary tail is appropriate upon completion of a sentence of incarceration.

**REQUEST SHORTER PROBATIONARY SENTENCES WHERE NO SENTENCE OF INCARCERATION IS SOUGHT.**

Criminological studies confirm that longer probationary periods often result in more failures than shorter ones where those studies have controlled for offense and criminal record. In addition, County Probation is overwhelmed with more than 44,000 supervisees, which makes supervising people who are more likely to commit serious crimes more difficult.

**REQUEST NO MORE THAN A 6-MONTH VOP SENTENCE FOR A TECHNICAL VIOLATION WITHOUT SUPERVISORY APPROVAL**

In many technical violation cases, no additional incarceration should be sought and no revocation is necessary. However, where the technical violation(s) calls for a more serious consequence, do not seek more than 6-12 months' incarceration unless you have approval from the District Attorney via your supervisor.

**SUPERVISORY REQUEST NO MORE THAN A 2-YEAR VOP SENTENCE FOR A DIRECT VIOLATION WITHOUT APPROVAL**

Every direct violation presents the opportunity for two sentencings (one on the old matter and one on the new matter) that take into account the fact of the defendant's commission of a new crime while under supervision. Obviously, commission of a new crime while under supervision is a factor tending to increase the sentence on the new matter. Therefore, ordinarily it is not necessary to seek a sentence of longer than 2-4 years for a direct VOP. However, where special factors arise, you may seek approval from the District Attorney via your supervisor to seek a lengthier direct VOP sentence.

**REQUEST THAT THERE BE NO VIOLATION OF PROBATION OR PAROLE DUE TO A POSITIVE DRUG TEST FOR USE OF MARIJUANA (CANNABIS) OR DUE TO POSSESSION OF CANNABIS WITHOUT SUPERVISORY APPROVAL**