

Commonwealth's Attorney
Ramin Fatehi

Chief Deputy
Krista L. Fulton

Deputies
Karen J. Burrell
Cynthia D. Collard
K. Scott Miles

Senior Litigation Counsel
Brent A. Johnson

Director of the
Victim/Witness
Assistance Program
Lakresha D. Boyd

COMMONWEALTH OF VIRGINIA



Senior Assistants
Andrew Kolp
William S. Maydosz
Michelle L. Newkirk
Gregory B. Turpin
Gordon C. Ufkes
David A. Vitto

Director of Communications
Nia Y. Tariq

Comptroller
Alice K. Allred

Director of
Information Technology
Christopher J. Beason

OFFICE OF THE COMMONWEALTH'S ATTORNEY CITY OF NORFOLK

800 East City Hall Avenue • Suite 600 • Norfolk • Virginia • 23510-2719
Phone: (757) 664-4444 • Fax: (757) 664-4445 • Norfolk Family Justice Center: (757) 330-0376
<http://www.norfolk.gov/commatty> • <http://www.facebook.com/NorfolkCWA> • @NorfolkCWA

PLEA AGREEMENT PHILOSOPHY, POLICIES, AND PROCEDURES

The following Plea Agreement Philosophy, Policies, and Procedures ("Policy") is effective on March 22, 2022, and will remain in effect unless updated or superseded.

Introduction and Philosophy

The Norfolk Commonwealth's Attorney's Office ("Office") pursues justice diligently on behalf of all who live, work, study, and play in our City and Commonwealth. The Office promotes public safety and accountability through the efficient, effective, and ethical prosecution of accused persons, taking into consideration the values of the community and the interests of victims, witnesses, the public at large, and accused persons. The Office works to combat explicit and implicit bias, mass incarceration, the school-to-prison pipeline, and the criminalization of poverty, homelessness, mental illness, and substance-use disorder. All prosecutors in this Office serve as guardians of the rights of the people and, above all, as ministers of justice.

In evaluating how to prosecute and resolve criminal cases, prosecutors in the Office should consider the factors in [Title 18, Section 3553 of the United States Code](#), which direct prosecutors and judges to impose criminal sanctions "sufficient but no greater than necessary" to do justice. Prosecutors should approach every case from a systems level and with an eye toward the place of that case within the history of the accused person, victims, and public. The disposition of every case should serve the public interest. The sanctions that this Office seeks should be proportionate to one another, treat similarly-situated people similarly, and use as a general frame of reference the sanctions that the court imposes in cases of homicide.

It is the responsibility of the Deputy Commonwealth's Attorneys to ensure that the prosecutors on their teams comply with this Policy and that this Policy applies consistently within teams and across teams. A Deputy may delegate a portion of this responsibility to a Senior Assistant Commonwealth's Attorney with the permission of the Commonwealth's Attorney, but the Deputy will ultimately remain responsible for the directives of the Senior Assistant and for their team's compliance with the Policy.

No policy can anticipate every set of facts. If a prosecutor feels that the principles of the Policy require a deviation from its specific directives, they should discuss the case with their Deputy, who will determine whether to authorize a departure from the Policy. The assigned prosecutor and, where appropriate, the Deputy must document these deviations in the case-management system.

Deputies should consult with the Chief Deputy or the Commonwealth's Attorney on cases of substantial seriousness or public interest. A prosecutor may consult directly with the Chief Deputy or the Commonwealth's Attorney where time or other circumstances require it.

It is the responsibility of every prosecutor to offer feedback to their supervisor, the Chief Deputy, and the Commonwealth's Attorney if they observe that a provision of this policy produces unintended or counterproductive results in a systemic fashion.

Victims of Crime, Witnesses, Lead Investigators, and the Public Interest

This Office serves the public interest and determines how to prosecute each case based above all on the public interest. The Office further recognizes that, where a crime involves a victim, that victim has, by definition, suffered trauma, loss, or both. The Office therefore strives to be trauma-informed and victim-centered in its actions, keeping in mind that the ultimate decision on the prosecution and disposition of cases must always serve justice and the public at large.

Prosecutors must treat victims with respect, keep them reasonably informed on the status of any proceedings, and take into account their views to the extent that those views are consistent with the public interest. Prosecutors must adhere to the Virginia Crime Victim and Witness Rights Act, Virginia Code §§ 19.2-11.01 et seq., and prosecutors should avoid practices that will retraumatize victims.

The lead law-enforcement case investigator is nearly always the individual most familiar with the facts and has devoted significant time and resources to bringing a case to trial. Prosecutors should keep the lead investigator reasonably apprised of the status of the case and of the plea negotiations and may in appropriate cases solicit input from the investigator on the disposition of the case.

Ultimately, while the interests of the victim and the public interest align in most cases, where the victim disagrees with a course of action that is in the public interest, prosecutors must act in the public interest above all and pursue the disposition consistent with this Policy.

Should a prosecutor and victim disagree on a plea agreement or case disposition, the prosecutor must inform the victim of the victim's opportunity to express that disagreement to the Court, offer the victim the opportunity (if practicable) to confer with the prosecutor's Deputy, and inform the Court of that disagreement prior to the Court's accepting any proposed plea agreement.

Case-Management System Annotations

In all cases, prosecutors must be able to articulate the relevant facts, their assessment of the legal and factual strengths of the case, the equities of the possible courses of action, and where the case fits into the whole picture of the victim, accused person, criminal activity in the city, and public safety at large. Those assessments will have value not just during the life of a given case but as insights for future treatment of that accused person, victims, and similarly situated accused persons. Those assessments also are the proof that prosecutors are acting consistently with the principles of this Policy and invaluable information for supervisors, the Director of Communications, and the Commonwealth's Attorney when addressing inquiries from interested parties regarding the status, progress, and outcome of our cases.

For those reasons, prosecutors must document in the Office's case management system a brief overview of the facts of the case, how they assessed the value of the case, and how their actions in the prosecution of the case were consistent with this Policy. Prosecutors should make notes in the case-management system of every substantial action that they have taken in the course of the case, as they have traditionally done in their written case notes, and store copies of material electronic correspondence in the case-management system.

In cases involving a victim, the prosecutor must also document their adherence to the victim-consultation requirements above and, at the conclusion of the case, how they sought to notify the victim of the case disposition (for example, in person in court, by letter, or by some other form of communication).

No Cash Bail

Requiring accused people to post cash bail criminalized poverty and harms public safety by increasing financial stress on accused people and their families. Extended detention in jail while a person presumed to be innocent or that person's family works to post cash bail further exacerbates this stress.

While by law the decision to set cash bail ultimately remains with Virginia Magistrates prior to the involvement of our office and with judges thereafter, the Office will continue its longstanding policy not to seek cash bail (secured bond) in any case.

Where an accused person demonstrates a danger to the community or an unreasonable risk of flight in relation to the seriousness of the charges before the Court, the prosecutor must argue for the accused person to be held without bail. In appropriate cases involving danger to the community, prosecutors may appeal the decision of the District Courts to grant bail over the prosecutor's objection.

Where an accused person is not a demonstrated danger to the community or an unreasonable risk of flight, the prosecutor will agree to or recommend an unsecured bond and, where appropriate, pretrial-supervision conditions aimed at protecting the community.

Where charges against an accused person are discontinued by dismissal or *nolle prosequi* and this Office subsequently reinstitutes those charges, prosecutors should generally agree to the same terms of bail as were previously in effect unless the accused person's behavior resulted in the absence of a material witness for the Commonwealth or the accused person's behavior subsequent to the dismissal or *nolle prosequi* would have constituted a violation of the terms of the accused person's previous bail.

Sentencing Guidelines Advisory and Not Mandatory

The Virginia Criminal Sentencing Commission's Virginia Sentencing Guidelines ("Guidelines") offer valuable guidance to prosecutors, but a mechanical application of the sentencing guidelines is inconsistent with the principles of this Policy. Prosecutors must analyze each case individually based on its unique facts and circumstances.

Prosecutors should calculate sentencing guidelines as soon as they have sufficient facts to do so and must be familiar with the guidelines recommendations as charged, as theoretically chargeable, and as contemplated for plea or disposition. Prosecutors should consider the Guidelines but should determine what a fair sentence is for the person's conduct regardless of what the guidelines recommend. The fact that a proposed dispositional offer is within the sentencing guidelines range is not a sufficient justification for extending that offer.

An accused person's conduct may merit a deviation from the sentencing guidelines, whether upward or downward. Where a prosecutor believes it appropriate to agree to or advocate for a sentence above or below the sentencing guidelines range, the prosecutor must discuss that position with their Deputy.

Mandatory Minimum Sentences – Deputy Approval

Mandatory minimum sentences present a significant possibility of over-punishment. Such sentences tie the hands of the Court and foreclose the possibility that a neutral finder of fact would evaluate mitigating evidence and conclude that a sentence below the mandatory minimum would be appropriate. Conversely, the existence of a mandatory minimum sentence is immaterial when the facts of a case are aggravated and will call for a heavy sentence in excess of the mandatory minimum. For those reasons, the existence of a mandatory-minimum sentence is one factor among many to consider when evaluating a case but should never be the sole factor.

In any case involving a mandatory minimum sentence exceeding 30 days, whether charged or theoretically chargeable, a prosecutor must seek the approval of their Deputy on whether maintaining the mandatory minimum sentence is consistent with the principles of justice and this Policy.

In cases other than violent felonies as defined in Virginia Code § 17.1-805, where the prosecutor and Deputy are of the opinion that maintaining a mandatory-minimum sentence of three years or more is appropriate, the prosecutor and Deputy should consult with the Chief Deputy and the Commonwealth's Attorney.

For cases involving a violent felony as defined in Virginia Code § 17.1-805, where the prosecutor and Deputy are of the opinion that maintaining a mandatory-minimum sentence of eight years or more is appropriate, the prosecutor and Deputy should consult with the Chief Deputy and the Commonwealth's Attorney.

Prosecutors must document all assessments of mandatory minimum sentences—whether to forego, reduce, or dismiss them or to or maintain them—pursuant to this Policy.

Sentence Length – Approval of Deputies or the Commonwealth's Attorney

This Office prosecutes a host of gravely serious offenses and an additional host of offenses that carry the potential for long prison sentences. While a long sentence, including confinement for life, can be appropriate in cases of extreme depravity, cruelty, or public risk, prosecutors must ensure that they have accurately assessed the merits of a case before deciding to seek such sentences.

In cases other than violent felonies as defined in Virginia Code § 17.1-805, where a prosecutor believes it appropriate to seek an active term of confinement of five years or more, that prosecutor must seek the approval of their Deputy. Where the prosecutor believes it appropriate in such a case to seek an active sentence of ten years or more, the prosecutor must seek the approval of their Deputy, the Chief Deputy, and the Commonwealth's Attorney.

For cases involving a violent felony as defined in Virginia Code § 17.1-805, where a prosecutor believes it appropriate to seek an active term of confinement of ten years or more, that prosecutor must seek the approval of their Deputy. Where the prosecutor believes it appropriate in such a case to seek an active sentence of fifteen years or more, or where the sentence the prosecutor seeks would serve functionally as a life sentence, the prosecutor must seek the approval of their Deputy, the Chief Deputy, and the Commonwealth's Attorney.

Prosecutors must document all assessments of sentence length pursuant to this Policy.

Collateral Consequences of Convictions

For too long prosecutors have ignored the negative collateral consequences that come with a felony conviction. That conviction brings with it lifelong civil disabilities, including the loss of the right to vote, to serve as a juror, to serve as a notary public, and to possess a gun. For noncitizens, even certain misdemeanor convictions can result in a non-appealable deportation from the United States. Civil disabilities increase the probability of crime by erecting barriers to a convicted person's reentry as a productive citizen. Deportation for minor offenses sunders families and, depending on a person's country of origin, may amount to a death warrant.

In assessing whether their actions are in the public interest, prosecutors should consider these collateral consequences. In serious cases, these collateral consequences will usually be irrelevant, no matter how profound, compared to the wrongful actions of the accused person and the harm to victims and the public. In less-serious cases, however, prosecutors should take care that collateral consequences do not inadvertently impose a harsh sanction that the prosecutor did not intend.

Treatment of Children Accused of Crimes – Transfer or Certification a Last Resort

Advances in the study of human development demonstrate that the parts of the human brain responsible for higher-order functions, including impulse control, do not fully mature until late adolescence, well past the age of 21. For that reason, this Office will address offenses committed by children, absent unusual circumstances, in the Juvenile and Domestic Relations District Court, which offers children and their victims services that specially address the correction and rehabilitation of children.

When a child is accused of an offense that allows for transfer or certification of the child for trial as an adult, the filing or withdrawal of any notice for transfer or certification of the child will be the responsibility of the

Deputy within two business days of the arraignment of the accused child. The Deputy should file such notice only where the facts of the case and the history of the child show that the child has exhausted all rehabilitative possibilities within the juvenile system and where the child poses a danger to public safety.

The Deputy should consult with the Commonwealth's Attorney or Chief Deputy prior to filing a notice of transfer or certification, if practicable, or as soon thereafter as possible.

Prosecutors may not use the filing or withdrawal of a motion to transfer a child for trial as an adult as a condition of a plea agreement.

Murder and Other Intentional Homicides

Murder is the most serious charge known to the law. Murder cases are among the most serious that the Office prosecutes.

A prosecutor seeking to charge a person with murder or other intentional homicide must secure the approval of the Commonwealth's Attorney. A prosecutor seeking to increase or decrease the grade of an intentional homicide must secure the approval of the Commonwealth's Attorney.

Family and Interpersonal Violence

The prosecution of family and interpersonal violence (sometimes called intimate-partner violence or domestic violence) involves particularly difficult, sensitive, and sometimes conflicting values. Prosecutors must always act in a victim-centered and trauma-informed fashion in these cases. Each case is unique, but prosecutors should pursue public safety first while acknowledging the wishes of victims and endeavoring not to retraumatize victims.

As often happens in these difficult cases, when a victim of interpersonal violence recants a prior position, requests the discontinuation of the prosecution, or indicates an intention to invoke a right against self-incrimination, prosecutors must disclose this information to the defense consistent with their ethical obligations and should evaluate whether it is ethically and logistically possible to proceed without the testimony of the victim.

Prosecutors will not force an uncooperative victim to testify and to invoke the right against self-incrimination. Where a victim fails to appear following the issuance of a subpoena in these cases, prosecutors should not seek the issuance of a rule to show cause or a *capias* against that witness. If prosecutor concludes that a complaining witness in an interpersonal-violence case has in fact filed false charges or abused the criminal process and that it is therefore appropriate to seek charges for perjury or the filing of a false report, the prosecutor must secure the approval of their Deputy, the Chief Deputy, and the Commonwealth's Attorney.

Residential Burglary

Short of physical violence, there is no violation more profound than the violation of the sanctity and privacy of a person's home. Prosecutors must keep in mind the trauma that victims of burglary experience, including the loss of physical and psychological security and of personal effects that may have little monetary but immeasurable intrinsic value.

Where the facts are sufficient to convict a person age 18 years or older of a residential burglary, prosecutors should seek a conviction for that residential burglary. Prosecutors should also bear in mind that the significant majority of residential-burglary cases will merit the imposition of an active term of confinement regardless of the recommendations of the sentencing guidelines. Prosecutors who feel that a conviction for residential burglary is inconsistent with the other principles of this Policy should discuss the case with their Deputy and, where appropriate, with the Chief Deputy and the Commonwealth's Attorney.

Fraud and Larceny – Dollar Thresholds

Fraud and larceny cases involve unlawful behavior, fact patterns, and victim characteristics too numerous to address individually. When considering how to prosecute a grand larceny or equivalent felony fraud, the prosecutor must consider, among other factors, the wrongfulness of the accused person's conduct, the characteristics of the accused person, the number of prior larceny convictions of the accused person, the intractability of the accused person's behavior, the characteristics of the victim, and the overall welfare of the community.

Frauds and larcenies involving vulnerable victims (including the elderly or disabled) or an abuse of the accused person's position of trust are aggravated cases and should be addressed accordingly. In some instances, the sentimental or symbolic value of the property at issue may inform the prosecutor's assessment. The prompt repayment of restitution, especially in the case of a victim in financial difficulty due to the accused person's conduct, may demonstrate remorse and a desire to make amends and therefore be a factor in mitigation, but the interests and protection of the community will always be the primary consideration in fashioning a just disposition in these cases.

Where a fraud or larceny case involves a theft or monetary loss or contemplated loss of \$2,500 or less, the prosecutor should consider a plea offer that would reduce a felony charge to the lesser-included misdemeanor. Prosecutors who believe that a larceny within this range merits prosecution as a felony should secure permission to do so from their Deputy and should document the file with the reasons for doing so.

Where a fraud or larceny case involves a theft or monetary loss or contemplated loss of at least \$10,000 but under \$50,000, the prosecutor must inform the Deputy of the nature of the case and consult with the Deputy regarding the handling and disposition of the case.

Where a fraud or larceny case involves a theft or monetary loss or contemplated loss of \$50,000 or more, the prosecutor and their Deputy must inform the Chief Deputy and the Commonwealth's Attorney of the nature of the case and consult with the Chief Deputy and Commonwealth's Attorney regarding the charging, handling, and disposition of the case.

Possession of Controlled Substances

Substance-use disorder remains an intractable problem that has fallen to the criminal-justice system to address. Unfortunately, empirical data has demonstrated that the traditional model of felony drug-possession prosecution and supervision is ineffective at assisting people with substance-use disorder in avoiding overdose or reaching sobriety. The aggressive prosecution of people with substance-use disorder for simple possession of a controlled substance has led to over-felonization and mass-incarceration and has not served public safety.

Prosecutors should therefore examine cases of simple possession of a controlled substance with the intention of reducing those cases to a lesser misdemeanor unless the facts of an individual case or the characteristics of the accused person demonstrate that the person is a risk to the safety of others. In those cases, prosecutors should seek a felony conviction and the post-sentence supervision necessary to protect the public.

Prostitution and Victims of Human Trafficking

Cases involving people charged with prostitution often intersect with the trafficking of people for forced sex or other forced labor. Prosecutors should scrutinize all cases of prostitution to determine whether the person charged with prostitution is participating in that prostitution by free will or by compulsion.

Where the prosecutor determines that a person charged with prostitution is in fact a victim of human trafficking and is not aiding and abetting in the trafficking of others, that person is not guilty as a matter of law, and the prosecutor must dismiss the charges against that person. If a victim of human trafficking is charged with other criminal conduct, the prosecutor must assess whether that person is acting under legal

duress and proceed with caution. Prosecutors should consult with their Deputy if they believe that a case has a connection to human trafficking.

In all prostitution cases, prosecutors should examine the facts to try to determine whether the person charged with prostitution is acting alone, in concert with others, or under the control of a procurer or other third party. Prosecutors should prioritize the prosecution of procurers and third parties over the prosecution of the person engaged in prostitution.

In cases where a person is engaging in prostitution freely and voluntarily, when fashioning a disposition prosecutors should consider where the act of prostitution was to have taken place and any secondary effects on the community, including on the owners of affected homes or commercial establishments.

Concealed Firearms

The Office respects the right of responsible gun owners to possess and carry their guns in a lawful way, including carrying guns openly in public places where not otherwise legally prohibited.

The unlawful possession of a concealed gun, however, is a threat to public safety and a leading indicator for perpetrating or suffering a homicide, which is why our Office exercises our discretion to prosecute these misdemeanor cases. Given the ease with which individuals may obtain a concealed-weapon permit in Virginia, there are practically no legitimate reasons to excuse the unlawful concealment of a gun.

In cases where a person aged 18 or older is charged or should have been charged with the unlawful possession of a concealed firearm as a primary offense, prosecutors must seek convictions for the most serious concealed-firearm offense (misdemeanor or felony) that the evidence supports, and prosecutors must seek the forfeiture of the firearm in question pursuant to Virginia Code § 19.2-386.27. Prosecutors may not agree to a finding under advisement leading to a reduction or dismissal of a concealed-firearm case and will oppose such a request to the judge by the defense absent exceptional circumstances.

A prosecutor who feels that the strength of the evidence in a concealed-firearm case merits the reduction of a concealed-firearm felony to a misdemeanor or a finding under advisement for a misdemeanor must secure the approval of their Deputy.

A prosecutor who feels that the mitigating facts of the case justify a reduction of a felony concealed-firearm case or a finding under advisement on a misdemeanor concealed-firearm case must secure the approval of their Deputy, the Chief Deputy, and the Commonwealth's Attorney.

Any other aspects of negotiated or argued sentences on these cases—including whether to seek active confinement or a suspended sentence, supervision, or other conditions—should be consistent with the other guidance in this Policy.

Possession of a Firearm by a Person Convicted of a Felony

A person convicted of a felony should not possess a firearm. A person charged with felony possession of a firearm as a convicted felon should generally be convicted of that offense, and prosecutors should not generally take under advisement such a crime to a misdemeanor or reduce such a crime to a misdemeanor. Any prosecutor seeking to do so much seek the approval of their Deputy.

Depending on the recency and the nature of the prior felony, this crime may carry a mandatory minimum sentence. Whether to pursue the mandatory-minimum sentence will depend on the accused person's threat to public safety and history of violence, the number and age of the prior felony convictions, and the other guidance in this Policy.

Written Plea Agreements, Virginia Crime Codes, Biographical Information, and Stipulations of Facts

In felony cases in Circuit Court, including cases of felonies taken under advisement or reduced to misdemeanors, prosecutors must present a written plea agreement to the Court pursuant to Virginia Supreme Court Rule 3A:8(c). Those plea agreements must contain all of the terms of the plea agreement, including any charges amended, reduced, or *nolle prosequi* in the District Courts and any charges not brought in light of the plea agreement. In addition, plea agreements should list all applicable Virginia Crime Codes and an affirmation by the accused person that their date of birth and Social Security number on the charging document is correct. In misdemeanor cases on appeal to the Circuit Court, prosecutors are encouraged to present a written plea agreement where at all practicable.

In cases disposed of in Circuit Court, excepting misdemeanor appeals, prosecutors must present a written stipulation of facts to support a guilty plea absent an explicit, unsolicited order from the Court to present an oral stipulation of facts. Prosecutors who present an oral stipulation of facts must inform their Deputy that they have done so and why.

Prosecutors who reach plea agreements on cases in the District Courts, especially in felony cases reduced to misdemeanors, should where at all practicable reduce those plea agreements to writing. Any plea agreement in the District Courts must include the Office's standard language for the waiver of the right to appeal to Circuit Court.

Prosecutors must, where at all practicable, typewrite the plea agreement and stipulation of facts.

Rejected Plea Agreements

This Office will pursue the public interest in all that it does, but all plea agreements involve three parties: this Office, the accused person, and the trial judge.

Judges have broad discretion to reject plea agreements should they so choose. Where a judge rejects a plea agreement, the prosecutor must inform their Deputy, the Chief Deputy, and the Commonwealth's Attorney of that rejection and note in the case-management system the reason for the court's rejection. The prosecutor may not present that identical plea agreement to a subsequent judge absent permission from the Commonwealth's Attorney.

Cooperation Agreements

Cooperation agreements are a necessary tool in the effective prosecution of many cases. To ensure the integrity of all criminal prosecutions, prosecutors must document in writing all the terms of a person's cooperation, both in the case management system and in any case documents such as proffer/*Kastigar* letters and plea agreements.

Prosecutors may inform defense counsel that a person pursuing consideration for cooperation may receive consideration at a later date, memorializing this information in writing with the defense counsel and in the case-management system. Prosecutors may not and should not, however, engage in "hypothetical," i.e. "what-if," discussions with defense counsel or any other person regarding the terms or results a person's cooperation.

To the extent that there are any agreements—even partial, inchoate, or conditional ones—between a prosecutor and a cooperating person, those agreements must be reduced to writing. The plea agreements and stipulations of fact in such cases may be reviewed *in camera* pursuant to Virginia Supreme Court Rule 3A:8, and prosecutors should move for the sealing of those agreements (excepting to satisfy the obligation to disclose impeachment evidence) in the unusual circumstance where the safety of the cooperating person or others requires it.

All cooperation agreements must be treated as impeachment evidence in the cases in which a cooperating witness or co-defendant is expected to cooperate or testify, and prosecutors must furnish any cooperation agreements and related paperwork to defense counsel.

Suspended Sentences

Nearly every case that this Office prosecutes involves the imposition of a suspended sentence in addition to any active sentence a person may serve.

As with active sentences, suspended sentences should be no longer than would be necessary to protect the public interest and should not result in a suspended sentence longer than would be appropriate for a judge to impose should the defendant fail to be of good behavior multiple times. While the length of that suspended sentence will depend on the nature of the offense, the relevant history of the accused person, and the interests of any victim, one useful guidepost is whether, following a third probation violation hearing for failure to be of good behavior, it would be appropriate to recommend that a convicted person serve the balance of the suspended sentence.

The period of good behavior on suspended sentences should be sufficient to protect the public should a person be charged with a subsequent offense but not so long as to create a situation of effective "suspended for life."

Active Probation Supervision

Prosecutors must bear in mind that the purpose of active probation supervision is rehabilitation, not punishment. Prosecutors should recommend or require supervised probation only where that supervision is narrowly tailored to ensure that a convicted person is not a threat to public safety. Probation conditions should be rationally related to the nature of that threat. The term of active supervision should be no longer than necessary to vindicate these goals. Those terms should not amount, absent a specific statutory mandate, to "supervision for life."

A history of substance-use disorder or mental illness will not, in itself, warrant placement on active supervision. A convicted person's history of substance use disorder or mental illness is a factor to consider in assessing the need for supervised probation where there is a demonstrable risk to public safety from that history.

Violations of Suspended Sentences and Uniform Good Behavior

When a prosecutor learns that a person subject to a suspended sentence has not been of good behavior, the prosecutor should review the history of the person, including the facts and circumstances of the underlying conviction and the nature of the violation of good behavior.

Where the public interest requires it, the prosecutor should initiate the process to charge the person with a violation of good behavior. Should the prosecutor conclude that the violation is minimal, the prosecutor may decline to initiate that process. Regardless of the decision, the prosecutor should note the reasons for initiating or declining the violation in the case-management system.

Where the violation of good behavior or the underlying conviction is for a crime of violence as defined in Virginia Code § 17.1-805 and the prosecutor believes it is appropriate to decline to file a violation of good behavior, the prosecutor must seek the approval of their Deputy.

Where the violation of good behavior or the underlying conviction is for homicide and the prosecutor believes it is appropriate to decline to file a violation of good behavior, the prosecutor must seek the approval of their Deputy, the Chief Deputy, and the Commonwealth's Attorney.

If a prosecutor initiates a violation of violation of good behavior, the prosecutor must make an individualized bail assessment consistent with this Office's existing policy opposing cash bail. A violation of uniform good behavior, in and of itself, is not sufficient cause to request a capias without bail.

Prosecutors may agree to make a joint recommendation with the defense to the Court on the disposition of good-behavior violations, but the ultimate disposition of a good-behavior violation will be subject to the approval of the Court.

Violations of Supervised Probation – Technical Violations and New Convictions

A person's failure to abide by the terms of supervised probation is, in large part, a failure of that person to abide by the conditions of the Court. Prosecutors must bear in mind that, as a violation of the Court's expectations, prosecutors may make recommendations to the Court regarding the disposition of supervised-probation violations but that the Court retains the ultimate authority to rule on their disposition.

In most cases, where a person fails to follow the rules of supervised probation, the probation officer initiates the process of the probation violation. If a prosecutor initiates a supervised-probation violation, the prosecutor must make an individualized bail assessment for each *capias* consistent with this Office's existing policy opposing cash bail. If the supervised-probation violation is a first or second technical violation under Virginia Code § 19.2-306.1 and the person is not charged with a new criminal offense, the prosecutor will recommend release on unsecured bail absent contrary guidance from a Deputy.

Given the realities of case docketing, people on probation who are charged with a first or second technical violation of the terms of supervision (as defined in Virginia Code § 19.2-306.1, and punishable by no more than 14 days of confinement) often spend more time in custody awaiting the disposition of the probation violation than they may by law be sentenced to serve. For that reason, in cases of first or second technical violations, unless the accused person is charged with a new criminal offense, prosecutors should agree to release the person on bail with appropriate supervision conditions absent extraordinary circumstances.

In cases of third technical violations or violations stemming from a new criminal conviction, prosecutors should assess whether it serves public safety or the public interest for the person to remain in custody pending the resolution of the violation.

In assessing the appropriate disposition of a supervised-probation violation, prosecutors should, where practicable, consult with the supervising probation officer to determine whether the person will benefit from continued supervision. Prosecutors should pursue the least restrictive disposition, including the removal of the requirement for supervised probation, consistent with maintaining public safety. The failure to abide by the technical terms of supervised probation should not, in itself, be grounds for a return of a person to supervised probation.

Concerns of Law-Enforcement Misconduct

Official misconduct within the justice system destroys the trust in and legitimacy of the justice system. If, in the course of prosecuting a case, a prosecutor has reason to believe that a law-enforcement officer has engaged in the excessive use of force, biased policing, racial profiling, civil-rights violations, or other misconduct, the prosecutor must immediately bring that information to the attention of their Deputy, the Chief Deputy, and the Commonwealth's Attorney for appropriate action.

Concerns of Prosecutorial Misconduct

Prosecutorial misconduct strikes at the heart of the truth-finding process. If a prosecutor has reason to believe that a fellow prosecutor has engaged in unethical conduct in a pending or concluded case, including the intentional suppression of material evidence tending to prove the innocence of an accused person or lessen that person's punishment, the prosecutor must immediately bring that concern to the attention of their Deputy, the Chief Deputy, and the Commonwealth's Attorney for appropriate action.

Abuse of the Criminal Process

It is an unfortunate reality that some people will abuse the criminal process by filing false reports or maintain false charges, whether in retaliation, to collect a civil debt, or for some other malign purpose. Such behavior

traumatizes innocent people who are falsely charged with crimes and undermines public trust in the fairness of the justice system. If a prosecutor has reason to believe that an individual has abused the criminal process, the prosecutor must immediately bring that concern to the attention of their Deputy, the Chief Deputy, and the Commonwealth's Attorney for appropriate action.

Policy Does Not Create Substantive or Procedural Rights

This Policy provides guidance for the prosecutors in this Office. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any civil or criminal matter, and this Policy puts no limitation on this Office's pursuit of any lawful litigation prerogative. This Policy is subject to revision, change, or withdrawal at the sole discretion of the Commonwealth's Attorney.

Effective on the 22nd day of March, 2022.

Ramin Fatehi
Commonwealth's Attorney for the City of Norfolk