

## **Written Guidelines governing charging and plea negotiation policies and practices adopted by Brown County Attorney pursuant to Minn. Stat. § 388.051**

1. Plea negotiation is the process by which the Brown County Attorney's Office, defense counsel, and the defendant attempt to conclude a criminal case by entry of a plea of guilty or other appropriate disposition without the necessity of a trial. Plea negotiation is a legitimate means to resolve a criminal case. In the interest of the effective administration of criminal justice, and public safety, the County Attorney's Office engages in discussions to reach an appropriate resolution of criminal cases.

2. The Brown County Attorney's Office, in resolving a criminal case, may agree to one or more of the following dispositions, depending on the circumstances of the case:

a. To make, or not oppose, recommendations concerning the sentence or conditions of probation which may be imposed if the accused enters a plea of guilty; or

b. To dismiss the offense charged if the accused enters a plea of guilty to a different offense, reasonably related to the accused's conduct; or

c. To dismiss other charges, or refrain from issuing other potential charges against the accused, if the accused enters a plea of guilty; or

d. Other dispositions whenever the interests, safety, and well-being of the public and the effective administration of criminal justice will be served.

e. A plea agreement should encourage finality in the case, and, in general, plea agreements should not allow a defendant to later withdraw a plea unless otherwise authorized by law.

3. Factors that the Brown County Attorney's Office will examine and consider in resolving cases include, but are not limited to:

a. Factors relating to the offense: (1) The nature and circumstances of the offense; (2) Mitigating or aggravating factors; (3) The deterrent value of the proposed disposition; (4) Recommendations, if any, of involved law enforcement, investigative, or assessment agencies, including charging recommendations; and (5) Excessive cost of prosecution in relation to the seriousness of the offense.

b. Factors relating to the victim: (1) The feelings and attitude of the victim; (2) The impact of the offense or trial on the victim (physical, psychological, and economic); (3) The relationship of the victim to the defendant or the witnesses; (4) The availability of the victim as a witness.

c. Factors relating to the offender: (1) the deterrent value of the disposition; (2) The willingness of the defendant to acknowledge guilt and assume responsibility for his or her conduct; (3) The assurance of prompt and certain application of correctional consequences to the defendant; (4) The availability of alternative correctional measures which are more appropriate to achieving correctional goals; (5) The defendant's giving or

offering cooperation which has or may result in the successful prosecution of others engaged in serious criminal conduct; (6) The characteristics of the offender, including amenability to probation and other criminal history.

d. Factors relating to the strength of the case, including: (1) The unavailability of a material witness; (2) A possible deficiency in the proof required to convict; (3) A possible issue as to admissibility of the State's evidence; (4) The possible challenge to the credibility of certainty of the State's evidence; and (5) The interests of justice.

4. Factors that the Brown County Attorney's Office shall not consider in resolving cases include, but are not limited to:

- a. Any personal or political advantage;
- b. Race, ethnicity, gender, religion, sexual orientation, social status or economic status of the accused, victim, and/or witness.

5. Specific Plea Negotiation Guidelines.

- a. Restitution: When authorized by law, restitution shall always be recommended as a part of a defendant's sentence if applicable.
- b. Career/Violent Offender Sentencing: When an enhanced sentence is available under M.S. §609.1095, the prosecutor may choose to waive the enhanced sentence to avoid the significant expense of trial, however, if the defendant has a significant criminal record, and has previously avoided career offender sentencing, the prosecutor may choose to argue for a sentence up to the statutory maximum or beyond the guidelines range based on the criminal history of the defendant.

c. If drug or treatment court is available, the Brown County Attorney's Office may support referral of cases to drug or treatment court on an individualized basis, and will consider among other factors, the interests of public safety and the likelihood of a defendant successfully completing drug or treatment court and remaining law-abiding upon completion.

6. The Brown County Attorney's Office shall in good faith attempt to comply with M.S. § 611A.03 which states as follows:

### **611A.03 PLEA AGREEMENTS; NOTIFICATION.**

#### **Subdivision 1. Plea agreements; notification of victim.**

Prior to the entry of the factual basis for a plea pursuant to a plea agreement recommendation, a prosecuting attorney shall make a reasonable and good faith effort to inform the victim of:

(1) the contents of the plea agreement recommendation, including the amount of time recommended for the defendant to serve in jail or prison if the court accepts the agreement; and

(2) the right to be present at the sentencing hearing and at the hearing during which the plea is presented to the court and to express orally or in writing, at the victim's option, any objection to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated objections to the prosecuting attorney, the prosecuting attorney shall make these objections known to the court.

This policy, as amended, replaces prior policies of the County Attorney's Office governing charging and plea negotiation. This policy uses the Rice County Attorney Plea Negotiation Guidelines as a model, and language from the Rice County Guidelines is used extensively in this policy, with amendments made as deemed appropriate by the Brown County Attorney.