

National Prosecution Standards

Third Edition

INTRODUCTION

These Standards are intended to be an aspirational guide to professional conduct in the performance of the prosecutorial function. Unless otherwise indicated, they are intended to apply to the chief prosecutor (by whatever title) in any office, as well as to deputy and assistant prosecutors.

These Standards are intended to supplement rather than replace the existing rules of ethical conduct that apply in a jurisdiction. Generally, these Standards should be construed in such a way that they are consistent with existing law and applicable rules of ethical conduct. These Standards are intended to be guides for prosecutors in the day-to-day performance of the prosecution function, but the problems of professionalism and ethics are too varied to be subject to unvarying rules. Thus, the decision whether or not to follow one or more of these Standards may or may not constitute an unacceptable lack of professionalism, depending on the attendant circumstances. These standards are not intended to: (a) be used by the judiciary in determining whether a prosecutor committed error or engaged in improper conduct; (b) be used by disciplinary agencies when passing upon allegations upon violations of rules of ethical conduct; (c) create any right of action in any person; and (d) alter existing law in any respect.

The accompanying Commentary is intended to help prosecutors understand and interpret these Standards, but is not an official part of the Standards. If the Commentary appears inconsistent with the text of the Standard, the text should guide the prosecutor's actions.

DEFINITIONS

“Jurisdiction”—Means the political area over which the prosecutor's authority extends. However, in the context of applicable laws and rules of ethical conduct, “jurisdiction” includes a state as well.

“Knows,” “Has Knowledge,” or “Within the Knowledge of”—Means actual knowledge.

“Misconduct”—Conduct defined as misconduct by the relevant Rules of Ethical Conduct.

“Prosecutor”—Unless otherwise specifically indicated, means any person performing the prosecution function.

“Rules of Ethical Conduct”—Refers to rules of professional conduct or rules of attorney conduct or rules of professional responsibility or codes of attorney conduct as adopted by the various states or jurisdictions to regulate attorney conduct. The term does not refer to the ABA Model Rules of Professional Conduct.

“Special Prosecutor”—Means any person who performs the prosecution function in a jurisdiction who is not the chief prosecutor elected or appointed in the jurisdiction or an

assistant or deputy prosecutor in the jurisdiction.

I. GENERAL STANDARDS

- 1. The Prosecutor's Responsibilities**
- 2. Professionalism**
- 3. Conflicts of Interest**
- 4. Selection, Compensation, and Removal**
- 5. Staffing and Training**
- 6. Prosecutorial Immunity**

1. THE PROSECUTOR'S RESPONSIBILITIES

1-1.1 Primary Responsibility

The prosecutor is an independent administrator of justice in the criminal justice system, which can only be accomplished through the representation and presentation of the truth. The primary responsibility of a prosecutor is to seek justice. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected.

1-1.2 Societal and Individual Rights and Interests

A prosecutor should zealously protect the rights of individuals, but without representing any individual as a client and therefore should put the rights and interests of society in a paramount position in exercising prosecutorial discretion in individual cases. A prosecutor should seek to reform criminal laws whenever it is appropriate and necessary to do so societal interests rather than individual or group interests should also be paramount in a prosecutor's efforts to seek reform of criminal laws.

1-1.3 Full-Time/Part-Time

The chief prosecutor in a jurisdiction should be a full-time position. A full-time prosecutor, whether the chief prosecutor or otherwise, should neither maintain nor profit from a private legal practice. A chief prosecutor may serve part-time in those jurisdictions that are unable or unwilling to fund a full-time prosecutor, but while serving as a part-time prosecutor may not engage in professional conduct that is inconsistent with the need for prosecutorial independence.

1-1.4 Rules of Conduct

A prosecutor shall abide by all applicable provisions of the rules of ethical conduct in his or her jurisdiction.

1-1.5 Inconsistency in Rules of Conduct

To the extent prosecutors are bound by their jurisdiction's rules of ethical conduct that are inconsistent with these Standards, they shall comply with the rules but endeavor to seek modification of those rules to make them consistent with these Standards.

1-1.6 Duty to Respond to Misconduct

A prosecutor is obligated to respond to professional misconduct that has, will, or has the potential to interfere with the proper administration of justice:

- a. Where the prosecutor knows that another person associated with the prosecutor's office has engaged, or intends to engage in professional misconduct that could interfere with the proper administration of justice, the prosecutor should address the matter in accordance with internal office procedures.
- b. If the office lacks adequate internal procedures to address allegations of professional misconduct, a prosecutor who learns of the misconduct may in the first instance request that the person desist from engaging in the misconduct. If such a request is, or is likely to be futile, or if the misconduct is of a sufficiently serious nature, a prosecutor, who is not the chief prosecutor, should report the misconduct to a higher authority within the prosecutor's office.
- c. If, despite a prosecutor's best efforts, no action is taken in accordance with the prior procedures to remedy the misconduct, a prosecutor should report the misconduct to appropriate officials outside the prosecutor's office to the extent permitted by the law and rules of ethical conduct of the state.
- d. A prosecutor's failure to report known misconduct may itself constitute a violation of the prosecutor's professional duties.

2. PROFESSIONALISM

1-2.1 Standard of Conduct

A prosecutor should conduct himself or herself with a high level of dignity and integrity in all professional relationships, both in and out of court. Appropriate behavior includes, but is not limited to, the following:

- a. A prosecutor should act with candor, good faith, and courtesy in all professional relations.
- b. A prosecutor should act with integrity in all communications, interactions, and agreements with opposing counsel. A prosecutor should not express personal animosity toward opposing counsel, regardless of personal opinion.
- c. A prosecutor should at all times display proper respect and consideration for the judiciary, without foregoing the right to justifiably criticize individual members of the judiciary at appropriate times and in appropriate circumstances.
- d. A prosecutor should be punctual for all court appearances. When absence or tardiness is unavoidable, prompt notice should be given to the court and opposing counsel.
- e. A prosecutor should conduct himself or herself with proper restraint and dignity throughout the course of proceedings. Disruptive conduct or excessive argument is always improper.
- f. A prosecutor should treat witnesses fairly and professionally and with due consideration. In questioning the testimony of a witness, a prosecutor should not engage in a line of questioning intended solely to abuse, insult or degrade the witness. Examination of a witness's credibility should be limited to legally permitted impeachment techniques.
- g. A prosecutor should avoid obstructive and improper tactics. Examples of such tactics include, but are not limited to, knowingly:

- (1) Making frivolous objections, or making objections for the sole purpose of disrupting opposing counsel;
- (2) Attempting to proceed in a manner that is obviously inconsistent with a prior ruling by the court;
- (3) Attempting to ask clearly improper questions or to introduce clearly inadmissible evidence;
- (4) Engaging in dilatory actions or tactics; and
- (5) Creating or taking unlawful advantage of prejudicial or inflammatory arguments or publicity.

3. CONFLICTS OF INTEREST

1-3.1 Conflict Avoidance

A prosecutor should not hold an interest or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office.

1-3.2 Conflicts with Private Practice

In jurisdictions that do not prohibit private practice by a prosecutor:

- a. The prosecutor in his private practice should not represent clients in any criminal or quasi-criminal related matters, regardless of the jurisdiction where the case is pending;
- b. The prosecutor should avoid representing to private clients or prospective clients that the status of a prosecutor could be an advantage in the private representation;
- c. The prosecutor should not indicate his or her status as a prosecutor on any letterhead, announcement, advertising, or other communication involved in the private practice and should not in any manner use the resources of the prosecutor's office for the purpose of such non-prosecutorial activities;
- d. The prosecutor should excuse himself or herself from the investigation and prosecution of any current client of the prosecutor and should withdraw from any further representation of that client.

1-3.3 Specific Conflicts

In all jurisdictions, including those prohibiting private practice by prosecutors:

- a. The prosecutor should excuse himself or herself from the investigation and prosecution of any former client involving or substantially related to the subject matter of the former representation, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.
- b. The prosecutor should excuse himself or herself from the investigation and prosecution of any matter where information known to the prosecutor by virtue of a prior representation and subject to the attorney-client privilege would be pertinent to the criminal matter, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.

- c. The prosecutor should excuse himself or herself from the investigation and prosecution of any person who is represented by a lawyer related to the prosecutor as a parent, child, sibling, spouse, or domestic partner, or who has a significant financial relationship with the prosecutor.
- d. The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.
- e. If an assistant or deputy prosecutor learns of the potential of a specific conflict, he or she should immediately report the matter to the chief prosecutor or a designee thereof.

1-3.4 Conflict Handling

Each prosecutor's office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

- a. The creation of firewalls and taint or filter teams to ensure that prosecutors with a conflict are not improperly exposed to information or improperly disclose information; and
- b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor's office.

1-3.5 Special Prosecutors

Where an actual or potential conflict of interest exists that would prevent the prosecutor's office from investigating or prosecuting a criminal matter, the prosecutor's office should appoint, or seek the appointment of, a "special prosecutor" or refer the matter to the appropriate governmental authority, as required by law. Under those circumstances where a special prosecutor is appointed,

- a. The special prosecutor should be a member of the state bar in good standing, with appropriate experience in the subject matter of the appointment, and should be perceived as having sufficient detachment from the prosecutor's office so as not to be influenced by any actual or potential conflict;
- b. The special prosecutor should have the authority only over the case or cases for which he or she is appointed; and
- c. Subject to the need to avoid the appearance of a conflict, a chief prosecutor and his or her assistants and staff should give all appropriate assistance, cooperation, and support to a special prosecutor.

4. SELECTION, COMPENSATION, AND REMOVAL

1-4.1 Qualifications

At the time of filing for election, appointment, or hiring, and for the duration of the term of office or employment, a prosecutor shall be a member in good standing of the state's bar, except as otherwise provided by law. Chief prosecutors should be residents of the jurisdiction that they serve.

1-4.2 Compensation; Responsibilities of the Chief Prosecutor

Chief prosecutors should be compensated commensurate with their responsibilities. The salary of the full-time chief prosecutor should be at least that of the salary of the chief judge of general trial jurisdiction in the chief prosecutor's district and should not be lowered during a term of office. Factors that should be considered in determining compensation include, but are not limited to:

- a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of prosecutor with a career orientation; and
- b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

1-4.3 Compensation of Assistant and Deputy Prosecutors

The compensation of the chief prosecutor should not serve as a basis for the highest compensation of assistant prosecutors. Factors that should be considered in determining compensation include, but are not limited to:

- a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of prosecutor with a career orientation; and
- b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

In addition, factors that may not be considered in setting compensation include, but are not limited to:

- a. Characteristics of the prosecutor that are irrelevant to their ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation;
- b. Partisan political affiliation or activity; and
- c. Revenues generated by the prosecution function—such as asset forfeitures or collection of fees.

1-4.4 Benefits

A chief prosecutor should seek to ensure that all assistant attorneys have access to a benefits program commensurate with their responsibilities. These benefits should include indemnification or insurance to pay all costs of defense against, and judgments rendered in, civil lawsuits arising from the prosecutor's performance of his or her official duties.

1-4.5 Workload

Except in extraordinary circumstances, a prosecutor should not maintain, and should not be asked to maintain, a workload that is inconsistent with the prosecutor's duty to ensure that justice is done in each case.

1-4.6 Removal

A chief prosecutor shall hold office during his or her term of office and shall only be removed by procedures consistent with due process and governing law. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

- a. Characteristics of the prosecutor that are irrelevant to their ability to perform the job and historically have been the basis of invidious discrimination, including

- race, gender, religion, national origin, and sexual orientation.
- b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.
- c. The refusal to participate in partisan activities.

1-4.7 Discharge of Assistant and Deputy Prosecutors

Assistant and Deputy prosecutors are subject to removal according to the laws of their jurisdictions and the procedures in their offices and. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

- a. Characteristics of the prosecutor that are irrelevant to their ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation.
- b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.
- c. The refusal to participate in partisan activities.

5. STAFFING AND TRAINING

1-5.1 Transitional Cooperation

Where an individual has been elected or appointed prosecutor, the incumbent prosecutor should, when practicable, fully cooperate in an in-house orientation of the incoming prosecutor to allow for an effective transition consistent with the principles of professional courtesy. This cooperation may include, when possible, designating the incoming prosecutor a special assistant prior to the time the incoming prosecutor assumes office, so that the incoming prosecutor may be briefed on significant ongoing proceedings and deliberations within the office, including grand jury or other investigations.

1-5.2 Assistant and Deputy Prosecutors

Assistant and Deputy Prosecutors, by whatever title, should be selected by the chief prosecutor and should serve at the chief prosecutor's pleasure, unless otherwise provided by law or contract.

- a. Assistant and deputy prosecutors should be active members of the state bar in good standing, except as otherwise provided by law.
- b. Assistant and deputy prosecutors should be selected on the basis of their achievements, experience, and personal qualifications related to their ability to successfully perform the work of the prosecutor's office. Personal or political considerations that have no legitimate bearing on the ability to perform the required work should not play a role in the hiring, retention, or promotion of assistant and deputy prosecutors.
- c. Absent unusual circumstances, a chief prosecutor should seek a minimum number of years employment commitment at the time of hiring or promoting assistant or deputy prosecutors conditioned upon continuing good performance.

1-5.3 Orientation and Continuing Legal Education

At the time they commence their duties and at regular intervals thereafter, prosecutors

should participate in formal training and education programs. Prosecutors should seek out continuing legal education opportunities that focus specifically on the prosecution function and:

- a. Chief prosecutors should ensure that all prosecutors under his or her direction participate in appropriate training and education programs. Chief prosecutors should also be knowledgeable of and make use of appropriate national training programs for both orientation and continuing legal education for both himself or herself and the prosecutors in his or her office.
- b. Chief prosecutors should participate in training programs sponsored by a state or national association or organization.
- c. Prosecutors with supervisory responsibilities should include in their continuing training the study of management issues, such as staff relations and budget preparation.
- d. The prosecutor should ensure that each new prosecutor becomes familiar with these Standards, as well as any code of ethical conduct and professionalism that has been adopted in the jurisdiction.
- e. Chief prosecutors should identify one or more sources both within and outside the office to which the prosecutors can turn for guidance on questions related to ethical conduct and professionalism.
- f. Prosecutors should be diligent in meeting or exceeding requirements for continuing legal education in those jurisdictions where the requirements are mandatory.
- g. Adequate funds should be allocated in the prosecutor's budget to allow for both internal training programs and attendance at external training events.

1-5.4 Office Policies and Procedures

Each prosecutor's office should develop written and/or electronically retrievable statements of policies and procedures that guide the exercise of prosecutorial discretion and that assist in the performance of those who work in the prosecutor's office.

6. PROSECUTORIAL IMMUNITY

1-6.1 Scope of Immunity

When acting within the scope of his or her prosecutorial duties, a prosecutor should enjoy the fullest extent of immunity from civil liability. The chief prosecutor should take steps to see that all costs, including attorneys' fees and judgments, associated with suits claiming civil liability against any prosecutor within the office arising from the performance of their duties should be borne by the prosecutor's funding entity.

Part II. RELATIONS

- 1. Relations with Local Organizations**
- 2. Relations with State Criminal Justice Organizations**
- 3. Relations with National Criminal Justice Organizations**
- 4. Relations with Other Prosecutorial Entities**
- 5. Relations with Law Enforcement**
- 6. Relations with the Court**

- 7. Relations with Suspects and Defendants**
- 8. Relations with Defense Counsel**
- 9. Relations with Victims**
- 10. Relations with Witnesses**
- 11. Community-Based Programs**
- 12. Prisons**
- 13. Parole Board**
- 14. Prosecutors and the Media**
- 15. Relations with Funding Entity**
- 16. Relations with the Public**
- 17. Relations with Non-Governmental Entities**

1. RELATIONS WITH LOCAL ORGANIZATIONS

2-1.1 Chief Prosecutor's Involvement

The chief prosecutor should be involved in local entities established and maintained in his or her jurisdiction for the purpose of enhancing the effectiveness, efficiency, and fairness of the administration of criminal justice, to the extent practicable and to the extent the prosecutor reasonably believes such entities are legitimately committed to protecting public safety. The obligations a prosecutor undertakes on behalf of community organizations should extend only to those that he or she can fulfill in a diligent and competent manner.

2-1.2 Information Input

To the extent permitted by law, the chief prosecutor should provide such criminal justice entities with information, advice, and data pertinent to the solution of problems identified in the jurisdiction and should consider the implementation of appropriate proposals designed to address and resolve such problems.

2-1.3 Organization Establishment

In those jurisdictions where there are no local inter-agency entities established for the enhancement of the effective, efficient, and fair administration of criminal justice, the chief prosecutor should determine the potential benefits of such organizations and, if deemed beneficial, provide leadership in their establishment.

2-1.4 Community Prosecution

The chief prosecutor should be mindful of opportunities to engage school officials, community youth organizations, social service agencies, neighborhood crime watch groups, and other such organizations with law enforcement agencies, including the prosecutor's office, in efforts to prevent and detect crime.

2-1.5 Enhancing Prosecution

The chief prosecutor should participate in state and local bar associations for the purpose of enhancing and advancing the goals of the prosecution function in the legal community.

2. RELATIONS WITH STATE CRIMINAL JUSTICE ORGANIZATIONS

2-2.1 Need for State Association

Each state should have a professional association of prosecuting attorneys for the purpose of serving and responding to the needs of its membership and enhancing the prosecution function. The chief prosecutor should be an active member of his or her state association and should allow his or her assistants and deputies to be members of and participate in the state association . Each state association should provide services that are most conducive to development at the state-wide level, including, but not limited to, the following:

- a. Continuing legal education;
- b. Training of newly-elected prosecutors and their staffs;
- c. Management training;
- d. Support for in-house training programs;
- e. Information dissemination (newsletters, bulletins, etc.);
- f. Sharing transcripts of testimony of defense experts for purposes of cross examination;
- g. Technical assistance in planning, management, litigation, and appeals, including the maintenance of data and brief banks;
- h. Promulgating model office policies and procedures;
- i. Coordinating resources not otherwise available or frequently used;
- j. Monitoring legislative developments and drafting model legislation;
- k. Maintaining liaisons between the offices of various prosecutors;
- l. Developing innovative programs; and
- m. Developing and monitoring computer systems.

2-2.2 Enhancing Prosecution

The chief prosecutor should participate, to the extent possible, in state-wide committees, task forces and other entities for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in state-wide entities should extend only to those that he or she believes can be fulfilled in a diligent and competent manner.

3. RELATIONS WITH NATIONAL CRIMINAL JUSTICE ORGANIZATIONS

2-3.1 Enhancing Prosecution

The chief prosecutor should take an active role, to the extent possible, in national criminal justice organizations that exist for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in national organizations should extend only to those which he or she believes can be fulfilled in a diligent and competent manner.

2-3.2 Prosecutorial Input

The chief prosecutor should seek to ensure that national criminal justice organizations undertake all reasonable measures to include the substantial involvement and views of incumbent state and local prosecutors in the research and studies and promulgation of standards, rules, and protocols that impact on the prosecutor and the prosecution function.

4. RELATIONS WITH OTHER PROSECUTORIAL ENTITIES

2-4.1 Prosecutorial Cooperation

In recognition of their mutual goal of serving the interests of justice, the prosecutor should cooperate with other federal, state, military, tribal and local prosecutorial entities in the investigation, charging, dismissal, or prosecution of cases which may be of common concern to their respective offices.

2-4.2 Coordinated Prosecutions

The prosecutor should establish procedures for ascertaining, to the extent possible, the likelihood that the defendant will be investigated and/or prosecuted by other jurisdictions for similar conduct, and coordinate prosecutions with the relevant prosecutorial agencies, in order to avoid unnecessarily duplicative investigations and/or prosecutions and to avoid impediments to prosecution such as defense claims of double jeopardy or grants of immunity.

2-4.3 Resource Sharing

The prosecutor should share resources and investigative information with other prosecutorial entities, when permitted by law and to the extent necessary, to ensure the fullest attainment of the interests of justice, without regard to political affiliation or partisan interest.

2-4.4 Duty to Report Misconduct

When a prosecutor has knowledge of misconduct or incompetence by another prosecutor, he or she should report that information in accordance with Standard 1-1.6. When the misconduct or incompetence involves the conduct of a prosecutor from another prosecutorial entity and it has the potential to interfere with the proper administration of justice, the chief prosecutor should report such conduct to the supervisor of the other prosecutorial entity. When the chief prosecutor has direct knowledge of a violation of the rules of ethical conduct by a prosecutor in another office, he or she shall also report such ethical misconduct to the appropriate bar disciplinary authority in the relevant jurisdiction, provided such misconduct raises a substantial question as to the prosecutor's fitness to practice law.

2-4.5 Furtherance of Justice

The office of the prosecutor and the office of the state attorney general, where separate and distinct entities, should cooperate, whenever practicable, in the furtherance of justice.

2-4.6 Attorney General Assistance

In those states where the Attorney General has criminal law responsibilities, the state Attorney General may assist in local prosecutions at the request of the local prosecutor or otherwise as authorized by law. The state Attorney General may also, when requested, play a role in mediating between local prosecutors when the possibility arises of prosecution in multiple jurisdictions, if such mediation is necessary to avoid injustice or the inefficient use of law enforcement resources.

4. RELATIONS WITH LAW ENFORCEMENT

2-5.1 Communications

The chief prosecutor should actively seek to improve communications between his or her office and other law enforcement agencies. The prosecutor should prepare and encourage the use of

uniform information sharing systems by all criminal investigative agencies within his or her jurisdiction.

2-5.2 Case Status Advisements

When it is practical to do so, the chief prosecutor should keep local law enforcement agencies informed of cases in which they were involved and provide information on those cases in order to aid law enforcement officers in the performance of their duties.

2-5.3 Law Enforcement Training

The chief prosecutor should encourage, cooperate with, and, where possible, assist in law enforcement training. The prosecutor should also urge local law enforcement officers to participate in national, state, and regional training courses available to them.

2-5.4 Prosecution Assistance in Training

The chief prosecutor should assist in the on-going training of law enforcement officers by conducting periodic classes, discussions, or seminars to acquaint law enforcement agencies within their jurisdiction with recent court decisions, legislation, and changes in the rules of criminal procedure.

2-5.5 Liaison Officer

The chief prosecutor should request that each major law enforcement agency within his or her jurisdiction assign at least one officer specifically to the prosecutor's office. That officer should serve as a liaison between offices, and should be available to perform the duty of informing concerned officers within the officer's agency of the progress and disposition of criminal cases.

2-5.6 Legal Advice

Although law enforcement agencies or individual law enforcement officers are not clients in criminal cases or employees of the prosecutor's office, the prosecutor may provide independent legal advice to local law enforcement agencies concerning specific prosecutions and, when appropriate, the proper interpretation of the criminal laws, the sufficiency of evidence to commence criminal charges or arrest, the requirements for obtaining search warrants for physical evidence and electronic surveillance, and similar matters relating to the investigation of criminal cases. The prosecutor should serve in such an advisory capacity to promote lawful investigatory methods that will withstand later judicial inquiry. The prosecutor should encourage law enforcement officers to seek legal advice as early as possible in the investigation of a criminal case. Where possible, the prosecutor should identify a primary point of contact within the prosecutor's office to receive and refer legal inquiries from particular law enforcement agencies.

5. RELATIONS WITH THE COURT

6.

2-6.1 Judicial Respect

A prosecutor shall display proper respect for the judicial system and the court at all times.

2-6.2 Respect in the Courtroom

A prosecutor should vigorously pursue all proper avenues of argument. However, such action must be undertaken in a fashion that does not undermine respect for the judicial function.

2-6.3 Improper Influence

A prosecutor should not seek to unfairly influence the proper course of justice by taking advantage of any personal relationship with a judge, or by engaging in any ex- parte communication with a judge on the subject matter of the proceedings other than as authorized by law or court order.

2-6.4 Suspicion of Criminal Misconduct

When a chief prosecutor has a reasonable suspicion of criminal conduct by a member of the judiciary, the prosecutor should take all lawful investigatory steps necessary to substantiate or dispel such suspicions and, if substantiated, should initiate prosecution or refer the case to another prosecutor's office for review or appoint a special prosecutor in the case.

2-6.5 Responsibility to Report Misconduct

When a prosecutor has knowledge of conduct by a member of the judiciary that may violate the applicable code of judicial conduct and/or that raises a substantial question as to the judge's fitness for office, the prosecutor has the responsibility to report that knowledge to his or her supervisor or if the chief prosecutor, directly to the relevant judicial conduct authority in his or her jurisdiction.

2-6.6 Application for Recusal

When a prosecutor reasonably believes that it is warranted by the facts, circumstances, law or rules of judicial conduct, the prosecutor may properly seek that judge's recusal from the matter.

7. RELATIONS WITH SUSPECTS and DEFENDANTS

2-7.1 Communications with Represented Persons

A prosecutor should respect a suspect's and defendant's constitutional right to the assistance of counsel. A prosecutor should also take steps to ensure that those persons working at his or her direction respect a suspect's and defendant's constitutional right to the assistance of counsel. Notwithstanding the foregoing:

- a. A prosecutor may communicate with a defendant or suspect in the absence of his counsel when either (1) counsel has consented to the communication or (2) the communication is authorized by law or court rule or order.
- b. A prosecutor may communicate with a witness who is also charged as a defendant in an unrelated criminal matter about the witness's upcoming testimony without the advance permission of the witness's attorney so long as the prosecutor does not discuss the criminal charges pending against the witness.

2-7.2 Communication with Unrepresented Defendants

When a prosecutor communicates with a defendant charged with a crime who is not represented by counsel, the prosecutor should make certain that the defendant is treated with honesty, fairness, and with full disclosure of his or her potential criminal liability in the matter under discussion.

- a. A prosecutor should identify himself or herself to the defendant as a prosecutor and make clear that he or she does not represent the defendant. If legally required under the

circumstances, the prosecutor should advise the defendant of his or her rights.

b. If a prosecutor is engaged in communications with a charged defendant who is not represented by counsel and the defendant changes his or her mind and expresses a desire to obtain counsel, the prosecutor should terminate the communication to allow the defendant to obtain counsel or to secure the presence of counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.3 Unsolicited Communications

A prosecutor may receive, accept and use unsolicited written correspondence from defendants, regardless of whether the defendant is represented by counsel. A prosecutor may receive unsolicited oral communications from defendants, of which he or she has no advance notice, without any duty of first ascertaining whether or not there is a valid reason for the communication or whether or not the defendant is represented by counsel if the prosecutor does not know that the defendant is represented by counsel. However, when a defendant who has been charged with a crime is represented by counsel, but requests to communicate with a prosecutor on the subject of the representation out of the presence of his or her counsel, before engaging in such communication the prosecutor should first ascertain whether the defendant has expressed a valid reason to communicate with the prosecutor without the presence of his or her attorney, and if so should thereafter communicate with the defendant only if authorized by law or court order.

2-7.4 Plea Negotiations

If a prosecutor enters into a plea negotiation with a defendant who is not represented by counsel, he or she should seek to ensure that the defendant understands his or her rights, duties, and liabilities under the agreement. When possible, the agreement should be reduced to writing and a copy provided to the defendant. The prosecutor should never take unfair advantage of an unrepresented defendant. The prosecutor should not give legal advice to a defendant who is not represented by counsel, other than the advice to secure counsel.

2-7.5 Right to Counsel

If a prosecutor is engaged in communications with a defendant who is not represented by counsel or whose counsel is not present, and the defendant changes his mind and expresses a desire to obtain counsel or to have counsel present, the prosecutor should terminate the communication in order to allow the defendant to obtain counsel or to secure the presence of his or her counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.6 Communications with Represented Persons During Investigations

A prosecutor performing his or her duty to investigate criminal activity should neither be intimidated nor discouraged from communicating with a defendant or suspect in the absence of his or her counsel when the communication is authorized by law or court rule or order. A prosecutor may advise or authorize a law enforcement officer to engage in undercover communications with an uncharged, represented suspect in the absence of the suspect's counsel provided such a communication is authorized by law or court order.

8. RELATIONS WITH DEFENSE COUNSEL

2-8.1 Standards of Professionalism

The prosecutor should comply with the provisions of professionalism as identified in Standard 1-2.1, in his or her relations with defense counsel, regardless of prior relations with or animosity toward the attorney. The prosecutor should attempt to maintain a uniformity of fair dealing among different defense counsel.

2-8.2 Propriety of Relations

In all contacts with members of the defense bar, the prosecutor should strive to preserve proper relations.

2-8.3 Cooperation to Assure Justice

The prosecutor should cooperate with defense counsel at all stages of the criminal process to ensure the attainment of justice and the most appropriate disposition of each case. The prosecutor need not cooperate with defense demands that are abusive, frivolous, or made solely for the purpose of harassment or delay.

2-8.4 Disclosure of Exculpatory Evidence

The prosecutor shall make timely disclosure of exculpatory or mitigating evidence, as required by law and/or applicable rules of ethical conduct.

2-8.5 Suspicion of Criminal Conduct

When a prosecutor has reasonable suspicion of criminal conduct by defense counsel, the prosecutor has a responsibility to take such action necessary to substantiate or dispel such suspicion.

2-8.6 Responsibility to Report Ethical Misconduct

When an assistant or deputy prosecutor has knowledge of ethical misconduct by defense counsel which raises a substantial question as to the attorney's fitness to practice law, the prosecutor should report such conduct to his or her supervisor. A chief prosecutor who has knowledge of ethical misconduct by defense counsel which raises a substantial question as to the attorney's fitness to practice law should report such conduct directly to the appropriate bar disciplinary authority in his or her jurisdiction. When such misconduct occurs during the course of litigation, the prosecutor should also report it to the judge presiding over the case or to his or her supervisor, if required by office policy, and may seek sanctions as appropriate.

2-8.7 Avoiding Prejudice to Client

When the prosecutor believes that the defense counsel has engaged in misconduct, remedial efforts should be directed at the attorney and not at his or her client. The prosecutor should at all times make efforts to ensure that a defendant who is not involved in misconduct is not prejudiced by the unlawful or unethical behavior of his or her attorney.

9. RELATIONS WITH VICTIMS

2-9.1 Information Conveyed to Victims

Victims of violent crimes, serious felonies, or any actions where it is likely the victim may be the object of physical or other forms of retaliation, should be informed of all important stages of the

criminal justice proceedings to the extent feasible, upon request or if required by law, including, but not limited to, the following:

- a. Acceptance or rejection of a case by the prosecutor's office, the return of an indictment, or the filing of criminal charges;
- b. A determination of pre-trial release of the defendant;
- c. Any pre-trial disposition;
- d. The date and results of trial;
- e. The date and results of sentencing;
- f. Any proceeding within the knowledge of the prosecutor which does or may result in the defendant no longer being incarcerated, including appellate reversal, parole, release, and escape, unless a legal obligation to inform the victim of such proceeding is imposed by law on another governmental entity; and
- g. Any other event within the knowledge of the prosecutor which may put the victim at risk of harm or harassment.

2-9.2 Victim Orientation

To the extent feasible and when it is deemed appropriate by the chief prosecutor, the prosecutor's office should provide an orientation to the criminal justice process for victims of crime and should explain prosecutorial decisions, including the rationale used to reach such decisions. Special orientation should be given to child and spousal abuse victims and their families, whenever practicable.

2-9.3 Victim Assistance

To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity, the chief prosecutor should develop policies and procedures for providing services to victims of crimes, including, but not limited to the following:

- a. Assistance in obtaining the return of property held in evidence;
- b. Assistance in applying for witness fees and compensation if provided for by law or local rule;
- c. Assistance in obtaining restitution orders at the sentencing;
- d. Assistance in appropriate employer intervention concerning required court appearance;
- e. Assistance with necessary transportation and lodging arrangements;
- f. Assistance in reducing the time the victim has to wait for any court appearance to a minimum; and
- g. Assistance in reducing overall inconvenience whenever possible and appropriate.

The prosecutor should be aware of any obligations imposed by victims' rights legislation in his or her particular jurisdiction.

2-9.4 Cooperative Assistance

The prosecutor should work with other law enforcement agencies to:

- a. Cooperate with victim advocates for the benefit of providing direct and referral services to victims of crime; and
- b. Assist in the protection of a victim's right to privacy regarding a victim's Social Security number, birth date, address, telephone number, place of employment, name when the victim is a minor or a victim of sexual assault, or any other personal information unless either a court finds it necessary to that proceeding or disclosure is required by law.

2-9.5. Facilities

Whenever possible, the chief prosecutor should take steps to ensure that victims have a secure and comfortable waiting area that avoids the possibility of making contact with the defendants or friends and families of the defendants.

2-9.6 Victim Compensation Program

The prosecutor should be knowledgeable of the criteria for victim compensation under state law, and should inform victims with potential compensable claims of the existence and requirements of victim compensation programs within the jurisdiction.

2-9.7 Victim Assistance Program

To the extent feasible, the chief prosecutor should develop and maintain a victim assistance program within the staffing structure of the office to provide services and give assistance to victims of crime.

2-9.8 Victim Protection

The prosecutor should be mindful of the possibility of intimidation and harm arising from a victim's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime, and should make referrals and recommendations for program participation where appropriate.

10. RELATIONS WITH WITNESSES

2-10.1 Information Conveyed to Witnesses

The prosecutor should keep witnesses informed of:

- a. All pre-trial hearings which the witnesses may be required to attend; and
- b. Trial dates and the scheduling of that witness's appearance.

2-10.2 Contacts by Defense with Witnesses

The prosecutor shall not advise a witness (including victims) to decline to meet with or give information to the defense. The prosecutor may advise a witness that they are not required to provide information to the defense outside of court and the prosecutor may also inform a witness of the implications and possible consequences of providing information to the defense.

2-10.3 Represented Witnesses

When the prosecutor is informed that a witness has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of-court contacts with the witness regarding the subject of that proceeding through the witness's counsel.

2-10.4 Witness Interviewing and Preparation

The prosecutor shall not advise or assist a witness to testify falsely. The prosecutor may discuss the content, style, and manner of the witness's testimony, but should at all times make efforts to ensure that the witness understands his or her obligation to testify truthfully.

2-10.5 Expert Witnesses

When a prosecutor determines that the testimony of an expert witness is necessary, the independence of the expert should be respected and if it is determined that a fee be paid to an expert witness, the fee should be reasonable and should not depend upon a contingency related to the outcome of the case.

2-10.6 Witness Assistance

To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity,, the chief prosecutor should develop policies and procedures for providing the services to witnesses of crimes including, but not limited to, the following:

- a. Assistance in applying for witness fees, if available, and appropriate and compensation if provided for by law or local rule;
- b. Assistance in appropriate employer intervention concerning required court appearance(s);
- c. Assistance in necessary transportation and lodging arrangements, if appropriate;
- d. Assistance in minimizing the time the witness has to wait for any court appearance; and
- e. Assistance in reducing overall inconvenience whenever possible and appropriate.

2-10.7 Witness Protection

The prosecutor should be mindful of the possibility of intimidation and harm arising from a witness's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime, and should make referrals and recommendations for program participation where appropriate.

2-10.8 Facilities

Whenever possible, the chief prosecutor should take steps to ensure that witnesses have a secure and comfortable waiting area that avoids the possibility of the witnesses making contact with defendants or the families and friends of defendants.

2-10.9 Enforcement of Crimes against Witnesses

The prosecutor, working with other law enforcement agencies, should assign a high priority to the investigation and prosecution of any type of witness intimidation, harassment, coercion, or retaliation, including any such conduct or threatened conduct against family members or friends.

2-10.10 Witness Assistance Program

To the extent feasible, the chief prosecutor should develop and maintain a witness assistance program within the staffing structure of the office to provide services and give assistance to witnesses.

11. COMMUNITY-BASED PROGRAMS

2-11.1 Knowledge of Programs

Prosecutors should be cognizant of and familiar with all community-based programs to which offenders may be sentenced, referred as a condition of probation, or referred as a diversionary disposition.

2-11.2 Need for Programs

In jurisdictions where community agencies providing services, such as employment, education,

family counseling, and substance abuse counseling, are needed but not provided by community agencies, the chief prosecutor should encourage the agencies to provide such services. The prosecutor's office should be available as a source of public information for such community-based agencies.

2-11.3. Notice

The prosecutor's office should take steps to ensure that the prosecutor's office and appropriate law enforcement agencies are notified of individuals participating in work-release programs in their jurisdiction.

12. PRISONS

2-12.1 Knowledge of Facilities

Prosecutors should be cognizant of, and familiar with, all penal facilities located within the jurisdiction to which offenders prosecuted in the jurisdiction may be sentenced. Where practicable, the chief prosecutor should attempt to ensure that new prosecutors hired by his or her office have an opportunity, as part of their initial training, to tour the penal institutions in their jurisdictions to which defendants may be sentenced.

2-12.2 Improvement of Institutions

The chief prosecutor should work with prison officials and the legislature to upgrade correctional institutions within the state, including the avoidance of prison over-crowding. Additional facilities, new construction or renovation of existing facilities, improved training of staff, and the expansion of existing programs and educational/behavioral services for inmates should be the primary goals of such upgrading.

2-12.3 Prosecutor as Resource

The prosecutor's office should be available as a source of information for prisons and jails and their intake divisions.

2-12.4 Career Offender Identification

The prosecutor's office should assist in the identification of multiple and career offenders.

2-12.5 Appropriate Sentencing

The prosecutor's office should cooperate with the prison system to assure that realistic sentences are carried out.

2-12.6 Innovative Improvements

The chief prosecutor should support innovative programs which would improve the penal system, provided that such programs do not adversely impact justice and appropriate offender accountability.

2-12.7 Notice

The chief prosecutor should take steps to ensure that any institution holding an offender should notify both the prosecutor and law enforcement agencies at the time of an escape, prior to any temporary or final release, and prior to parole consideration.

2-12.8 Corrections Advisory Committee

To the extent practicable, the chief prosecutor should encourage the establishment of and participate in a state-wide correctional advisory committee involving representatives from all components of the criminal justice system and responsible members of the public.

13. PAROLE and EARLY RELEASE

2-113.1 Prosecution as Resource

To the extent permitted by law, the prosecutor's office should be available as a source of information for the parole board, the department of corrections or other supervisory agency considering or monitoring an offender's release from custody.

2-13.2 Information System

Where the chief prosecutor deems it appropriate, he or she should assist in the development and maintenance of an information system to keep the prosecutor's office informed of parole decisions concerning individuals from, or planning to reside in, the jurisdiction.

2-13.3 Parole Board and Release Discretion

The chief prosecutor should be cognizant of the discretion vested in parole boards and in other entities or agencies authorized by law to make release from custody decisions and he or she should address abuses of this discretion which come to his or her knowledge.

2-13.4 Right to Appear

The chief prosecutor should advocate that prosecutors and victims have the opportunity to receive sufficient advance notice of and appear at hearings for parole, pardon, commutation, and grant of executive clemency, or be permitted to otherwise provide information at such hearings. Upon receipt of such notice, the prosecutor should endeavor, to the extent possible, to notify the victims of such crimes residing within the prosecutor's jurisdiction and local law enforcement agencies of this information.

2-13.5 Early Release

The chief prosecutor should oppose the early release of offenders where the release decision is made by correctional authorities solely or primarily on the basis of overcrowding of the correctional facility, unless such release is mandated by court order.

2-13.6 Notice of Release

The prosecutor should seek to have the prosecutor's office, law enforcement agencies and victims notified of all releases from confinement or commitment of individuals from facilities within the jurisdiction, or releases from confinement or commitment of individuals outside the

jurisdiction who plan to reside in the jurisdiction. For purposes of this standard, “*release from confinement or commitment*” includes changes in a convicted person’s custody status due to parole, pardon, commutation, grant of executive clemency, service of sentence, or release from court-ordered commitment to a mental health facility.

2-13.7 Sexually Dangerous Persons

Where the prosecutor is entitled to petition the court for civil commitment or continued detention of a prisoner after the term of the prisoner’s sentence has expired based on a finding of sexually dangerous person status, the prosecutor should take steps to ensure that the board of prisons and parole notify the prosecutor’s office of the prisoner’s upcoming release date sufficiently in advance of that date to enable the prosecutor to file such a petition in a timely manner.

14. PROSECUTORS AND THE MEDIA

2-14.1 Media Relations

The prosecutor should seek to maintain a relationship with the media that will facilitate the appropriate flow of information to and from the public. An appropriate and professional relationship with the media is necessary to promote public accountability and transparency in government.

2-14.2 Balancing Interests

The prosecutor should strive to protect both the rights of the individual accused of a crime and the needs of citizens to be informed about public dangers and the conduct of their government. The prosecutor may provide sufficient information to the public so that citizens may be aware that the alleged perpetrator of a crime has been arrested and that there exists sufficient competent evidence with which to proceed with prosecution. Subject to Standard 2-14.4 and applicable rules of ethical conduct, information may be released by the prosecution if such release will aid the law enforcement process, promote public safety, dispel widespread concern or unrest, or promote confidence in the criminal justice system. The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose, and that serve solely to heighten public condemnation of the accused.

2-14.3 Information Appropriate for Media Dissemination by Prosecutors

Prior to and during a criminal trial the prosecutor may comment on the following matters:

- a. The accused’s name, age, residence, occupation, family status, and citizenship;
- b. The substance or text of the charge such as the complaint, indictment, information, and where appropriate, the identity of the complainant;
- c. The existence of probable cause to believe that the accused committed the offense charged;
- d. The identity of the investigating and arresting agency, the length and scope of the investigation, the thoroughness of the investigative procedures, and the diligence and professionalism of the law enforcement personnel in identifying and apprehending the accused;

- e. The circumstances immediately surrounding the arrest, including the time and place of arrest, the identity of the arresting officer or agency, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest or pursuant to a search warrant; and
- f. Information contained in a public record, the disclosure of which would serve the public interest.

2-14.4 Restraints on Information

Prior to and during a criminal trial the prosecutor should not make any public, extrajudicial statement that has a substantial likelihood of materially prejudicing a judicial proceeding. In particular, from the commencement of a criminal investigation until the conclusion of trial, the prosecutor should not make any public, extrajudicial statements about the following matters, unless the information is part of the public record of the criminal proceeding:

- a. The character, reputation, or prior criminal conduct of a suspect, accused person or prospective witness;
- b. Admissions, confessions, or the contents of a statement or alibi attributable to a suspect or accused person;
- c. The performance or results of any scientific tests or the refusal of the suspect or accused to take a test;
- d. Statements concerning the credibility or anticipated testimony of prospective witnesses;
- e. The possibility of a plea of guilty to the offense charged or to a lesser offense, or the contents of any plea agreement.

2-14.5 Public Responses

The prosecutor may make a reasonable and fair reply to comments of defense counsel or others. A public comment made by a prosecutor pursuant to this paragraph shall be limited to statements reasonably necessary to mitigate the effect of undue prejudice created by the public statement of another. In no event should a prosecutor make statements prohibited by Standard 2-14.4 or applicable rules of ethical conduct.

2-14.6 Law Enforcement Policy on Information

The prosecutor should assist law enforcement and other investigative agencies in understanding their statutory responsibilities with respect to the release of criminal justice information. The prosecutor should also assist in the training of law enforcement agencies within his or her jurisdiction on subject matters to avoid when discussing pending criminal investigations or prosecutions with the media.

2-14.7 Judicial Decisions

The prosecutor may inform the public of judicial decisions that are contrary to law, fact or public interest, but a prosecutor should not make any public statement that he or she knows to be false, or with reckless disregard for its truth or falsity, as to the integrity or qualifications of a judge.

2-14.8 Verdicts

A prosecutor should not make any public statement after trial that is critical of jurors, but may express disagreement with or disappointment in the jury verdict.

15. RELATIONS WITH FUNDING ENTITY

2-15.1 Assessment of Need

The chief prosecutor should cooperate with his or her funding entity by providing an assessment of resources needed to effectively administer the duties of the office.

2-15.2 Independent Revenue

The budget for prosecution should be independent of and unrelated to revenues resulting from law enforcement and criminal justice activities, such as fines, forfeitures and program fees. The prosecutor may expend revenues from forfeited assets only in accordance with statute or court order

16. RELATIONS WITH THE PUBLIC

2-16.1 Community Organizations

The prosecutor should encourage the formation and growth of community-based organizations interested in criminal justice, crime prevention, and the punishment and rehabilitation of offenders.

2-16.2 Staff Liaison

With respect to such organizations and to the extent that the prosecutor has the resources to do so, the chief prosecutor should assign an appropriate staff member(s) to act as liaison to such organizations and provide qualified speakers from the prosecutor's office to address and appear before such groups on matters of common interest.

2-16.3 Public Education

The chief prosecutor should use all available resources to encourage citizen involvement in the support of law enforcement and prosecution programs and issues. The chief prosecutor should educate the public about the programs, policies, and goals of his or her office and alert the public to the ways in which the public may be involved and benefit from those programs, policies, and goals.

2-16.4 Advisory Role

Because the prosecutor has the responsibility of exercising discretion and making ultimate decisions, the role of public interest and citizen groups must be understood to be advisory only.

17. RELATIONS WITH NON-GOVERNMENTAL ENTITIES

2-17.1 Generally

In all dealings with a non-governmental entity, the chief prosecutor should place the public interest above all other considerations.

2-17.2 Financial and Resource Assistance

- a. Where permitted by law, a prosecutor's office may accept financial or resource assistance from a non-governmental source when such assistance is specifically approved by the chief prosecutor;
- b. When determining whether to accept assistance from a non-governmental source, the

chief prosecutor should give priority consideration to the public interest over the private interests of a non-governmental source, especially when the assistance relates to a specific case or cases rather than office wide assistance;

c. The chief prosecutor should consider whether accepting assistance from a non-governmental source will create the appearance of undue influence;

d. The chief prosecutor should have office procedures in place that protect the independent exercise of discretion of the office from the undue influence of a non-governmental resource, that has provided assistance to the office, during the investigation and prosecution of specific cases or types of cases including requirements for strict bookkeeping and accounting of any assistance received, whether financial or resource assistance, and if required by law, disclosure procedures.

PART III. INVESTIGATIONS

1. Investigations Generally

2. Warrant Review

3. Grand Jury Investigations

4. Grants of Immunity

1. INVESTIGATIONS GENERALLY

3-1.1 Authority to Investigate

A prosecutor should have the discretionary authority to initiate investigations of criminal activity in his or hers jurisdiction. The exercise of this authority will depend upon many factors, including, but not limited to, available resources, adequacy of law enforcement agencies investigation in a matter, office priorities and potential civil liability.

3-1.2 Fairness in Investigations

A criminal investigation should not begin or be continued if it is motivated, in whole or part, by the victim or perpetrator's race, ethnicity, religion, sexual orientation, or political affiliation unless these factors are an element of a crime or relevant to the perpetrator's motive. Nor should an investigation be motivated, in whole or significant part, by partisan political pressure or professional ambition or improper personal considerations

3-1.3 Prosecutor's Responsibility for Evidence

A prosecutor is ultimately responsible for evidence that will be used in a criminal case. A prosecutor, who knows or who is aware of a substantial risk that an investigation has been conducted in an improper manner or that evidence has been illegally obtained by law enforcement, must take affirmative steps to investigate and remediate such problems.

3-1.4 Illegally Obtained Evidence

A prosecutor should not knowingly obtain evidence through illegal means, nor should the prosecutor instruct or encourage others to obtain evidence through illegal means.

3-1.5 Undercover Investigations

Although prosecutors may not normally make false statements or engage in conduct involving deception, a prosecutor may, to the extent permitted by law, engage in or direct

law enforcement investigations that involve such conduct. A prosecutor should take all reasonable steps to ensure that any such investigations do not create an unnecessary risk of harm to innocent parties, perpetuate a fraud on the court, or interfere with a defendant's constitutionally protected right to counsel or right to a fair trial. Nothing in this standard precludes a prosecutor from engaging in a duly authorized investigation of judicial or court officers, or members of the bar.

3-1.6 Prosecutorial Investigators

Chief prosecutors should employ properly trained investigators to assist with case preparation, supplement law enforcement investigations, conduct original investigations, and carry out other duties as assigned by the prosecutor. The Chief Prosecutor should seek investigative resources from appropriate funding authorities.

2. WARRANT REVIEW

3-2.1 Search and Arrest Warrant Review

The prosecutor's office should develop and maintain a system for providing law enforcement with the opportunity for a prompt legal review of search and arrest warrant applications before the applications are submitted to a judicial officer.

3-2.2 Electronic Surveillance Review

The prosecutor's office should review and approve the use of all electronic surveillance by law enforcement entities that are within the prosecutor's jurisdiction.

3-2.3 Law Enforcement Training

The prosecutor's office should assist in training law enforcement personnel within the prosecutor's jurisdiction on the law applicable to the issuance and execution of search and arrest warrants.

3. GRAND JURY INVESTIGATIONS

3-3.1 Scope of Grand Jury Investigations

Unless the law of the jurisdiction specifically permits otherwise, a prosecutor should not use a grand jury investigation to:

- a. Assist solely in a non-criminal matter; or
- b. To gather evidence solely for the use at trial against a defendant who already has been charged by indictment or information.

3-3.2 Counsel for Witnesses

In jurisdictions where counsel for a witness is not permitted in the grand jury room but is permitted to consult with the witness outside the room, the prosecutor should grant a witness's reasonable requests to consult with counsel during questioning. If the decision whether to allow such consultation rests with the grand jury, the prosecutor should recommend to the grand jury that the witness be given reasonable opportunities to consult with counsel.

3-3.3 Subpoenaing the Target of an Investigation

In jurisdictions where it is permissible to call a person to testify before the grand jury even though the person is the target of the investigation, the following procedures should apply:

- a. The chief prosecutor or his or her designee should approve all efforts to have a target of the investigation testify before a grand jury;
- b. The target should be informed in writing of his or her status before any grand jury appearance and advised in writing to obtain legal advice as to his or her rights;
- c. To avoid the appearance of unfairness, the prosecutor should make reasonable efforts to secure the target's grand jury appearance voluntarily rather than through a subpoena; and
- d. At the outset of his or her appearance before the grand jury, the target should be informed of his or her rights as provided in Standard 3- 3.4.

3-3.4 Grand Jury Warnings

Before questioning a grand jury witness who is the target or subject of the investigation, a prosecutor should warn the witness as follows:

- a. If the truthful answer to a question would tend to incriminate you in criminal activity, you may refuse to answer the question;
- b. Anything you say may be used against you by the grand jury or in a later legal proceeding;
- c. If you have retained counsel with you, the grand jury will grant your reasonable requests to consult with your counsel before answering a question.

These warnings should be given on the record, and the prosecutor should obtain from the witness an affirmation that he or she understands the warnings given.

3-3.5 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

- a. A prosecutor should disclose any credible evidence of actual innocence known to the prosecutor or other credible evidence that tends to negate guilt, as required by law or applicable rules of ethical conduct;
- b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;
- c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;
- d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;
- e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;
- f. The prosecutor should inform the grand jury that it has the right to hear in person

- any available witness or subpoena pertinent records;
- g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false;
 - h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

3-3.6 Request by a Target to Testify

Except as otherwise governed by the law of the jurisdiction, the prosecutor should grant requests by the target of an investigation to testify before the grand jury unless such a request:

- a. Would unduly burden or delay the grand jury proceedings;
- b. Would clearly provide information that is irrelevant to the investigation;
- c. Would be inconsistent with the need to preserve the secrecy of the investigation;
- d. Is made for an improper purpose.

Before a request to testify is granted, the target should be required to waive on the record his or her Fifth Amendment privilege against self incrimination.

3-3.7 Grand Jury Subpoenas

While a prosecutor should zealously pursue all relevant information that is within the scope of a criminal investigation, reasonable efforts should be made to minimize the burden of investigation on third party witnesses. A prosecutor should consider in good faith requests to limit or otherwise modify the scope of subpoenas that are claimed to impose an undue burden on the recipients.

3-3.8 Termination of Target Status

If a person has previously been notified or made aware that he or she was the target of a grand jury investigation, and the prosecutor elects not to seek an indictment or the grand jury fails to return a true bill and no further investigation against the target is contemplated, the prosecutor should notify the person he or she is no longer a target unless doing so is inconsistent with the effective enforcement of the criminal law.

4. GRANTS OF IMMUNITY

3-4.1 Immunity Generally

A prosecutor should not grant or request immunity for a witness without the prior approval by the chief prosecutor or his or her designee. Approval should be granted only after careful consideration of the public interest. A grant of immunity should be in writing and should describe the scope and character of the immunity granted.

3-4.2 Granting or Requesting Immunity – The Public Interest

Factors that should be considered before deciding whether to grant or request immunity from prosecution for a witness include, but are not limited to:

- a. The likelihood that a grant of immunity will produce truthful information from the witness;
- b. The value of the witness's testimony or information to the investigation or prosecution;

- c. The impact on the witness's perceived credibility if he or she testifies before a grand jury or trial jury pursuant to a grant of immunity;
- d. The likelihood of prompt and full compliance with a compulsion order, and the effectiveness of available sanctions if there is no such compliance;
- e. The witness's relative culpability in connection with the offenses being investigated or prosecuted, and his or her criminal history;
- f. The possibility of successfully prosecuting the witness prior to compelling his or her testimony; and
- g. The likelihood of future physical harm to the witness if he or she testifies under a compulsion order.

3-4.3 Prosecution After Grants of Immunity

Any prosecution of a witness who has previously been immunized should be approved by the chief prosecutor or his or her designee. The prosecutor's office should take reasonable steps to ensure that any decision to pursue a subsequent prosecution of an immunized witness is not perceived as a breach of a prosecutorial commitment.

3-4.4 Grants of Immunity to Compel Testimony on Behalf of a Defendant

Except as otherwise required by law, a prosecutor is not obligated to grant or seek immunity to compel information on behalf of a defendant. A prosecutor may immunize or seek to immunize a defense witness if the prosecutor believes that it is necessary for a just prosecution.

PART IV. PRE-TRIAL CONSIDERATIONS

- 1. Screening**
- 2. Charging**
- 3. Diversion**
- 4. Pretrial Release**
- 5. First Appearance**
- 6. Preliminary Hearing**
- 7. Forfeiture**
- 8. The Grand Jury Charging Function**
- 9. Discovery**
- 10. Case Scheduling and Priority**
- 11. Juvenile Justice**

1. SCREENING

4-1.1 Prosecutorial Responsibility

The decision to initiate a criminal prosecution should be made by the prosecutor's office. Where state law allows criminal charges to be initiated by law enforcement or by other persons or means, prosecutors should, at the earliest practical time, decide whether the charges should be pursued.

4-1.2 Prosecutorial Discretion

The chief prosecutor should recognize and emphasize the importance of the initial charging decision and should provide appropriate training and guidance to prosecutors regarding the exercise of their discretion.

4-1.3 Factors to Consider

Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest. Factors that may be considered in this decision include:

- a. Doubt about the accused's guilt;
- b. Insufficiency of admissible evidence to support a conviction;
- c. The negative impact of a prosecution on a victim;
- d. The availability of adequate civil remedies;
- e. The availability of suitable diversion and rehabilitative programs;
- f. Provisions for restitution;
- g. Likelihood of prosecution by another criminal justice authority;
- h. Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
- i. The charging decisions made for similarly-situated defendants;
- j. The attitude and mental status of the accused;
- k. Undue hardship that would be caused to the accused by the prosecution;
- l. A history of non-enforcement of the applicable law;
- m. Failure of law enforcement to perform necessary duties or investigations;
- n. The expressed desire of an accused to release potential civil claims against victims, witnesses, law enforcement agencies and their personnel, or the prosecutor and his personnel, where such desire is expressed after having the opportunity to obtain advice of counsel and is knowing and voluntary;
- o. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
- p. Whether the accused has already suffered substantial loss in connection with the alleged crime;
- q. Whether the size of the loss or the extent of the harm caused by the alleged crime is too small to warrant a criminal sanction;

4-1.4 Factors Not to Consider

Factors that should not be considered in the screening decision include the following:

- a. The prosecutor's individual or the prosecutor's office rate of conviction;
- b. Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;
- c. Political advantages or disadvantages that a prosecution might bring to the prosecutor;
- d. Characteristics of the accused that have been recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime;
- e. The impact of any potential asset forfeiture to the extent described in Standard 4-7.4.

4-1.5 Information Sharing

The prosecutor should attempt to gather all relevant information that would aid in rendering a sound screening decision. The prosecutor's office should take steps to ensure that other government and law enforcement agencies cooperate in providing the prosecutor with such information.

4-1.6 Continuing Duty to Evaluate

In the event that the prosecutor learns of previously unknown information that could effect a screening decision previously made, the prosecutor should reevaluate that earlier decision in light of the new information.

4-1.7. Record of Declinations

Where permitted by law, a prosecutor's office should retain a record of the reasons for declining a prosecution.

4-1.8 Explanation of Declinations

The prosecutor should promptly respond to inquiries from those who are directly affected by a declination of charges.

2. CHARGING

4-2.1 Prosecutorial Responsibility

It is the ultimate responsibility of the prosecutor's office to determine which criminal charges should be prosecuted and against whom.

4-2.2 Propriety of Charges

A prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.

4-2.3 Improper Leveraging

The prosecutor should not file charges where the sole purpose is to obtain from the accused a release of potential civil claims.

4-2.4 Factors to Consider

The prosecutor should only file those charges that are consistent with the interests of justice. Factors that may be relevant to this decision include:

- a. The nature of the offense, including whether the crime involves violence or bodily injury;
- b. The probability of conviction;
- c. The characteristics of the accused that are relevant to his or her blameworthiness or responsibility, including the accused's criminal history;
- d. Potential deterrent value of a prosecution to the offender and to society at large;
- e. The value to society of incapacitating the accused in the event of a conviction;
- f. The willingness of the offender to cooperate with law enforcement;
- g. The defendant's relative level of culpability in the criminal activity;
- h. The status of the victim, including the victim's age or special vulnerability;
- i. Whether the accused held a position of trust at the time of the offense;
- j. Excessive costs of prosecution in relation to the seriousness of the offense;

- k. Recommendation of the involved law enforcement personnel;
- l. The impact of the crime on the community;
- m. Any other aggravating or mitigating circumstances.

3. DIVERSION

4-3.1 Prosecutorial Responsibility

The decision to divert cases from the criminal justice system should be the responsibility of the prosecutor. The prosecutor should, within the exercise of his or her discretion, determine whether diversion of an offender to a treatment alternative best serves the interests of justice.

4-3.2 Diversion Alternatives

A prosecutor should be aware and informed of the scope and availability of all alternative diversion programs. The prosecutor's office should take steps to help ensure that all diversion programs are credible and effective

4-3.3 Need for Programs

In jurisdictions where diversion programs are deemed insufficient by the chief prosecutor, the prosecutor's office should urge the establishment, maintenance, and enhancement of such programs as may be necessary.

4-3.4 Information Gathering

The prosecutor should have all relevant investigative information, personal data, case records, and criminal history information necessary to render sound and reasonable decisions on diversion of individuals from the criminal justice system. The chief prosecutor should take steps to ensure the enactment of appropriate legislation and court rules to enable the prosecutor to obtain such information from appropriate agencies.

4-3.5 Factors to Consider

The prosecutor may divert individuals from the criminal justice system when he or she considers it to be in the interest of justice and beneficial both to the community and to the individual. Factors which may be considered in this decision include:

- a. The nature, severity, or class of the offense;
- b. Any special characteristics or difficulties of the offender;
- c. Whether the defendant is a first-time offender;
- d. The likelihood that the defendant will cooperate with and benefit from the diversion program;
- e. Whether an available program is appropriate to the needs of the offender;
- f. The impact of diversion and the crime on the community;
- g. Recommendations of the relevant law enforcement agency;
- h. The likelihood that the defendant will recidivate;
- i. The extent to which diversion will enable the defendant to maintain employment or remain in school;
- j. The opinion of the victim;
- k. Provisions for restitution;

- l. The impact of the crime on the victim; and
- m. Diversion decisions with respect to similarly situated defendants.

4-3.6 Diversion Procedures

The process of diverting a defendant should include the following procedures:

- a. A signed agreement or court record specifying all requirements for the accused;
- b. A signed waiver of speedy trial requirements, where applicable;
- c. The right of the prosecutor, for a designated time period, to proceed with the criminal case when, in the prosecutor's judgment, such action would be in the interest of justice;
- d. Appropriate mechanisms to safeguard the prosecution of the case, such as admissions of guilt, stipulations of facts, and depositions of witnesses.

4-3.7 Record of Diversion

A record of the defendant's participation in a diversion program, including the reasons for the diversion, should be created for each case and maintained by the prosecutor's office for subsequent use by law enforcement, unless prohibited by law.

4-3.8 Explanation of Diversion Decision

Upon request, the prosecutor should provide adequate explanations of diversion decisions to victims, witnesses, law enforcement officials, the court and statewide diversionary program(s) and when deemed appropriate, to other interested parties.

4. PRETRIAL RELEASE

4-4.1 Prosecutorial Responsibility

A prosecutor should request that bail be set at an appropriate amount to ensure that the defendant appears at all required court proceedings, and, where allowed by law, does not pose a danger to others or to the community. Where permitted by law, a prosecutor should request that the defendant be held without bail if the prosecutor reasonably believes the accused:

- a. Would present a danger to others or the community if he or she were released prior to trial;
- b. Is likely to tamper with evidence, attempt to improperly influence witnesses, or otherwise interfere with the orderly resolution of the criminal case; or
- c. Is a substantial flight risk.

4-4.2 Bail Amount Request

A prosecutor should take steps to gather adequate information about the defendant's circumstances and history to request an appropriate bail amount. Among the factors a prosecutor may consider in determining the proper amount to request are:

- a. The defendant's employment status and history;
- b. The defendant's financial condition, ability to raise funds and source of funds;
- c. The defendant's length and character of residence in the community, and the nature and extent of the accused's family ties to the community;
- d. The nature and severity of the crime, the strength of the evidence, and the

severity of the sentence that could be imposed on conviction, to the extent these factors are relevant to the risk of non-appearance and the commission of other crimes while awaiting trial;

- e. The defendant's criminal record, including any record of appearance or non-appearance on other criminal charges;
- f. The likelihood of the defendant attempting to intimidate witnesses or victims, or to tamper with the evidence;
- g. Identification of responsible members of the community who would vouch for the accused's reliability;
- h. Any other factors indicating the defendant's ties to the community.

A prosecutor should not seek a bail amount or other release conditions that are greater than necessary to ensure the safety of others and the community and to ensure the appearance of the defendant at trial.

4-4.3 Continuing Obligation

If, after the initial bail determination is made, the prosecutor learns of new information that makes the original bail decision inappropriate, the prosecutor should take steps to modify the accused's bail status or conditions.

4-4.4 Alternatives to Pretrial Incarceration

Prosecutors should recommend bail decisions that facilitate pretrial release rather than detention to the extent such release is consistent with the prosecutor's responsibilities set forth in Section 4-4.1.

4-4.5 Periodic Reports

A prosecutor should request periodic reports on detained defendants to determine if continued detention under the current conditions is appropriate. The prosecutor's office should be informed of any violations of pretrial release conditions of a defendant released pending trial, and should seek revocation of release status, higher bail and/or appropriate sanctions as deemed necessary, in accordance with applicable law or court rules.

5. FIRST APPEARANCE

4-5.1 Prosecutorial Responsibility

The prosecutor should work with law enforcement and the courts to see that the accused is brought before a judicial officer without unnecessary delay.

4-5.2 Prosecutor's Role

A prosecutor need not be present at the first appearance unless required by statute, rule, or court order. When the prosecutor is present at the first appearance, he or she should, to the extent practicable, ensure that:

- a. Bond is set commensurate with the offense charged;
- b. The charges are correct and appropriate;
- c. Any schedule of future proceedings that the court sets avoids unnecessary delay.

If the accused is not represented by counsel at the first appearance, a prosecutor should

not seek a waiver from the accused of a preliminary hearing or other pretrial right.

6. PRELIMINARY HEARING

4-6.1 Prosecutor's Role

The prosecutor should appear at the preliminary hearing and present such reliable information as is required for a judicial officer to make the probable cause determination.

4-6.2 Waiver

Before accepting a waiver by the defendant of a probable cause determination, the prosecutor should be satisfied that the defendant's decision was knowing and voluntary. A defendant's opportunity to consult with counsel prior to the waiver is prima facie evidence of a valid waiver.

7. FORFEITURE

4-7.1 Prosecutor's Role

The prosecutor should support the enactment and enforcement of statutes that permit the forfeiture of property used in or obtained as a result of criminal activity.

4-7.2 Impact on Private Counsel

The ability of defendants to secure private legal counsel of their choice should not be a consideration in the prosecutor's enforcement of forfeiture statutes.

4-7.3 Factors in Mitigation

A prosecutor may, in the exercise of his or her sound professional judgment, decide to remit, mitigate, or forgo the forfeiture of property to an owner or interest holder other than the wrongdoer. Factors a prosecutor may consider in making such a decision include whether an owner or interest holder has, to the prosecutor's satisfaction, established that:

- a. The interest was acquired and maintained in good faith without knowledge or substantial reason to know of the conduct which gave rise to the forfeiture;
- b. That the forfeiture would work a severe hardship on an otherwise innocent owner or interest holder; and
- c. That the property will not be used in furtherance of future criminal activity or benefit the one whose conduct subjected the property to forfeiture.

4-7.4 Impermissible Considerations

The fact that forfeited assets might be available to fund law enforcement efforts should not unduly influence the proper exercise of the prosecutor's discretion in the enforcement of forfeiture statutes or the criminal law, nor should forfeiture be improperly used as a substitute for criminal prosecution.

8. THE GRAND JURY CHARGING FUNCTION

4-8.1 Prosecutorial Responsibility

To the extent permitted by the jurisdiction's law or rules, a prosecutor appearing before a grand jury:

- a. May explain the law and express his or her opinion on the legal significance of the evidence;
- b. Should assist the grand jury with procedural and administrative matters appropriate to its work;
- c. May recommend that specific charges be returned;
- d. Should recommend that a grand jury not indict if the prosecutor believes that the evidence presented does not warrant an indictment under governing law and he or she should encourage members of the grand jury to consider the fact that sufficient evidence must exist to enable the prosecutor to meet the state's burden of proof at trial;
- e. Take all necessary steps to preserve the secrecy of the grand jury proceedings.

4-8.2 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

- a. A prosecutor should present to the grand jury any credible evidence or information of actual innocence or other credible evidence that a prosecutor reasonably believes tends to negate guilt, as required by law and applicable rules of ethical conduct;
- b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;
- c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;
- d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;
- e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;
- f. The prosecutor should inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records;
- g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false; and
- h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

4-8.3 Impermissible Conduct

A prosecutor should take no action and should make no statements that have the potential to improperly undermine the grand jury's independence.

4-8.4 Hearsay Evidence

The prosecutor may present reliable hearsay evidence to a grand jury in accordance with

applicable law or court rule. However, when hearsay evidence is presented, the grand jury should be informed that it is hearsay evidence.

4-8.5 Statements of Record

In jurisdictions where grand jury proceedings are recorded, a prosecutor's advice, recommendations, and other communications with the grand jurors should be of record except as otherwise provided by law.

9. DISCOVERY

4-9.1 Prosecutorial Responsibility

A prosecutor should, at all times, carry out his or her discovery obligations in good faith and in a manner that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for effective cross examination, expedite trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel.

4-9.2 Continuing Duty

If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure or inspection, the prosecutor should promptly notify defense counsel and provide the required information.

4-9.3 Access to Evidence Not To Be Impeded

Unless permitted by law or court order, a prosecutor should not impede opposing counsel's investigation or preparation of the case.

4-9.4 Deception as to Identity

Except as permitted by law or court order, a prosecutor should not deceive the defendant or a witness as to his or her identity or affiliation.

4-9.5 Redacting Evidence

When portions of certain materials are discoverable and other portions are not, a prosecutor should make good faith efforts to redact the non-discoverable portions in a way that does not cause confusion or prejudice the accused.

4-9.6 Reciprocal Discovery

A prosecutor should take steps to ensure that the defense complies with any obligation to provide discovery to the prosecution.

10. CASE SCHEDULING AND PRIORITY

4-10.1 Prosecutorial Responsibility

A prosecutor should not seek or cause delays because of a lack of diligent preparation, nor should the prosecutor seek or cause delays for the purpose of disadvantaging the

defendant or his or her counsel.

4-10.2 Factors to Consider in Setting Priorities

In setting case priority, the prosecutor should consider the following factors:

- a. Criminal cases should normally be given priority over civil cases;
- b. Whether the defendant is in pre-trial custody;
- c. Whether the defendant represents a significant threat of violence to others;
- d. Whether the victim is a child or family member of the defendant;
- e. Whether the defendant is a repeat offender;
- f. Whether the defendant is charged with a heinous crime;
- g. Whether the defendant is a public official;
- h. The age of the case;
- i. The availability of witnesses or other evidence;
- j. Any significant problems or interests of particular concern to the community;
- k. The need for and availability of scientific testing of evidence;
- l. The age, health and circumstances of victim and witnesses.

4-10.3 Trial Scheduling

A prosecutor shall exercise due diligence in preparing for trial and not cause or accede to any unreasonable delay. Some factors to be considered in deciding whether or not a delay is reasonable are:

- a. Whether the case is criminal or civil;
- b. Whether the defendant is in pre-trial custody;
- c. Whether the defendant constitutes a significant threat of violence to others;
- d. Whether the victim is a child or a family member of the defendant;
- e. The need for and availability of scientific testing of evidence;
- f. The age, health and circumstances of the victim and witnesses;
- g. Whether the defendant is a repeat offender;
- h. The seriousness of the crime(s);
- i. Whether the defendant is a public official;
- j. The age of the case;
- k. The availability of witnesses; and
- l. The existence of any other significant factor which requires or justifies a delay at the request of either party.

11. JUVENILE JUSTICE

4-11.1 Prosecutorial Responsibility

A prosecutor should appear at all hearings concerning a juvenile accused of an act that would constitute a crime if he or she were an adult. The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without unduly compromising their primary concern. Formal charging documents for all cases referred to juvenile or adult court should be prepared or reviewed by a prosecutor.

4-11.2 Personnel and Resources

The prosecutor's office should devote specific personnel and resources to fulfill its responsibilities with respect to juvenile delinquency proceedings, and all prosecutors' offices should have an identified juvenile unit or attorney responsible for representing the state in juvenile matters.

4-11.3 Qualification of Prosecutors in Juvenile Court

Specialized training and experience should be required for prosecutors assigned to juvenile delinquency cases. Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in children and youth, education, and experience. Entry-level attorneys in the juvenile unit should be as qualified as any entry-level attorney, and receive special training regarding juvenile matters.

4-11.4 Screening Juvenile Cases

The prosecutor or a designee should review all cases for which some action is required to decide whether a case will be transferred to adult court, filed as a formal petition with the juvenile court, or diverted. If the facts are not legally sufficient to warrant the current action, the matter should be terminated or returned to the referral source pending further investigation or receipt of additional reports.

4-11.5 Transfer or Certification to Adult Court

When making a discretionary decision whether to transfer a juvenile to adult court, a prosecutor should consider, among other factors, whether the gravity of the current alleged offense or the record of previous delinquent behavior reasonably indicates that the treatment services and dispositional alternatives available in the juvenile court are:

- a. Adequate to protect the safety and welfare of the community; and
- b. Adequate for dealing with the juvenile's delinquent behavior.

4-11.6 Criteria for Deciding Formal Adjudication Versus Diversion

The prosecutor or a designee must further review legally sufficient cases not appropriate for transfer to adult court to determine whether they should be filed formally with the juvenile court or diverted for treatment, services, or probation. In determining whether to file formally or, where allowed by law, divert, the prosecutor or designated case reviewer should consider the following factors in deciding what disposition best serves the interests of the community and the juvenile:

- a. The seriousness of the alleged offense including whether the conduct involved violence or bodily injury to others;
- b. The role of the juvenile in that offense;
- c. The nature and number of previous cases presented by law enforcement or others against the juvenile, and the disposition of those cases;
- d. The juvenile's age, maturity, and mental status;
- e. The existence of appropriate treatment or services available through the juvenile court or through diversion;
- f. Whether the juvenile admits guilt or involvement in the offense charged, and

- whether he or she accepts responsibility for the conduct;
- g. The dangerousness or threat posed by the juvenile to the person or property of others;
 - h. The decision made with respect to similarly-situated juveniles;
 - i. The provision of financial restitution to victims; and
 - j. Recommendations of the referring agency, victim, law enforcement and advocates for the juvenile.

4-11.7 Diversion

The prosecutor should be responsible for recommending which cases should be diverted from formal adjudication. Treatment, restitution, or public service programs developed in his or her office may be utilized or the case can be referred to existing probation or community service agencies. No case should be diverted unless the prosecutor reasonably believes that he or she could substantiate the criminal or delinquency charge against the juvenile by admissible evidence at a trial.

4-11.8 Disposition Agreements

The decision to enter into a disposition agreement should be governed by both the interests of the state and those of the juvenile, although the primary concern of the prosecutor should be protection of the public interest as determined in the exercise of traditional prosecutorial discretion.

4-11.9 Prosecutor's Role in Adjudication

At the adjudicatory hearing, the prosecutor should assume the traditional adversarial role of a prosecutor.

4-11.10 Dispositions

The prosecutor should take an active role in the dispositional hearing and make a recommendation to the court after reviewing reports prepared by prosecutorial staff, probation department, and others. In making a recommendation, the prosecutor should consider those dispositions that most closely meet the interests and needs of the juvenile offender, provided that they are consistent with community safety and welfare.

4-11.11 Victim Impact

At the dispositional hearing, the prosecutor should make the court aware of the impact of the juvenile's conduct on the victim and the community.

4-11.12 Evaluation of Programs

The prosecutor should periodically review diversion and dispositional programs, both within and outside the prosecutor's office, to ensure that they provide appropriate supervision, treatment, restitution requirements, or services for the juvenile. The prosecutor should maintain a working relationship with all outside agencies providing diversion and dispositional services to ensure that the prosecutor's decisions are consistent and appropriate. If the prosecutor discovers that a juvenile or class of juveniles are not receiving the care and treatment envisioned in disposition or diversion decisions, the prosecutor should inform the court of this fact.

4-11.13 Duty to Report

If the prosecutor becomes aware that the sanctions imposed by the court are not being administered by an agency to which the court assigned the juvenile or that the manner in which the sanctions are being carried out is inappropriate, the prosecutor should take all reasonable steps to ensure agency supervisors are informed and appropriate measures are taken. If the situation is not remedied, it is the duty of the prosecutor to report this concern to the agency and, if necessary, to the dispositional court.

PART V. PROPRIETY OF PLEA NEGOTIATION AND PLEA AGREEMENTS

1. General

2. Availability for Plea Negotiation

3. Factors for Determining Availability and Acceptance of Guilty Plea

4. Fulfillment of Plea Agreements

5. Record of Plea Agreement

1. GENERAL

5-1.1 Propriety

The prosecutor is under no obligation to enter into a plea agreement that has the effect of disposing of criminal charges in lieu of trial. However, where it appears that it is in the public interest, the prosecution may engage in negotiations for the purpose of reaching an appropriate plea agreement. When agreement is reached, it should be reduced to writing, if practicable.

5-1.2 Types of Plea Negotiations

The prosecution, in reaching a plea agreement, may agree to a disposition of the case that includes, but is not limited to, one or more of the following commitments from the prosecution in exchange for a plea of guilty:

- a. To make certain recommendations concerning the sentence which may be imposed by the court if the defendant enters a plea of guilty or *nolo contendere*;
- b. To agree not to oppose sentencing requests made by the defense; or
- c. To dismiss, seek dismissal, or not oppose dismissal of an offense or offenses charged if the defendant enters a plea of guilty or *nolo contendere* to another offense or other offenses supported by the defendant's conduct;
- d. To dismiss, seek dismissal, or not oppose dismissal of the offense charged, or not to file potential charges, if the accused, agrees not to pursue potential civil causes of action against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his staff or agents;
- e. To agree to forego an ongoing investigation into other criminal activity of the defendant if the defendant enters a plea of guilty or *nolo contendere* to a presently charged offense or offenses; and/or
- f. To agree that the defendant and prosecution will jointly recommend a particular sentence to the court and that the prosecution will support the defendant's motion to withdraw his plea of guilty if the court exceeds this agreed upon sentencing

recommendation.

5-1.3 Conditional Offer

Prior to reaching a plea agreement and subject to the standards herein and the law of the jurisdiction, the prosecutor may set conditions on a plea agreement offer, such as:

- a. The defendant's acceptance of the offer within a specified time period that would obviate the need for extensive trial preparation;
- b. The defendant's waiver of certain pre-trial rights, such as the right to discovery;
- c. The defendant's waiver of certain pre-trial motions such as a motion to suppress or dismiss; or
- d. The defendant's waiver of certain trial or post-trial rights, such as the right to pursue an appeal.

5-1.4 Uniform Plea Opportunities

Similarly situated defendants should be afforded substantially equal plea agreement opportunities. In considering whether to offer a plea agreement to a defendant, the prosecutor should not take into account the defendant's race, religion, sex, sexual orientation, national origin, or political association or belief, unless legally relevant to the criminal conduct charged.

2. AVAILABILITY FOR PLEA NEGOTIATION

5-2.1 Willingness to Negotiate

The prosecutor should make known a policy of willingness to consult with the defense concerning disposition of charges by plea and should set aside times and places for plea negotiations, in addition to pre-trial hearings.

5-2.2 Presence of Defense Counsel

The prosecutor should not negotiate a plea agreement directly with a defendant who is represented by counsel in the matter, unless defense counsel is either present or has given his or her express permission for the prosecutor to negotiate directly with the defendant.

3. FACTORS FOR DETERMINING AVAILABILITY AND ACCEPTANCE OF GUILTY PLEA

5-3.1 Factors to Consider

Prior to negotiating a plea agreement, the prosecution should consider the following factors:

- a. The nature of the offense(s);
- b. The degree of the offense(s) charged;
- c. Any possible mitigating circumstances;
- d. The age, background, and criminal history of the defendant;
- e. The expressed remorse or contrition of the defendant, and his or her willingness to accept responsibility for the crime;
- f. Sufficiency of admissible evidence to support a verdict;
- g. Undue hardship caused to the defendant;
- h. Possible deterrent value of trial;

- i. Aid to other prosecution goals through non-prosecution;
- j. A history of non-enforcement of the statute violated;
- k. The potential effect of legal rulings to be made in the case;
- l. The probable sentence if the defendant is convicted;
- m. Society's interest in having the case tried in a public forum;
- n. The defendant's willingness to cooperate in the investigation and prosecution of others;
- o. The likelihood of prosecution in another jurisdiction;
- p. The availability of civil avenues of relief for the victim, or restitution through criminal proceedings;
- q. The willingness of the defendant to waive his or her right to appeal;
- r. The willingness of the defendant to waive (release) his or her right to pursue potential civil causes of action arising from his or her arrest, against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his or her staff or agents;
- s. With respect to witnesses, the prosecution should consider the following:
 - (1) The availability and willingness of witnesses to testify;
 - (2) Any physical or mental impairment of witnesses;
 - (3) The certainty of their identification of the defendant;
 - (4) The credibility of the witness;
 - (5) The witness's relationship with the defendant;
 - (6) Any possible improper motive of the witness;
 - (7) The age of the witness;
 - (8) Any undue hardship to the witness caused by testifying.
- t. With respect to victims, the prosecution should consider those factors identified above and the following:
 - (1) The existence and extent of physical injury and emotional trauma suffered by the victim;
 - (2) Economic loss suffered by the victim;
 - (3) Any undue hardship to the victim caused by testifying.

5-3.2 Innocent Defendants

The prosecutor should always be vigilant for the case where the accused may be innocent of the offense charged. The prosecutor must satisfy himself or herself that there is a sound factual basis for all crimes to which the defendant will plead guilty under any proposed plea agreement

5-3.3 Candor

The prosecutor should not knowingly make any false or misleading statements of law or fact to the defense during plea negotiations.

4. FULFILLMENT OF PLEA AGREEMENTS

5-4.1 Limits of Authority

The prosecutor should not make any guarantee concerning the sentence that will be imposed by the court or concerning a suspension of sentence. The prosecutor may advise the defense

of the position the prosecutor will take concerning disposition of the case, including a sentence that the prosecutor is prepared to recommend to the court based upon present knowledge of the facts of the case and the offender, including his or her criminal history.

5-4.2 Implication of Authority

The prosecutor should not make any promise or commitment assuring a defendant that the court will impose a specific sentence or disposition in the case. The prosecutor should avoid implying a greater power to influence the disposition of a case than the prosecutor actually possesses.

5-4.3 Inability to Fulfill Agreement

The prosecutor should not fail to comply with a plea agreement that has been accepted and acted upon by the defendant to his or her detriment, unless the defendant fails to comply with any of his or her obligations under the same agreement or unless the prosecutor is authorized to do so by law. If the prosecutor is unable to fulfill an understanding previously agreed upon in plea negotiations, the prosecutor should give prompt notice to the defendant and cooperate in securing leave of court for the defendant to withdraw any plea and take such other steps as would be appropriate to restore the defendant and the prosecution to the position they were in before the understanding was reached or plea made.

5-4.4 Rights of Others to Address the Court

The prosecutor should not commit, as part of any plea agreement, to limit or curtail the legal right of any victim or other person authorized by law to address the court at the time of plea or sentencing. The prosecutor should honor the legal rights of victims and other persons authorized by law to address the court.

5-4.5 Notification of Media

Prior to the entry of a plea of guilty by the defendant in open court, the prosecutor should not make any extrajudicial comments to the media about either the possibility or existence of a plea agreement with the defendant, or of the nature or contents of any such agreement.

5. RECORD OF PLEA AGREEMENT

5-5.1 Record of Agreement

Whenever the disposition of a charged criminal case is the result of a plea agreement, the prosecutor should make the existence and terms of the agreement part of the record. The prosecutor should also maintain the reasons for the disposition in the case file.

5-5.2 Reasons for *Nolle Prosequi*

Whenever felony criminal charges are dismissed by way of a *nolle prosequi* or its equivalent, the prosecutor should make a record of the reasons for his or her action.

PART VI: TRIAL

1. Candor with the Court

2. Selection of Jurors

- 3. Relations with Jury
- 4. Opening Statements
- 5. Presentation of Evidence
- 6. Examination of Witnesses
- 7. Objections and Motions
- 8. Arguments to the Jury

1. CANDOR WITH THE COURT

6-1.1 False Statement

A prosecutor shall not knowingly make a false statement of fact or law to a court. If a prosecutor learns that a previous statement of material fact or law made to the court by the prosecutor is incorrect, the prosecutor shall correct such misstatement in a timely manner.

6-1.2 Legal Authority

A prosecutor shall inform the court of legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to his or her position.

6-1.3 False Evidence

A prosecutor shall not offer evidence that the prosecutor knows to be false. If a prosecutor learns that material evidence previously presented by the prosecutor is false, the prosecutor shall take reasonable remedial measures to prevent prejudice caused by the false evidence.

6-1.4 Ex Parte Proceeding

A prosecutor, in an *ex parte* proceeding authorized by law, shall inform the court of all material facts known to the prosecutor which he or she reasonably believes are necessary to an informed decision by the court.

2. SELECTION OF JURORS

6-2.1 Investigation

A prosecutor may conduct a pre-*voir dire* investigation of any prospective juror, but any such investigation shall not harass or intimidate prospective jurors. Prosecutors may conduct criminal history record checks of prospective jurors and, to the extent required by law or court order, share any conviction information with the court or defense for use in conducting the *voir dire* examination.

6-2.2 Voir dire Examination

A prosecutor should not (a) conduct *voir dire* examination in such a manner as to cause any prospective juror unnecessary embarrassment; or (b) intentionally use the *voir dire* process to present information that he or she knows will not be admissible at trial.

6-2.3 Peremptory Challenges

A prosecutor should not exercise a peremptory challenge in an unconstitutional manner

based on group membership or in a manner that is otherwise prohibited by law.

6-2.4 Duration

A prosecutor should conduct selection of the jury without unnecessary delay.

6-2.5 Identity of Jurors

In cases where probable cause exists to believe that jurors may be subjected to threats of physical or emotional harm, the prosecutor may request the trial court to keep their identities from the defendant or the public in general.

3. RELATIONS WITH JURY

6-3.1 Direct Communication

A prosecutor should not intentionally speak to or communicate with any juror or prospective juror prior to or during the trial of a case, except while in courtroom with all parties and the judge present and on the record.

6-3.2 After Discharge

After the jury is discharged, the prosecutor may, unless otherwise prohibited by law, communicate with the jury as a whole or with any members of the jury to discuss the verdict and the evidence. In jurisdictions where permitted, the prosecutor may ask the court to inform jurors that it is not improper to discuss the case with the lawyers in the case after verdict, if the juror decides to do so. The prosecutor should not criticize the verdict, harass any juror, or intentionally seek to influence future jury service during such communication. A prosecutor should cease communication upon a juror's request.

4. OPENING STATEMENTS

6-4.1 Purpose

When permitted by law, a prosecutor may give an opening statement for the purpose of explaining the legal and factual issues, the evidence, and the procedures of the particular trial.

6-4.2 Limits

A prosecutor should not allude to evidence unless he or she believes, in good faith, that such evidence will be available and admitted into evidence at the trial.

5. PRESENTATION OF EVIDENCE

6-5.1 Admissibility

A prosecutor should not mention or display, in the presence of the jury, any testimony or exhibit which the prosecutor does not have a good faith belief will be admitted into evidence.

6-5.2 Questionable Admissibility

A prosecutor, when anticipating the use of testimony or exhibits of questionable

admissibility, should endeavor to obtain a ruling on the admissibility of the testimony or exhibit prior to mentioning or displaying the same before the jury.

6. EXAMINATION OF WITNESSES

6-6.1 Fair Examination

A prosecutor should conduct the examination of all witnesses fairly and with due regard for their reasonable privacy.

6-6.2 Improper Questioning

A prosecutor should not ask a question that implies the existence of a factual predicate that the prosecutor either knows to be untrue or has no reasonable objective basis for believing is true.

6-6.3 Purpose of Cross-Examination

A prosecutor should use cross-examination as a good faith quest for the ascertainment of the truth.

6-6.4 Impeachment and Credibility

A prosecutor should not misuse the power of cross-examination or impeachment to ridicule, discredit, undermine, or hold a fact witness up to contempt, if the prosecutor knows the witness is testifying truthfully.

7. OBJECTIONS AND MOTIONS

6-7.1 Procedure

A prosecutor, when making an objection during the course of a trial, should formally state, in the presence of the jury, the objection, along with a short and plain statement of the grounds for the objection. Unless otherwise directed by the court, further argument should usually be made outside the hearing of the jury.

6-7.2 Motions in Limine

A prosecutor should attempt to resolve issues relating to the admissibility of evidence prior to the swearing of the jury or, in non-jury adjudications, prior to the swearing of the first witness. Where permitted, this may be accomplished by the filing of and a hearing on a Motion in Limine. A prosecutor should also request the court to similarly resolve questions as to the admissibility of any defense evidence.

8. ARGUMENTS TO THE JURY

6-8.1 Characterizations

In closing argument, a prosecutor should be fair and accurate in the discussion of the law, the facts and the reasonable inferences that may be drawn from the facts.

6-8.2 Personal Opinion

In closing argument, a prosecutor should not express personal opinion regarding the justness of the cause, the credibility of a witness or the guilt of the accused; assert personal knowledge of facts in issue; or allude to any matter not admitted into evidence during the trial.

PART VII: SENTENCING

- 1. Sentencing**
- 2. Probation**
- 3. Community Based Programs**
- 4. Parole/Early Release**

1. SENTENCING

7-1.1 Fair Sentencing

To the extent that the prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and fully informed judgment is made and that unfair sentences and unfair sentence disparities are avoided.

7-1.2 Sentencing Input

The prosecutor may take advantage of the opportunity to address the sentencing body, whether it is the jury or the court, and may offer a sentencing recommendation where appropriate. The prosecution should also take steps to see that the victim is not denied his or her rights to address the sentencing body.

7-1.3 Mitigating Evidence

The prosecutor should disclose to the defense prior to sentencing any known evidence that would mitigate the sentence to be imposed. This obligation to disclose does not carry with it additional obligations to investigate for mitigating evidence beyond what is otherwise required by law.

7-1.4 Pre-Sentencing Reports

The prosecutor should take steps to ensure that sentencing is based upon complete and accurate information drawn from the pre-sentence report and any other information the prosecution possesses.

- a. The prosecutor should disclose to the court or probation officer any information in its files relevant to the sentencing process.
- b. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

2. PROBATION

7-2.1 Role in Pre-Sentence Report

The prosecutor should take an active role in the development and submission of the pre-

sentence report, including the following:

- a. The office of the prosecutor should be available as a source of information to the probation department concerning a defendant's background when developing pre-sentence reports;
- b. The office of the prosecutor should review pre-sentence reports prior to or upon submission of such reports to the court; and
- c. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

7-2.2 Prosecutor as a Resource

The office of the prosecutor should be available as a source of information for the probation department for offenders under supervision.

7-2.3 Notice

The office of the prosecutor should seek to be notified of and have the right to appear at probation revocation and termination hearings, and be notified of the outcome of such proceedings within the jurisdiction.

3. COMMUNITY-BASED PROGRAMS

7-3.1 Knowledge of Programs

The prosecutor should be cognizant of and familiar with all community-based programs to which defendants may be sentenced or referred to as a condition of probation.

7-3.2 Prosecutor as a Resource

To the extent permitted by law, the prosecutor should be available as a source of information for community-based agencies that provide services to probationers.

PART VIII: POST-SENTENCING

1. Post-Sentencing

1. POST-SENTENCING

8-1.1 Cooperation of Trial and Appellate Counsel

To the extent the appellate prosecutor is not the trial prosecutor, the appellate prosecutor and trial prosecutor should cooperate with each other to ensure an adequate flow of information. When feasible, prior to confession of error, the appellate prosecutor should inform the trial prosecutor and obtain his or her input on any issue in question.

8-1.2 Duty of Prosecutor to Defend Conviction

Subject to Standards 8-1.4 and 8-1.8, the prosecutor should defend a legally-obtained conviction and a properly-assessed punishment. A prosecutor has the duty, consistent with the responsibility as a minister of justice, to require the convicted person to meet the applicable burden of proof to obtain relief on both appeal from or collateral attack of a

conviction.

8-1.3 Prosecution Appeals

Subject to Standard 8-1.4, the prosecutor should appeal pre-trial and trial rulings when appropriate and it is in the interests of justice to do so.

8-1.4 Argument on Appeal

The prosecutor shall not assert or contest an issue on appeal unless there is a basis in both law and fact for doing so. The basis should not be frivolous, and may include good faith arguments for extension, modification or reversal of existing law.

8-1.5 Appeal Bonds

The prosecutor should defend against the efforts of convicted defendants to be released on appeal bond unless there is reason to believe that the conviction is no longer supported by the law or evidence or opposition to the bond would create a manifest injustice.

8-1.6 Collateral Review

The prosecutor shall not assert or contest an issue on collateral review unless there is a basis in law and fact for doing so. The basis should not be frivolous, and may include good faith arguments for extension, modification or reversal of existing law.

8-1.7 Duty to Cooperate in Post-Conviction Discovery Proceedings

A prosecutor shall provide discovery to the defense attorney during post-conviction proceedings where (1) required to do so by law, court order or rule, (2) the evidence is constitutionally exculpatory, or (3) he or she reasonably believes that the convicted person's claim of actual innocence is supported by specific factual allegations which, if true, would entitle the convicted person to relief under the legal standard applicable in the jurisdiction and the evidence relates to that claim. A prosecutor may require a specific offer of proof to establish a claim of actual innocence before the prosecutor agrees to take any affirmative action in response to a post-conviction request for discovery.

8-1.8 Duty of Prosecutor in Cases of Actual Innocence

When the prosecutor is satisfied that a convicted person is actually innocent, the prosecutor should notify the appropriate court and unless the court authorizes a delay, the defense attorney, or the defendant, if the defendant is not represented by counsel, and seek the release of the defendant if incarcerated. If the prosecutor becomes aware of material and credible evidence which leads him or her to reasonably believe a defendant may be innocent of a crime for which the defendant has been convicted, the prosecutor should disclose, within a reasonable period of time, as circumstances dictate, such evidence to the appropriate court and unless the court authorizes a delay, to the defense attorney, or to the defendant, if the defendant is not represented by counsel.