

IOWA COUNTY ATTORNEYS ASSOCIATION PROSECUTORIAL STANDARDS

RESPONSIBILITIES OF COUNTY ATTORNEYS AND ASSISTANT COUNTY ATTORNEYS

(As amended through November 1989)

Standard 1.1

A. The County Attorney and the Assistant County Attorney are the chief law enforcement officials of the county. The County Attorney is responsible for the direction and control of the prosecutorial function in his or her jurisdiction. The primary responsibility of the prosecutor is to seek and obtain justice.

B. The County Attorney and the Assistant County Attorneys shall represent the case of the people as to both civil and criminal jurisdiction. The criminal representation shall be the primary responsibility. The civil jurisdiction of the County Attorney shall be as specifically required by state law.

C. The duties of the County Attorney's office shall be conducted in a professional and non-partisan manner.

D. County Attorneys and Assistant County Attorneys owe a solemn duty to uphold the integrity and honor of the legal profession; to encourage respect for the law and for the courts and judges thereof; to strictly adhere to the Code of Professional Responsibility; to conduct themselves so as to reflect credit on the legal profession and to inspire the confidence, respect and trust of their clients and the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety. Of the greatest importance to the functioning of the prosecutor is the ability to exercise independent professional judgment. The prosecutor shall be afforded the discretion necessary to exercise independent professional judgment and this judgment shall be tempered by adherence to the Code of Professional Responsibility.

E. County Attorneys and Assistant County Attorneys shall not engage in the defense of an accused in any criminal matter in any court within or without the boundaries of the State of Iowa, during the time they are holding this public office.

F. A County Attorney or Assistant County Attorney having knowledge that another County Attorney or Assistant County Attorney, while acting in the capacity of a prosecuting attorney, has violated a Code of Professional Responsibility disciplinary rule or any of these standards, has engaged in willful misconduct in office, has willfully and persistently failed to perform his or her public or professional duties, suffers from a substance abuse problem or other habitual behavior or disability that is prejudicial to the administration of justice, or engages in any other conduct which may bring the office of County Attorney into disrepute and seriously interfere with the performance of his or her

duties shall inform the Iowa County Attorneys Association Prosecutorial Standards and Conduct Committee of such knowledge either by sworn complaint or otherwise. This knowledge may be communicated either to the chairperson of that committee or to the Executive Director of the Iowa County Attorneys Association.

Standard 2.1

The decision to initiate or pursue criminal charges or to divert cases from the criminal justice system shall be within the discretion of the prosecutor, excepting only the grand jury. Within his or her discretion, the prosecutor shall determine whether charges should be filed or pursued; whether an offender should be diverted to other treatment alternatives; what should be filed; how many charges should be filed; and how charges should be prosecuted.

Standard 2.2

The prosecutor should utilize his or her discretion in screening to eliminate those cases from the criminal justice system in which prosecution is not justified. Among the factors to be considered in this decision are:

1. Doubt as to the accused's guilt;
2. Undue hardship caused to the accused;
3. Excessive cost of prosecution in relation to the seriousness of the offense;
4. Possible deterrent value of prosecution;
5. Aid to other prosecution goals through non-prosecution;
6. The expressed wish of the victim not to prosecute;
7. Age of the case;
8. Insufficiency of admissible evidence to support a case;
9. Attitude and mental state of the defendant;
10. Possible improper motives of a victim or witness;
11. A history of non-enforcement of the statute at issue;
12. Likelihood of prosecution by another criminal justice authority;
13. The availability of suitable diversion programs;
14. Any provisions for restitution; and
15. Any mitigating circumstances.

Standard 2.3

The prosecutor may, where relevant, utilize appropriate diversionary programs when in his or her judgment the effects of such diversion would be beneficial to the community and to the offender. Diversion may be undertaken on either a formal or informal basis. Among the factors to be considered in the decision to divert are:

1. The nature of the offense;
2. Any special characteristics or difficulties of the offender;
3. Whether the defendant is a first-time offender;

4. Whether there is a probability that the defendant will cooperate with and benefit from alternative treatment;
5. Whether the available program is appropriate to the needs of the offender;
6. The impact of diversion upon the community;
7. Recommendations of the involved law enforcement agency;
8. Consideration for the feeling of the victim;
9. Provisions for restitution; and
10. Any mitigating circumstances.

Standard 2.4

The prosecutor is not obligated to file all possible charges which available evidence might support. The prosecutor may properly exercise his or her discretion to present only those charges which the prosecutor considers to be consistent with the best interests of justice. Among the factors which the prosecutor may consider in making a charging decision are:

1. The nature of the offense;
2. The characteristics of the offender;
3. The age of the offense;
4. The interests of the victim;
5. Possible improper motives of a victim or witness;
6. A history of non-enforcement of a statute;
7. Likelihood of prosecution by another criminal justice authority;
8. Aid to other prosecution goals through prosecution;
9. Possible deterrent value of prosecution;
10. Undue hardship caused to the accused;
11. Excessive cost of prosecution in relation to the seriousness of the offense;
12. The probability of conviction;
13. Recommendations of the involved law enforcement agency; and
14. Any mitigating circumstances.

Standard 3.1

Where it appears that the interest of the State in the effective administration of criminal justice will be served, the prosecutor, while under no obligation to negotiate any criminal charges, may engage in plea negotiations with defendant's attorney for the purpose of reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor shall make a charging or sentencing concession.

Standard 3.2

Among the factors which the prosecutor may consider in determining whether to engage in plea negotiations are:

1. The nature of the offense;
2. The degree of the offense charged;
3. Any possible mitigating circumstances;
4. Any possible relationship between the accused and the victim;
5. The age, background, and criminal record, if any, of the accused;
6. The attitude and mental state of the accused at the time of the crime, the time of arrest, and the time of plea discussion;
7. The age of the victim;
8. Sufficiency of admissible evidence to support a verdict;
9. Undue hardship caused to the accused;
10. Possible deterrent value of prosecution;
11. Aid to other prosecution goals through non-prosecution;
12. A history of non-enforcement of the statute violated;
13. The expressed wish of the victim not to prosecute;
14. The age of the case;
15. Possible improper motives of a victim or witness;
16. Likelihood of prosecution in another jurisdiction;
17. Any provisions for restitution; and
18. The character, attitude, demeanor, physical characteristics and credibility of the victim and/or any of the witnesses, as well as their availability for Court appearance.

Standard 4.1

The decision whether or not to seek the return of a fugitive from another jurisdiction should rest in the sound discretion of the local prosecutor. In exercising this discretion, the prosecutor may consider certain criteria including, but not limited to, the following:

1. The expense involved in transportation;
2. The nature of the proceeding for which the fugitive's return is sought;
3. The likelihood of conviction once the fugitive is returned;
4. The current status of the defendant;
5. The future effect of the prosecutor's decision as an indication of policy; and
6. The disposition that can reasonably be expected if the fugitive is returned and convicted.

GUIDELINES ON FORFEITURES OF PROPERTY

[Adopted at the ICAA annual meeting November 13, 1989.]

Guideline 1

The decision to initiate forfeiture of property pursuant to Iowa Code Chapter 809 is within the discretion of the prosecutor. The prosecutor determines whether forfeiture actions should be pursued, what property should be forfeited, and which interests of joint property owners should be excepted from the forfeiture action. The decision to

forfeit property is made only after consideration of all the facts and circumstances available in light of the objectives to be achieved by forfeiture.

Guideline 2

The prosecutor should consider all of the objectives to be achieved by any forfeiture action. Among the objectives to be considered are the following:

1. Divesting criminal enterprises of their profits;
2. Separating criminal perpetrators from the instrumentalities of their crimes;
3. Ensuring the safety of the community from future criminal activities;
4. Deterring future criminal activity;
5. Imposing consequences that are proportionate to the seriousness of the criminal activities.

Guideline 3

The prosecutor should utilize his or her discretion in screening cases in which forfeiture is not justified. Among the factors to be considered in this decision are:

1. The seriousness of the criminal activity that supports the forfeiture;
2. The intent or mental state of the perpetrator of the criminal offense or series of offenses;
3. The nexus between the forfeitable instrumentality and the criminal offense or series of offenses;
4. The course of conduct of the perpetrator during the commission of the criminal offense or series of offenses;
5. The prior involvement, if any, of the perpetrator with the criminal justice system;
6. The effect, if any, that forfeiture would have in deterring future criminal activity by the perpetrator or by others in the community;
7. The effect, if any, that forfeiture would have in punishing the perpetrator;
8. The hardship, if any, that forfeiture would impose upon the perpetrator, family members, or joint property interest holders;
9. Balancing the cost of the forfeiture action to the county;
10. Protecting the rights of innocent property interest holders, if any.