

Commonwealth of Pennsylvania v. _____		CIU Case #: _____ (internal/CIU use only)
CP-51-CR-_____ - _____	Convicted Offense(s):	
Petitioner's name:		
Date of Birth:	Age:	
Date of Offense:	Date of Sentencing:	
Are there open appeals/PCRA? If yes, please list:		
The petitioner must agree to all of the following and indicate such agreement by initialing to the right of each statement.		
1. I acknowledge that I have been convicted of the offense(s) noted above by the Commonwealth of Pennsylvania. 2. I believe that credible evidence of my innocence/wrongful conviction exists. 3. I am requesting that the Conviction Integrity Unit review my claim of actual innocence/wrongful conviction. 4. I am willing to cooperate with the Conviction Integrity Unit's investigation. 5. I understand the Conviction Integrity Unit may determine that my case does not meet their criteria and at any point decline my submission. 6. I understand that I have no right to appeal a declination by the Conviction Integrity Unit of my submission/request for review. 7. I understand that sending this submission to the Conviction Integrity Unit will not extend the deadlines for any PCRA or appellate court claims. (The prosecutors in the CIU at the District Attorney's Office do not represent you and cannot offer you legal advice. A prosecutor cannot legally or ethically be your attorney. If you do not understand any of the above, you should consult an attorney immediately.)	INITIALS OF PETITIONER 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____ 7. _____	
ACKNOWLEDGMENT BY PETITIONER		
I have read and understand all of the above statements. By initialing the statements and signing below, I understand and agree to comply with any terms herein. No one has told me to agree to anything that I oppose or do not understand. My agreements are of my own free will and are given voluntarily.		
DATE: _____	NAME (PRINT): _____	
	SIGNATURE: _____	

1. Are you currently serving a sentence? Due to legal limitations, we are only able to assist inmates who have been convicted and are serving a sentence.
 Yes No

2. Were you convicted in Philadelphia County? Due to our office's jurisdiction, we are only able to assist inmates who were convicted in Philadelphia County (state charges only.).
 Yes No (STOP! We cannot assist you.)

3. What is your first language?

4. What is the highest grade you completed in school?

5. Is there any reason that corresponding in writing will be difficult for you?
 Yes (Please describe below) No

6. Have you ever received mental health treatment?
 Yes (Please describe below) No

7. Would you be willing to sign a release to allow us to review your medical records?
 Yes No (Please describe why not)

8. Were you employed at the time of your arrest? If so, please provide the name, address, and telephone number of your employer:
 Yes No

9. Please provide the names, addresses, and phone numbers of family and friends who might have information regarding your case. *By writing these names, you are giving us permission to talk to them about your case.*
10. Are you claiming **actual innocence**? Actual innocence means that you were not involved in ANY way (e.g., self-defense is not an actual innocence claim).
 Yes No
11. Are you claiming that you were wrongfully convicted, but not actually innocent? Wrongfully convicted but not actually innocent means that, although you had some involvement in the crime, the evidence used against you at trial was tainted in some way (e.g. the primary evidence against you was a confession that was obtained after using physical force) OR there was a constitutional violation of your right to a fair trial?
 Yes No
12. Are you claiming that you received a disproportionately and/or unfairly long sentence? (e.g. your co-defendant has been released and you are serving a life sentence or a de facto life sentence)?
 Yes No
13. Please list **ALL** the crimes (and the corresponding sentences) that you are **CURRENTLY** incarcerated for.

14. Please describe (in detail) your case the way the **prosecutors** presented it at the time of trial?

15. Please describe (in detail) the facts of your case the way **you** think the crime happened (e.g., was there a struggle, were any fluids discharged like semen, saliva, or blood, did the perpetrator touch several items at the crime scene)? Or, if you are stating that no crime happened, please explain (e.g. your child died because he/she was sick, not because of a criminal act).

16. Did you go to trial or plead guilty?

Trial

Pled guilty

17. Did you appeal your conviction(s)?

Yes

No

18. Besides your direct appeal, please list all other post-conviction motions and petitions filed in both state and federal court (for example, federal habeas corpus petition, motion for new trial, etc.). **DO NOT SEND COPIES UNTIL YOU ARE ASKED FOR THEM.**

19. Do you have any litigation regarding this case pending in court (criminal or civil)?

Yes (Please list all cases below) No

20. Do you have copies of documents given to you by your trial attorney (e.g., police reports, discovery, bill of particulars, etc.)? If yes, please list below what you possess. **DO NOT SEND COPIES UNTIL YOU ARE ASKED FOR THEM.**

Yes

No

21. What was the name of the victim(s)?
22. Did you know the victim(s)? How did you know the victim(s)?
23. How did you become a suspect in the case?
24. Describe your arrest: where were you, when did it happen, and how did it happen?
25. Who were the investigating detectives on your case?
26. Did the police or investigating detective interview you BEFORE you were arrested?
 Yes No
How many times were you interviewed, and for how long?
27. Did the police or investigating detective interview you AFTER you were arrested?
 Yes No
How many times were you interviewed, and for how long?
28. Was any part of the interview(s) recorded or videotaped? If yes, do you have a copy of the interview?
 Yes No
29. Did you give a written statement?
 Yes No

30. If you gave a statement in any form, please explain why you decided to give a statement, and briefly describe what you told the police.
31. Was any victim or witness asked to identify you prior to trial with a line-up or photos? If so, please describe who identified you and how.
- Yes No
32. Do you know of anyone who was asked to identify you but could not? If so, who, when, and where?
- Yes No
33. Did any eyewitnesses testify, either for you or against you? [An eyewitness is someone who claims he or she actually saw the crime being committed.] If so, please list their names and any information you have about how to contact them.
- Yes No
34. Did you have any co-defendants? Please list all of your co-defendants and any information you have about how to contact them, including their prison number (if known). Did they plead guilty or go to trial? Did any of your co-defendant(s) testify against you?
- Yes No

35. Did you testify on your own behalf? If not, why not?

Yes

No

36. Did any of the victims testify? If so, which one(s)?

Yes

No

37. Did any experts testify during the trial? If so, who and what did they say?

Yes

No

38. Did any police informants or snitches testify against you at your trial? If so, who testified and what did they say?

Yes

No

39. Did anyone testify that you confessed to, or admitted being involved in, the crime?

Yes (Please describe below) No

40. Did anybody testify against you in exchange for a promise of leniency in his or her own case?

Yes (Please describe below) No

41. Did anyone who testified against you, including the alleged victim, have a reason to lie?

Yes (Please describe below) No

42. Who else testified for the **prosecution** at your trial?

43. Who testified for the **defense** at your trial?

44. Do you have an alibi that proves you could not have committed the crime?

Yes (Please describe below) No

45. Did you attempt to prove your alibi at trial? If so, how? If not, why not? Did you discuss your alibi with your attorney? If not, why not?

Yes No

46. Did the prosecution use any of the following against you to convict you?

If you check one of the boxes, please explain below.

- | | |
|--|---|
| <input type="checkbox"/> Bite mark analysis | <input type="checkbox"/> Shaken baby-syndrome |
| <input type="checkbox"/> Microscopic hair comparison | <input type="checkbox"/> Blood typing (AB, O, etc.) |
| <input type="checkbox"/> Arson science | <input type="checkbox"/> Microscopic fiber or carpet analysis |
| <input type="checkbox"/> Gunshot residue (GSR) | <input type="checkbox"/> Bullet/Ballistic comparison |
| <input type="checkbox"/> Fingerprints | <input type="checkbox"/> DNA |

47. Please describe the defense that you or your attorney raised at trial. (For example, if you were convicted of rape, did you assert that the sex was consensual, or that you were wrongfully identified? Or, if you were convicted of murder, did you argue self-defense, present an alibi, or raise some other defense?)

48. Was any physical and/or biological evidence recovered during the investigation of your case? [Examples of this type of evidence are blood, hair, clothing, weapons, etc.] If so, please describe it.

Yes

No

48a. If applicable, was a rape kit obtained from the alleged victim?

Yes

No

48b. Did you ever see or hear about a report of the test results? If so, what did it say? If you have the DNA report, **please send a copy along with this application.**

Yes (Please describe below) No

48c. Were the results used at trial?

Yes (Please describe below) No

48d. Do you know what lab or individual conducted the test?

Yes (Please name below) No

49. Is there new evidence in your case—or could testing develop new evidence in your case—which the jury did not hear about in your original trial that would demonstrate your actual innocence/wrongful conviction?

Some possible examples could include:

- 1) A DNA test that a lab could perform on the crime scene evidence which would conclusively prove that you did not commit the crime.
- 2) A DNA test which a lab could perform which would point to someone else having committed the crime.
- 3) A DNA test on the crime scene evidence which could be put in the national DNA database of convicted felons and which might match to a convicted felon showing that that person actually committed the crime.
- 4) A key state witness against you at the time you were convicted who has now recanted his or her testimony. By “recanted,” we mean that the witness is now saying that he or she lied against you before, or was mistaken before, and that they now are saying something different that shows you are innocent.
- 5) A new witness who has recently come forward, and who did not testify before, who can now testify that you are innocent. This can be someone who saw the crime and says it was someone else who they saw do it, or someone who provides you with a solid alibi because they were with you somewhere else when the crime occurred.
- 6) Other new science other than DNA, such gunshot residue analysis or new arson science, which could be performed on the crime scene evidence and which would show that you are innocent. (Note: lead bullet analysis and arson science have greatly advanced in recent years. Many old methods that might have been used to convict you are now considered inaccurate. If you were convicted as a result of arson science or gunshot residue analysis, new studies showing those methods were flawed could constitute new evidence).
- 7) Evidence that your lawyer did not present that could have proven you innocent.

****Note:** The above list is not a complete list of examples and this type of evidence does not necessarily demonstrate actual innocence/wrongful conviction in every case. The list is included simply to provide some examples of evidence the jury did not hear which could, depending on the facts of your case, be used to demonstrate actual innocence or that you were wrongfully convicted.

Having read the examples of “new evidence,” please answer question 49 describing the new evidence in your case:

(If you are writing to the CIU claiming you are wrongfully convicted, but not actually innocent OR received a disproportionately and/or unfairly long sentence, please explain if there is new evidence supporting these claims, e.g. evidence of an officer’s misconduct has come to light through another case or a new witness has come forward that demonstrates you are guilty of murder of the third degree rather than the second degree)

50. Do you know who committed the crime(s) of which you were convicted? If yes, please name them below and provide that person’s whereabouts (if known).

Yes

No

51. How do you know that this person is committed the crime?

52. Please tell us anything else you would like us to know that could help us prove your innocence, demonstrate you were wrongfully convicted, and/or received a disproportionately and/or unfairly long sentence. Use additional sheets of paper if necessary.

Signature of inmate: _____

Date: _____

Appendix B
Pro Se Form Request Letter



LAWRENCE S. KRASNER
DISTRICT ATTORNEY

**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000**

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: Request for CIU review of your case, received «Date Received»

Dear «Name»,

Enclosed please find a 16-page CIU Submission and Consent Form for CIU Review. Please complete, sign and return the enclosed forms to us at the address listed above.

If you are currently represented by an attorney, please contact your attorney instead of submitting these forms. Your attorney should contact our office directly for further information regarding attorney submissions for CIU review.

It is important for you to understand that providing these forms to us does not a guarantee that your case will be accepted for review.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

Encl. 16-page Submission and Consent Form

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

DAO 000100

Appendix C
Pro Se Correspondence Acknowledgement Letter



LAWRENCE S. KRASNER
DISTRICT ATTORNEY

**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000**

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate_Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: Correspondence to CIU Received

Dear «Name»,

The Conviction Integrity Unit (CIU) received your letter on «Date Received».

Due to the high volume of submissions, the CIU cannot provide additional updates on the status of our review. The CIU will contact you if we have any questions about your case. We will also write to inform you of the result of this review.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

Appendix D
Pro Se Submission Acknowledgement Letter



LAWRENCE S. KRASNER
DISTRICT ATTORNEY

DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate_Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: CIU Submission Received

Dear «Name»,

The Conviction Integrity Unit (CIU) received your submission and consent forms on «Date Received». **Your submission paperwork indicates you are not represented by an attorney.** If for some reason that information is inaccurate, if circumstances have changed or you expect them to change and you obtain an attorney, please have your attorney contact us at CIU.Submission@Phila.Gov.

Please be aware that due to the high volume of submissions we receive, the CIU is unable to provide updates on the status of our review. The CIU, however, will contact you if we have any questions about your case or if we need additional information. We will also write to inform you of the results of our review.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

DAO 000104

Appendix E
Pro Se Screening Memo

CONVICTION INTEGRITY UNIT
PRO SE SUBMISSION
SCREENING MEMO

DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000



Last Updated 10/20/20

Case and Reviewer Information

Name: _____ Date Submission Complete: _____
CP Number: _____ Reviewed by: _____
Sentencing Date: _____ Date of Review: _____
Lead Charge: _____ Circle one: Non-trial Jury Trial Waiver Trial
Disposition type: Negotiated Guilty Plea Non-negotiated GP Guilty Other: _____

Decline Screen

- Mandatory – No Jurisdiction
- Case is not in Philadelphia County.
 - Defendant is not convicted. Circle one: Pretrial Favorable Outcome Other
 - Defendant is not serving a sentence.
- Discretionary - Resources
- Misdemeanor SORNA Only Legal Question Only
 - Not Compelling Immigration Probation

Re-Submission Screen

Search SharePoint. Is this a resubmission? YES | NO

If NO, skip to New Submission section.

Note: A resubmission = a case that was previously declination. (If you're looking at information for a case that has never been closed, then it's just "additional info" for a submission.)

If resubmission:

- Pull the CIU's old paper file.
- Review old submission + any CRU/CIU memos + new submission.
- Does the resubmission or the CIU have *additional substantive info*? (Can be facts or legal claims.)

YES → (1) Briefly Describe (elaborate in Additional Comments if necessary)

(2) Place in resubmission queue.

NO → Decline [resubmission – NNB (no new basis)]

New Submission

- Create paper file.
- Create SharePoint file.
- Add data to Case Management Database.
- Locate documents + add to paper file + complete Documents Included section below.
- Submit to designated paralegal for priority screening.

Documents Included

- Submission Form
- Docket(s) [CP + appeals]
- Other:
- dtBank Search complete
- Appellate Opinion(s) [not in dtBank]

Screening Result

- Decline
 - Mandatory
 - Discretionary
- Decline Resubmission
- Ready for Review
- Other:
- Queue:**
 - Priority Queue
 - Regular Queue
 - Resubmission Queue

Additional Comments

Appendix F
Pro Se Mandatory Declination Letters



LAWRENCE S. KRASNER
DISTRICT ATTORNEY

DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate_Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: CIU Review Request Declined – Conviction Out of County

Dear «Name»,

The Conviction Integrity Unit (CIU) has received your letter requesting a review of your case. Since your case was prosecuted in a county other than Philadelphia, we have no jurisdiction to review your case.

You may want to consider writing to the Conviction Integrity Section of the Office of the Attorney General for Commonwealth of Pennsylvania. The CIS is set up to review claims of actual innocence state-wide. The CIS will bring substantial resources to review past convictions in collaboration with district attorneys, police agencies and victims to ensure justice. You may write to the CIS to obtain a submission form.

Conviction Integrity Section – PAOAG
Criminal Law Division
Strawberry Square – 16th Floor
Harrisburg, PA 17120

We regret that we cannot be of assistance to you.

Sincerely,

«Paralegal Name»
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.



DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: CIU Review Request Declined – No Longer Serving Sentence

Dear «Name»,

The Conviction Integrity Unit (CIU) has received your letter requesting review of your conviction on «Date Received». We are writing to inform you that your claim does not meet our criteria for further investigation.

In order to meet our criteria, you must be “currently serving a sentence of imprisonment or parole for the crime.”¹

Thank you for writing to the CIU. Please note that decision is only in regards to your submission to the CIU and has no bearing on any other legal proceeding regarding your case.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

¹ To be “eligible for relief under the PCRA, a petitioner must be: (i) currently serving a sentence of imprisonment, probation or parole for the crime ...” 42 Pa.C.S. § 9543(a)(1). *Com. v. Smith*, 609 Pa. 605, 658, 17 A.3d 873, 904 (2011). Eligibility for federal habeas relief is likewise limited to those who are in custody or under supervision as a result of the judgment they challenge. 28 U.S.C. § 2254(a); *Garlotte v. Fordice*, 515 U.S. 39 (1995).



**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000**

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate_Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: CIU Review Request Declined – Not Yet Convicted

Dear «Name»,

The Conviction Integrity Unit (CIU) has received your letter requesting review of your charge(s) on «Date Received». We are writing to inform you that your claim does not meet our criteria for further investigation.

In order to meet our criteria, you must be already convicted of a crime.

Thank you for writing to the CIU. Please note that decision is only in regards to your submission to the CIU and has no bearing on any other legal proceeding regarding your case.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

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Appendix G
Pro Se Re-Submission Acceptance Letter



LAWRENCE S. KRASNER
DISTRICT ATTORNEY

DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: Comm. v. «Name»; «CP_no»
CIU Re-submission – Accepted for Review

Dear «Name»,

The Conviction Integrity Unit (CIU) received your re-submission on «Date Received». According to our records, your case was previously declined by the CIU [or Conviction Review Unit] on «Prior Rejection Date».

The CIU will reconsider a prior decision if (1) the new submission provides additional information that the CIU did not previously consider, and (2) it raises a factual or legal basis for actual innocence or a wrongful conviction.

Your re-submission provides additional information, so your case will be further reviewed to see if it potentially raises a factual or legal basis for actual innocence or wrongful conviction.

Due to the high volume of submissions, the CIU cannot provide additional updates on the status of our review. The CIU will contact you if we have any questions about your case. We will also write to inform you of the result of this review.

Sincerely,

«Paralegal Name»
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

Appendix H
Pro Se Re-Submission Declination Letter



**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000**

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

**RE: Comm. v. «Name»; «CP_no»
CIU Re-submission - Declination**

Dear «Name»,

The Conviction Integrity Unit (CIU) received your re-submission and consent forms on «Date Received». According to our records, your case was previously declined by the CIU [or Conviction Review Unit] on «Prior Rejection Date».

Based on a review of your submissions, there is no qualifying additional information to justify reconsideration of our original declination.

For your information, the CIU will reconsider a prior decision if (1) the new submission provides additional information that the CIU did not previously consider, and (2) it raises a factual or legal basis for actual innocence or a wrongful conviction.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

Appendix I
Attorney Submission Checklist



**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT**
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

Via email at «Attorney_Contact»

February 13, 2020

**Re: Commonwealth v. «Petitioner», «Case_No_»;
Conviction Integrity Unit Submission Checklist**

Dear «Attorney»:

We are writing to you because you have submitted a letter requesting that the Conviction Integrity Unit (“CIU”) review the above referenced case. Due to the high volume of cases, this case has **not** yet been assigned to a CIU attorney for review.

In order to assist the CIU in prioritizing cases for review, please complete the enclosed document and return it to the CIU.

Failure to submit the enclosed form will be considered in prioritization of cases for review.

Thank you in advance for your cooperation.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

Enclosed: Attorney Submission Checklist (Revised 11/20/2019)

DAO 000117



LAWRENCE S. KRASNER
DISTRICT ATTORNEY

**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000**

**ATTORNEY CIU SUBMISSION
CHECKLIST**

Due to the high volume of submissions, we are asking that attorneys submitting applications to the Conviction Integrity Unit ("CIU") complete the following checklist to assist CIU in prioritizing cases for review.

Commonwealth of Pennsylvania v. _____		CIU Case #: _____ (internal/CIU use only)
CP-51-CR-_____ - _____	Convicted Offense(s):	
Petitioner's name:		DOB:
Date of Offense:	Date of Sentencing:	

- (1) Please provide the names of any attorneys who have previously represented your client on this or any related case, along with any contact information for prior counsel and a brief description of the proceeding in which they represented your client. If you need additional room, please attach an additional sheet of paper.

Attorney Name	Contact Information	Nature of Proceeding

(2) If your client appealed their conviction, please provide the following information:

Superior Court Docket No.:

Date of Decision:

Pa. Supreme Court Docket No.:

Date of Decision:

(3) If your client filed a PCRA petition, please provide the following information:

Date Filed:

Date of Decision:

Superior Court Docket No.:

Counsel of Record:

Date filed:

Date of Decision:

Pa. Supreme Court Docket No.:

Counsel of Record:

(4) If your client filed a petition for a writ of habeas corpus in federal court, please provide the following information:

District Court Docket No.:

Counsel of Record:

Date Filed:

Date of Decision:

Court of Appeals Docket No.:

Counsel of Record:

Date Filed:

Date of Decision:

(5) Do you have the files of the attorneys who represented your client in prior proceedings?

Yes No

If not, please explain what steps you have taken to obtain these files:

(6) Have you obtained copies of any records or files kept by your client?

Yes No

If not, please explain what steps you have taken to obtain these files.

(7) Do you have electronic copies of the records (including exhibits, pleadings, orders, and notes of testimony) from the following proceedings?

Trial: Yes No

Direct Appeal: Yes No N/A

PCRA: Yes No N/A

Federal Habeas: Yes No N/A

(8) If there was any portion of the records above you were not able to obtain a copy of/review, please list those portions of the record below (e.g. exhibits, pre-trial suppression hearing, etc):

(9) If there is any portion of the record of a related case (e.g. a jailhouse informant's testimony in another case, informant's sentencing hearing, co-defendant's trial/postconviction hearing, etc.) you were not able to obtain a copy of/review, please list the defendant's name, case number, and the missing portions of that record below:

(10) Are you requesting postconviction forensic testing? Yes No

If yes, please identify the item to be tested (including the property receipt number), the type of testing you are requesting (e.g. DNA, fingerprint, etc.), and the current location of that evidence. With respect to the type of testing, please be as specific as possible (e.g. DNA testing of the collar of the jacket for wearer DNA). With respect to the location of the evidence, if you have not been able to confirm the current location of the evidence, please describe your efforts to confirm the location of the evidence. If you need additional room, please attach an additional sheet of paper.

Property (include property receipt #)	Type of testing requested (include as much specificity as you can)	Location of evidence

(11) Has any forensic testing already been conducted either pre-trial or post-trial? Yes No

If yes, please identify the item that was tested (including the property receipt number), the type of testing conducted (e.g. DNA, fingerprint, etc.), and the current location of that evidence if not specified in answer number 10. With respect to the type of testing, please be as specific as possible (e.g. DNA testing of the collar of the jacket for wearer DNA). With respect to the forensic testing of the evidence, please provide a brief description of the testing results (e.g., inconclusive, included or excluded). If you need additional room, please attach an additional sheet of paper. **Also, please attach copies of all lab reports and records you have in your possession.**

Property (include property receipt #)	Type of testing conducted (include as much specificity as you can)	Results of Testing

Property (include property receipt #)	Type of testing conducted (include as much specificity as you can)	Results of Testing

- (12) Please identify the names of any witnesses that testified at trial and/or a postconviction hearing that you have interviewed/attempted to interview as part of your postconviction investigation (please include their contact information). If you need additional room, please attach an additional sheet of paper.

Witness Name	Current Contact Information	Interview Completed (Yes or No)

- (13) Please identify the names of any witness you have interviewed/attempted to interview as part of your postconviction investigation who did not testify at trial and/or postconviction hearing. If you need additional room, please attach an additional sheet of paper.

Witness Name	Current Contact Information	Interview Completed (Yes or No)

(14) Have you made any contact with a victim or victim's family member in this case?

Yes No

It is the policy of the Conviction Integrity Unit to contact any surviving victims or their family members at an appropriate time. While the Conviction Integrity Unit does **not** encourage counsel to engage in victim outreach, it is important to know at the outset of review if any victims have been contacted.

Please provide the name, relationship to victim (if applicable), and contact information for the person with whom you have discussed this case:

Name	Current Contact Information	Relationship to Victim

(15) Has your client ever applied to the Board of Pardons for Commutation / Clemency?

Yes No

If yes, please provide the dates the application was submitted to the Board of Pardons below. Please also attach the application to this checklist.

Signature of Attorney for Convicted Offender
(Type or Print)

Name of Attorney for Convicted Offender

Date Signed

Appendix J
Attorney Submission Continuances Letter



**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000**

«Attorney»
Via email at «Attorney_Contact»

February 13, 2020

**Re: Commonwealth v. «Petitioner», «Case_No_» Requests for
Continuances / Resets / Extensions of Time / Pending CIU Review**

Dear «Attorney»:

All post-conviction matters are handled by law division ADAs until the CIU completes its initial review, investigation, and accepts your client's case.

If you have a pending Post Conviction Relief Act ("PCRA") Petition, Federal Writ or Appeal and you are requesting additional time from the court for purposes of CIU review, you must email the CIU (samantha.bass@phila.gov) and the law division ADA assigned to your case **prior** to the listing / deadline. Failure to notify both the law division and the CIU prior to the listing / deadline may result in the law division ADA **opposing your request**.

Please note – CIU receipt of your submission does not mean the CIU has begun the process of reviewing your client's case nor does it mean your case has been accepted as a CIU case. In fact, due to the high number of submissions we receive, the CIU is unable to provide a timeline for our unit's review and ultimate decision as to whether to accept the case. Thus, until you receive confirmation from the CIU that your client's case has been accepted, please refrain from informing the court that the CIU has accepted your client's case.

Thank you in advance for your cooperation.

Sincerely,

Paralegal Name
Paralegal
Conviction Integrity Unit

CC: «Judge» (via mail)
Law Division at Philadelphia District
Attorney's Office (via email)

Appendix K
Discovery and Cooperation Agreement
and Waiver and Consent Form



**DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000**

Discovery and Cooperation Agreement

The parties enter into a discovery and cooperation agreement relating to the Conviction Integrity Unit (CIU) review of all actual innocence claims and/or post-conviction wrongful conviction claims which may arise during the CIU review, in:

Case No(s): CP-51-CR-

Defendant

Defendant's Attorney agrees:

- 1) To redact the address, telephone number, driver's license number, social security number, date of birth, bank account or other identifying numbers, and all privileged information contained in all documents and witness statements before showing and/or using any discovery obtained from the CIU. If the filing of unredacted copies is required by 42 Pa.C.S. Section 9541 et.seq. or some other legal statute, said copies shall be filed under seal if permitted by the court or publicly filed if agreed to by the CIU.
- 2) To maintain custody of all documents produced pursuant to this Agreement and not allow anyone to copy the documents produced pursuant to this Agreement except copies provided to experts, attorneys, staff and colleagues who are assisting with the investigation and who also agree to be bound by attorney-client privilege and the terms of this agreement, unless the CIU consents to such additional disclosure. The attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, may allow a defendant, witness, or prospective witness to view the information provided under this article, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this subsection, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. For purposes of this agreement, the defendant may not be the agent for the attorney representing the defendant.
- 3) To be fully cooperative in the CIU investigation, including executing the attached limited "Waiver" (Exhibit A), and sharing any investigative materials, reports, recordings or

communications or other materials relevant to the investigation of the asserted claims.

- 4) To coordinate, when feasible, the scheduling of witness interviews and other investigatory assignments in order to prevent potential interference with the CIU investigation and ensure the safety of witnesses and victims and the integrity of the post conviction investigation.

The CIU of the Philadelphia District Attorney's Office agrees:

- 1) To produce files and other documentation in its possession or acquired through the CIU investigation. Work product may be produced on a case by case basis and will be produced if necessary to fulfill any ethical or legal obligations of the CIU.
- 2) To make timely and appropriate disclosures of any exculpatory, impeachment or mitigating evidence it discovers as part of the ongoing CIU review and as may be related to any potential post conviction legal claim.
- 3) To provide written notice if there is information or evidence that the CIU believes may need to be produced under a protective order or should be withheld (for a substantial amount of time) in order to avoid jeopardizing the safety of a witness or any ongoing investigation.

Attorney and the CIU both further agree:

- 1) To the release of forensic evidence (if the CIU agrees to forensic testing) to be examined by forensic experts and that the results of those examinations and access to those experts will be equally available to both parties. Parties will earnestly endeavor to use mutually agreed upon experts for said testing where feasible.
- 2) That while the CIU review is pending, the parties will refrain from discussion of this case in the media unless consented to by the other party. If either party determines it is necessary to discuss the case in the media, this agreement may be terminated.
- 3) To handle any evidentiary hearing where the CIU has agreed to relief – however, if the parties cannot agree upon legal conclusion(s) or finding(s) for relief, the legal proceeding may be referred by the CIU to the Law Division of the Philadelphia District Attorney's Office.
- 4) If this agreement is violated the CIU reserves the right to terminate the review and refer the matter to the Law Division for further proceedings.

Revised: April 5th, 2021

By signing below, both parties agree to be bound by all of the terms of this agreement until the termination of the CIU review and post-conviction proceedings resulting from that review.

Attorney Signature

ADA Signature

Date

Date

WAIVER AND CONSENT

INSTRUCTIONS: Please read the limited waiver below and sign if you agree with its terms. If you are currently represented by an attorney, please discuss this matter with your attorney and have your attorney sign as well. **The original copy of this form must be delivered to the Conviction Integrity Unit.** Please retain a copy for your records.

I, _____, have filed an application with the Conviction Integrity Unity (CIU) of the Philadelphia District Attorney's Office in which I have requested the CIU to review my conviction. I am / am not (*circle one*) currently represented by an attorney. I understand that, in order for the CIU to fully investigate any claims of misconduct by the Commonwealth, the CIU will need to determine what information was disclosed to my previous attorney(s) by the Commonwealth or other parties.

Therefore, I agree to fully cooperate with the CIU's review, which includes allowing the CIU to contact and speak with my previous attorney(s) about any NON-PRIVILEGED matters, and allowing the CIU to access my client file, as maintained by my previous attorney(s), to view any information, other than privileged communications or attorney work-product, contained within my file.

By signing below, I acknowledge that I have read and understood all of the above statements and that my agreement to cooperate with the CIU is made by my own free will and is given voluntarily.

My name is _____, my date of birth is _____, my inmate identifying number, if any, is _____, and my address (or place in which I am currently incarcerated) is _____.

_____ I declare under penalty of perjury that the foregoing is true and correct.

Signature of Convicted Offender

Date Signed

CERTIFICATION BY ATTORNEY FOR CONVICTED PERSON (if currently represented by counsel)

I hereby certify that I have fully explained to the convicted offender the above statement and that his/her signature is a result of an independent and informed decision made by him/her.

Signature of Attorney for Convicted Offender

Name of Attorney for Convicted Offender
(Type or Print)

Date Signed

Appendix L
Victim Contact Information Form

01/24/19 - FM

Victim Contact Information Form (Use a Separate Form for Each Victim)

Date of request: _____ Due Date: _____

Victim's name: _____

Date of offense: _____ Date of death (if different): _____

Defendant's name: _____

Co-Defendant's name: _____

Name of Victim Contact Person (include relationship) at trial:

Name of Victim Contact Person (include relationship) post-conviction:

Address/telephone/email:

Address/telephone/email:

Involvement: _____

Involvement: _____

Opinion/Position Communicated to DAO (if any): _____

Opinion/Position Communicated to DAO (if any): _____

Current Victim Contact Person/Next of Kin:

Name: _____

Name: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Email: _____

Email: _____

Date completed: _____

01/24/19 -FM

Appendix M
Pro Se Declination following
Review Letters



DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

**RE: Comm. v. «Name»; «CP_no»
CIU Submission**

Dear «Name»,

The Conviction Integrity Unit (CIU) has completed a preliminary review based on the submission(s) you sent on «Date Received». We are writing to inform you that your claim does not meet our criteria for further investigation.

The CIU cannot identify any new evidence¹ within your claim that would allow us to make a determination about your innocence or wrongful conviction. As such, this letter serves to notify you that our unit has declined your case.

Please note this decision is only in regards to your submission to the CIU and has no bearing on any other legal proceeding regarding your case.

Sincerely,

«Paralegal Name»
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

¹ See Title 42 PA C.S. § 9545(b) for legal definition of "new evidence."



DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: Comm v. «Name»; «CP_no»
CIU Submission

Dear «Name»,

The Conviction Integrity Unit (CIU) has received your submission form and conducted a preliminary review of your claims. Given the documents you have provided, we are unable to determine whether there is any evidence that supports a provable claim of actual innocence or wrongful conviction. As such, the CIU must decline your submission.

Please note that this decision only pertains to your submission to the CIU and has no bearing on any other legal proceeding regarding your case.

Thank you for writing to the CIU.

Sincerely,

«Paralegal Name»
Paralegal
Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.



DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

RE: Comm v. «Name»; «CP_no»
CIU Submission

Dear «Name»,

The Conviction Integrity Unit (CIU) has received your submission form(s) and conducted a preliminary review of your claims. Given the documents you have provided, we are unable to identify any new evidence¹ to support your claim that you are only guilty of third degree murder or a lesser crime. As such, the CIU must decline your submission.

Please note that this decision only pertains to your submission to the CIU and has no bearing on any other legal proceeding regarding your case.

Thank you for writing to the CIU.

Sincerely,

«Paralegal Name»
Paralegal
Conviction Integrity Unit

***Please Note:** The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.*

¹ See Title 42 PA C.S. § 9545(b) for legal definition of "new evidence."



DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC
«Name» / «Inmate Number»
«Institution»
PO Box 33028
St Petersburg, FL 33733

**RE: Comm. v. «Name»; «CP_no»
CIU Submission**

Dear «Name»,

The Conviction Integrity Unit (CIU) has completed a preliminary review based on the submission(s) you sent on «Date Received». We are writing to inform you that your claim does not meet our criteria for further investigation.

Given the information you provided, the CIU cannot identify any new evidence¹ that supports a claim that first/second degree murder was not the appropriate charge in your case. As such, this letter serves to notify you that our unit has declined your case.

Please note this decision is only in regards to your submission to the CIU and has no bearing on any other legal proceeding regarding your case.

Sincerely,

«Paralegal Name»
Paralegal
Conviction Integrity Unit

***Please Note:** The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.*

¹ See Title 42 PA C.S. § 9545(b) for legal definition of "new evidence."

Appendix N
Pro Se Discretionary Declination Letter



LAWRENCE S. KRASNER
DISTRICT ATTORNEY

DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

April 30, 2021

Smart Communications/PADOC

«Name» / «Inmate_Number»

«Institution»

PO Box 33028

St Petersburg, FL 33733

RE: Comm. v. «Name»;«CP_no»; **CIU Submission**

Dear «Name»,

The Conviction Integrity Unit (CIU) has reviewed the submission you sent on «Date Received». We regret to inform you that after a thorough preliminary review, your claim does not meet our criteria for further investigation at this time.

The CIU receives a high volume of submissions and is devoted to carefully reviewing all submissions with a critical eye so as to identify, investigate, and ultimately litigate cases where post-conviction relief is warranted. However, due to our limited capacity, we can only accept cases for further review in limited circumstances, thus, we must use the utmost discretion when deciding whether to further investigate a submission.

Please note this decision is only in regards to your submission to the CIU and does not affect any other legal proceeding regarding your case or prevent you from seeking other legal assistance. Our decision is not a statement on the merits of your claims. Should you obtain new information that was not included in your submission, this declination does not prevent you from re-submitting your case for review at a later date.

You may also want to write to the **Pennsylvania Innocence Project** for assistance. If so, please send the Project a short letter to 1515 Market Street, Suite 300, Philadelphia, PA 19102. The letter should briefly state your conviction, sentence, and claim of innocence. Do not send any additional documents.

Additionally, other organizations exist which seek to aid pro se applicants with getting their cases reviewed. These organizations include but are not limited to:

Philadelphia Lawyers for Social Equity (PLSE) - PLSE seeks a more equitable social environment for those seeking pardons from the Governor.

Sincerely,

«Paralegal Name»

Paralegal

Conviction Integrity Unit

Please Note: The CIU is part of the Philadelphia District Attorney's Office. As such, the CIU is not your attorney and cannot give you legal advice or represent you in any court proceeding. Also, as a result of the COVID-19 pandemic, you may experience slower than usual response times from the CIU. We appreciate your patience and understanding.

DAO 000138

Appendix O
Case Closure Form

April 16, 2021

Reviewed by: _____



DISTRICT ATTORNEY'S OFFICE
CONVICTION INTEGRITY UNIT
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
215-686-8000

CIU Case Closure Form

Case Details

Name: _____

Sentencing Date: _____

CP Number: _____

Date of Receipt: _____

Lead Charge: _____

Date of Case Closure: _____

Documents Included

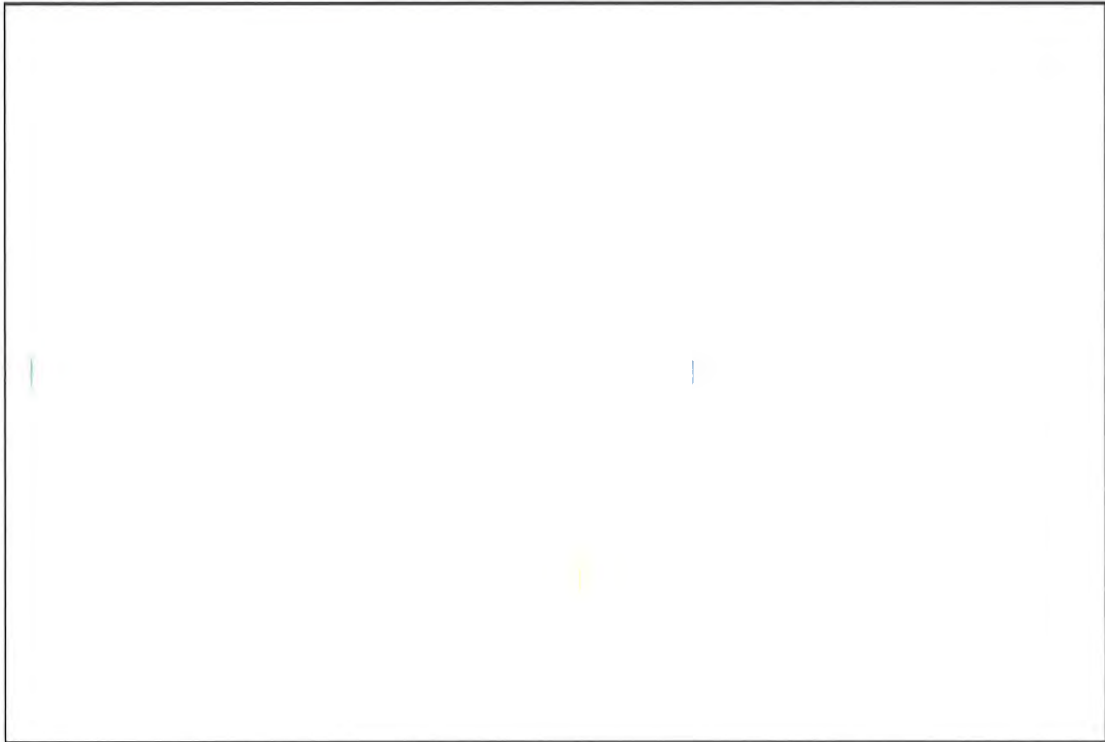
- | | |
|---|---|
| <input type="checkbox"/> SUBMISSION FORM | <input type="checkbox"/> Transcript |
| <input type="checkbox"/> DOCKET(S) | <input type="checkbox"/> PCRA |
| <input type="checkbox"/> APPELLATE OPINION(S) | <input type="checkbox"/> SUBMISSION CHECKLIST (Atty. Review only) |
| <input type="checkbox"/> DNA/Forensic Testing | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Investigation | |

Review

- Not Actually Innocent/Wrongfully Convicted
- No New Evidence
- Sentencing (Applicant guilty of 1st/2nd Degree)
- Sentencing (NNE to show applicant guilty of 3rd Degree)
- Discretionary Decline
- Other:

April 16, 2021

Additional Comments



NAME _____ DATE _____

Philadelphia DAO Policy on Improving Assistant District Attorney Communication with Victims of Crime



Effective Date: 1/31/2019

One of the most important responsibilities you have as an Assistant District Attorney is timely communication with victims about the criminal court process and potential outcomes of the case. Principles of procedural justice (fairness in the process) must guide your interactions with victims because fairness in the process improves public perception and trust. Research shows that a criminal justice system that grants victims representation and a sense of accuracy in the process creates a higher level of satisfaction for a victim.¹

Procedural Justice has several key components:

- (1) Voice: The victim's opportunity to be heard.**
- (2) Respect: The preservation of dignity in interactions with victims and defendants.**
- (3) Trust and Neutrality: A decision-making process that is unbiased and consistent.**
- (4) Understanding: Making sure the victim has an understanding of the court process throughout the case.**
- (5) Helpfulness: Re-assuring the victim that the justice system has an interest in the needs of victims, witnesses, communities, and defendants.**

Incorporating procedural justice principles by applying these key components into your communication with victims makes prosecutions more effective and increases victim satisfaction in your decisions and outcome of the case.

¹ For a comprehensive discussion about Procedural Justice as it relates to stakeholders in the criminal justice system see FJP "Issues at a Glance: Procedural Justice: Enhancing the Legitimacy of the Justice System" brief at <https://fairandjustprosecution.org>. See also "Procedural Justice is for Victims Too" at www.proceduralfairness.org.

Pennsylvania Crime Victims Act

In addition to the principles of procedural justice, your interactions with victims must also be guided by the PA Crime Victims Act (18 P.S. § 11.102).² You as a member of the District Attorney's Office are to honor the following victims' rights:

- (1) To be notified of significant actions and proceedings within the criminal justice system pertaining to the victim's case. § 11.201(2)
- (2) In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office in the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.201(4)
- (3) To have an opportunity to offer prior comment on the sentencing of a defendant, to include the submission of written and oral victim impact statements detailing the physical, psychological, and economic effects of the crime on the victim and the victim's family. § 11.201(5)
- (4) To be restored, to the extent possible, to the pre-crime economic status through the provision of restitution. § 11.201(6)

The PA Crime Victims Act § 11.213 further lays out the responsibilities of a Prosecutor's Office including, but not limited to:

- (1) PLEADING: In cases involving a personal injury crime or burglary, the prosecutor's office shall provide notice of and offer the opportunity to submit prior comment on the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.213(b)
- (2) SENTENCING: The prosecutor's office shall provide notice of the opportunity to offer prior comment on the sentencing of an adult which includes the submission of oral and written impact statements. § 11.213(c)

Ultimately, the responsibility of victim communication falls on you as the assigned Assistant District Attorney. You and your supervisor(s) will be accountable for making reasonable efforts to comply with the Pennsylvania Office of Victim Advocate. Following the policies outlined in this memo will ensure that you have honored victim' rights and applied these rights to the principles of procedural justice.

² For the complete text of the Crime Victims Act, refer to the PA crimes code 18. P.S. §11.201-216.

I. Documentation of conversations with the victim in the contact log

The trial file is the most important place to find all information pertaining to the history of your case. Every trial file has a contact log fastened to the flap. This log provides a history of all interactions with victims.

YOU MUST:

- (1) Use this contact log to document all victim/witness communication and attempts at communication, including the following:
 - The date on which the call is made, email sent, letter mailed out, or in person conversation took place.
 - Phone number you called from and the number you called.
 - Purpose of your call to the victim.
 - Name of the person you spoke with.
 - Result of the call (e.g. will attend court).
 - Additional action taken, if any (e.g. CW will email ADA photos of injury).
 - CMS address updates.

- (2) Sign your name next to the entry in the contact log so that anyone reviewing the file knows you spoke with the victim.

- (3) Document all in-court appearances on the outside of the file in the disposition box including:
 - Name of witness who appeared for court (e.g. NAME - P)
 - Name of witness who testified (e.g. NAME - P+T)
 - Name of witness who failed to appear (e.g. NAME - FTA)

II. Notifying the victim of upcoming court listings

The Case Management System (CMS) will automatically generate a subpoena and mail it to the victim's address listed on the PARS (Preliminary Arraignment Reporting System) arrest paperwork. This occurs in every case except for cases in the Homicide Unit and cases in the Investigations Division Units (Special Investigations, Economic Crime, Insurance Fraud). CMS tracks all documents sent out from the office in the section titled "*output history*." Output history shows you the case specific date when the witness subpoena was generated, how it was delivered, and the exact address to which the subpoena was delivered.

YOU MUST:

- (1) Call the victim prior to an upcoming court listing to discuss: What to expect at the next court listing,
 - Victim impact statement where the case is set for trial and Any input the victim may offer.
- (2) Confirm that the victim has the same phone number and address.
 - If the victim's contact information has changed, update CMS with the new information.
- (3) Ask for alternative contact information for the victim.
 - Email address
 - Work phone number and address
 - Family or friend's phone number and address
 - Any phone number and address that the victim believes will not change in the near future
- (4) Document all conversations with the victim on the contact log and any follow up actions you take.
- (5) Check your voicemail for messages from a victim and provide a summary of that message on the contact log including date, time, and the call back number that the victim left.

Prior to the first court listing, the victim will receive an initial contact letter from the Victim Witness Services Unit. This letter outlines the victim's rights, including directions to a safe witness waiting room at the Criminal Justice Center, financial reimbursement, transportation to and from court, changes in defendant's custody status, and a phone number/email to Victim Witness Services for all other concerns. Accompanying the letter is a separate restitution form

and victim impact statement that the victim can complete and return to the Victim Services Unit. CMS output history tracks the sent date and the address where the letter is mailed.

Victim Witness Coordinators are responsible for making sure that information, including the returned restitution/victim impact statement, from any victim in response to this initial letter reaches the case file.

III. *Victim information gathering and documentation at the preliminary hearing*

In a felony case, the preliminary hearing listing is the **only in-person opportunity you have to gather input for a plea bargain** that will be made in the Court of Common Pleas.

YOU MUST:

- (1) Ask the victim for input on the case in an open-ended way.
 - Allow the victim to express themselves without steering or directing the input.
 - Specifically inquire about physical consequences and restitution requests.
 - Specifically advise on their right to give a victim impact statement.
- (2) Confirm with the victim that the contact information has not changed.
 - If changed, update CMS and notate this action on the contact log.

YOU MUST NOT: Decide what the offer will be on *felony cases listed for preliminary hearing*. If asked about this, explain to the victim that the exact terms of the offer will be decided at a later point in the case.

EXCEPTION:

- (1) You make a pre-preliminary hearing offer with supervisor approval
- (2) Vertical assignments where the preliminary hearing ADA is making the SMART offer

IV. *Filling out the BIF form to include the victim's input*

There will be one uniform Municipal Court Unit Bills of Information (BIF) sheet that you will fill out for each held for court case following a preliminary hearing.

YOU MUST:

- (1) Document your conversation with the victim in the top section of the BIF sheet.
- (2) Include all information gathered.

V. *Conveying an offer in the SMART room after considering victim input*

The initial offer on a felony case is made in the pre-trial SMART³ room within three weeks after the held for court date.

YOU MUST:

- (1) Consider victim input when formulating a plea offer in a case, referring to the following:
 - BIF sheet for this information.
 - Contact log for this information.
 - Information mailed or emailed to the office.
 - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap by a Victim Witness Coordinator (VWC) or Trial Listing Clerk (TLC).
- (2) Call the victim to notify them of the terms of the offer.
- (3) Ask if the victim would like to give a victim impact statement at sentencing. The victim can submit via written statement or in-person testimony.

³ In all Common Pleas Court cases except Homicide and Indicting Grand Jury cases, pre-trial offers are extended to defense counsel prior to the pre-trial conference listing in the SMART rooms. SMART stands for Strategic Management Advance Review and Consolidation, Readiness, and Trial. SMART rooms are staffed by attorneys in the Pre-Trial Unit.

- (4) Document this conversation and all attempts at victim contact on the contact log.
- (5) Send a "no contact letter" where you cannot reach a victim via phone or email. You can generate this letter in CMS and mail to the victim.

Prior to the first SMART listing, the victim will receive an arraignment contact letter from the Victim Witness Services Unit. This letter states that a plea offer will be made in the case and reminds the victim of their right to provide comment and request restitution prior to the offer being made.

CMS output history tracks the date that this arraignment letter is mailed out and the address where it is mailed. Victim Witness Coordinators are responsible for making sure that any information from a victim in response to this letter reaches the case file.

VI. Ongoing duty of the trial attorney to notify the victim and allow for prior comment

Where the offer is rejected in the SMART room, the case is spun out for a waivers trial or a majors scheduling conference to pick a trial date. All future victim interaction is with the trial attorney.

YOU MUST:

- (1) Call victims prior to court listings and update them on the status of the case.
- (2) Familiarize yourself with the victim's input.
 - BIF Sheet
 - Contact log
 - Information mailed or emailed to the office
 - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap
- (3) Notify the victim when there is a change in the plea offer.
 - If you cannot reach the victim, you must mail the victim a no contact letter that you generate by CMS.

- (4) Provide the victim a chance to give a victim impact statement and request restitution on their behalf at the sentencing where your case is a guilty plea or conviction.
- (5) Document all victim conversations on the contact log in proper format.

VII. *Common Pleas Court Case disposition notification to the victim*

YOU MUST:

- (1) Mail a disposition letter to the victim upon completion of a CP case.
 - Generate this letter via CMS by going to "participants" and clicking the drop down box next to the victim and selecting from the disposition templates
 - Template options are Nolle Prose, Not Guilty, Probation, and State Custody
- (2) Put a copy of the disposition letter in the file after you send the original to the victim
- (3) Document the contact log that a disposition letter has been sent

VIII. *Victim Witness Coordinators will assist attorneys with victim communication*

Every unit has victim witness coordinators available to assist you in carrying out the policies and tasks in this memo. On the H drive is a list of Victim Witness Coordinators in each unit and their assigned courtrooms. When you designate a Victim Witness Coordinator to perform any of the above tasks there are a few things to keep in mind.

YOU MUST:

- (1) Clearly state the task and the timeline in which you need it accomplished.
- (2) Document on the contact log that you designated the VWC to complete the task.

- (3) Give the file to the VWC to complete the task and update the contact log.
- (4) Confirm that the VWC updated the contact log when the file is returned.
- (5) Remember that you gave the file to the VWC.



Improving Assistant District Attorney Communication with Victims of Crime

Thursday, January 31, 2019
Mandatory ADA Training

Courtney Knoedler, Interim Supervisor of Victim Services
Liam Riley, Supervisor of Pre-Trial Unit
Cheryl Yankolonis, Assistant Supervisor Family Violence & Sexual Assault Unit

Procedural Justice

Procedural Justice has several key components:

- (1) **Voice:** The victim's opportunity to be heard.
- (2) **Respect:** The preservation of dignity in interactions with victims and defendants.
- (3) **Trust and Neutrality:** A decision-making process that is unbiased and consistent.
- (4) **Understanding:** Making sure the victim has an understanding of the court process throughout the case.
- (5) **Helpfulness:** Re-assuring the victim that the justice system has an interest in the needs of victims, witnesses, communities, and defendants.

Incorporating these basic concepts into your communication with victims makes prosecutions more effective and increases victim satisfaction in your decisions and outcome of the case.

Pennsylvania Crime Victims Act (a)

In addition to the principles of procedural justice, your interactions with victims must also be guided by the PA Crime Victims Act (18 P.S. § 11.102).[1] You as a member of the District Attorney's Office are to honor the following victims' rights:

- (1) To be notified of significant actions and proceedings within the criminal justice system pertaining to the victim's case. § 11.201(2)
- (2) In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office in the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.201(4)
- (3) To have an opportunity to offer prior comment on the sentencing of a defendant, to include the submission of written and oral victim impact statements detailing the physical, psychological, and economic effects of the crime on the victim and the victim's family.

§ 11.201(5)

- (4) To be restored, to the extent possible, to the pre-crime economic status through the provision of restitution. § 11.201(6)

[1] For the complete text of the Crime Victims Act, refer to the PA crimes code 18. P.S. §11.201-216.

Pennsylvania Crime Victims Act (b)

The PA Crime Victims Act § 11.213 further lays out the responsibilities of a Prosecutor's Office including, but not limited to:

(1) PLEADING: In cases involving a personal injury crime or burglary, the prosecutor's office shall provide notice of and offer the opportunity to submit prior comment on the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.213(b)

(2) SENTENCING: The prosecutor's office shall provide notice of the opportunity to offer prior comment on the sentencing of an adult which includes the submission of oral and written impact statements. § 11.213(c)

Ultimately, the responsibility of victim communication falls on you as the assigned Assistant District Attorney. You and your supervisor(s) will be accountable for making reasonable efforts to comply with the Pennsylvania Office of Victim Advocate. Following the policies outlined in this memo will ensure that you have honored victim' rights and applied these rights to the principles of procedural justice.

I. Documentation – Victim Contact Log (a)

The trial file is the most important place to find all information pertaining to the history of your case. Every trial file has a contact log fastened to the flap. This log provides a history of all interactions with victims.

YOU MUST:

- (1) Use this contact log to document all victim/witness communication and attempts at communication, including the following:
 - The date on which the call is made, email sent, letter mailed out, or in person conversation took place
 - Phone number you called from and the number you called
 - Purpose of your call to the victim
 - Name of the person you spoke to
 - Result of the call (e.g. will attend court)
 - Additional action taken, if any (e.g. CW will email ADA photos of injury)
 - CMS address updates

I. Documentation – Victim Contact Log (b)

- (2) Sign your name next to the entry in the contact log so that anyone reviewing the file knows you spoke with the victim.
- (3) Document all in-court appearances on the outside of the file in the disposition box including:
 - Name of witness who appeared for court (e.g. NAME - P)
 - Name of witness who testified (e.g. NAME - P+T)
 - Name of witness who failed to appear (e.g. NAME - FTA)

Contact Log/Activity Log

Complainant: Jill Lee Relationship with A: MSK
 Complainant Contact Information: 715-000-0000 0000 RES: 1216 St. (U)
 Respite Needed? Yes No 3 1/2 Email: JILL.LEE@STATE.GOV
 Interpreter Needed? Yes No Language: _____
 Transportation Needed? Yes No Pick-up Location: _____

Date/Time	Call To	Call from	Contact (who spoke with result of call activity taken etc)	Notes
12/16 12:18 4:30pm	215 000 0000	6-1274	TODD - UM RE: PH 1216	MDA
12/17 12:15 2:00pm	MDA 6-1274	CHU CHERRY VM	CHU LUE VM RE: PH 1216 - WGT BAR RES OPERATORS. Also RE: 1216 PHOS	MDA
12/17 4pm	215 000 0000	6-1274	Called Chu - WGT 1216 - gave info re: VAP + reimbursement - 311 5:00 re-pay from ER due to machine. Chu with PHOS	MDA
1/30 10:19 5:00pm	215 000 0000	6-8049	Spoke to Chu re: SMART offer change worker - 215 2:15 PM Chu re 30 will add to SMART offer - 3:15 PM Chu	Michelle
2/15 10:14 4pm	VWC Sp - PAVEN + new copy on the 12/16		Chu PHOS and PAVEN - give info to VWC re: PH 1216 re: offer to the PHOS - good that from PAVEN	Michelle
2/16 10:17 1pm	MDA re Chu	VWC NE	Forwarded Chu re: Michelle PHOS Chu with email from PAPP - re: offer to the PHOS - WGT for new PHOS the re: PHOS - PHOS 1216 3:15 PM	VWC NE
2/16 2:14pm	MDA	6-8049	Spoke to Michelle - mats ready for pick up	Michelle
2/16 1:00pm	MDA re Chu	CV	PH BAPCS to pick up mats (1216 in file)	

11/15/2015 10:14:22 AM - 11/15/2015 10:14:22 AM - 11/15/2015 10:14:22 AM

Contact Log/Activity Log rev. 1/30/15

Example Contact Log

II. Victim Notification of Upcoming Court Listings (a)

The Case Management System (CMS) will automatically generate a subpoena and mail it to the victim's address listed on the PARS (Preliminary Arraignment Reporting System) arrest paperwork. This occurs in every case except for cases in the Homicide Unit and cases in the Investigations Division Units (Special Investigations, Economic Crime, Insurance Fraud). CMS tracks all documents sent out from the office in the section titled "*output history*." Output history shows you the case specific date when the witness subpoena was generated, how it was delivered, and the exact address to which the subpoena was delivered.

II. Victim Notification of Upcoming Court Listings (b)

YOU MUST:

- (1) **Call the victim prior to an upcoming court listing to discuss:**
 - What to expect at the next court listing,
 - Victim impact statement where the case is set for trial and
 - Any input the victim may offer.

- (2) **Confirm that the victim has the same phone number and address.**
 - If the victim's contact information has changed, update CMS with the new information.

- (3) **Ask for alternative contact information for the victim.**
 - Email address
 - Work phone number and address
 - Family or friend's phone number and address
 - Any phone number and address that the victim believes will not change in the near future

II. Victim Notification of Upcoming Court Listings (c)

- (4) Document all conversations with the victim on the contact log and any follow up actions you take.
- (5) Check your voicemail for messages from a victim and provide a summary of that message on the contact log including date, time, and the call back number that the victim left.

Prior to the first court listing, the victim will receive an initial contact letter from the Victim Witness Services Unit. This letter outlines the victim's rights, including directions to a safe witness waiting room at the Criminal Justice Center, financial reimbursement, transportation to and from court, changes in defendant's custody status, and a phone number/email to Victim Witness Services for all other concerns. Accompanying the letter is a separate restitution form and victim impact statement that the victim can complete and return to the Victim Services Unit. CMS output history tracks the sent date and the address where the letter is mailed.

Victim Witness Coordinators are responsible for making sure that information, including the returned restitution/victim impact statement, from any victim in response to this initial letter reaches the case file.

III. Victim Information Gathering at Preliminary Hearing (a)

In a felony case, the preliminary hearing listing is the **only in-person opportunity you have to gather input for a plea bargain** that will be made in the Court of Common Pleas.

YOU MUST:

- (1) Ask the victim for input on the case in an open-ended way.
 - Allow the victim to express themselves without steering or directing the input.
 - Specifically inquire about physical consequences and restitution requests.
 - Specifically advise on their right to give a victim impact statement.

- (2) Confirm with the victim that the contact information has not changed.
 - If changed, update CMS and notate this action on the contact log.

III. Victim Information Gathering at Preliminary Hearing (b)

YOU MUST NOT: Decide what the offer will be on *felony cases listed for preliminary hearing*. If asked about this, explain to the victim that the exact terms of the offer will be decided at a later point in the case.

EXCEPTION:

- (1) You make a pre-preliminary hearing offer with supervisor approval
- (2) Vertical assignments where the preliminary hearing ADA is making the SMART offer

IV. Bills of Information Form

There will be one uniform Municipal Court Unit Bills of Information (BIF) sheet that you will fill out for each held for court case following a preliminary hearing.

YOU MUST:

- (1) Document your conversation with the victim in the top section of the BIF sheet.
- (2) Include all information gathered.

MVA: MC PHYSICALLY MISDEMEANOR MISDEMEANOR
 Defendant: John Doe Offense Date: 12-15-2015
 Complainant: John Doe File #/Case: 10000000000000000000

Complainant's relationship to N: Self Yes No
 Did complainant testify?

Complainant's input: John Doe, 12-15-2015, 10:00 AM, 10000000000000000000
John Doe, 12-15-2015, 10:00 AM, 10000000000000000000

Officers' impressions/complaints/notes during prep and/or testimony:
John Doe, 12-15-2015, 10:00 AM, 10000000000000000000
John Doe, 12-15-2015, 10:00 AM, 10000000000000000000
Highlight, circle, and DR in all charges, subsections/parag. that were held for court

<p>Controlled Substance Act PMSI (13A:3-3) Degree 1 Weight 1/16 oz. RAS 13A:3-3(a) Paraphernalia 13A:3-3(b) Class 1 or 2 (13A:3-3(c))</p> <p>PEA Complaint 25 P.S.A. § 6124 (M)</p> <p>Inchoate Offenses Criminal Attempt §901 grade _____ Crim. Solicitation §902 grade _____ Crim. Conspiracy §903 grade _____ PFC 907 (M) action _____ PFCM §908 (M) conviction _____</p> <p>Assault Offenses Assault on a Young Child §2606 (1-1) Simple Assault §2701 (a) 1-1 (a) or (b) (M2) (a) 2-1 (b) with knife or weapon (M2) (a) 2-1 (b) with other weapon (M2) Aggravated Assault §2702 (a) 1-1 (a) or (b) (M1) (a) 2-1 (M2) or (b) (M2) (a) 3-1 (b) with a deadly weapon (F2) (a) 3-1 (b) with a deadly weapon (F2) (a) 3-1 (b) with a deadly weapon (F2)</p> <p>Strangulation §2718 1-1 (a) or (b) (M1) 1-2 (a) or (b) (M2) M2, no deadly weapon</p> <p>RE-AR §2705 (M2)</p> <p>Terroristic Threats §2706 (M1) Discharge of a Firearm into an occupied structure §2707.1 (F3)</p> <p>Harassment §2709 (N) (M1) if subsection (a) or (b) or (c) Stalking §2709.1 (M1) (F3) if qualifying prior conviction</p>	<p>Kidnapping Offenses Kidnapping §2703 (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) (a) 2-1 (b) (M2) Unlawful Restraint §2902 (M1) Adult & Crim. Mischief Offenses Arson §2901 (F3) (F2) if and endangering property Car or Truck a Catastrophe §3302 (F3) (F3) if and taking catastrophe Criminal Mischief §3304 grade _____ (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) Burglary Offenses Burglary §3502 - Residence (F1) (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) Burglary §3502 - Business (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) Criminal Trespass §3503 (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) Robbery Offenses Robbery §3701 (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) (a) 3-1 (a) or (b) (M3) (a) 3-1 (b) (M3) (a) 3-1 (c) (M3) Robbery of motor vehicle § 3702 (F1)</p>	<p>Theft Offenses Theft by unlawful taking §902 Receiving stolen property §9025 (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) (a) 3-1 (a) or (b) (M3) (a) 3-1 (c) (M3) Unauthorized use of auto § 9026 (M1) Theft from a Motor Vehicle § 903 grade _____ Forgery Offenses Forgery §4101 (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) (a) 3-1 (a) or (b) (M3) Identity Theft §4120 (M1) if a) or b) (M1) (F1) if c) (M1) Intimidation Offenses Intimidation §4952 grade _____ Retaliation §4953 grade _____ Obstructing Court Offenses Resisting Arrest §5104 (M2) A.I.E.A. Offenses Person not in possession §6105 (a) 1-1 (a) or (b) (M1) (a) 2-1 (a) or (b) (M2) (a) 3-1 (a) or (b) (M3) Poss. Firearm with license §6106 (F1) Poss. Firearm in Phila. §6106 (M1) Firearm w/ alt. serial # §6110.2 (F2) Additional Offenses COMM/Sect 100/Conduct</p>
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Example BIF Sheet

V. Conveying an Offer in SMART Room (a)

The initial offer on a felony case is made in the pre-trial SMART[1] room within three weeks after the held for court date.

YOU MUST:

- (1) Consider victim input when formulating a plea offer in a case, referring to the following:
 - BIF sheet for this information.
 - Contact log for this information.
 - Information mailed or emailed to the office.
 - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap by a Victim Witness Coordinator (VWC) or Trial Listing Clerk (TLC).

[1] In all Common Pleas Court cases except Homicide and Indicting Grand Jury cases, pre-trial offers are extended to defense counsel prior to the pre-trial conference listing in the SMART rooms. SMART stands for Strategic Management Advance Review and Consolidation, Readiness, and Trial. SMART rooms are staffed by attorneys in the Pre-Trial Unit.

V. Conveying an Offer in SMART Room (b)

- (2) Call the victim to notify them of the terms of the offer.
- (3) Ask if the victim would like to give a victim impact statement at sentencing.
 - The victim can submit via written statement or in-person testimony.
- (4) Document this conversation and all attempts at victim contact on the contact log.
- (5) Send a “no contact letter” where you cannot reach a victim via phone or email.
 - You can generate this letter in CMS and mail to the victim.

V. Conveying an Offer in SMART Room (c)

Prior to the first SMART listing, the victim will receive an arraignment contact letter from the Victim Witness Services Unit. This letter states that a plea offer will be made in the case and reminds the victim of their right to provide comment and request restitution prior to the offer being made.

CMS output history tracks the date that this arraignment letter is mailed out and the address where it is mailed. Victim Witness Coordinators are responsible for making sure that any information from a victim in response to this letter reaches the case file.

VI. Ongoing Trial Attorney Duties (a)

YOU MUST:

- (1) Call victims prior to court listings and update them on the status of the case.
- (2) Familiarize yourself with the victim's input.
 - BIF Sheet
 - Contact log
 - Information mailed or emailed to the office
 - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap

VI. Ongoing Trial Attorney Duties (b)

- (3) Notify the victim when there is a change in the plea offer.
 - If you cannot reach the victim, you must mail the victim a no contact letter that you generate by CMS.
- (4) Provide the victim a chance to give a victim impact statement and request restitution on their behalf at the sentencing where your case is a guilty plea or conviction.
- (5) Document all victim conversations on the contact log in proper format.

VII. Common Pleas Court Case Disposition Notification to Victims

YOU MUST:

- (1) Mail a disposition letter to the victim upon completion of a CP case.
 - Generate this letter via CMS by going to “participants” and clicking the drop down box next to the victim and selecting from the disposition templates
 - Template options are Nolle Prose, Not Guilty, Probation, and State Custody
- (2) Put a copy of the disposition letter in the file after you send the original to the victim
- (3) Document the contact log that a disposition letter has been sent

VIII. Victim Witness Coordinators will assist attorneys with victim communication

Every unit has victim witness coordinators available to assist you in carrying out the policies and tasks in this memo. On the H drive is a list of Victim Witness Coordinators in each unit and their assigned courtrooms. When you designate a Victim Witness Coordinator to perform any of the above tasks there are a few things to keep in mind.

YOU MUST:

- (1) Clearly state the task and the timeline in which you need it accomplished.
- (2) Document on the contact log that you designated the VWC to complete the task.
- (3) Give the file to the VWC to complete the task and update the contact log.
- (4) Confirm that the VWC updated the contact log when the file is returned.
- (5) Remember that you gave the file to the VWC.

Philadelphia DAO New Policies**



Effective Date: 2/15/2018

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

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

DECLINE CERTAIN CHARGES

1. Do not charge possession of marijuana (cannabis) regardless of weight.
2. Do not charge any of the offenses relating to paraphernalia or buying from a person (BFP) where the drug involved is marijuana.
3. Do not charge prostitution cases against sex workers.
4. Do not charge or prosecute cases involving the possession of Buprenorphine.

CHARGE LOWER GRADATIONS FOR CERTAIN OFFENSES

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

** These policies, which relate to various subjects, are included here together because they are the very first policies announced by District Attorney Larry Krasner within forty-five days after assuming office. They were a historic first step in the re-shaping of the Philadelphia Criminal Justice System.

1. Charge and dispose of Retail Theft cases as summary offenses unless the value of the item(s) stolen in a particular case exceeds \$500.00 or where the defendant has a very long history of theft and retail theft convictions.
2. You must seek supervisory approval to charge and dispose of retail theft cases at misdemeanor or felony levels.
3. Remember, that a summary conviction permits a sentence of 90 days incarceration, fines of up to \$250, and full restitution. These penalties are sufficient to hold a retail thief accountable.
4. In all cases, seek full restitution.

DIVERT MORE

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

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

This is not a comprehensive list.

INCREASE PARTICIPATION IN RE-ENTRY PROGRAMS

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

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PLEA OFFERS

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

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

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

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

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

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each case, place the financial cost of incarceration on the record as part of your explanation of the sentence recommended.

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

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

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

FACTS YOU SHOULD KNOW AND CONSIDER IN MAKING YOUR RECOMMENDATION

1. The actual cost (including pension and other benefits to correctional employees, health care for incarcerated individuals, etc.) arguably is close to \$60,000 now to incarcerate one person for a year in Philadelphia County prison system. (\$5,000 per month at \$164.00 per day).
2. As of March 1, 2022, Philadelphia County incarcerates approximately 4,600 people at any given time with a total annual cost of around \$360 Million per year.
3. The cost of one year of unnecessary incarceration (at \$42,000.00 - \$60,000.00) is in the range of the cost of one year's salary for a beginning teacher, police officer, fire fighter, social worker, Assistant District Attorney, or addiction counselor. You may use these comparisons on the record.
4. The average family's total income in Philadelphia in 2022 is approximately \$46,000.00---which paid their housing, food, utilities, transportation, clothing, educational expense and taxes.

EXAMPLES OF HOW THIS INFORMATION CAN BE USED AT SENTENCING

1. If you are seeking a sentence of 3 years incarceration, state on the record that the cost to the taxpayer will be \$126,000.00 (3 x \$42,000.00) if not more and explain why you believe that cost is justified.
2. In a very serious matter, where for example, 25 years incarceration are sought and is appropriate, state on the record that the cost to the taxpayer is \$1,050,000.00 (25 x \$42,000.00) if not more and explain why you believe that cost is justified.
3. When recommending a sentence of probation, compare the cost of incarceration to the cost of probation.

** These policies, which relate to various subjects, are included here together because they are the very first policies announced by District Attorney Larry Krasner within forty-five days after assuming office. They were a historic first step in the re-shaping of the Philadelphia Criminal Justice System.

Emphasize the positive rehabilitative factors of a probationary sentence such as permitting the defendant to continue working and paying taxes, permitting the continuation of family life, education and community inclusion.

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

Criminological studies show that most violations of probation occur within the first 12 months. Assuming that a defendant is violation free for 12 months, any remaining probation is simply excess baggage requiring unnecessary expenditure of funds for supervision. Working with our justice partners and through the policies of this office, we have reduced the number of people on supervision in Philadelphia from 42000 in 2018 to fewer than 26000 in 2022. There is no reason to assume a probationary tail must be two years or more in every single case. Carefully evaluate what, if any, probationary tail is appropriate upon completion of a sentence of incarceration. For more information, please see the office policy on probation tails, which limits the length of probation for felonies to 3 years and misdemeanors to 1 year.

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

Criminological studies confirm that longer probationary periods often result in more failures than shorter ones where those studies have controlled for offense and criminal record.

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

In many technical violation cases, no additional incarceration should be sought and no revocation is necessary. However, where the technical violation(s) calls for a more serious consequence, do not seek more than 30 to 60 days of incarceration unless you have approval from the District Attorney via your supervisor. For most technical violations, you should not recommend a custodial sentence.

SUPERVISORY REQUEST NO MORE THAN A 1-2 YEAR VOP SENTENCE FOR A DIRECT VIOLATION WITHOUT APPROVAL

Every direct violation presents the opportunity for two sentencings (one on the old matter and one on the new matter) that take into account the fact of the defendant's commission of a new crime while under supervision. Obviously, commission of a new crime while under supervision is a factor tending to increase the sentence on the new matter. Therefore, ordinarily it is not necessary to seek a sentence of longer than 1-2 years for a direct VOP. However,

** These policies, which relate to various subjects, are included here together because they are the very first policies announced by District Attorney Larry Krasner within forty-five days after assuming office. They were a historic first step in the re-shaping of the Philadelphia Criminal Justice System.

where special factors arise, you may seek approval from the District Attorney via your supervisor to seek a lengthier direct VOP sentence.

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

** These policies, which relate to various subjects, are included here together because they are the very first policies announced by District Attorney Larry Krasner within forty-five days after assuming office. They were a historic first step in the re-shaping of the Philadelphia Criminal Justice System.

Philadelphia DAO Policy on Bail



Effective Date: 2/21/2018

Effective February 21, 2018, the District Attorney will ordinarily no longer ask for cash bail for the following misdemeanors and felonies. All representatives of the District Attorney will be expected to abide by this presumption. Where justice requires, there is discretion to go against this presumption.

The cash bail system is rife with injustice and exacerbates socio-economic and racial inequalities, disproportionately penalizing the poor and people of color. The reforms laid out below represent a decisive step toward ending the use of cash bail and making the pretrial system more just.

All representatives of the District Attorney should presume that they will no longer seek cash bail on the following charges:

35-780-113-A16	Intentional Possession of a Controlled Substance
75-3802	DUI
18-3929	Retail Theft
35-780-113-A19	Unlawful Purchase of a Controlled Substance (BFP)
35-780-113-A31	Possession of Marijuana
18-3921	Theft by Unlawful Taking (not graded as F2)
18-5902	Prostitution
18-3925	Receiving Stolen Property (not graded as F2)
18-3304	Criminal Mischief
184101	Forgery
18-3502	Burglary F2- Not for Overnight Accommodation, No Person Present
18-3503	Trespass (non-residential)
18-3934	Theft from Motor Vehicle (not graded as F2)
18-3922	Theft by Deception or False Impression
18-5104	Resisting Arrest
18-3928	Unauthorized Use of a Motor Vehicle
35-780-113-A32	Paraphernalia
18-5123	Contraband
18-4914	Providing False Identification to Law Enforcement
62-62- 481	Fraud in Obtaining Foodstamps/Pubic Assistance
18-4120-	Identity Theft
18-4119	Trademark Counterfeiting
18-4106	Access Device Fraud
35-780-113-A30	PWID-Marijuana (51bs or under)

Special Conditions for PWID Cases (Other than Marijuana)

Where a defendant is charged with possession with the intent to deliver a substance other than marijuana, the presumption against monetary bail applies, except in any of the following circumstances:

- The weight of drugs possessed is greater than:
 - Heroin: 2.5g
 - Cocaine/Crack: 5g
 - Methamphetamine/PCP/Amphetamine: 12.5g
 - Other schedule 1/11 narcotic: 5g
- There is evidence of the presence of fentanyl
- The defendant has received two or more bench warrants in the past five years
- The defendant has one or more open cases of:
 - PWID
 - A violent felony or
 - VUFA/PIC (gun)
- A defendant has finished serving a sentence for:
 - PWID in the last 2 years
 - A violent felony in the past 5 years
 - VUFA or PIC (gun) in the past 5 years

Discretion:

In the above cases where the presumption applies, representatives of the District Attorney should generally recommend R.O.R.

While a presumption against cash bail applies in the above cases, representatives will continue to have discretion to ask for monetary bail where justice requires. For example, cases where a defendant is charged with a string of crimes, such as burglaries or thefts, or who have multiple DUIs in a short period of time, may be given cash bail despite the presumption against it. A significant history of recent flight may also suggest detention.

For all cases not subject to the above policy, representatives of the District Attorney should continue to evaluate bail requests on a case by case basis.

This policy will also apply to bail reduction motions in preliminary hearing and trial rooms, and in Motions Court.

Philadelphia DAO Policy on Cannabis DUI



Effective Date: 12/3/2018

An ADA may assume that a defendant whose blood tests positive for 5 ng/mls of psycho-active THC (Delta-9-THC) was driving while impaired. An ADA may not proceed on a case where a defendant's blood only contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psycho-active THC.

Chronic users of cannabis or individuals with high BMIs will have inflated levels of psycho-active THC in their blood, because of the way the compound is stored in the fat cells in the body. Therefore, if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant. In such cases, an ADA should consider the following factors, in this order:

- a. The level of psycho-active THC found in the blood
- b. Any evidence or scientific reports submitted by the defendant
- c. Whether or not the defendant drove in an unsafe manner
- d. The observations of the police officers

Where a defendant's blood shows the presence of 4 ng/ml of psycho-active THC or less and a blood alcohol level of .08 or more, a defendant should be charged under 75 Pa. C.S.A. § 3802(a) only.

Where a defendant's blood shows the presence of 4 ng/ml of psycho-active THC or less and a blood alcohol level of .07 or less, the ADA should analyze the case, and consider whether there is credible evidence of unsafe driving and/or police observation of impairment. Where an ADA believes that the defendant was in fact impaired at the time he was stopped, he or she may use his or her discretion and proceed either under 75 Pa. C.S.A. § 3802(a) or under 75 Pa. C.S.A. § 3802(d).

Where a defendant's blood test reveals the presence of psycho-active THC and another illegal drug, a defendant may be prosecuted under 75 Pa. C.S.A. § 3802(d).

Philadelphia DAO Conflicts Policy



Effective Date: March 2018

The DAO recognizes that, from time to time, attorneys have been hired and will continue to be hired who have previously been involved in various capacities in handling Criminal matters. The DAO also recognizes that current case law and the Canons of Professional Responsibility are somewhat imprecise in defining conflicts as relates to prosecutors and, therefore, we have devised a Screening Procedure whose goal is to avoid any impropriety or appearance of impropriety while, at the same time, retaining as many cases as possible and avoiding the indiscriminate transfer of cases to the AG or the Federal authorities.

THE POLICY

This Policy shall apply to any case where a member off the DAO staff is involved in a Criminal case wherein:

- Any staff member has previously represented the defendant or a witness;
- Any staff member is an eyewitness to the crime charged;
- Any staff member is the Complainant;
- Any staff member is a close relative of a party or witness;
- A staff member was a Judge who presided over any stage of the proceedings of a case that is on Appeal or Collateral Attack or is up for consideration of Parole, Probation or Commutation;
- This list is not exhaustive. There are other potential conflict scenarios that might require application of the Conflict Protocol. If in doubt, please consult with the Senior Advisor.

THE PROTOCOL

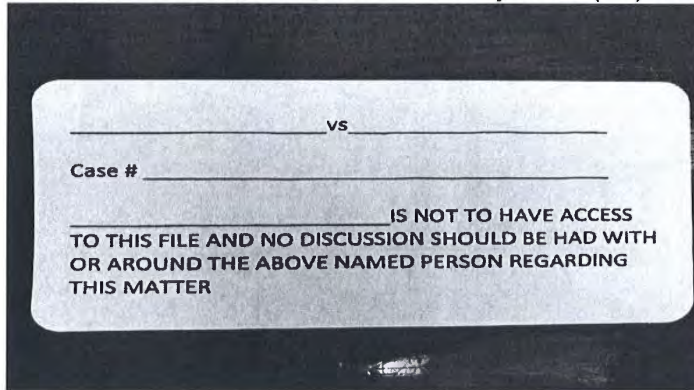
When a staff member becomes aware of the existence of any of the above scenarios, the staff member shall contact the Senior Advisor who will determine, on an ad hoc basis, if the conflict requires referral to another Agency or only screening of the employee. If the Senior Advisor is unavailable, a First Assistant shall make that decision. If referral is required, the First Assistant shall make the necessary arrangements. A formal referral letter will be sent. The First Assistant shall keep a copy of all referral letters and an Agency's acceptance letters in a secure place. In a case where only the screening of the employee is necessary, refer to the procedures below:

SCREENING PROCEDURE

The definition of screening is set out in Model Rule of Professional Conduct 1.0 (k):

“The isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances (emphasis mine) to protect information that the isolated lawyer is obligated to protect under these Rules or other law.”

- the personally disqualified lawyer (conflicted lawyer or CL) should be informed of the obligation not to communicate with any of the other lawyers in the DAO with respect to the matter at issue
- other lawyers in the DAO who are working on the matter (assigned lawyer(s) and their supervisors) should be informed that the screening is in place and that they may not communicate with the CL with respect to the matter at issue
- to implement and reinforce the presence of the screening, it may be appropriate in certain instances, to require a written undertaking by the screened lawyer (CL) to avoid any communication with other DAO personnel and any contact with any DAO files or other information relating to the matter at issue
- denial of access by the screened lawyer to DAO files or other information, including information in electronic form, (including but not limited to DAO electronic databases- PARS, PIINS, DAOCMS, eDiscovery [Document Management System], shared network drive, CPCMS) relating to the matter at issue
- placement of a highly visible sticker on each file involving a conflict with information on the file name, file number, and the identity of the (CL) conflicted lawyer



- all communications by and between DAO lawyers on conflicts should be copied to the Senior Advisor.

Philadelphia DAO Policy on Expungement and Refile



Effective Date: 5/2/2018

The following statements of policy are presumptions, not absolutes. If an ADA wishes to deviate from these presumptions, he or she must seek permission from the DA, via a First Assistant.

Pennsylvania law allows expungements and redactions of a defendant's criminal history in a very limited set of circumstances.¹ The guiding statute is 18 Pa.C.S. § 9122. The seminal case on expungements in this jurisdiction is *Commonwealth v. Wexler*, 494 Pa 325 (1981), which lays out the balancing test the Court must use in considering a petition for expungement. In light of this, state law, and city ordinances prohibiting the use of non-conviction data and summary convictions for seeking employment, professional, and occupational licenses, the DAO will only oppose motions for redactions or expungements in limited circumstances.

A. The DAO Will Agree to Expunge All Acquittals, Summary Convictions and Diversionary Dispositions

1. The DAO will agree to the expungement of cases or charges where the defendant has been found not guilty or where the Court has granted a motion for judgement of acquittal.² Under the law, there can be no exceptions to this rule.
2. The DAO will agree to the expungement of summary offenses if the law allows for their expungement.
3. The DAO will agree to the expungement of a case after a defendant has successfully completed a diversion program.³

B. The DAO Will Seek Expungement When A Defendant Has Been Wrongly Accused

4. In cases where the assigned ADA believes that the charges against a defendant were unfounded, or that the defendant is most likely innocent, the ADA should bring the

¹ Expungement is the process by which the record of a defendant's arrest or, in very limited cases, conviction, is purged from the public record. Redaction is the process by which the record of certain non-conviction data is purged from the record, even as other data from the same arrest may remain.

² See, *Commonwealth v. D.M.* 548 Pa 131 (1997)(an acquitted defendant is automatically entitled to expungement of his arrest record).

³ *Commonwealth v. Armstrong*, 495 Pa. 506 (1981)(holding that unless Commonwealth can demonstrate overriding societal interest in maintain arrest record, a defendant is entitled to have ARD record expunged).

file to the pretrial supervisor, who will consult with the District Attorney or First Assistant.

C. The DAO Will Not Oppose Expungement In the Following Circumstances

5. The mere fact that a defendant is in custody is not grounds to oppose a motion for expungement or redaction.⁴
6. The DAO will not object to a motion for expungement or redaction simply because the defendant has made a similar motion in the past and been denied. The elements of the test laid out in *Commonwealth v. Wexler, supra*, allows for a change in circumstance with the passage of time, and therefore such an objection is improper.
7. The DAO will agree to expungements and redactions even if a defendant has failed to pay all of his fines and costs, absent strong proof that the defendant is able to pay and is refusing to do so. The ADA assigned to the case should note for the record that the office does not oppose such a request, even if the Court system refuses to complete the expungement.

D. The DAO Will Agree to the Expungement of Dismissed and Nolle Prossed Cases and Charges, With Limited Exceptions

8. With the exception of cases or charges involving sexual or domestic violence⁵, the DAO will agree to the redaction of other charges where the defendant has pled to a lesser offense as part of a negotiation agreed to by this office. For example, where a defendant has been charged with aggravated assault, but has pled guilty to simple assault and, in return, the DAO has agreed to dismiss the lead charge, an ADA should not oppose redaction of the non-conviction data.
9. The DAO will agree to the expungement of all non-conviction data (e.g., cases or charges that have been dismissed or where the DAO has nolle prossed) where the case or charge **does not** involve an allegation of domestic violence or sexual assault. There is one exception: the trial division will keep a list of cases that have been held for court and later nolle prossed, where the office is likely to seek to lift the nolle prosse. If a defendant is seeking expungement of these cases or charges and less

⁴ While the law allows a Court to deny an expungement petition simply because a defendant is in custody on another matter, *see Commonwealth v. Wallace*, 45 A.3d 446 (Pa 2014), it is the position of this office that an individual's custody status alone should not determine whether or not he is entitled to have his record expunged on a matter unrelated to his confinement.

⁵ For a discussion of how to proceed in a case involving sexual or domestic violence, see paragraph 10.

than six months have elapsed since disposition, the assigned ADA must consult that list and should oppose expungement where the defendant's name appears on the list.

10. In all cases where a defendant is seeking to expunge cases or charges where he was accused of domestic or sexual violence, the assigned ADA must make a case-by-case determination as to whether expungement is appropriate, using the following balancing test:
 - a. The collateral consequences to the defendant of objecting to the expungement;⁶
 - b. The length of time that has elapsed since the defendant's arrest for the offense which the defendant wishes to have expunged or redacted;
 - c. The facts and the strength of the evidence in the underlying charges that the defendant is seeking to have expunged or redacted,
 - d. The defendant's criminal history prior to, and after, his arrest in the case he wishes to have expunged or redacted.⁷
11. In any case involving a homicide or alleged homicide, the supervisor of the homicide unit and the DA, via the First Assistant, should be consulted.

E. Refiling Procedure

12. If an ADA believes that a case should be refiled or the defendant should be rearrested, he or she must seek permission from a First Assistant or the District Attorney within two business days of the time that the case has been discharged or withdrawn. Only the District Attorney or a First Assistant can grant permission to refile.

⁶ The ABA provides a list of searchable consequences: <https://niccc.csgjusticecenter.org/search/?jurisdiction=41> For permitted uses of criminal records by state agencies and employers, *See*, 18 Pa CS § 9124.

⁷ An assigned ADA should attempt to assess whether or not the alleged conduct that the defendant is seeking to expunge is indicative of a pattern of similar abuse, and whether expungement or redaction would hide that pattern.

Philadelphia DAO Policy on Avoiding Unjust Immigration Outcomes



Effective Date: 11/27/2018

It is essential that immigrants participate—as victims, witnesses and defendants—in the criminal justice system, in order to ensure the safety of our communities and residents, including both citizens and noncitizens. Creating barriers to participation in the criminal justice system due to the harsh deportation policies carried out by the federal government creates vulnerability in our communities where immigrants can be preyed upon with impunity by criminals and is completely unacceptable.

Where disproportionate immigration consequences may result from a criminal conviction and/or sentence, the case will be reviewed by immigration counsel to see what, if any, changes could be made to neutralize or reduce those consequences.

Deportation following a criminal conviction has significant and often devastating impacts on the emotional and financial well-being of innocent community members, including victims of crimes. Such impacts can include separation of families; significantly increased risks of involvement of children in criminal behavior; victims left without marital or child support; and families facing economic crises (common financial repercussions of deportation include food instability, loss of housing, and greater reliance on government assistance programs).

This office accepts the guidance offered by the Supreme Court of the United States in *Padilla v. Kentucky*, which held that adverse immigration consequences, especially deportation, are an *additional* punishment – not shared by a citizen defendant – which often inexorably follows from a conviction and sentence. As such, immigration consequences are so intimately tied to the criminal process that they are “uniquely difficult to classify as either a direct or a collateral consequence.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010).

A citizen and noncitizen – each with the same culpability – can be convicted of the same crime and receive the same sentence. The citizen will walk out of jail and return to his family, while the noncitizen, even with a valid visa or permanent resident status, can face the serious and long lasting additional penalty of deportation and/or other immigration related consequences (these can include: mandatory detention; inability to travel internationally; or preclusion from future immigration benefits such as applying for a green card or U.S. citizenship).

Due to the close relationship between criminal convictions and immigration consequences, and the severity of these consequences, this office further accepts the U.S. Supreme Courts’

statement that “informed consideration of possible [immigration consequences] can only benefit both the State and noncitizen defendants during the [trial process],” and that, “by bringing deportation consequences into this process, the defense and prosecution may well be able to reach [resolutions] that better satisfy the interest of both parties” *Padilla v. Kentucky* at 373. Considering alternative plea offers or sentencing recommendations serves the prosecution by avoiding unjust outcomes, which are most likely to arise when the charged offense and corresponding sentence are less serious and are disproportionate to the immigration risks. Therefore, this office believes that, to the extent possible, alternative dispositions which are immigration neutral can and should be considered in all appropriate cases.

THE POLICY

1. If you become aware that a defendant is not a U.S. citizen, through notification by the defense, information in the file, or by some other means, you must contact the District Attorney’s Immigration Counsel.
2. **DO NOT** inquire directly of a defendant about a defendant’s immigration status.
3. **DO NOT** disclose a defendant’s status to anyone outside the office, including witnesses or victims.
4. **DO NOT, under any circumstances,** contact or communicate with ICE (Immigration and Customs Enforcement). If ICE is able to reach you, state that you are not authorized to speak to them and refer them to Immigration Counsel.
5. All contact with ICE must be discussed with and authorized by Immigration Counsel first, with final approval from the District Attorney.
6. Where an immigration consequence has been detected at the pre-trial stage, Immigration Counsel will advise what offer or offers can be made that will avoid the immigration consequence. If trial counsel disagrees with the advice of Immigration Counsel, the Unit Supervisor must be consulted. If the Unit Supervisor disagrees with Immigration Counsel, the District Attorney must be consulted and will make the final determination.
7. If the offer is refused and the case proceeds to trial, Immigration Counsel must be consulted to determine if a sentencing recommendation can be made that will avoid the immigration consequence. If the trial attorney disagrees with Immigration Counsel, the matter must be discussed, as indicated above, with the Unit Supervisor and, if necessary, with the District Attorney.
8. After Immigration Counsel’s initial review, if changes in the case warrant a change in the offer or sentence recommendation (either lower or higher as evidence comes

together or does not), or if defense presents additional information, such as a mitigation packet or immigration memo, relating to why the offer or sentence recommendation should be altered, Immigration Counsel must be notified to determine whether additional changes are warranted.

PRESUMPTIONS

PLEASE NOTE: *You must notify Immigration Counsel, regardless of the presumption. Cases will be reviewed on a case-by-case basis. However, the following presumptions will guide the decision. The presumptions, which are based upon detailed input from the relevant units, are as follows:*

MC Cases

There are no presumptions for MC cases and each will be reviewed on a case-by-case basis.

Felony Cases

In general, offers for cases that include felony charges will not be evaluated or considered until after the preliminary hearing. For cases that should be considered prior to the preliminary hearing, they will be considered through the Pretrial Unit. Any offer will be conveyed by the Pretrial Unit supervisor and shared with the MC Unit supervisors as well.

Cases where there is a presumption that an immigration neutral solution will not be sought

- Crimes perpetuated by adults against minors
- Crimes where the offer includes SORNA registration
- Crimes involving human trafficking
- Most crimes involving child pornography
- Most DV cases where the initial offer remains a felony
- Shootings
- F1 and F2 Robbery
- Cases involving the use of a deadly weapon
- Cases involving serious bodily injury
- VUFA with a record of violence or prior gun possession/use
- Homicides

Diversion

In general, there will be a presumption that offers will be modified to take into account immigration consequences. However, in the following cases, there is a presumption the offer will not change:

- VUFA
- Robbery with a gun
- Defendants with disqualifying prior convictions (in line with existing diversion policies)

Family Violence and Sexual Assault

In general, there will be no presumption and cases will be looked at on a case-by-case basis. In cases where a misdemeanor is the only charge, immigration neutral changes are more likely.

CONCLUSION

In all cases, in order to arrive at the appropriate charge or disposition, for a criminal case, prosecutors routinely review and consider all relevant factors relating to the crime itself as well as all relevant factors relating to the defendant. In some cases, the factors relating to the defendant include adverse consequences that the defendant will suffer as a result of the conviction in addition to the direct consequences of the conviction. Immigration consequences often have a greater adverse impact on a defendant than the conviction alone. Most often, when considering immigration consequences, the immigration considered offer or sentencing recommendation will be commensurate with the original offer or recommendation and carry a commensurate penalty, but in some cases the offense and penalty may be greater or lesser as required for immigration consequences and our pursuit of justice.

Philadelphia DAO Introduction to Juvenile Policies



Effective Date: January & July 2019

Rationale for Juvenile Policies

The juvenile justice system is failing our most vulnerable children. The policies set forth here seek to decrease the number of children sent to juvenile placement and limit the number of youth on supervision. By almost every metric, juvenile crime is down across the country and in Pennsylvania.ⁱ And yet, children who have been labeled delinquent for relatively minor offenses are often trapped in a system that fails to offer them the help they need, and then sends them away from their homes when they fail. It is time to shrink the footprint of the juvenile justice system.

The vast majority of children in the juvenile system have not committed serious violent crimes—those children are charged and (at least at first) prosecuted in adult court. The children that these policies seek to address are those who have committed misdemeanor or lesser felony offenses, and who are sent to placement or supervised for inordinate lengths of time for behavioral problems that do not require intervention from the juvenile justice system.

The statistics bear out this alarming truth: 72% of the children we send to juvenile placement are sent because they are not complying with their probation—not because they have committed another crime.ⁱⁱ Children come into the delinquent system because they have committed a delinquent act. They stay in the system, often for years, and are sent away from their homes for failing to go to school, failing to make their curfew and using marijuana. By placing children in facilities to address these behavioral problems, we have created a cure that is worse than the disease: research suggests that sending youth to placement not only fails to reduce recidivism but may actually increase the likelihood that youth will recidivate.ⁱⁱⁱ

Philadelphia County has the highest rate of juvenile placement of any jurisdiction in the state: our city accounts for a little more than 12% of the Pennsylvania population, but 28.3% of the children in placement live in Philadelphia. Our city sends 2.5 times the number of children to out-of-home placement as Allegheny County (the next most populated county) and five times as many as Delaware County (the third most populated county).^{iv}

The purpose of the juvenile justice system is to provide children who have been adjudicated delinquent with “supervision, care and rehabilitation . . . [and] to enable children to become responsible and productive members of the community.”^v Our system has strayed from this goal. Instead of caring for and educating our most vulnerable youth, the system punishes them, refusing to let go of them even when they pose no threat, even as it makes the circumstances of their lives worse.^{vi} In the latest study, conducted in 2013, only 36% of Philadelphia children who passed through the juvenile justice system graduated from high

school.^{vii} We are sending children to facilities of variable quality all over the state (and sometimes as far away as Tennessee and Virginia), where their educational needs often go unmet, at an alarming cost to the taxpayer. A child in public school in Philadelphia costs the government \$14,627 per year.^{viii} The average cost of juvenile placement per year in Pennsylvania is \$161,695 and the cost of secure confinement is as much as \$241,265.^{ix}

We cannot ignore the disparate impact that our policies are having on children of color in our communities: 73% of all children adjudicated delinquent in Philadelphia are African American and only 6% are Caucasian.^x 71.4% of all the children held in secure detention from Philadelphia are African American, while 5.6% are Caucasian and nearly 18% are Hispanic.^{xi} In Pennsylvania as a whole, African Americans make up 14% of the population, but they account for 48.2% of delinquent dispositions and nearly 38% of placements.^{xii}

Juvenile placements vary enormously in quality. Some are dangerous. We were reminded of this in the fall of 2016, when a 17-year-old housed at Wordsworth in West Philadelphia was killed when he was choked in an altercation with staff, and then again in August when a child at Glen Mills Schools, a placement for delinquent youth, was badly beaten by staff.^{xiii}

For too long the system has demanded that children be held accountable for their behavior, while the adults in positions of power fail to make sure that the programs we send them to are working for their benefit. It has become increasingly clear we do a disservice to children who are not dangerous to the community when we send them far away from their homes.

Other jurisdictions, including New York, have implemented Close to Home policies, which allow more kids to stay in their homes or, if they must be removed for community safety, to stay in the same school district or neighborhood. The results are impressive: high school graduation rates improve, rates of recidivism decrease and participant satisfaction rises.^{xiv} We encourage our system partners to embrace this model.

Children who are placed on juvenile probation are also being over-supervised. Even though evidence suggests that the number of conditions a child must abide by should be limited, children in Philadelphia are often compelled to comply with five, or six, or sometimes more conditions to be released from supervision.^{xv} The DAO is therefore committed never to ask for more than three conditions for any child placed on supervision.

Children who must be charged as adults are not addressed in these policies.^{xvi} This category of children stand accused of committing serious felonies where a deadly weapon was used. While these children must at first be charged in adult court, this office has the discretion to send many of these cases back to the juvenile system. In the last nine months, we have cut the number of children being tried in adult court by ____, and reduced the number of children being held in adult jail in half. We have done this carefully and thoughtfully, with an eye toward the safety of the community and the best interests of the child. We know now—and United States Supreme Court precedent acknowledges—that children cannot be held accountable in the same way that adults are because their brains have not fully developed.^{xvii} It is unjust and unnecessary to punish children for their actions in the same way we would adults. This office will continue to transfer children accused of serious crimes back to the juvenile system where it is appropriate and does not compromise public safety.

In every unit, the DAO is striving to create fairer, more thoughtful and more effective prosecutors. Juvenile ADAs are critical to this mission. We hope that these policies, and the trainings that will accompany them, can reshape not just this office, but the juvenile justice system in Philadelphia and beyond.

ⁱ See OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, UNITED STATES DEPARTMENT OF JUSTICE, STATISTICAL BRIEFING BOOK, *available at* <https://www.ojjdp.gov/ojstatbb/crime/JAR.asp>; and https://www.ojjdp.gov/ojstatbb/ezaucr/asp/ucr_display.asp

ⁱⁱ See JUVENILE COURTS' JUDGES COMM'N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 19 (2016), *available at* [https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

ⁱⁱⁱ See Jake Horowitz & Arna Carlock, *Nearly a Quarter of Confined Juveniles Nationwide Held for Noncriminal Infractions*, PEW TRUSTS (Feb. 14, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/14/nearly-a-quarter-of-confined-juveniles-nationwide-held-for-noncriminal-infractions>.

^{iv} See JUVENILE COURTS' JUDGES COMM'N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 19 (2016), *available at* [https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

^v See 42 Pa.C.S. § 6301(b)(2).

^{vi} Philadelphia youth with a history of contact with either the delinquent or the dependent systems score substantially lower on standardized tests, have lower job promotion rates, higher rates of absenteeism and special education eligibility, and accumulate fewer educational credits compared to their peers who have no contact with the system. See Maura McInerney, Esq., Legal Director, Education Law Center, Testimony Before Philadelphia City Council: Education Interrupted: How We Are Failing Our Children in Residential Placements (May 17, 2018), *available at* <https://www.elc-pa.org/wp-content/uploads/2018/05/ELC-Testimony-Before-City-Council-Re-Residential-Placements-May-17-2018.pdf>; SOPHIA HWAN ET AL., CHOP POLICYLAB, SUPPORTING THE NEEDS OF STUDENTS INVOLVED IN THE FOSTER CARE AND JUVENILE JUSTICE SYSTEMS 5 (2014), *available at* http://policylab.chop.edu/sites/default/files/pdf/publications/PolicyLab_Report_Supporting_Students_Involved_with_Child_Welfare_June_2014.pdf.

^{vii} JULIA RANSOM ET AL., PROJECT UTURN, A PROMISE WORTH KEEPING: ADVANCING THE HIGH SCHOOL GRADUATION RATE IN PHILADELPHIA 12 (n.d.), *available at* <http://www.projectuturn.net/docs/PromiseWorthKeeping.pdf>; *see also* ARLEY STYER & EDUCATION LAW CENTER, STONELEIGH FOUNDATION, MOVING THE DIAL: A REPORT ON EDUCATION EXPERIENCES OF CHILDREN IN PENNSYLVANIA RESIDENTIAL TREATMENT FACILITIES 2 (2011), *available at*: https://www.elc-pa.org/wp-content/uploads/2013/08/access_Moving_the_Dial_Styer.pdf.

^{viii} *See* the National Center for Education Statistics, Philadelphia District Directory Information, (last visited Sept. 13, 2018), https://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=2&ID2=4218990.

^{ix} SELA COWGER ET AL., JUSTICE LAB AND YOUTH SENTENCING & REENTRY PROJECT, DOUBLE PUNISHMENT: PHILADELPHIA'S PRACTICE OF CHARGING PARENTS FOR THEIR CHILD'S INCARCERATION COSTS 24-25 (2016), *available at* <https://www2.law.temple.edu/cs/cjs/cms/wp-content/uploads/2016/11/Double-Punishment.pdf>.

^x *See* JUVENILE COURTS' JUDGES COMM'N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 93 (2016), *available at* [https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](https://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

^{xi} *Id.* at 95.

^{xii} *See* JUVENILE COURTS' JUDGES COMM'N, 2016 PENNSYLVANIA JUVENILE COURT DISPOSITIONS 28 (2016), *available at* [http://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20\(PDF\).pdf](http://www.jcjc.pa.gov/Research-Statistics/Disposition%20Reports/2016%20Pennsylvania%20Juvenile%20Court%20Disposition%20Report%20(PDF).pdf).

^{xiii} *See* Nancy Phillips & Chris Palmer, Death of Teen at Wordsworth in Fight Over iPod Ruled Homicide, THE INQUIRER (Feb. 10, 2017), <http://www2.philly.com/philly/news/Death-of-teen-at-Wordsworth-was-homicide-Medical-Examiner-says.html>; Lisa Gartner, "I Can't Breathe": Probe Underway at Glen Mills After Staffer Attacks Boy, THE INQUIRER (Aug. 31, 2018), <http://www2.philly.com/philly/news/philadelphia-glen-mills-schools-juvenile-abuse-attack-20180831.html>. 40% of the youth held at Glen Mills are sent there from Philadelphia County.

^{xiv} Teresa Wiltz, Keeping Youth Close to Home Reduces Juvenile Arrests, PEW TRUSTS (Mar. 16, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/03/16/keeping-youth-close-to-home-reduces-juvenile-arrests>.

^{xv} Advocates for children, as well as the Philadelphia Juvenile Probation Department agree that more than three conditions can be counterproductive. Pennsylvania's Juvenile Justice System Enhancement Strategy Report explains that a child should be assessed by measuring forty-two risk and need factors so that the assessor can identify the "top three criminogenic needs" of the

child and a Probation Officer can create a condition to meet each need. JUVENILE COURT JUDGES' COMM'N ET AL., PENNSYLVANIA'S JUVENILE JUSTICE SYSTEM ENHANCEMENT STRATEGY 20-21, 33 (2012), *available at* <https://www.pccd.pa.gov/Juvenile-Justice/Documents/JJSES%20Monograph%20Final%20version%20press%20ready%2005%2025%2012.pdf>. This is a best practice recognized in our system and beyond. See JUVENILE COURT JUDGES' COMM'N, PENNSYLVANIA JUVENILE DELINQUENCY BENCHBOOK § 9-7 (2008), *available at* <https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Juvenile%20Delinquency%20Benchbook%20-%20Compilation.pdf> (recommending a limited and specific set of conditions for juveniles on probation).

^{xvi} See 42 Pa.C.S. § 6302(2).

^{xvii} See *Miller v. Alabama*, 567 U.S. 460, 472-73 (2012)

Policy #1
Juvenile Pre-Adjudicatory Offer Policy With Annotations
January 10, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. An ADA should make an offer for a deferred adjudication in most cases.^{xviii} In the following cases, a deferred adjudication may not be appropriate:
 - a. Where the youth has a prior adjudication of delinquency;
 - b. Where the youth is charged with possessing a gun;
 - c. Where the youth is charged with an aggravated assault and has intentionally inflicted significant or serious bodily injury on the victim;
 - d. Where the youth is charged with rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault;
 - e. Where the youth is charged with a felony of the first degree where a weapon was used; or
 - f. Where the youth is charged with a delinquent act that involves the invasion of the home of another, and a weapon was used in the commission of the act.
2. In cases where a Reporting Consent Decree (“RCD”) is inappropriate, an offer that includes the DAO’s consent to expungement six months after the completion of probation should be considered.
3. All pretrial offers must be made available to defense counsel 48 hours before the pretrial listing of the case, so that defense counsel has the opportunity to review the discovery and discuss the offer with the child prior to the pretrial listing. Victims who have suffered a physical injury must also be notified of the offer prior to disposition and should be given an opportunity to address the Court, should they wish to do so.
4. Pre-adjudicatory hearing offers should remain open until forty-eight hours before the adjudicatory hearing listing, unless there is a significant change in the circumstances. An ADA may make the same offer on the day of the adjudicatory hearing if he or she believes it is appropriate and has discussed it with a supervisor.

ⁱ Where a youth has been found guilty of a delinquent act, the Court must hold a disposition hearing at which the Court will decide whether the child is “in need of treatment, rehabilitation or supervision.” 42 Pa.C.S. § 6341(b). If the Court makes this finding, a child is adjudicated delinquent. Where a child has been found guilty of a delinquent act, the Court may choose to delay such a finding, placing the child on “deferred” status to see if the child is able to take advantage of available services so that he or she need not be adjudicated delinquent. See JUVENILE COURT JUDGES’ COMM’N, PENNSYLVANIA JUVENILE DELINQUENCY BENCHBOOK § 8-6 n.35 (2008), *available at* <https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Juvenile%20Delinquency%20Benchbook%20-%20Compilation.pdf>. The ADA may recommend deferring adjudication, to allow the child the opportunity to cooperate with Juvenile Probation, thereby avoiding an adjudication of delinquency.

Policy #2

Juvenile Reporting Consent Decree (“RCD”) Policy^{xi} With Annotations

January 17, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. Reporting Consent Decrees (“RCDs”), a statutorily recognized form of juvenile diversion, shall be extended on cases where a misdemeanor is the lead charge and the child has no prior adjudications of delinquency or open cases. This does not apply to cases where the child is charged with possession of a gun, a serious sexual offense, or has a history of serious violence.^{xx} RCDs should also be offered to defendants charged with felonies, where appropriate.
2. RCDs should contain no more than three conditions. If the ADA offering the RCD thinks it appropriate, he or she may allow the Juvenile Probation Officer to set the conditions after the child has been evaluated using the Youth Level of Service/Case Management Inventory tool (“YLS”), which uses forty-two factors to identify the top three criminogenic needs of the youth.^{xxi} This test is often not completed at the time the offer is made, but may be the best guide as to the child’s needs. However, regardless of the results of the YLS, only three conditions can be placed on the child.
3. RCDs should not require drug testing unless some evidence exists that the child may be using illegal drugs. If testing is appropriate, drug testing should be one of no more than three conditions.^{xxii}
4. An ADA may not recommend that an RCD be revoked because a child is using marijuana. A child who uses marijuana may be referred to treatment services if the problem is repeated or the child’s guardian asks for treatment.^{xxiii}
5. Children on an RCD shall not be required to complete more than twenty-five hours of community service without approval of a supervisor.
6. Victims must be notified when the DAO offers a child an RCD.

ⁱ A Reporting Consent Decree, like the Accelerated Rehabilitative Disposition (“ARD”) program, is a statutorily recognized form of diversion. The Juvenile Act explains that “[a]t any time after the filing of a [juvenile] delinquency petition and before the entry of an adjudicatory order, the court may, on motion of the district attorney or of counsel for the child, suspend the proceedings, and continue the child under supervision in his own home, under terms and conditions negotiated with the probation services and agreed to by all parties” 42 Pa.C.S. § 6340(a). This order is known as a consent decree. In Philadelphia, the DAO may offer a child an RCD which will place him or her under court supervision for a minimum of six months and no more than a year. If he or she completes the terms of his or her supervision, the petition against him or her will be withdrawn, and may be expunged. *See id.* at § 6340(c), (e).

ⁱⁱ The statute places no limits on the types of cases that may be considered appropriate for an RCD and the DAO recognizes that even if a child has committed a serious delinquent act, he or she may not be in need of significant supervision by the juvenile justice system. *See generally id.*

ⁱⁱⁱ Advocates for children, as well as the Philadelphia Juvenile Probation Department agree that more than three conditions can be counterproductive. Pennsylvania’s Juvenile Justice System Enhancement Strategy Report explains that a child should be assessed by measuring forty-two risk and need factors so that the assessor can identify the “top three criminogenic needs” of the child and a Probation Officer can create a condition to meet each need. JUVENILE COURT JUDGES’ COMM’N ET AL., PENNSYLVANIA’S JUVENILE JUSTICE SYSTEM ENHANCEMENT STRATEGY 20-21, 33 (2012), *available at* <https://www.pccd.pa.gov/Juvenile-Justice/Documents/JJSES%20Monograph%20Final%20version%20press%20ready%2005%2025%2012.pdf>. This is a best practice recognized in our system and beyond. *See* JUVENILE COURT JUDGES’ COMM’N, PENNSYLVANIA JUVENILE DELINQUENCY BENCHBOOK § 9-7 (2008), *available at* <https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Juvenile%20Delinquency%20Benchbook%20-%20Compilation.pdf> (recommending a limited and specific set of conditions for juveniles on probation).

^{iv} At the present time, the Juvenile Probation Department drug tests all youth when they begin their supervision on an RCD. ADAs should not recommend that a child’s RCD be terminated for the use of marijuana. Instead, a positive drug screen for marijuana is but one piece of information about a child that should be used in assessing the proper services a child may need.

^v Recent studies suggest that the impact of marijuana on the adolescent brain is not as significant as experts previously believed, although further study is necessary. While marijuana certainly produces short term cognitive impairment, the long-term impact that the drug has on the developing brain is less certain. See J. Cobb Scott et al., *Association of Cannabis With Cognitive Functioning in Adolescents and Young Adults: A Systematic Review of Meta-Analysis*, 75 JAMA PSYCHIATRY 585, Conclusions and Relevance (2018) (“Associations between cannabis use and cognitive functioning in cross-sectional studies of adolescents and young adults are small and may be of questionable clinical importance for most individuals. Furthermore, abstinence of longer than 72 hours diminishes cognitive deficits associated with cannabis use.”); Claudia Wallis, *What Pot Really Does to the Teen Brain*, SCIENTIFIC AMERICAN (Dec. 1, 2017), <https://www.scientificamerican.com/article/what-pot-really-does-to-the-teen-brain>.

Other recent studies suggest that people who use marijuana as adolescents, are not more prone to “cognitive decline” in adulthood. In other words, youth who consume marijuana are not necessarily permanently damaging their future mental capacity as we once believed. Brenden Tervo-Clemens et al., *Adolescent Cannabis Use and Brain Systems Supporting Adult Working Memory Encoding, Maintenance, and Retrieval* 169 NEUROIMAGE 496, 505 (2018). However, it is undisputed that marijuana has a detrimental impact on a young person’s concentration and cognition in the short term.

Lastly, recent studies suggest that ending the sanctions imposed for the use of marijuana is unlikely to increase its use. Christopher Ingraham, *Following Marijuana Legalization, Teen Drug Use is Down in Colorado*, WASHINGTON POST (Dec. 11, 2017), available at https://www.washingtonpost.com/news/wonk/wp/2017/12/11/following-marijuana-legalization-teen-drug-use-is-down-in-colorado/?utm_term=.1eaba6acf5d6 (recounting federal survey data that shows a statistically significant drop in teen marijuana usage in Colorado a year after its legalization (citing SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., NATIONAL SURVEY DATA ON DRUG USE AND HEALTH: COMPARISON OF 2014-2015 AND 2015-2016 POPULATION PERCENTAGES (2016), available at <https://www.samhsa.gov/data/sites/default/files/NSDUHsaeShortTermCHG2016/NSDUHsaeShortTermCHG2016.htm>)).

Policy # 3
Juvenile Detention Policy With Annotations
January 17, 2019

The following policies are presumptions. An ADA may depart from these presumptions if he or she has good cause to do so and has consulted with a supervisor.

1. An ADA should recommend an alternative to detention at the time of any new arrest with the following exceptions:^{xxiv}
 - i. The child is an immediate danger to his or her community or family;
 - ii. The parent refuses to take the child home^{xxv};
 - iii. The child is charged with possessing a gun; or
 - iv. The child has a history of violence and is accused of a new violent offense.^{xxvi}

2. At bench warrant hearings and violation of probation hearings, alternatives to a child being held in detention at the Philadelphia Juvenile Justice Services Center ("JJSC") must be considered, including the following:
 - a. An alternative relative that a juvenile might stay with;
 - b. In Home Detention ("IHD");^{xxvii}
 - c. Intensive Supervision Program ("ISP");^{xxviii}
 - d. GPS (where a child would otherwise be held);^{xxix} and
 - e. Evening Reporting Center coupled with GPS;^{xxx}

3. An ADA may recommend that a child be held if he or she has gone absent without leave from an out-of-home placement.^{xxxi}

4. Where a Hearing Officer^{xxxii} has denied a joint recommendation from the ADA and defense counsel that a child be released, an appeal should be taken to the on-call judge, after consultation with a supervisor. At the hearing before the on-call judge, the grounds for release should be stated for the record. An ADA may include the cost of detention in his or her argument.

5. An ADA may not appeal a Hearing Officer's decision to release a child without the approval of a supervisor.

6. Victims must be informed as to whether or not the child has been detained or released.

ⁱ The cost of holding a child at the Philadelphia Juvenile Justice Services Center is \$661 per child, per night. See SELA COWGER ET AL., SHELLER CTR. FOR SOC. JUSTICE, DOUBLE PUNISHMENT: PHILADELPHIA'S PRACTICE OF CHARGING PARENTS FOR THEIR CHILD'S INCARCERATION COSTS 24-25 (2016), available at <https://www2.law.temple.edu/cs/cms/wp-content/uploads/2016/11/Double-Punishment.pdf>.

ⁱⁱ If a child's parents refuse to take a child home and the child is otherwise appropriate for release, an ADA should not object to releasing the child to another appropriate caregiver.

ⁱⁱⁱ When a child is arrested, the Probation Department evaluates the child using a risk assessment tool called the Detention Risk Assessment Instrument ("DRAI"). Only those children who score above a fifteen receive a hearing before a Hearing Officer; those who score below that number are automatically released. While the DAO believes that the DRAI is useful in certain respects, it is the position of the DAO that the DRAI over-rates certain factors in assessing whether a child is appropriate for release.

^{iv} In Home Detention is a court-ordered supervision program through which youth participate in community-based activities weekly under the supervision of a youth worker. Activities are tailored to the individual child, but include workshops, drug and alcohol awareness, sexual health career development, financial literacy, and sports and art training. IHD costs between \$36 and \$40 per child, per day.

^v Intensive In-Home Supervision Program includes one to three daily contacts between the youth and the service provider, therapeutic and instructional workshops, and one-on-one mentoring.

^{vi} The Juvenile Probation Department owns 250 GPS ankle monitors, which are attached to juveniles in the delinquent system, often as a condition of their release. While between 100 and 120 juveniles are held at the JJSC, nearly all available GPS monitors are in use at any given time. Often juveniles are kept on GPS for months at a time without any review of its necessity. Devices must be re-charged for more than an hour each day at an outlet, at which time the juvenile must stand or sit next to an outlet. When monitors are damaged, the juveniles are ordered to pay for the damage.

^{vii} An Evening Reporting Center is available to some children prior to their adjudicatory hearings. These centers provide a place for children to receive academic support as well as opportunities to engage in art and music programming. See Geo, *Evening Reporting Centers: A Second Chance Through Music*, JUMP (Aug. 8, 2016), <https://jump Philly.com/2016/08/08/evening-reporting-center-a-second-chance-through-music>. Evening Reporter Centers cost approximately \$60 per child, per day.

^{viii} A juvenile out-of-home placement is a facility designed and operated for the benefit of delinquent children that provides substitute care for children who have been adjudicated delinquent and who the Court has found cannot be adequately supervised in the community. See 42 Pa.C.S. § 6302. These facilities vary significantly in location, quality of the programming available and level of security.

^{ix} A Hearing Officer (previously known as a Master) is an attorney employed by Family Court who has limited jurisdiction, conferred by the Court of Common Pleas and consented to by the parties. 42 Pa.C.S. § 6305(a), (b). Hearing Officers sit in place of judges at Detention Hearings and at other proceedings in Family Court. Both parties may appeal the decisions of the Hearing Officer to a judge of the Court of Common Pleas. *Id.* at § 6305(d).