

**FREEBORN COUNTY ATTORNEY'S OFFICE
CHARGING GUIDELINES**

1. Prosecutorial Discretion

If a citation is not initially issued by an officer, the decision to initiate criminal charges (or in a rare case to present a case to a grand jury), rests within the discretion of the County Attorney's Office. By its very nature, the exercise of this discretion cannot be reduced to a formula. This discretion, however, should be exercised as fairly and uniformly as possible and in accordance with the following guidelines.

2. Propriety of the Charges

The County Attorney's Office should file only those charges which can be substantiated by available and admissible evidence at trial, but this office is not obligated and likely will not file all possible charges which might be supported by the available evidence. The charge or charges selected should adequately reflect the nature of the conduct in question and should be consistent with the interests of justice. (It is within the sole discretion of the County Attorney to decide when it is necessary to seek the assistance of a grand jury in the charging process in all cases.)

3. Upon receipt of a completed investigation report from the Albert Lea Police Department, Freeborn County Sheriff's Office or the Minnesota State Patrol, the reports will be reviewed as promptly as possible by the County Attorney's Office. A charging decision shall consist of the following:

- a. A complaint or juvenile petition shall be drafted. (Whether a complaint is a summons, warrant or order for detention is a factual determination also made by the County Attorney's Office); or
- b. The investigating agency shall be directed to issue a citation charging a particular offense(s); or
- c. The investigator/investigating agency shall be asked to provide further investigation so a charging decision can be made; or
- d. The investigating agency/LEC records shall be notified that no charges will be issued.
- e. If a juvenile is the alleged offender and the fact situation fits the established criteria, the offender may be referred to an appropriate juvenile diversion program.

4. Factors to Consider

Factors which will be considered by the County Attorney's Office in making the charging decision shall include, but are not limited to, the following:

- a. Whether or not sufficient probable cause exists to believe a crime has been committed and that a particular person committed the crime.
- b. Whether or not all necessary evidence has been gathered.
- c. Whether the investigation/arrest presents search and seizure or other constitutional concerns materially detrimental to a successful prosecution.
- d. The probability of a conviction based upon a review of the evidence that can reasonably be presented at trial.
- e. The characteristics of the Defendant (i.e., dangerousness, criminal history, the presence of obvious mitigating defenses, etc.).
- f. The nature and circumstances of the offense and the sanctions or punishments that would most likely be imposed if a conviction is obtained.
- g. The valid and substantiated interests of the victim(s).
- h. Undue hardship or good faith reluctance of witnesses to testify.
- i. Any mitigating or aggravating factual circumstances.
- j. The deterrent value of the prosecution of the Defendant and to society in general.
- k. Application of community standards.
- l. A history of non-enforcement of the statute.
- m. The cost of prosecution (time and money) and the ability of this office to support that cost in relation to the seriousness of the offense.
- n. The availability of adequate civil remedies to a victim and whether a victim is "promoting" prosecution to accomplish primarily a civil or "collection" goal.
- o. The age of the offense (after reviewing the reasons for delay in investigation or prosecution).
- p. The willingness of the accused to cooperate with law enforcement and aid in the apprehension and conviction of others, equally or more culpable.

q. The likelihood of prosecution by another criminal justice authority (jurisdiction/venue).

1. Inappropriate Considerations

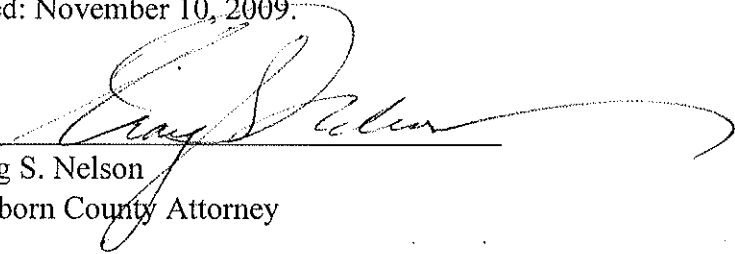
- a. The County Attorney's Office should not charge more serious offenses only as a means to leverage the accused to plead guilty to lesser charges.
- b. The County Attorney's Office should not file charges for the purpose of obtaining from a defendant a release of potential civil claims against victims, witnesses, or law enforcement or prosecutorial agencies or personnel.
- c. The County Attorney's Office should not consider any personal or political advantage a prosecution may bring.
- d. The County Attorney's Office shall not consider in any way the race, gender, social status, sexual orientation or the economic status of the accused, victim and /or witnesses when making the charging decision.

6. Specific Charging Considerations

- a. Victims Contact: In cases involving a crime against a person, the victim should be contacted. If the victim cannot be contacted prior to charging, efforts should be made to contact the victim as soon as possible. Upon contacting the victim, the prosecutor or the victim/witness coordinator should discuss with the victim the general allegations, charges, court procedures and victim's rights.
- b. Statements of the Suspect: Every effort should be made to obtain a statement from the suspect prior to charging. The requirements of State v. Scales must apply (i.e., all statements from a suspect must be recorded).
- c. Forfeitures: When law enforcement has seized potentially forfeitable property, law enforcement should notify the County Attorney's Office and separately request initiation of a civil forfeiture action or representation by the County Attorney's Office at an administrative forfeiture proceeding, if any is requested.
- d. Identification of Victims and Witnesses in Charging Instruments: Victims and witnesses shall be referred to by generic terms or initials rather than by their name(s). Sexual assault victims shall be referred to as "the victim" or initials rather than by name.
- e. Firearms or where prior offenses have enhanced the offense: Whenever a firearm has been determined to have been used during the commission of a crime or where prior offenses have enhanced the offense, the charges shall reflect the appropriate mandatory minimum sentences under M.S. 609.11.

- f. Drug Testing: It is the policy of this office that drug cases shall be charged on the basis of positive field testing and weighing.

Dated: November 10, 2009.



Craig S. Nelson
Freeborn County Attorney