

FREEBORN COUNTY ATTORNEY'S PLEA NEGOTIATION GUIDELINES

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

2. The County Attorney's Office, in resolving a criminal case, may agree to one or more of the following dispositions, depending on the circumstances of the case:
 - a. To make or not oppose recommendations concerning the sentence or conditions of probation which may be imposed if the accused enters a plea of guilty; or
 - b. To dismiss the offense charged if the accused enters a plea of guilty to a different offense reasonably related to the accused's conduct; or
 - c. To dismiss other charges or refrain from issuing other potential charges against the accused if the accused enters a plea of guilty; or
 - d. Other dispositions whenever the interests, safety and wellbeing of the public and the effective administration of criminal justice will be served.

3. Factors that the Freeborn County Attorney's Office will examine and consider in resolving cases include, but are not limited to:
 - a. Factors relating to the offense
 - (1) The nature and circumstances of the offense;
 - (2) Mitigating or aggravating factors;
 - (3) The deterrent value of the proposed disposition;
 - (4) Recommendations of involved law enforcement, investigative, or assessment agencies;
 - (5) Excessive cost of prosecution in relation to the seriousness of the offense.

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

c. Factors relating to the offender

- (1) The deterrent value of the disposition;**
- (2) The willingness of the defendant to acknowledge guilt and assume responsibility for his or her conduct;**
- (3) The assurance of prompt and certain application of correctional consequences to the defendant;**
- (4) The availability of alternative correctional measures which are more appropriate to achieving correctional goals;**
- (5) The defendant's giving or offering cooperation which has or may result in the successful prosecution of others engaged in serious criminal conduct;**
- (6) The characteristics of the offender.**

d. Factors relating to the strength of the case

- (1) The unavailability of a material witness;**
- (2) A possible deficiency in the proof required to convict;**
- (3) A possible issue as to admissibility of the State's evidence;**
- (4) The possible challenge to the credibility of certainty of the State's evidence.**

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

- a. Any personal or political advantage;**
- b. Race, gender, social status or economic status of the accused, victim, and/or witness;**
- c. Reasons solely related to economy of time or expense.**

5. Specific Plea Negotiation Guidelines.

a. M.S. 152.18: Stays of adjudication under M.S. 152.18 shall not be recommended at sentencing unless:

- The defendant has no prior criminal history (except minor traffic offenses);**
- The investigation indicates the defendant is not involved in the illegal distribution of controlled substances;**
- The defendant is willing to enter and complete an appropriate chemical dependency treatment program; and**
- The offense charged is a Controlled Substance Crime in the Fifth Degree and involves an amount of controlled substance indicative of personal use.**

b. Restitution: When authorized by law, restitution shall always be recommended as a part of a defendant's sentence.

c. Forfeitures: A prosecutor handling the criminal prosecution shall not negotiate any pending forfeiture action related to a criminal case. Such negotiations shall be conducted by the attorney assigned to handle the civil or administrative forfeiture case.

d. Incarceration: A period of incarceration in the local jail or prison shall be recommended for all felony level offenses.

6. The Freeborn County Attorney's Office, with the assistance of the Victim/Witness Advocate, shall in good faith, attempt to comply with M.S. 611A.03 which states as follows:

"611A.03 PLEA AGREEMENTS; NOTIFICATION.

Subdivision 1. Plea agreements notification of victim. Prior to the entry of the factual basis for a plea pursuant to a plea agreement recommendation, a prosecuting attorney shall make a reasonable and good faith effort to inform the victim of:

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

(b) The right to be present at the sentencing hearing and to express in writing any objection to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated objection to the prosecuting attorney, the prosecuting attorney shall make this objection known to the court.

Amended and revised:

12/28/05


Craig S. Nelson
Freeborn County Attorney

