

INTERIM OFFICE POLICIES

Effective January 2, 2019

OVERVIEW & PURPOSE

To provide guidance for Assistant Prosecuting Attorneys (“APAs”), Investigators and Support Staff in the daily operation of the office as the new administration continues the discussion and development of policies. Of utmost importance to the new administration is the receipt of feedback from current employees prior to the finalization of policies.

All policies outlined herein are guided by the United States and Missouri Constitutions, Missouri Rules of Criminal Procedure, Statutes and case law, as well as the Missouri Rules of Professional Conduct and the ethical obligations we share as a community in the ongoing pursuit of making St. Louis County a safe and prosperous place in which to live.

For purposes of interim policy, “team leader” or “supervisor” is the same team leader/supervisor to whom attorneys/investigators/support staff have already been assigned unless/until otherwise noted.

For purposes of interim policy, “written approval” includes, but is not limited to: e-mails to/from employees’ approved St. Louis County e-mail address(es).

BAIL/BOND

Note: on December 18, 2018, the Missouri Supreme Court adopted revisions to Rules of Criminal Procedure. While the new rules are effective July 1, 2019, this office has based its Interim Office Policies on the new rules, effective immediately. These policies, based on the new rules, will be the basis for all recommendations to the court.

Misdemeanor Offenses

APAs shall request summons, and not warrants, on all misdemeanor offenses. APAs shall not request cash bond for any misdemeanor offense absent first obtaining written approval from a supervisor.

- Note: **immediate action** - At the request of defense counsel, APAs shall agree to a recognizance bond for any individual currently incarcerated on misdemeanor

offenses, absent finding any of the exceptions below.

Exceptions: If an APA determines the answer to any of the questions enumerated below is “yes,” APA shall obtain written approval from a supervisor in writing prior to issuance of a warrant/request for cash bond.

1. Does a witness and/or victim exhibit signs of physical injury, and
2. Does clear and convincing evidence exist to determine there is a danger to a witness and/or victim that cannot be alleviated by conditions of release, including, but not limited to: an order or protection?

D and E Felony Offenses

APAs shall request summons, and not warrants, on all D and E felony offenses. APAs shall not request a warrant or cash bond for any D or E felony offense absent first obtaining written approval from a supervisor.

- Note: **immediate action** - APAs will produce a list of cases on which an individual is confined on D and E felonies no later than January 11, 2019.
- Note: **immediate action** - At the request of defense counsel, APAs will agree to recognizance bonds on said cases absent finding one of the exceptions below.

Exceptions: If an APA determines the answer to any of the questions enumerated below is “yes,” APA must obtain written approval from a supervisor in writing prior to issuance of a warrant/request for cash bond.

1. Was there a direct threat to a witness and/or victim before/during/after arrest?
2. Is there more than one prior conviction involving the same victim?
3. Were there more than two failures to appear within the last two years?
 - a. If so, does information show that failures to appear were in an effort to avoid prosecution, such as evading the police upon arrest or using an alias in a police encounter?

If exceptions met, then: when requesting an initial warrant, APA shall ask for least restrictive conditions available.

- Note: APAs must make good faith effort to contact the victim prior to issuance of warrant/request for cash bond to avoid necessity of requesting an additional five days prior to addressing bond review upon arrest.
- Note: should an accused remain incarcerated at a bond review hearing solely due to monetary bond condition, a rebuttable presumption exists that the accused

cannot afford the monetary condition and the APA must request an alternative condition of release

Violation of Conditions of Release - All Offenses

APAs will review prior conditions of release when there has been a failure to appear on an open case. Absent evidence the accused intentionally attempted to flee from law enforcement, such as evading the police upon arrest or using an alias in a police encounter, then release upon the original conditions will be recommended.

APAs will not ask for cash bond as an additional condition to ensure return to court. Any request for monetary conditions based solely on a failure to appear requires written approval from a supervisor.

ISSUANCE OF CHARGES

APAs will issue only the charges which, based on the APA's good faith belief, can be proven beyond a reasonable doubt on the date of filing, and not the charges for which only probable cause can be met.

Specifically, APAs shall not seek to "overcharge" at the stage of the initial summons/warrant/indictment phase to pressure the accused to admit guilt.

Note: this policy also precludes APAs from adding additional counts or increasing the potential range of punishment when the accused exercises his/her constitutional rights; including, but not limited to: preliminary hearings, motions to suppress, depositions, negotiations and other pre-trial hearings. Ex.: APAs shall not threaten to "send the case back to grand jury," or "charge the defendant as prior and persistent" simply because the accused has exercised the rights guaranteed to him/her under both United States and Missouri Constitutions.

DISCOVERY

"Open file policy" means the entire contents of the APA's file, with the exception of work product, shall be furnished to defense counsel when fulfilling discovery requests pursuant to Missouri Supreme Court Rule 25.02; including, but not limited to: all police/incident reports and supplements, witness interview notes, restitution valuation(s), audio and video recordings, and the accused's criminal history. Said discovery may be furnished via advanced hand delivery of a hard copy or via the

preferred method of an electronic copy using the defense attorney's Missouri Bar Association e-mail address.

The above-articulated policy applies regardless of the stage of criminal proceeding (both associate and circuit court).

APAs will abide by their ongoing duty of disclosure, which exists from the inception of the case until disposition, and cannot be negated at any point therein.

See: *Brady v. Maryland*, Missouri Supreme Court Rules 25.02, 25.03, 25.07, 25.08

PRELIMINARY HEARING

APAs will not object to defense counsel's request to record Preliminary Hearing(s), via a licensed court reporter or audio recording via the Associate Court with the court's permission.

APAs will not request or require defense counsel to waive an accused's right to Preliminary Hearing as a condition of or exchange for the accused's release from custody and/or waiver of the accused's other constitutionally protected due process rights.

If a case is dismissed after Preliminary Hearing for lack of probable cause, APAs shall not re-issue the case without written approval in writing from his/her supervising attorney.

WITNESSES / VICTIMS

Note: while Victims Services Division is responsible for handling the majority of interaction(s) with witnesses/victims, said division, practically speaking, cannot be responsible for ALL interactions with witnesses/victims, and it is this premise upon which the Interim Office Policy is articulated. The ongoing development of additional victims services is forthcoming, after the new administration has received input from current employees. While the office's sympathy and compassion toward witnesses/victims cannot be understated, it is important to recall the ethical rules and state law which establish certain limitations. Specifically, employees of this office represent The State of Missouri, and thus it would be improper for employees to provide witnesses/victims with legal advice.

Employees will not attempt to threaten witnesses and/or victims in an effort to force them to participate in prosecution. APAs will not deny witnesses and/or victims the opportunity to complete an Affidavit of Non-Prosecution if such a request is received.

Specifically, employees shall not: communicate or imply the witness/victim will face civil or criminal charges for failure to appear in court/cooperate with prosecution; communicate or imply loss of child custody or visitation rights for failure to appear in court/cooperate with prosecution; communicate or imply loss of licensure or other collateral legal consequences for failure to appear in court/cooperate with prosecution.

MARIJUANA

This office will not prosecute the possession of less than 100 grams of marijuana in any capacity. Prosecution of more than 100 grams of marijuana will only be pursued if evidence suggests the sale/distribution of marijuana. APAs will not issue cases, apply for summons or warrants for possession of 100 grams or less of marijuana.

Pending cases: APAs will not proceed with or attempt to accept any plea/finding of guilt for felony or misdemeanor marijuana possession, regardless of amount, without written approval from supervisor.

- Note: **immediate action** - APAs will file Nolle Prosequis for every pending felony and misdemeanor marijuana possession case no later than January 11, 2018.
- Note: **immediate action** - APAs will not to request capias warrants for failure(s) to appear on possession of marijuana matters.

Probation violation matters: APAs will not file or pursue Motions to Revoke Probation arising solely from the use or possession of marijuana.

Conditions of bail/bond: APAs will not file or pursue Motions to Revoke Bond arising solely from the use or possession of marijuana.

CRIMINAL NON-SUPPORT

Note: this office will enforce child support orders via civil mechanisms already in place. The loss of liberty and/or employment opportunities due to the filing of criminal charges only ensures the subject of the civil order will have greater difficulty operating as a productive member of society, and thus, would not be able to provide said support.

This office will not criminally prosecute the failure to pay child support. APAs will not issue criminal cases or apply for summons or warrants for failure to pay child support.

Pending cases: APAs will not proceed with or attempt to accept any plea/finding of guilt

for any felony or misdemeanor failure to pay child support, regardless of amount of arrears, without written approval from a supervisor.

Probation violation matters: APAs will not file or pursue Motions to Revoke Probation arising solely from the failure to pay child support.

Immediate Action

- APAs shall not request capias warrants for failure(s) to appear on criminal non-support matters, whether felonies or misdemeanors.
- APAs shall recommend termination/discharge of probation for anyone supervised solely relating to failure to pay child support, whether felony or misdemeanor supervision.
- In the absence of termination/discharge, APAs will agree to a recognizance bond for anyone in custody solely for probation violation relating to failure to pay child support, whether felony or misdemeanor supervision.
- APAs will not file or pursue Motions to Revoke Bond arising solely from failure to pay child support.

Note: APAs currently assigned to criminal non-support to draft suggestions or outline plan to pursue the failure to pay child support via a civil contempt docket prior to finalization of future policy.

LEGAL FINANCIAL OBLIGATIONS (“LFOs”) / RESTITUTION

Probation violation matters: APAs will not pursue Motions to Revoke Probation arising solely from failure to pay legal financial obligations and/or restitution unless a hearing has been held regarding the defendant’s ability to pay and the court has made a ruling finding willful nonpayment.

Legal financial obligations (“LFOs”) include, but are not limited to: court costs, intervention fees, fees associated with conditions of supervision (ex. electronic home detention).

Immediate Action

- APAs will not request warrants/cash bond for probation violations/violations of bond arising solely from failure to pay LFOs or restitution
- APAs will agree to recognizance bond(s) for anyone in custody solely for probation violation(s) relating to failure to pay LFOs, whether felony or

misdemeanor supervision

- APAs to agree to recognizance bond(s) for anyone in custody solely for probation violation(s) relating to failure to pay restitution, whether felony or misdemeanor supervision

PROBATION CLASSIFICATION & TERMS

Felony Probation: APAs will not seek more than three years of probation, whether supervised or unsupervised, SIS or SES.

- Note: **immediate action** - for probation recommendations already extended, recommendation is automatically converted to three year probation term.

Misdemeanor Probation: APAs will not seek more than one year of probation, whether supervised or unsupervised, SIS or SES.

- Note: **immediate action:** for probation recommendations already extended, recommendation is automatically converted to one-year probation term.

MEDIA / PUBLIC STATEMENTS

Employees of the St. Louis County Prosecuting Attorney's Office, whether civil service or appointed, attorney, investigator, or support staff, will not comment to the press about any matter relating to this office, including, but not limited to: personnel, pending criminal cases or policy. Any questions or inquiries from the press about any matter related to the office, including trials, shall be referred to Chief of Staff, Sam Alton, unless/until otherwise instructed.

For purposes of this policy, any "posts" on social media, including but not limited to: Twitter, Facebook and Instagram, are considered public comment and thus employees are not permitted to post about any matter as it relates to personnel, pending criminal cases or policy relating to this office.