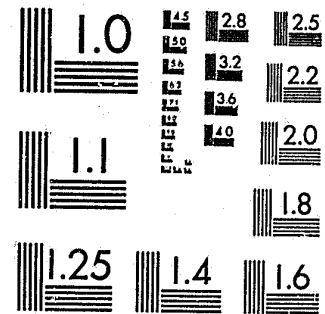


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United States Department of Justice
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1/13/84

90346



ARREST STANDARDS

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ARREST STANDARDS

Boulder County Sheriff's Department
Boulder County District Attorney
Boulder Police Department
Broomfield Department of Public Safety
Erie Police Department
Lafayette Police Department
Longmont Police Bureau
Louisville Police Department
Lyons Police Department
Nederland Marshal's Office
University of Colorado Police Department

Adopted and Finalized

March 26, 1982

NCJRS
JUN 28 1983
ACQUISITIONS

BOULDER COUNTY ARREST STANDARDS
DETERMINANTS

1. Victim Restitution
2. Hostile Victim or Witness - Unwillingness to Prosecute
Unwilling to Testify
3. Conditional Violations
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BOULDER COUNTY
DISCRETION DETERMINANT

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Victim Restitution

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Victim Restitution (D-1)	That situation involving minor loss where the victim seeks only to regain property or be made whole for damage or loss.	Restitution by the defendant may substantiate a decision by the officer not to file charges or to leave charging open to review. The victim should genuinely desire restitution as final resolution and fulfillment of the restitution should be assured. Then defendant should be made aware that the restitution does not absolutely eliminate the possibility of a criminal charge.	See Pros. Std. 1-8 (Discretionary Factors) (b) (1) [but not decline solely because of]

Hostile Victim or Witness-
Unwillingness to Prosecute
Unwilling to Testify

BOULDER COUNTY
DISCRETION DETERMINANT

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
<p>Hostile victim or Witness- Unwillingness to Prosecute, Unwilling to Testify (D-2)</p>	<p>That victim/witness who for whatever reason will not voluntarily give information or testify in a court of law regarding a criminal act.</p>	<p>The ability of an officer to solicit witnesses to a crime who will readily provide accurate testimony during subsequent prosecution will be critical to the desired outcome of convicting the offender.</p> <p>Refusal of witnesses to become involved or otherwise assist in prosecution may substantiate the use of non-charging or of leaving charges open for review.</p> <p>It should be noted that CRS 16-9-101 provides for the prosecuting attorney to compel witness attendance and production of evidence.</p> <p>The officer must realize that absent the desire of a victim to initiate action, cooperate and testify against a defendant in a criminal proceeding, little likelihood of conviction exists. However, assessments by the officer of possible victim intimidation and overall gravity or harm inflicted should be closely scrutinized in determining appropriate resolution.</p>	<p>See Pros. Std. 1-8 (Discretionary Factors) (a) (v); 2-1 (Class of offense) (a) (ii).</p>



BOULDER COUNTY
DISCRETION DETERMINANT

Conditional Violations

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Conditional Violations (D-3)	<ul style="list-style-type: none"> a. de minimus violation - the gravity or the actual consequence of the act is negligible b. technical violation - statutory crime but violator lacked technical intent c. antiquated statute - violation of a law still in existence which has not been enforced for a long period due to demand or preference or acquiescence of society in general 	<p>Offenses indicated by this determinant would automatically require an alternative other than incarceration and prosecution except where extenuating circumstances would mandate arrest as in progression to a more serious offense.</p> <p>The officer should understand and base his actions upon the fact that PR release for these offenses would be automatic and that prosecution and conviction for these types of offenses alone is unlikely.</p>	<p>See Pros. Std. 1-8 (Discretionary Factors) (a) (ii), (viii); 2-1 (Class of Offense) (a) (iv) & (v) but see 1-8 (b) (iv)</p>

BOULDER COUNTY
DISCRETION DETERMINANT

Probable Victim or Witness FTA

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Probable victim or Witness FTA (D-4)	The determination that the victim or critical witness/es will not be available for subsequent proceedings, based upon assessing the stability of family relation, residence, or employment within jurisdiction.	Consideration must be given those instances where a victim/witness will as a matter of fact not be available in the event of apprehension and prosecution of an offender. Particularly considered with other mitigating determinants a charge open for review status would be most appropriate in this situation.	See Pros. Std. 1-1 (Basic Criteria for Charging) (b)

BOULDER COUNTY
DISCRETION DETERMINANT

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Status of Relationship Between
Offender and Victim/Witness

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
<p>Status of Relationship Between Offender and Victim/Witness (D-5)</p>	<p>The Interrelationships between the offender either by blood, marriage, friendship, or acquaintance to the victim/s or witness/es.</p>	<p>The more known an offender to the victim, the more appropriate non-incarceration, charge open for review status becomes. This indication is based upon low probability of formal or informal follow-up by the victim.</p> <p>Assessment of filing of charges after sufficient cooling period is warranted particularly in highly emotional situations.</p>	<p>See Pros. Std. 1-8 (Discretionary Factors) (a) (v); 2-1 (Class of Offense) (a) (ii) but see 1-8 (b) (iii)</p>

BOULDER COUNTY
DISCRETION DETERMINANT

Informant Status

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
<p>Informant Status (D-6)</p>	<p>That individual, whether or not suspected of an offense, who in return for monetary remuneration, leniency or non-arrest, supplies information regarding further offenses or offenders.</p>	<p>The value of otherwise unobtainable information of criminal activity may warrant non-arrest or bond-and-release concessions to an informant.</p> <p>Although an officer may consider an informant's cooperation as a factor in the arrest or release decision, the officer should clearly understand, and communicate to the informant, that Colorado law empowers only the District Attorney or his duly appointed and sworn deputies to make decisions regarding whether or not felony charges are to be filed against a criminal suspect and what disposition is to be made of those charges once they are filed. Any law enforcement officer must, under Colorado law, have obtained the authority to do so from the District Attorney or one of his deputies. Any law enforcement officer who makes such a promise without having obtained such authority is acting outside the scope of his lawful authority.</p>	<p>See Pros. Std. 1-8 (Discretionary Factors) (a) (vi); but see 1-8 (b) (v)</p>

BOULDER COUNTY
DISCRETION DETERMINANT

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Questionable or Weak Identification
by Victim or Witness/es

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Questionable or Weak Identification by Victim or Witness/es (D-7)	The probability of the inaccuracy of the identification of a suspect by a victim or witness. Additionally, the disagreement between two or more individuals about issues of identity to the extent that an officer could not proceed with certainty against a particular defendant.	Eye witness identification is a critical factor in the determination of convictability of an offender. Officers should make a full assessment and evaluation of all possible witnesses. Where offender identification is to some degree questionable or does not correlate between multiple witnesses a non-incarceration, charge open for review status is appropriate. Efforts to locate and encourage cooperation of witness will reward the officer with higher conviction rates and thus greater results per effort expended.	See Pros. Std. 1-1 (Basic Criteria for Charging) (b); 1-4 (Sufficiency and Admissibility of Evidence) (a) (and see Commentary page 4)

BOULDER COUNTY
DISCRETION DETERMINANT

Improper or Questionable
Motives of Victim or Witnesses

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Improper or Questionable Motives of Victim or Witnesses (D-8)	That situation where a victim or witness is motivated by some form of self interest in his or her actions against an alleged offender.	Officers should be alert for those instances where a victim or witness might attempt to personally benefit in some manner by falsely implicating an alleged offender. The officer must make independent assessment of victim/witness credibility in instances where improper or questionable motives seem plausible. Care must be taken to ensure that factual substantiation gives rise to these implications. The greater likelihood of impropriety increases the appropriateness of non-incarceration alternatives.	See Pros. Std. 1-8 (Discretionary Factors) (a) (iv); 2-1 (Class of Offense) (a) (ii) & (iv)

BOULDER COUNTY
DISCRETION DETERMINANT

Affirmative Defenses

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Affirmative Defenses (D-9)	Those qualified situations where a criminal act is legitimized.	<p>Officers should be aware of statutory provisions which negate criminal liability of an individual when acting against an initial aggressor or in further defense of a person, or in certain other special relationships (see CRS 18-1-702, 703, 704, 705, 706, 707, 709). Obvious defenses such as those detailed in the above cited provisions should warrant non-incarceration alternatives, particularly where injury or damage is negligible.</p> <p>The greater the determination that an affirmative defense can be substantiated, the more appropriate a charge open for review non-incarceration status.</p>	See Pros. Std. 1-1 (Basic Criteria for Charging) (c); 1-6 (Affirmative Defenses); 2-1 (Class of Offense) (a) (iv)

BOULDER COUNTY
DISCRETION DETERMINANT

Victim Instigated or Involved
in Offense as Causal Factor

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Victim Instigated or Involved in Offenses as Causal Factor (D-10)	Instigation, involvement or contributing responsibility for a criminal incident by which a participant becomes the victim of the criminal act.	A victim's contribution to, or involvement in an offense will serve as an indicator of a non-incarceration alternative.	See Pros. Std. 1-6 (Affirmative Defenses); 1-8 (Discretionary Factors) (a) (iv) & (v); 2-1 (Class of Offense) (a) (ii) & (iv)

BOULDER COUNTY
DISCRETION DETERMINANT

Witness Instigated Offense

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
<p>Witness Instigated Offense (D-11)</p>	<p>That situation where a major instigator or participant in a criminal occurrence is not so charged but is to be utilized as a witness to the event.</p>	<p>An assessment of witness instigation of or involvement in an offense may be an indicator of a non-incarceration alternative when processing the primary defendant. Consideration should be given to the seriousness of the offense, as well as the other determinants. Situation where a witness instigated or was to some extent involved in an offense justify non-incarceration alternatives in processing the defendant.</p>	<p>See Pros. Std. 1-6 (Affirmative Defenses); 1-8 (Discretionary Factors) (a) (iv) & (v); 2-1 (Class of Offense) (a) (ii) & (iv)</p>

BOULDER COUNTY
DISCRETION DETERMINANT

Degree of Culpability

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Degree of Culpability (D-12)	<p>The degree of responsibility and participation in criminal conduct vis a vis other suspects participating in the same act.</p> <p>For Specific Criminal Culpability see <u>INTENT</u>.</p>	<p>In many instances, an officer may properly assess the degree of involvement or responsibility of a suspect in selecting a non-incarceration alternative.</p> <p>Additionally, in complicity or conspiracy situations an assessment of who played the greater role in the criminal act or circumstances might further assist the officer.</p> <p>The existence and degree of guilt or culpability assessed will be proportionate to the type of alternative selected.</p>	<p>See Pros. Std. 1-1 (Basic Criteria for Charging) (d); 1-8 (Discretionary Factors) (a) (iii); 2-1 (Class of Offense) (a) (iv)</p>

BOULDER COUNTY
DISCRETION DETERMINANT

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Intent

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Intent (D-13)	<p>That mental state of subject that fulfills required criminal culpability pursuant to the criminal code. Subject's act or conduct is done <u>intentionally, knowingly, or willingly, recklessly, or with criminal negligence.</u></p> <p>See 1973 CRS 18-1-501 <u>Definitions</u></p>	<p>A common assessment made during a police officer's determination of appropriate arrest alternative is the intent of the suspected offender (overt or implied). Some offenses, although a technical violation of the law, lack true intent of the violator and, therefore warrant assessment of the design of the offenders act or omission. Where a technical violation exists, but intent does not appear existent and no harm or injury has resulted, an officer is justified in utilizing the charge open for review option.</p>	<p>See Pros. Std. 1-4 (Sufficiency and Admissibility of Evidence) (a); 1-8 (Discretionary Factors) (a) (viii)</p>

BOULDER COUNTY
DISCRETION DETERMINANT

Evidence - Testimonial, Physical

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Evidence - Testimonial Physical	Those factors which when formally presented in a court of law would substantiate that a particular offense had been committed and that a particular individual/s had committed that offense.	<p>The ultimate result of an arrest should be the conviction of the offender. Critical to the obtaining of conviction is the initial identification, collection and preservation of evidence (both physical and testimonial).</p> <p>Conviction becomes more likely when the arresting officer recovers tangible evidence and identifies cooperative witnesses as soon as possible after the occurrence of the crime.</p> <p>In cases where little or no physical or testimonial evidence is available to assure conviction, charging open to review or charges pending are the best alternatives.</p> <p>Every effort should be made to assure likelihood of conviction prior to charging.</p> <p>In felony situations where minimal probable cause exists, the charges pending or open for review status should be utilized in lieu of arrest.</p>	See Pros. Std. 1-1 (Basic Criteria for Charging) (a) & (b); 1-4 (Sufficiency and Admissibility of Evidence) (a); 1-5 (Reasonable Probability of Conviction)

BOULDER COUNTY
DISCRETION DETERMINANT

Health - Physical, Mental

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Health: (Physical-Mental) D-15	The suspect's lack of mental well being which will impact the selection of arrest or release alternatives by the officer.	A suspect's deteriorated physical and/or mental condition will often indicate the desirability of non-incarceration via diversion resource. (Mental health, detox, etc.). Further consideration may be given these health aspects when viewed as instigators or causes of the offense in question. A review of determinant 16 is appropriate when referring to this determinant.	See Pros. Std. 3-3 (a) (Specific Dispositions - Pre Filing Diversion) (iii)

BOULDER COUNTY
DISCRETION DETERMINANT

Influence of Alcohol/Drugs

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
<p>Influence of Alcohol/Drugs (D-16)</p>	<p>Consumption of a quantity of alcohol or drugs sufficient to affect to some degree the mental judgement or physical actions of a subject either by current use or continuing addiction.</p>	<p>Intoxicated individuals will provide the officer with the appropriate arrest alternative based upon the following concerns:</p> <p>Arrest: combative individuals who are to be charged with additional offenses otherwise meet incarceration determinants.</p> <p>Detox: non-combative with additional concerns after issuance of summons and complaint.</p> <p>Release: with (misdemeanor summons) or without (felony summons by District Attorney) issuance of summons and complaint upon arrival of responsible party.</p> <p>Where probability of addiction is determined, non-incarceration diversion alternatives of a formal nature are necessary that will best suit the defendant's problem and cover potential liabilities of the officer and agency.</p>	<p>See Pros. Std. 1-4 (Sufficiency and Admissibility of Evidence) (a); 1-8 (Discretionary Factors) (a) (viii); 3-3 (a) (Specific Dispositions - Pre-Filing Diversion) (iii)</p>

BOULDER COUNTY
DISCRETION DETERMINANT

Degree of Offense

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Degree of Offense (Misdemeanor, Petty Offense, Municipal Ordinance) (D-17)	All offenses other than felony classifications.	The degree of the offense other than a felony i.e. misdemeanors, petty offenses and municipal ordinances all initially indicate appropriate use of non-incarceration alternatives via officer issued summons and complaint unless additional complicating determinants substantiate an incarceration.	See generally Pros. Std. Part II (Charg Selection)
Felony Class 4 & 5	Those offenses specifically categorized as class 4-5 felonies which qualify for use of felony summons and complaint procedures.	The degree of seriousness of offenses which are classified as 4 & 5 felonies may indicate a non-incarceration alternative (issuance of a felony summons through the district attorney's office) when other determinants indicate non-incarceration.	
Felony Offenses	Those offenses classified as felonies within Colorado Revised Statutes 1973 as amended.	All felony offenses will substantiate incarceration. However, felonies 1-2-3 statutorily mandate incarceration, while felonies 4-5 may allow non-incarceration alternatives: D.A. felony summons and complaint - see D-18. Incarceration should be utilized for felony 4 & 5 offenses committed in the officer's presence.	

BOULDER COUNTY
DISCRETION DETERMINANT

Criminal History

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Criminal History (D-18)	Suspect has been arrested and/or convicted for similar offenses previously. A pattern of continuing illegal activity is known to the officer, indicating probability of present or future similar activity.	The known factual criminal history of an individual may serve as a negative factor and provide additional weight to an officer's decision to utilize the incarceration alternatives in class 4 & 5 felonies. Criminal history alone will never substantiate arrest alternatives. Other arrest indicators must be primary in substantiating that decision.	N/A

BOULDER COUNTY
DISCRETION DETERMINANT

Lack of Positive I.D.

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Lack of Positive I.D. (D-19)	That instance where an officer cannot establish with reasonable certainty the true identity of an offender either by direct evidence or by reasonable secondary verifications.	Justification may exist to incarcerate an offender where a reasonable and prudent police officer would be led to not believe an offender is who he says he is. The mere presence of identification does not establish positive identity. Conversely, absence of identification does not justify incarceration where reasonable efforts by the officer can verify identity. This rationale includes (depending on offense) processing through prescribed booking procedures.	See 1-3 (Case Investigation) (a) (v); 1-8 (Discretionary Factors) (c) (and discussion page 9-10); 2-1 (class of Offense) (a) (iii); 2-3 (Special Allegations) but see 1-2 (Improper Bases for Charging) (f)

BOULDER COUNTY
DISCRETION DETERMINANT

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Warrant/Hold

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Warrant/Hold (D-20)	That document issued by a judicial officer which directs a law enforcement officer to arrest a person accused of an offense.	The legal requisites of a warrant currently allow the officer no latitude other than arrest. Consideration may be given to the time of service if a warrant is involved, to correspond to those hours when court is in session thus avoiding incarceration. This standard does not preclude the following of departmental bonding procedure.	See Pros. Std. 1-4 (Sufficiency and Admissibility of Evidence) (a)

BOULDER COUNTY
DISCRETION DETERMINANT

Probable FTA

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Probable FTA (D-21)	The probability that a suspect will fail to appear for scheduled court appearances. Such probability causing the arresting officer to utilize incarceration rather than otherwise available alternatives.	<p>The strong probability that a suspect will fail to appear justifies incarceration. However, to the extent that the officer feels appearance will be honored, other alternatives to incarceration should be utilized (depending on degree and class of offense). Primary indications of likelihood of appearance would be:</p> <ol style="list-style-type: none"> 1. <u>Defendant's Residence</u> - defendant has an established residence within the state of Colorado. Municipal charges shall be handled as per departmental policy. 2. <u>Defendant's Employment</u> - defendant has established reasonably permanent employment within the state of Colorado. Municipal charges shall be handled as per department policy. 3. No known past history of failure to appear for legal process. <p>The above conditions should be examined from the perspective of reasonable likelihood that defendant could be located should failure to appear occur.</p>	See Pros. Stds. 1-3 (Case Investigation) (discussion middle of page 3)

BOULDER COUNTY
DISCRETION DETERMINANT

Risk of Continuance of Offense

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Risk of Continuance of Offense (D-22)	The likelihood of the violation continuing without substantial police intervention.	Protection from probable further injury or property damage to a victim, complainant, society in general, or the officer will substantiate arrest or incarceration. However, where extenuating circumstances exist (family disputes) and the officer feels non-arrest or non-incarceration alternatives will provide equivalent safety to the complainant, that alternative may be utilized and would generally be preferred especially if it provides treatment or assistance in rendering a more permanent solution than arrest.	See Pros. Std. 1-8 (Discretionary Factors) (a) (ii) and those Standards involving an accused's criminal history.

BOULDER COUNTY
DISCRETION DETERMINANT

Degree of Cooperation of Suspect

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTION STANDARDS
Degree of Cooperation (D-23)	The quantity and type of interaction generally forthcoming from reasonable law abiding citizens in similar situations.	Non-cooperation in and of itself will not substantiate incarceration. Non-cooperation to the extent of resistance or to a point where other determinants exist (e.g. lack of I.D.) will indicate incarceration.	See Pros. Std. 1-8 (Discre- tionary Factors) (a) (vi)

BOULDER COUNTY
DISCRETION DETERMINANT

Suspect Other/Additional Felonies

GLOSSARY

DETERMINANT	DEFINITION	RELATIONSHIP OF DETERMINANT TO ARREST-RELEASE DISCRETION	RELATIONSHIP OF DETERMINANT TO PROSECUTIVE STANDARDS
<p>Suspect Other/ Additional Felonies (D-24)</p>	<p>That situation where an offender is detained initially for one offense, but is a developing suspect in additional concurrent offenses of equal or greater importance or interest to the law enforcement officer or agency.</p>	<p>The incarceration alternative may be utilized when conditions normally would not warrant such action if known factors lead the officer to believe that probable cause will soon be established substantiating the arrestee's involvement in other felony offenses.</p> <p>This determinant should not be utilized without a formal review by agency supervisor(s), or agency policy or procedure controlling the use of this determinant.</p>	<p>See Standards Involving an accused's criminal history</p>

PROSECUTION STANDARDS

Twentieth Judicial District
Boulder County, Colorado

ALEXANDER M. HUNTER
District Attorney
January 13, 1983

The office of the prosecutor is charged with responsibility for prosecutions in its jurisdiction.

The prosecutor is both an administrator of justice and an advocate. The prosecutor must exercise sound discretion in the performance of his or her functions.

The duty of the prosecutor is to seek justice, not merely to convict.

Standard 3-1.1 ABA Standards for Criminal Justice, 2d. Ed (1980)

Each prosecutor's office should develop a statement of:

- (i) general policies to guide the exercise of prosecutorial discretion, and
- (ii) procedures of the office.

The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient and effective enforcement of the criminal law.

Standard 3-2.5, Id.

PREFACE

So much has been written about the need for prosecution standards, and so many task forces, study groups, agencies and offices have promulgated and adopted such standards, that there is little to be gained by further exposition on that subject here. The need for standards that will help to reduce caprice while increasing predictability, effectiveness, fairness and efficiency within the criminal justice system is by now obvious.

Nevertheless, discretion -- the ability to evaluate each case on its own merits -- remains at the heart of the prosecution function. The purpose of prosecution standards is not to restrict that discretion per se, but rather to provide understandable guidelines for its exercise. Increased understanding of how each component of the criminal justice system operates cannot help but lead to more coordinated and cost-effective efforts toward realization of the shared goals of law enforcement. The value of the system to the community is also enhanced by a broader public understanding of how the system operates and what can legitimately be expected of it.

It is my hope and belief that these standards will serve to:


- 1) reduce inconsistencies, and thereby the potential for abuse, in the exercise of the prosecutor's discretion;
- 2) provide training and guidance, especially for new deputies, in the policies, procedures and objectives of this office;
- 3) increase mutual communication, understanding and accountability between this office and the other components of the criminal justice system in Boulder County;
- 4) guide police agencies in their investigation, evaluation and presentation of cases for the filing of charges; and
- 5) increase the overall predictability and effectiveness of the criminal justice system for everyone concerned including defendants, the defense bar, the courts and the public.

It should be noted that we, as prosecutors and attorneys, are bound by the Colorado Code of Professional Responsibility, Appendix to Chapters 18 to 20 of the Colorado Rules of Civil Procedure, and that nothing in these standards should be construed as contrary to any provisions of that Code.

In addition, I feel that the new American Bar Association (ABA) Standards for Criminal Justice, Second Edition (1980) should also apply (where appropriate) in the Twentieth Judicial District, and should be read in conjunction with these standards for a complete understanding of the prosecution function. References are made in these standards to related provisions in the ABA Standards.

Finally, an acknowledgement must be made to Nolan L. Brown, District

Attorney for the First Judicial District, whose "Prosecution Standards - First Judicial District" provided much of the basis, and indeed some of the language, for the standards set out below. We have used Mr. Brown's work, as well as the ABA Standards and the National District Attorney's Association (NDAA) National Prosecution Standards, as points of departure, and have tried to distill, synthesize, simplify, and adapt that material to the needs of Boulder County. I hope that we have been successful in that effort.


ALEXANDER M. HUNTER
District Attorney

PART I THE DECISION TO FILE A CHARGE

Standard 1-1. Basic Criteria for Charging

The prosecutor should not cause a charge to be filed unless the following four basic requirements are satisfied:

- (a) based upon a complete investigation and a thorough consideration of all available information, the prosecutor is satisfied that the evidence shows that the accused is in fact guilty of the crime to be charged;
- (b) there is admissible evidence sufficient to prove beyond a reasonable doubt that the crime was committed and that the accused committed it;
- (c) the admissible evidence is of such weight as to give rise to a reasonable probability of conviction by an objective fact-finder, despite the best defense which could reasonably be raised against the charge; and
- (d) none of the standards for alternatives to the filing of charges, Part III, infra, have been satisfied.

Commentary: This standard defines the "bottom line" which must be satisfied before the prosecutor should cause a charge to be filed. It must be read in conjunction with ABA Standards 3-3.4 and 3-3.9, and considered in light of the discretionary standards set forth in Part III of these standards -- Alternative to the Filing of Charges.

Each of the subsections of this standard are elaborated in the balance of this Part I.

Standard 1-2. Improper Bases for Charging

The prosecutor should not cause a charge to be filed because of any of the following:

- (a) the race, religion, nationality, sex, occupation, economic class, or political association or position of the victim, a witness, or the accused;
- (b) the mere fact of a request to charge by a police agency, private citizen, or public official;
- (c) public or journalistic pressure to charge;

- (d) solely to facilitate an investigation;
- (e) because of personal political advantages or disadvantages; or
- (f) the prior criminal record of the accused, and nothing more.

Commentary: This standard is self-explanatory. It should be read in conjunction with ABA Standards 3-3.4 and 3-3.9, and the commentaries thereto.

Standard 1-3. Case Investigation

(a) The prosecutor, prior to authorizing the filing of a charge, should insist upon as complete an investigation as is reasonably feasible. Cases presented for filing consideration should contain all of the following, unless inapplicable upon the facts of the case:

- (i) interviews with all material witnesses;
- (ii) results of scientific tests and examinations;
- (iii) statements of the accused;
- (iv) complete written police reports, including the complete circumstances and results of any searches for and seizures of evidence;
- (v) the criminal history of the accused; and
- (vi) the charging recommendation of the agency, together with any special aggravating or mitigating factors or other information which the agency wishes to be considered.

(b) If the initial investigation does not satisfy the standards of subsection (a), above, the prosecutor should insist upon subsequent investigation by the law enforcement agency before making the decision to file a charge, except in extraordinary compelling circumstances.

Commentary: Anyone who has participated in the litigation of a felony criminal charge has experienced the sometimes astonishing difference in the "convictability" of the case between the time when it is presented for filing and upon submission to the jury after closing argument. A major goal of the Prosecution and Arrest Standards Project is to minimize, as much as possible, this inevitable change in the complexion of a case. Thorough investigation prior to filing, as quickly as possible after the time of the

commission of the crime and/or the identification of a suspect is perhaps the most effective means of reaching this goal.

A case should be investigated from both the prosecution and defense points of view. This will help to avoid "surprise evidence" from the defense later on. For instance, the accused should, consistent with constitutional requirements, be provided with the opportunity to make a statement. The statements of "defense witnesses" should also be taken. These statements should be investigated, no matter how implausible, as far as is reasonably feasible.

There will undoubtedly be situations where, due to limitations upon length of incarceration of an accused prior to filing, a decision must be made without the benefit of as complete an investigation as this standard requires. The preferred procedure in such a situation is to release the accused and re-arrest upon a warrant following the completion of the investigation, unless there are specific, articulable facts to support a reasonable belief that the accused will flee. Of course, the evidence then available must satisfy the "bottom line" of standard 1-1. An investigation which satisfies this standard 1-3 should in every case be completed prior to the preliminary hearing.

The responsibility for investigation subsequent to the initial presentation of a case for filing consideration must lie with the originating law enforcement (police) agency, and not the prosecutor. However, the prosecutor should, whenever the originating agency so requests, lend whatever assistance the resources of his office will allow.

This standard should be read in conjunction with ABA Standards 3-3.1 and 3-3.11.

Standard 1-4. Sufficiency and Admissibility of Evidence

(a) The prosecutor should be satisfied that there is sufficient evidence to prove each element of the charge at trial beyond a reasonable doubt, with special attention to the identity of the accused as the perpetrator of the crime. The prosecutor should consider the nature of the evidence (i.e., direct or circumstantial) and any problems created thereby. The evidence must satisfy the prosecutor that the accused is in fact guilty of the crime to be charged.

(b) The prosecutor should believe that there is a reasonable possibility, based upon current statutory or case authority, that the evidence necessary to satisfy this standard will be ruled admissible at trial.

(c) In cases where the evidence raises novel or unclear questions of law, the prosecutor should file a charge if the following requirements are satisfied:

(i) the crime is a substantial one significantly affecting the values which the criminal law is designed to protect;

(ii) there is available to the prosecutor a reasonable argument in support of his position; and

(iii) there is a reasonable possibility that the trial court or an appellate court will rule in favor of the prosecutor's position.

Commentary: Evaluation of the evidence is the most basic function of the prosecutor in making the decision to file a charge. Absent the most compelling considerations of public justice, no charge should be filed if this standard is not met.

It will be the rare case indeed where, given the complexity of the criminal law, the ingenuity of defense counsel and the nature of life in general, there will be no significant evidentiary issues to consider. This standard seeks to balance those considerations against the clear need to prosecute offenders, in the context of our system of criminal jurisprudence as it exists today.

The prosecutor should evaluate the evidentiary issues as they affect the "reasonable probability of conviction" set forth in standard 1-5, *infra*. For example, where the evidence is largely direct (eyewitness testimony), the prosecutor should consider such issues as mistake, improper motive, or flawed memory or perception. In circumstantial cases, the prosecutor should consider whether there is another rational explanation for the factual material besides the commission of a crime by the accused. The prosecutor must then decide whether these issues create a reasonable doubt as to the accused's guilt.

The admissibility of evidence is always an issue. The prosecutor should be familiar with relevant statutory and case authority so as to reach an informed decision on questions of admissibility. The possibility for success in the resulting litigation must be a reasonable possibility. This standard should be evaluated at the trial court level, unless the trial court frequently makes rulings contrary to current appellate interpretations. The ultimate standard is of course that of the Colorado and United States Supreme Courts.

Because no two cases are ever exactly the same, and factual distinctions common in our legal system, subsection (c) of this standard is particularly important. The prosecutor should not shrink from making new or difficult arguments where to do so clearly furthers the interests of public justice. However, there is nothing to be gained and much to be lost, both in terms of the resources of the criminal justice system as well as the prosecutor's credibility, in proceeding to litigation without a reasonably strong foundation in the law. In the situations contemplated by this subsection (c),

the gravity of the offense will frequently be the factor which tips the balance one way or the other.

This standard should be read in conjunction with ABA Standards 3-3.6, 3-3.9 and 3-5.6.

Standard 1-5. Reasonable Probability of Conviction

The prosecutor should not file a charge unless the admissible evidence is of such weight as to give rise to a reasonable probability of conviction by an objective fact-finder, despite the best defense which could reasonably be raised against the charge.

Commentary: The gravamen of this standard is the difference between that quantum of evidence which establishes "probable cause", and that quantum which, when all factors are considered, appears sufficient to make it more probable than not that the accused will be convicted at trial. Ordinarily, the expense, effort and time involved in a criminal prosecution cannot be justified where this standard is not satisfied. In addition, the public perception of the effectiveness of the system is adversely affected by unsuccessful litigation.

There will, however, quite clearly be exceptions to this standard. The goals of public justice will at times necessitate that the prosecutor proceed to trial with a case which arguably falls somewhere between probable cause and this standard 1-5. The gravity of the offense will generally be the key factor creating the need for such an exception. There are simply some cases where the charge must be tried against the accused, even though the likelihood of conviction is something less than a "reasonable probability."

In such situations, the prosecutor should have a reasonable belief that the admissible evidence is sufficient to withstand a Motion for Judgment of Acquittal at the close of the People's case. If at any time during the pendency of the case, the prosecutor reasonably believes that the admissible evidence no longer establishes probable cause, he should promptly move to dismiss.

This standard should be read in conjunction with ABA Standard 3-3.6 and 3-3.9.

Standard 1-6. Affirmative Defenses

The prosecutor should not file a reduced charge or decline to charge solely because of the application of an affirmative defense to the charge unless:

(a) There is insufficient admissible evidence to support a verdict at trial which rejects the application of the affirmative defense; or

(b) The affirmative defense arises in conjunction with one or more of the factors set forth in standard 1-8 of these standards.

Commentary: Evaluation of the application of affirmative defenses to prospective charges is often a most difficult aspect of both the decision to charge, and the selection of the proper charge, as discussed in Part II of these standards. This standard 1-6 elects a preference in favor of filing a charge, or filing the greater charge, unless subsections (a) or (b) are satisfied.

Subsection (a) is merely a restatement of standards 1-4 and 1-5 relating to evidentiary sufficiency. Since an affirmative defense, if properly placed in issue by the evidence, must be disproven by the prosecutor beyond a reasonable doubt, it functionally becomes another "element" of the offense, as to which the evidentiary standards must be met in order to authorize the filing of the charge.

Frequently, however, precise evaluation of the sufficiency of the evidence on this issue will be extremely difficult at the charging stage. The standard then also elects in favor of the filing of a charge or the filing of a greater charge, (so long as the other relevant standards are satisfied) unless the affirmative defense arises in conjunction with one or more of the factors set forth in standard 1-8 of these standards. Those factors are taken from ABA Standard 3-3.9 (b) and when they appear in conjunction with an affirmative defense, may indicate that the filing of a charge, or the filing of the greater charge, is inappropriate.

In the usual case, this standard contemplates that a reduction (or an acquittal) due to the application of an affirmative defense will be decided after litigation.

Standard 1-7. Proper Jurisdiction

(a) Where venue and jurisdiction are proper in more than one county,

the prosecutor should consult with the prosecutors in the other counties to determine the most appropriate venue. Factors which should be considered include:

(i) the relative ability to prove venue in each county;

(ii) the determination of which county has the most significant connection with the harm caused by the offense and the evidence of the offense;

(iii) the location of the witnesses; and

(iv) the willingness of the other county to prosecute the offense.

If another jurisdiction clearly has the most significant connection with the offense, the prosecutor should not file a charge based upon a tenuous connection solely because of the unwillingness of the other jurisdiction to prosecute.

(b) No defendant should be successfully prosecuted by more than one sovereign (i.e., municipal-state-federal) for conduct arising from the same criminal transaction unless:

(i) the offenses are factually distinct, and neither sovereign is legally capable of prosecuting them all together, and

(ii) the goals of public justice would clearly be compromised by the failure of each sovereign to prosecute for its respective offenses.

Commentary: Cross-jurisdictional offenses become more commonplace as the mobility of our society increases. Ordinarily, one jurisdiction will clearly have the most "significant connection" with the offense, both in terms of the harm caused and the location of evidence and witnesses, and it is in that jurisdiction that the most efficient prosecution can generally be brought.

Where the "most significantly connected" jurisdiction declines to prosecute, for whatever reason, the prosecutor of a jurisdiction clearly less connected with the offense should ordinarily defer to the judgment of the prosecutor in the more connected jurisdiction, unless the interests of public justice clearly require that the accused be prosecuted somewhere, and the rest of the prosecution standards are satisfied.

Similarly, prosecution by one sovereign will ordinarily be sufficient to serve the goals of the criminal justice system. The exception to this is in the situation where a criminal course of conduct clearly offends factually separate and distinct statutes over which no one sovereign has complete jurisdiction, and the sanctions available to either alone are clearly insufficient relative to the violations. In this case, the prosecutor, after consultation with the other sovereign, may file those charges over which he alone has jurisdiction to prosecute. Of course, all other relevant standards should be satisfied.

This standard should be read in conjunction with ABA Standard 3-3.9.

Standard 1-8. Discretionary Factors

(a) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction. Illustrative of the factors which the prosecutor may properly consider in exercising his or her discretion are:

(i) the prosecutor's reasonable doubt that the accused is in fact guilty;

(ii) the extent of the harm caused by the offense;

(iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;

(iv) possible improper motives of a complainant;

(v) reluctance of the victim to testify, or a request by the victim for nonprosecution;

(vi) cooperation of the accused in the apprehension or conviction of others;

(vii) availability and likelihood of prosecution by another jurisdiction;

(viii) the commission of a technical violation, lacking true criminal intent, or the violation of an antiquated statute; and

(ix) the costs of prosecution (i.e. transporting or locating witnesses, etc.) are highly disproportionate to the importance of prosecuting the offense in question.

(b) However, the prosecutor should not decline to file a charge solely because of any one of the following:

(i) the accused has made or offered restitution;

(ii) the accused must be extradited;

- (iii) the victim and the accused are related;
- (iv) the statute which the accused has violated is unpopular;
- (v) the mere fact of a request or even pressure, not to charge by or from the media, the public, or a law enforcement agency; and
- (vi) the hardship caused to the accused and/or his or her family.

(a) The prosecutor should exercise this discretion in favor of the filing of charges and more vigorous prosecution whenever an accused has a significant prior criminal record or clearly represents a danger to the community.

Commentary: Most of subsection (a) of this standard is taken verbatim from ABA Standard 3-3.9 and should be read in conjunction with the commentary thereto. Other factors thought necessary and relevant have been added. While these factors may be less definite than the evidentiary standards, it is neither possible nor desirable to pretend they must not, or should not, be considered. Given the continually increasing need to prioritize the application of resources within the criminal justice system, these factors take on added significance. As the Commentary to ABA Standard 3-3.9 states

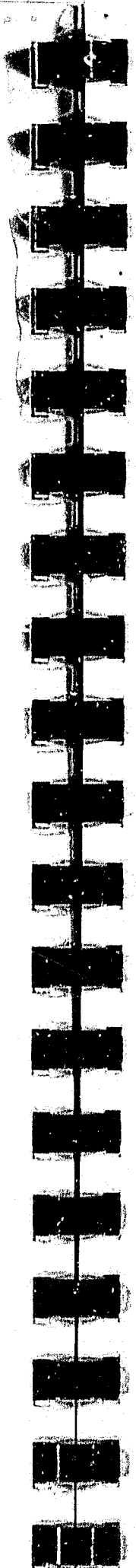
[I]n exercising discretion in this way, the prosecutor is not neglecting public duty or discriminating among offenders. The public interest is best served and evenhanded justice best dispensed not by the mechanical application of the "letter of the law," but by a flexible and individualized application of its norms through the exercise of a prosecutor's thoughtful discretion.

In addition, most of these factors correlate the determinants contained in the Arrest Standards for Boulder County.

Subsection (b) sets out factors which, without more, should not be the basis for a decision not to file a charge. A combination of one or more of these factors, however, especially if present with the factors set out in subsection (a) of this standard or other applicable standards, could result in a situation which results in a non-filing, or the filing of a reduced charge.

Subsection (a) directs the prioritizing effort in favor of more vigorous prosecution of frequent, habitual, or dangerous offenders. These offenders must be identified at the earliest possible stage and the discretionary tools of the prosecutor (for example, immunity in exchange for testimony) should

be utilized to insure the most effective possible prosecution of such individuals.



PART II CHARGE SELECTION

Standard 2-1. Class of Offense

(a) The prosecutor should generally charge the highest class of offense which accurately describes the conduct of the accused and which satisfies the applicable evidentiary standards set forth in Part I, above. In reaching this decision the prosecutor should consider:

- (i) the extent of the actual harm caused by the offense;
- (ii) any prior relationship of the victim, witnesses and the accused;
- (iii) the criminal history of the accused;
- (iv) the degree of culpability disclosed by the evidence; and
- (v) the legislative intent, if ascertainable.

(b) Whenever a course of criminal conduct is punishable under two or more separate statutes, the prosecutor should charge under the statute which most specifically addresses the conduct, as opposed to a more general statute, unless the more specific statute is inadequate to deal with the nature of the accused's conduct.

Commentary: This standard is designed to address both the decision as to which class of felony to charge, as well as the felony-misdemeanor alternative. It must be read in close conjunction with standard 1-6 (affirmative defenses) and standard 1-8 (discretionary factors). It is the prosecutor's responsibility to see that the charge selected describes the offense and provides for an adequate sentence.

This standard prefers the greater applicable charge, except in the presence of certain enumerated factors. Given the need to prioritize, the result should be that the greater sanctions of the felony charge and the greater scrutiny of the District Court will be utilized to prosecute the true "felony" offense or offender.

This standard should be read in conjunction with ABA Standard 3-3.0.

Standard 2-2. Additional Counts

(a) Additional Felony Counts. The charging deputy may add additional felony counts to an Information, so long as the following factors are satisfied:

- (i) the counts are properly joinable;
- (ii) the counts are not merely cumulative, but accurately describe factually distinct conduct of the accused;
- (iii) conviction upon the additional counts would carry significant and appropriate consequences for the accused;
- (iv) the trial deputy has the authority to add additional counts whenever necessary to enhance the effectiveness of the prosecution's case at trial, but he should not add counts simply to increase disposition leverage.

(b) Misdemeanor Counts. Misdemeanors should generally not be joined with felony counts unless the misdemeanor describes significant independent conduct and its addition materially strengthens the prosecution on the felony charge.

Commentary: The charging deputy has the authority to file all counts as to which the applicable standards are satisfied. Basically, this standard requires that each additional count actually add something — in terms of evidence, trial effectiveness, and sanction, to the charge against the accused.

Once an appropriate disposition has been rejected, and the interests of the disposition process are no longer a factor, the trial deputy may add counts, preferably before an initial preliminary hearing, where to do so significantly increases the prosecution's effective presentation of the case and chances for success at trial. They may be related or unrelated crimes, so long as they are properly joinable.

Misdemeanors are ordinarily inappropriate as additional counts in felony cases since they generally do not result in additional sanctions or punitive consequences for the accused. Additionally, such charging often invites juries to avoid difficult decisions in felony cases by returning compromise misdemeanor verdicts. However, there are cases where the joinder of misdemeanor counts facilitates the full exposition at trial of all of the circumstances surrounding a criminal episode and thus clarifies and enhances the felony case. In such cases, the joinder of misdemeanor counts is proper.

Of course, as to all additional counts, the applicable evidentiary standards must be satisfied. This standard should be read in conjunction with ABA Standard 3-3.9.

Standard 2-3. Special Allegations.

Special Allegations (i.e. habitual offender, crime of violence, special offender, aggravating circumstances, elderly and handicapped, etc.) should be filed whenever the evidence supporting them satisfies all other applicable standards.

Commentary: The legislature has enacted provisions which impose increased sanctions for certain types of repeated or especially dangerous behavior. The intent of legislation should be effectuated by the filing of those counts in appropriate cases. It is permissible for the prosecutor to threaten the filing of these types of counts as leverage in disposition negotiations, but if the substantive charge is to go to trial, the special allegation should ordinarily be added.

The applicable evidentiary standards of Part I must be satisfied, as well as the Charge Level and Additional Counts standards of this Part II.

Standard 2-4. Joinder of Defendants.

Defendants who are properly joinable in one Information should be so joined, unless the prosecutor knows in advance of evidentiary, statutory, or constitutional reasons why a joint trial will not be possible.

Commentary: This standard elects a preference for the efficient and effective procedure of a joint trial of several defendants. Such a practice operates to save time and resources, and often allows for a more effective presentation of evidence. However, if the prosecutor knows in advance that a joint trial will not be legally possible, he should file separately.

PART III DISPOSITIONS

Standard 3-1. Dispositions Generally.

The prosecutor should consider in each case all possible dispositions short of trial, as the particular disposition relates to the evidence and the individual defendant, and select an appropriate disposition and communicate this, as an offer, to defense counsel at the earliest possible stage. The disposition should be consistent with these standards, and should take into consideration any relevant aggravating and/or mitigating circumstances.

Commentary: Where the defendant indicates a willingness to immediately accept an appropriate degree of accountability for criminal conduct, the system as a whole is benefitted by a disposition which allows prosecution resources to be applied elsewhere. These dispositions should not be subject to caprice, but should be the product of a thoughtful consideration of all relevant factors within established guidelines. Law enforcement agencies and victims should be consulted whenever practical, although their recommendations are not binding on the prosecutor. Dispositions which, for whatever reasons, fall outside established parameters should be approved by the Chief Trial Deputy.

If a defendant continues to refuse an offered disposition, it becomes necessary for the prosecutor to begin to prepare for trial, and the resources to be conserved through the disposition process are largely expended. At that point, the disposition offer should ordinarily be withdrawn.

This standard should be read in conjunction with ABA Standards 3-4.1 through 3-4.3.

Standard 3-2. Role of Charging Deputy.

It is appropriate for the charging deputy, based upon his evaluation of the completed case investigation, to communicate to defense counsel, prior to the filing of a charge, a disposition offer. The charging deputy should not, however, threaten to file a charge or count which does not satisfy these standards to gain leverage in the negotiation process. If the pre-filing disposition is rejected, charges should be filed pursuant to these standards, and the pre-filing disposition offer should be communicated to the trial deputy.

Commentary: Where appropriate, pre-filing dispositions save the system very significant amounts of resources. If the investigation, evidentiary and discretionary standards have been satisfied so as to support the filing of a charge, the charging deputy should be in a position to communicate a disposition offer prior to filing.

However, it would be inappropriate for the charging deputy to threaten to "overcharge" - to file a charge which does not satisfy these standards - as a plea negotiation tool.

The pre-filing disposition offer, if rejected, should be communicated to the trial deputy. The trial deputy should not ordinarily offer a more favorable disposition than the pre-filing offer, in the absence of new evidence affecting the likelihood of conviction. The subsequent disposition may well be less favorable, since the flexibility of the system necessarily decreases as each stage of prosecution is completed.

Standard 3-3. Specific Dispositions.

(a) Pre-Filing Diversion. This is a non-criminal disposition and generally is available only where:

- (i) the goals of public justice would not be served by a criminal prosecution;
- (ii) the conduct of the accused involved no significant harm to the community;
- (iii) the accused is clearly in need of monitored treatment and is unlikely to pursue such treatment on his or her own;
and
- (iv) the accused has no prior criminal record.

(b) Deferred Prosecution: This disposition is generally unavailable in felony cases. The only exception should be in cases of significant new evidence or the deterioration of existing evidence.

(c) Deferred Sentence: A deferred sentence, with appropriate conditions, including restitution, supervision, treatment, and county jail time is generally available to non-violent offenders who have no significant prior criminal history. The class of felony and aggravating and/or mitigating circumstances also affect the availability of this disposition.

(d) Recommendation of Probation: This disposition, including any appropriate conditions as in subsection (c) above, is generally available to:

- (i) serious offenders with no significant prior criminal history who are nevertheless, because of the impact of the offense upon the community, ineligible for deferred sentencing;
and

(ii) offenders with a significant prior criminal history but no prior felony convictions, ordinarily including a condition of some county jail time. Probation is generally unavailable in cases of Murder, Manslaughter, Kidnapping (1st, 2nd - not child of defendant), Sexual Assault (1st, 2nd or force) and Aggravated Robbery.

(e) All other disposition offers should ordinarily include a sentence to the Department of Corrections.

Commentary: An effective disposition policy cannot be composed of mandatory provisions and inflexible standards - rather, each case must be carefully considered, on its own unique facts, within basic articulable guidelines. The goal should be to treat similar offenders in a similar fashion, consistent with an appropriate accountability for the offending conduct, given the resources of the criminal justice system.

This standard reflects the policy of the prosecutor's office in the Twentieth Judicial District to maximize the application of those resources to offenses and offenders which have the most significant and/or continuing impact upon our community. Every case has an appropriate disposition, even if it is only a plea to the charge and acceptance of the maximum possible sentence. Once a disposition has been offered, it should not be significantly altered in the absence of new matter.

This standard should be read in conjunction with ABA Standards 3-3.8, and 3-4.1 through 3-4.3.

PART IV MISCELLANEOUS STANDARDS

Standard 4-1. Grand Jury

(a) The prosecutor should ordinarily initiate a prosecution by the filing of an Information with the District Court.

(b) The prosecutor should consider taking a case or an investigation before the grand jury whenever:

(i) premature disclosure of the case or investigation would cause significant community disruption and possible loss of evidence;

(ii) the case or investigation involves official misconduct or corruption;

(iii) there is a danger to witnesses if the case or investigation were to be disclosed; or

(iv) any case or investigation in which there is a reasonable probability that sufficient evidence cannot be gathered by ordinary, investigative techniques.

Commentary: This standard is self-explanatory, and should be read in conjunction with ABA Standards 3-3.5 and 3-3.6.

Standard 4-2. Mediation/Voluntary Compliance

The prosecutor may mediate, refer for mediation, or seek voluntary compliance in the following types of cases:

(a) disputes involving an ongoing relationship of the parties (i.e. families, neighbors, political entities, etc.), with no significant threat to the community at large;

(b) child support or violation of custody cases; and

(c) civil cases such as consumer protection, agency regulation, zoning or health ordinances, and public nuisances (abatement).

Commentary: These are basically extra-judicial resolutions of disputes where the criminal process is either unavailable or would operate to aggravate the causes of the dispute, or where a civil remedy can be achieved without a civil suit. These procedures can sometimes be more effective, in dealing

with the cause of the problem, and in insuring a lasting resolution, than adversary litigation.

Standard 4-3. Public Nuisance (Forfeiture)

(a) The prosecutor should proceed in the nature of forfeiture under the Public Nuisance statute, against real or personal property whenever the following conditions are satisfied:

(i) there is sufficient admissible evidence to obtain a judgment of forfeiture pursuant to the public nuisance statute;

(ii) it can be established that the property to be forfeited was either the fruit of or played a significant role in the illegal activity;

(iii) the accused has a significant interest in the property,

(iv) the penalty worked by the forfeiture is not disproportionate to the underlying criminal offense with which the accused is charged.

(b) The prosecutor should request that the proceeds of the forfeiture remain in the community primarily affected by the illegal activity, whether distributed to law enforcement agencies, social programs, or otherwise.

Commentary: The Public Nuisance statute, CRS (1973) 16-13-30, et seq., as amended, contains provisions in the nature of forfeiture which are designed to prevent offenders from profiting from illegal activity. These provisions should be invoked by the prosecutor whenever the above standards are satisfied.

Often, it will be possible and desirable to attach a confession of forfeiture as a condition of disposition, and the prosecutor should inform defense counsel if forfeiture will be sought prior to the disposition of the criminal charges. Forfeiture should ordinarily not be sought where the penalty thereof would be disproportionate to the crime with which the accused can be charged, pursuant to Parts I and II of these standards. The Nuisance statute should be considered in conjunction with the Colorado Organized Crime Control Act, CRS (1973) 18-17-101, et seq., as amended.

Standard 4-4. Immunity

The prosecutor may grant immunity whenever necessary to further the goals of public justice. The following factors should be considered in making a decision on immunity:

(a) whether the accused's testimony is essential to a successful prosecution of an equally serious or more serious offender;

(b) the level of culpability of the accused in the offense;

(c) the criminal history, and propensity for future dangerousness of the accused;

(d) which offense or offender there exists the greater need to prosecute;

(e) whether the overall seriousness of the case is such as would justify a grant of immunity.

Commentary: The prosecutor must have broad discretion in using the tool of immunity and compelled testimony in criminal prosecutions. Generally, immunity should be granted only when there is practically speaking, no other way to secure sufficient evidence to convict a serious offender. However, only the prosecutor is in a position to evaluate the strength of the case, and balance the competing factors, in reaching this decision.

This standard should be read in conjunction with ABA Standard 3-3.9.

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Standard 4-3. Public Nuisance (Forfeiture)

(a) The prosecutor should proceed in the nature of forfeiture under the Public Nuisance statute, against real or personal property whenever the following conditions are satisfied:

(i) there is sufficient admissible evidence to obtain a judgment of forfeiture pursuant to the public nuisance statute;

(ii) it can be established that the property to be forfeited was either the fruit of or played a significant role in the illegal activity;

(iii) the accused has a significant interest in the property,

(iv) the penalty worked by the forfeiture is not disproportionate to the underlying criminal offense with which the accused is charged.

(b) The prosecutor should request that the proceeds of the forfeiture remain in the community primarily affected by the illegal activity, whether distributed to law enforcement agencies, social programs, or otherwise.

Commentary: The Public Nuisance statute, CRS (1973) 16-13-30, et seq., as amended, contains provisions in the nature of forfeiture which are designed to prevent offenders from profiting from illegal activity. These provisions should be invoked by the prosecutor whenever the above standards are satisfied.

Often, it will be possible and desirable to attach a confession of forfeiture as a condition of disposition, and the prosecutor should inform defense counsel if forfeiture will be sought prior to the disposition of the criminal charges. Forfeiture should ordinarily not be sought where the penalty thereof would be disproportionate to the crime with which the accused can be charged, pursuant to Parts I and II of these standards. The Nuisance statute should be considered in conjunction with the Colorado Organized Crime Control Act, CRS (1973) 18-17-101, et seq., as amended.

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END