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**FOR IMMEDIATE RELEASE**

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**Prosecutor's Response to Muncie/Delaware County Racial  
Justice Plan 2020: Eleven Steps Toward Justice and Peace**

*Muncie Indiana* – On June 15, 2020, various members of the Muncie/Delaware County community met with various community leaders, including the Prosecuting Attorney. The community leaders in attendance were provided with a document entitled “Muncie/Delaware County Racial Justice Plan 2020: Eleven Steps Toward Justice and Peace.” Two (2) of the action items relate to the Prosecutor’s Office. Those are specifically listed in Paragraphs 9 and 10 of the Plan. Attached is the Prosecutor’s Office action plan toward justice and peace as well as the answers asked in the racial justice plan.

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# OFFICE OF THE PROSECUTING ATTORNEY

**Eric M. Hoffman, Prosecutor**

46<sup>TH</sup> JUDICIAL CIRCUIT COURT  
DELAWARE COUNTY, INDIANA

July 20, 2020

COPY

Rev. Robert Scaife  
President, Collective Coalition of Concerned Clergy  
Senior Pastor, Union Missionary Baptist Church  
1100 N. Macedonia Ave.  
Muncie, IN 47303

*(copy via email)*

*RE: Muncie/Delaware County Racial Justice Plan 2020: Eleven Steps  
Toward Justice and Peace*

Dear Rev. Scaife,

Thank you and the Coalition for including my office in this critical discussion. We appreciate this opportunity to answer your questions and to address related issues.

We are all aware of – and deeply disturbed by – the accounts surrounding George Floyd's death on May 25, 2020. Generally speaking, the rules of ethics regulating the public comments of prosecutors prohibit certain comments on pending investigations and/or cases. However, the statement of probable cause in the State of Minnesota's case against Derek Chauvin, one of the former Minneapolis police officers being prosecuted for Mr. Floyd's death, describes Mr. Floyd's last minutes. The document describes that while Mr. Floyd was lying on the ground, Chauvin "placed his left knee in the area of Mr. Floyd's head and neck." Chauvin continued to do so even after another officer found that Mr. Floyd had no pulse. We are aware of no justification for holding a knee on the throat of another person particularly while ignoring distress calls that the person cannot breathe. It is our hope that all appropriate steps are taken and will continue to be taken in Minneapolis to ensure the effective and fair administration of justice.

Before turning to your questions, we wanted to take a moment to discuss the violence that followed many of the peaceful protests across the county. The gravity and seriousness of the events across the country and here in Indiana demanding equity—both peaceful protests and violent outbursts—require a response from the Prosecuting Attorney. We are ardent and strong supporters of our constitutional rights especially the First Amendment right of free speech and assembly. Over the past month or so we have seen the news coverage of the protests across the country. We are extremely proud of our fellow citizens of Muncie for expressing their beliefs and thoughts in a peaceful way. Each of us are

proud to call Delaware County our home. We look at the violence around the country and it is deeply saddening. We are so thankful that all of Muncie's protests and marches have been peaceful and without violence. It is a testament to the people of our community.

As prosecutors, we condemn the types of actions taken by those who killed Mr. Floyd as well as the violence, rioting, and looting that took place after Mr. Floyd's death. We stand for justice and the rule of law. Violence only begets violence. As the late Dr. Martin Luther King Jr. said:

We must not allow our creative protest to degenerate into physical violence and let me say as I've always said, and I will always continue to say, that riots are socially destructive and self-defeating. I'm still convinced that non-violence is the most potent weapon available to oppressed people in their struggle for freedom and justice. We feel that violence will create more social problems than it will solve...I will continue to condemn riots.

Violence, rioting, and looting defile the memory of Mr. Floyd. The appropriate avenue for justice for Mr. Floyd will be in a Minnesota courtroom and that Mr. Floyd's ultimate legacy will be a national commitment to improve law enforcement training, our attitudes on race, our selection and retention of police officers, and our commitment to the reality, not merely the promise, of equal justice for all. The Prosecutor plays a vital role in our society's aim toward justice for all.

Indiana Supreme Court Chief Justice Loretta Rush, in her "Statement on Race and Equity" of June 5, 2020 expressed the feelings of those in the legal profession:

Despite all we have worked to pursue, justice remains elusive to many persons of color in matters across the legal spectrum. There is a disconnect between what we aspire for in our justice system and what we have achieved. That may be hard to hear for all of us who work every day for fairness, but we must hear the voices that cry out in our streets and towns. We must acknowledge and confront the reality that our fellow community members say is their experience. And it is imperative we take action to change that experience—not ignore, justify, or disparage it.

As Prosecuting Attorney and Chief Deputy Prosecutor, we are committed to the following:

1. The Prosecutor's Office condemns all forms of hatred, racism, prejudice, discrimination, bigotry, and anti-Semitism. We will not be complicit in perpetuating bias and inequity.

2. The Prosecuting Attorney will continue to utilize the current hate crime legislation contained within Indiana law. The Prosecuting Attorney will strive to advocate for passage of more comprehensive hate crime statute in Indiana that punishes crimes motivated by bias including bias against color, creed, disability, national origin, race, religion, sexual orientation, age, sex, gender identity, or identification with any other recognizable group or affiliation.
3. Victims of biased hatred and racism must be able to rely on the Prosecutor's Office and they must be treated with dignity. Those who stoke the fires of that hatred and racism must be held accountable.
4. The Prosecutor's office will hold those accountable for committing crimes in Delaware County in a just and fair manner, consistent with Indiana law regardless of color, creed, disability, national origin, race, religion, sexual orientation, age, sex, gender identity or socio-economic status.
5. The Prosecutor's Office will support, defend, and enforce the constitutional and statutory rights of victims of crime regardless of color, creed, disability, national origin, race, religion, sexual orientation, age, sex, gender identity or socio-economic status.
6. Families affected by poverty must be shown both fairness and compassion, no matter their color. The disadvantaged and vulnerable must be protected by our legal system, not left to fend for themselves and crushed under its weight and its complexity.
7. Every human filters facts through the prism of their own life experiences. Thus, to ensure the work of fairness and justice continues, we need to include the subject of implicit bias in our training curriculum. We are pleased to state that the majority of our staff have already received training on the topic of implicit bias.

***MUNCIE/DELAWARE COUNTY RACIAL JUSTICE PLAN 2020:  
ELEVEN STEPS TOWARD JUSTICE AND PEACE***

Thank you for inviting us to the June 15, 2020 meeting. We both thought it was a productive meeting. As you know, the community leaders in attendance were provided with a document entitled "Muncie/Delaware County Racial Justice Plan 2020: Eleven Steps Toward Justice and Peace." Two (2) of the action items relate to the Prosecutor's Office. Those are specifically listed in Paragraphs 9 and 10. Below are our answers to the questions posed as well as our action plan regarding those particular topics. We appreciate the opportunity to provide this response.

9. **We call for the prosecutor's office to implement equivalent charges for equivalent crimes and to recommend equivalent sentencing for all ethnic groups. We call for the prosecutor to publicly release data, itemized by ethnic group, on charges and sentencing for Delaware County by July 31, 2020.**

### **RELEVANT LEGAL PRINCIPLES**

We believe that it is important to begin with some very important legal principles.

#### **Law Enforcement and the Prosecutor**

As the intro to the NBC drama *Law and Order* states: "[i]n the criminal justice system, the people are represented by two separate yet equally important groups: the police, who investigate crime, and the [prosecutors], who prosecute the offenders." This is a very important distinction to make. Police officers take reports of crime and investigate the allegations. Generally speaking, law enforcement's attention is drawn to a matter because a person has reported criminal activity. It is not predicated on a person's race or ethnicity.

The results of those investigations are then sent to the Prosecuting Attorney to make an independent determination of whether a crime has been committed and whether there is sufficient evidence to formally charge and prosecute a suspect. The police and the Prosecutor each perform two separate and distinct roles yet work as a team toward the pursuit of truth and justice.

The maintenance of good relations between the Prosecuting Attorney and the law enforcement agencies within the community is essential for the smooth functioning of the criminal justice system. Both parties have the burden of fostering, maintaining, and improving their working relationship and developing an atmosphere conducive to a positive exchange of ideas and information. The Prosecuting Attorney should actively seek to improve communications between his or her office and other law enforcement agencies.

The criminal justice system, of which the police are one element, is a structure of law. Many times this structure suffers from seemingly contradictory court decisions, public pressure, and the problems that arise in trying to balance effective law enforcement and the protection of the rights of individuals. The police face many of these problems. To alleviate these problems, the Prosecuting Attorney should educate the police in the area of pre-trial criminal procedure, including search and seizure law, the arrest process, interrogation, and what information can and cannot legally be released to the media. In particular, with respect to the various exclusionary rules pertaining to the admissibility of evidence,

the Prosecuting Attorney has a responsibility to educate the police on the effect of court decisions in general and their application in specific cases where evidence was suppressed by a trial court. The Prosecutor should encourage, cooperate with and, where possible, assist in law enforcement training. The Prosecutor should also urge local law enforcement officers to participate in national, state, and regional training courses available to them. The Prosecutor should assist in the on-going training of law enforcement officers by conducting periodic classes, discussions, or seminars to acquaint law enforcement agencies within their jurisdiction with recent court decisions, legislation, and changes in the rules of criminal procedure.

### **The rule of law and pursuit of justice**

The greatness of our nation comes from our commitment to the rule of law. The Prosecuting Attorney is the chief law enforcement officer of the county. The Prosecuting Attorney must ensure that law and order are maintained and, most importantly, seek truth and justice.

The concept of justice is discussed in many of our founding documents. The Preamble to the U.S. Constitution states that one of the purposes of establishing the Constitution was to “establish Justice.” Our Indiana Constitution states that “Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.” The leading law dictionary defines justice as “the fair and proper administration of laws.” In 1865, Florence Ellinwood Allen, the first woman to serve on a state supreme court and one of the first two women to serve as a United States federal judge, said “the attainment of justice is the highest human endeavor.” Inscribed on the east portico of the U.S. Supreme Court Building is the phrase “Justice is the guardian of liberty.” We believe that a prosecutor should always seek justice, no matter how well she may hide. As Chief Justice Loretta Rush has recently said “courts are the hallowed halls within which justice is sought.”

It has been said that the benchmark of a civilized society is the quality of its justice. Dr. Martin Luther King Jr. once said that “injustice anywhere is a threat to justice everywhere.” It is how society responds to that threat of injustice that will determine whether the rule of law will endure.

When we became prosecutors we took an oath to support and defend the United States Constitution and the Constitution of the State of Indiana and we constantly remind ourselves that justice needs to be applied fairly, without fear or favor and never based on anyone’s race. Justice is indiscriminately due to all. It is guaranteed by due process and equal protection rights. As our Declaration of Independence says: “all men are created equal, that they are endowed by their creator with certain inalienable rights. That among these are life, liberty and the pursuit of happiness.”

This is reminiscent of the statue of lady justice holding the scales of justice who can be found in courthouses across this great country. She is blindfolded which represents that justice must be blind to a person's color, race, or creed. Justice is to be rendered solely based on the evidence and the law – and not on any other factors such as the political affiliation, race, creed, gender, sexual orientation, economic, or social status of the litigants. No one is above the law. Our office seeks justice while wearing that blindfold. Every day we strive to seek justice for all victims of crime while wearing that blindfold based solely on the evidence and the law and regardless of who the victim or the perpetrator is. That is something we have always done and will continue to do. As our pledge of allegiance concludes we are “one nation, under God, indivisible, with liberty and **justice for all.**” (emphasis added).

The official Mission Statement for our office reflects the notion that justice must be the same for all. It states in pertinent part:

The Prosecutor serves the public interest and should act with integrity and balanced judgment to promote greater public safety by vigorously prosecuting those who commit violent crime, child abuse, exploitation and neglect, drug dealing, firearms offenses, as well as repeat and habitual offenders without regard to race, religion, gender, political affiliation, or socio-economic status. The Prosecutor's Office strives to maintain the highest level of integrity, ethics, and professionalism while treating all those that come into contact with the criminal justice system with dignity and respect.

The criminal prosecution system holds people accountable who commit crimes and provides assistance to victims of crime. The Prosecutor is an independent administrator of justice. The primary responsibility of a prosecutor is to seek justice, which can only be achieved by the representation and presentation of the truth. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected. A prosecutor should zealously protect the rights of individuals, but without representing any individual as a client. A prosecutor should put the rights and interests of society in a paramount position in exercising prosecutorial discretion in individual cases. As experienced prosecutors know, pursuing justice means more than obtaining convictions. Prosecutors are responsible for conducting thorough and thoughtful investigations, making accurate charging decisions, aggressively and ethically litigating cases, safeguarding defendant's rights, and advocating for appropriate sentences that hold offenders accountable and keep communities safe.

The United States Supreme Court has said:

The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a fair one.

Former U.S. Supreme Court Justice Robert Jackson once said “.....the citizen’s security lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.”

### **EQUIVALENT CHARGES AND SENTENCES**

Step Nine of the plan calls “for the prosecutor’s office to implement equivalent charges for equivalent crimes and to recommend equivalent sentencing for all ethnic groups...”

Let me assure you that our office has always strived to prosecute equitably. Race and ethnicity have no bearing on the filing of a criminal charge. Frankly, the first consideration is to determine the known facts surrounding the allegations. As to sentencing, race and ethnicity have no bearing on that decision either. The most relevant considerations are the nature of the crime and the character of the offender. This includes any number of factors that, if present, can aggravate or mitigate the sentence.

The decision to initiate a criminal prosecution is made by the Prosecuting Attorney and his/her deputy prosecutors. Each and every case presented to the Prosecutor’s Office for review have different and unique nuances. The decision to initiate a prosecution must be based on the unique and specific facts of each individual case. Quite some time ago, the Delaware County Prosecutor’s Office adopted the relevant National Standards for Prosecution written by the National District Attorney’s Association. When determining whether to initiate a criminal prosecution, the standards provide that:

Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest. Factors that may be considered in this decision include:

- a. Doubt about the accused's guilt;
- b. Insufficiency of admissible evidence to support a conviction;
- c. The negative impact of a prosecution on a victim;
- d. The availability of adequate civil remedies;
- e. The availability of suitable diversion and rehabilitative programs;
- f. Provisions for restitution;
- g. Likelihood of prosecution by another criminal justice authority;
- h. Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
- i. The charging decisions made for similarly-situated defendants;
- j. The attitude and mental status of the accused;
- k. Undue hardship that would be caused to the accused by the prosecution;
- l. A history of non-enforcement of the applicable law;
- m. Failure of law enforcement to perform necessary duties or investigations;
- n. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
- o. Whether the accused has already suffered substantial loss in connection with the alleged crime;
- p. Whether the size of the loss or the extent of the harm caused by the alleged crime is too small to warrant a criminal sanction.

Factors that should not be considered in the screening decision include the following:

- a. The prosecutor's individual or the prosecutor's office rate of conviction;
- b. Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;
- c. Political advantages or disadvantages that a prosecution might bring to the prosecutor;
- d. Characteristics of the accused that have been recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime.

These screening decisions are the most important made by prosecutors in the exercise of their discretion in the search for justice. The screening decision determines whether or not a matter will be absorbed into the criminal justice system.

Following an initial screening decision that prosecution should be initiated, the charging decision is the sole prerogative and responsibility of the Prosecutor. As the National Standards note, in making a charging decision, the Prosecutor should keep in mind the power he or she is exercising at that point in time. The Prosecutor is making a decision that will have a profound effect on the lives of the person being charged, the person's family, the victim, the victim's family, and the community as a whole. The magnitude of the charging decision does not dictate that it be made timidly, but it does dictate that it should be made wisely with the exercise of sound professional judgment.

While commencing a prosecution is permitted by most ethical standards upon a determination that probable cause exists to believe that a crime has been committed and that the defendant has committed it, the National Standards prescribe a higher standard for filing a criminal charge. To suggest that the charging standard should be the Prosecutor's reasonable belief that the charges can be substantiated by admissible evidence at trial is recognition of the powerful effects of the initiation of criminal charges. Pursuant to the prosecution's duty to seek justice, the protection of the rights of all (even the prospective defendant) is required.

A Prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial. The Prosecutor should only file those charges that are consistent with the interests of justice. The National District Attorney's Association's National Standards for Prosecution provide that factors that may be relevant to this decision include:

- a. The nature of the offense, including whether the crime involves violence or bodily injury;
- b. The probability of conviction;
- c. The characteristics of the accused that are relevant to his or her blameworthiness or responsibility, including the accused's criminal history;
- d. Potential deterrent value of a prosecution to the offender and to society at large;
- e. The value to society of incapacitating the accused in the event of a conviction;
- f. The willingness of the offender to cooperate with law enforcement;

- g. The defendant's relative level of culpability in the criminal activity;
- h. The status of the victim, including the victim's age or special vulnerability;
- i. Whether the accused held a position of trust at the time of the offense;
- j. Excessive costs of prosecution in relation to the seriousness of the offense;
- k. Recommendation of the involved law enforcement personnel;
- l. The impact of the crime on the community;
- m. Any other aggravating or mitigating circumstances.

### CHARGING STATISTICS AND DEMOGRAPHICS

We were asked to publicly release data, itemized by ethnic group, on charges and sentencing for Delaware County by July 31, 2020. I (Eric Hoffman) personally spoke with you about this request. One of the primary functions of a prosecutor is to evaluate a set of facts and determine if formal criminal charges should be filed. Thus, as we discussed, I can pull accurate charging data. That is, data that relates to the criminal charges that my office files. As for sentencing, our case management system cannot compile that data in a useful form. Given that sentencing is the judge's function, you might, as I mentioned earlier, make an inquiry to the Indiana Supreme Court Office of Judicial Administration, the Indiana State Police Central Repository, and/or the Indiana Department of Correction.

Below are tables that represent the charging data that was requested. The first table shows how many people were charged with felony offenses in 2019 along with their demographics. The second table shows how many people were charged with misdemeanor offenses along with their demographics for the same time period.

<b>2019 Felonies</b>	<b>Male</b>	<b>Percentage</b>	<b>Female</b>	<b>Percentage</b>	<b>Total</b>	<b>Percentage</b>
Asian	2	0.16%	0	0%	<b>2</b>	<b>0.16%</b>
Black	245	19.84%	33	2.67%	<b>278</b>	<b>22.51%</b>
Hispanic or Latino	8	0.65%	3	0.24%	<b>11</b>	<b>0.89%</b>
Indian	1	0.08%	0	0%	<b>1</b>	<b>0.08%</b>
Multiple Races	0	0.00%	0	0%	<b>0</b>	<b>0.00%</b>
Pacific Islander	1	0.08%	0	0%	<b>1</b>	<b>0.08%</b>
Unknown	7	0.57%	5	0.40%	<b>12</b>	<b>0.97%</b>
White	670	54.25%	260	21.05%	<b>930</b>	<b>75.30%</b>
<b>Total</b>	<b>934</b>		<b>301</b>		<b>1235</b>	<b>100%</b>

<b>2019 Misdemeanors</b>	Male	Percentage	Female	Percentage	Total	Percentage
Asian	2	0.09%	1	0.05%	<b>3</b>	<b>0.14%</b>
Black	406	18.56%	141	6.44%	<b>547</b>	<b>25.00%</b>
Hispanic or Latino	26	1.19%	8	0.37%	<b>34</b>	<b>1.55%</b>
Indian	0	0.00%	0	0.00%	<b>0</b>	<b>0.00%</b>
Multiple Races	0	0.00%	0	0.00%	<b>0</b>	<b>0.00%</b>
Pacific Islander	3	0.14%	1	0.05%	<b>4</b>	<b>0.18%</b>
Unknown	14	0.64%	10	0.46%	<b>24</b>	<b>1.10%</b>
White	1059	48.40%	517	23.63%	<b>1576</b>	<b>72.03%</b>
<b>Total</b>	<b>1510</b>		<b>678</b>		<b>2188</b>	<b>100%</b>

The first table below shows how many people were charged with felony offenses from January 1, 2020 to May 31, 2020 along with their demographics. The second table shows how many people were charged with felony offenses along with their demographics for the same time period.

<b>2020 Felonies</b>	Male	Percentage	Female	Percentage	Total	Percentage
Asian	1	0.20%	0	0%	<b>1</b>	<b>0.20%</b>
Black	90	18.29%	23	5%	<b>113</b>	<b>22.97%</b>
Hispanic or Latino	1	0.20%	0	0%	<b>1</b>	<b>0.20%</b>
Indian	0	0.00%	0	0%	<b>0</b>	<b>0.00%</b>
Multiple Races	0	0.00%	0	0%	<b>0</b>	<b>0.00%</b>
Pacific Islander	0	0.00%	0	0%	<b>0</b>	<b>0.00%</b>
Unknown	3	0.61%	0	0%	<b>3</b>	<b>0.61%</b>
White	288	58.54%	86	17%	<b>374</b>	<b>76.02%</b>
<b>Total</b>	<b>383</b>		<b>109</b>		<b>492</b>	<b>100%</b>

<b>2020 Misdemeanors</b>	Male	Percentage	Female	Percentage	Total	Percentage
Asian	2	0.26%	0	0.00%	<b>2</b>	<b>0.26%</b>
Black	157	20.13%	104	13.33%	<b>261</b>	<b>33.46%</b>
Hispanic or Latino	2	0.26%	1	0.13%	<b>3</b>	<b>0.38%</b>
Indian	0	0.00%	0	0.00%	<b>0</b>	<b>0.00%</b>
Multiple Races	0	0.00%	0	0.00%	<b>0</b>	<b>0.00%</b>
Pacific Islander	0	0.00%	1	0.13%	<b>1</b>	<b>0.13%</b>
Unknown	2	0.26%	0	0.00%	<b>2</b>	<b>0.26%</b>
White	332	42.56%	179	22.95%	<b>511</b>	<b>65.51%</b>
<b>Total</b>	<b>495</b>		<b>285</b>		<b>780</b>	<b>100%</b>

## SENTENCING OF AN OFFENDER

Sentencing a person for a conviction is the sole responsibility of the trial judge. Prosecutors do not sentence offenders for their convictions. Rather, it is the function of the judicial branch of government. The trial judge is constrained by the relevant statutes in terms of what sentence may be imposed. Generally speaking, the trial judge can choose a sentence from a broad range of possibilities.

A judge must choose and impose an individualized sentence based upon the unique facts and circumstances of each case. Indiana law provides that a sentence must be reflect the “nature of the offense and the character of the offender.” The law requires that the sentencing judge consider various aggravating and mitigating circumstances enumerated in the law as well as any evidence presented by the defense and the prosecution. Again, the National Prosecution Standards are relevant and provide the following comment:

Participation in the sentencing process provides the Prosecutor the opportunity to continue his or her quest for justice. The Prosecutor should be the person most familiar with the defendant, the facts surrounding the commission of the crime, and the procedures that brought the defendant to the sentencing stage. It is also the Prosecutor who, from prior experience, will be aware of the sentences received by persons in similar situations so as to steer the court away from unfair sentences and unfair sentence disparities.

Sentencing participation also provides the Prosecutor with an opportunity to assure that the victims of crimes are allowed to voice their thoughts and opinions regarding the sentence to be imposed. Sentencing further provides the means for the Prosecutor to make sure the defendant is treated fairly by making mitigating evidence in his or her possession available to the defense and to ensure that the information provided to the court in the form of a pre-sentence investigation report is accurate.

The National District Attorney’s Association’s National Standards for Prosecution provide that to the extent that the Prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and fully informed judgment is made and that unfair sentences and unfair sentence disparities are avoided. The Prosecutor may address the sentencing court and may offer a sentencing recommendation where appropriate. The prosecution should also take steps to see that the victim is not denied his or her right to address the sentencing court.

## PLAN FOR TIMELY PROSECUTION OF LAW ENFORCEMENT OFFICERS

The Muncie/Delaware County Racial Justice Plan 2020: Eleven Steps Toward Justice and Peace contained one more request as it relates to the Prosecutor's Office.

**10. We call for the prosecutor's office to publicly release their plan for timely prosecution of law enforcement officers accused of violent crimes by August 30, 2020.**

Any person who is accused of or investigated for a crime is entitled to a number of very important constitutional and statutory rights. A defendant is presumed innocent until proven guilty beyond a reasonable doubt and to be free of charges for which probable cause is lacking. These rights – and the duties we have described for prosecutors – apply whether the person accused is a law enforcement officer or not.

Once again, the National Prosecution Standards are helpful. As they indicate – and as we all know – “the vast majority of criminal investigations are undertaken by [local police forces, county sheriffs, and the state police].” Still, “there are times when the prosecutor must use his or her authority to initiate or continue an investigation [such as when] . . . the law enforcement agency that would normally conduct the investigation has a conflict of interest [or when] the investigation has been handled improperly and is in need of re-investigation.” It may also be necessary for the Prosecutor to step in when “the investigation calls for expertise that is available in the prosecutor's office [or] where the [other] law enforcement agencies do not have sufficient resources to conduct the investigation.” There are times when the Prosecutor may use his or her authority to initiate or continue an investigation. Some instances where such action by the Prosecutor would be appropriate are: where the law enforcement agency that would normally conduct the investigation has a conflict of interest; where the investigation has been handled improperly and is in need of re-investigation; where the investigation calls for expertise that is available in the prosecutor's office; and, where the law enforcement agencies do not have sufficient resources to conduct the investigation.

In Indiana, a Prosecuting Attorney has the discretionary authority to initiate investigations of criminal activity in his or her jurisdiction. The exercise of this authority will depend upon many factors, including, but not limited to, available resources, adequacy of law enforcement agencies' investigation in a matter, office priorities, and potential civil liability. It should be noted that although the Prosecutor's Office has the legal authority to conduct investigations, as a practical matter, they are most often conducted by law enforcement agencies, state and federal, who have the expertise and manpower to conduct complete and thorough investigations.

Each and every investigation has its own intricacies and nuances. From a prosecutor's standpoint, an investigation should never be rushed or hurried. A prosecutor can only make an informed ethical charging decision if there is a thorough and complete investigation which is needed to avoid any potential acquittal or dismissal as a result of inadequate evidence or mishandling of a given case. To suggest that a prosecutor should authorize an arrest without reviewing all available evidence does not allow for the fair administration of justice.

A criminal investigation should not begin or be continued if it is motivated in whole or part by the victim or perpetrator's race, ethnicity, religion, sexual orientation, or political affiliation unless these factors are an element of a crime or relevant to the perpetrator's motive (i.e. hate crimes). Nor should an investigation be motivated, in whole or significant part, by partisan political pressure or professional ambition or improper personal considerations.

A prosecutor is ultimately responsible for evidence that will be used in a criminal case. A prosecutor who knows or who is aware of a substantial risk that an investigation has been conducted in an improper manner, or that evidence has been illegally obtained by law enforcement, must take affirmative steps to investigate and remediate such problems.

Once a criminal investigation is complete, the Prosecutor's Office performs the screening and charging process as outlined above. Generally speaking, once the Prosecutor files a formal criminal charge, the Indiana Rules of Criminal Procedure require that a criminal defendant be brought to trial within one year of the date that charges are filed. However, that does not always occur because there is an exception for when defense attorneys ask to continue or delay a trial. There are many legitimate reasons a defense attorney may ask to continue a trial including the fact that they need additional time to prepare for trial, locate key defense witnesses or they are scheduled to be in a different court at the same time. The defense then files a motion to continue with the court and the decision to grant or deny the continuance rests within the discretion of the court. However, a criminal defendant has a constitutional right to a fair trial and included within that right is the right for his or her attorney to be sufficiently prepared for trial. Generally speaking, the more complicated or complex the case is, the longer it takes both sides to be sufficiently prepared for trial.

When a police officer is accused of committing a crime of violence in the line of duty, there must be a complete and thorough investigation. Once that investigation is complete, it is turned over the Prosecuting Attorney for review. At that point, the Prosecuting Attorney has several preliminary decisions to make. First, the Prosecuting Attorney must examine the rules of professional conduct and determine whether the ethical rules and statutes require appointment of a special prosecutor to avoid even the appearance of a conflict of interest. Second, the

Prosecuting Attorney must decide whether it is in the interests of justice that the Prosecuting Attorney keep the case or whether the case should be submitted to the United States Department of Justice Civil Rights Division for prosecution.

As the National Standards for Prosecution note, in the pursuit of his or her duty to seek justice, the Prosecutor needs to be mindful of the expression, "justice delayed is justice denied." From the view of society, delays in disposition of violation of criminal laws create uncertainty regarding the reliability and efficiency of the criminal justice system. Victims and families of victims are left without a necessary ingredient for closure. Defendants are kept in a state of limbo about their future. In short, delay does not serve anyone's best interests. With that being said, the reality is that due to caseloads and the necessity for complete investigations by both the prosecution and defense, case disposition often takes longer than those involved would like.

The fact that a police officer may be charged with a crime should not unnecessarily accelerate or delay an investigation or a prosecution. A police officer charged with a crime, just like every other American is presumed to be innocent and constitutional due process demands that they receive an appropriate amount of time to prepare for and receive a fair trial. The National Prosecution Standards that we have adopted assist in keeping pre-trial delays as short as reasonably possible. A prosecutor should not seek or cause delays because of a lack of diligent preparation, nor should the Prosecutor seek or cause delays for the purpose of disadvantaging the defendant or his or her counsel. In setting case priority, the Prosecutor should consider the following factors:

- a. Criminal cases should normally be given priority over civil cases;
- b. Whether the defendant is in pre-trial custody;
- c. Whether the defendant represents a significant threat of violence to others;
- d. Whether the victim is a child or family member of the defendant;
- e. Whether the defendant is a repeat offender;
- f. Whether the defendant is charged with a heinous crime;
- g. Whether the defendant is a public official;
- h. The age of the case;
- i. The availability of witnesses or other evidence;
- j. Any significant problems or interests of particular concern to the community;
- k. The need for and availability of scientific testing of evidence;
- l. The age, health and circumstances of victims and witnesses.

A prosecutor shall exercise due diligence in preparing for trial and not cause or accede to any unreasonable delay. Some factors to be considered in deciding whether or not a delay is reasonable are:

- a. Whether the case is criminal or civil;
- b. Whether the defendant is in pre-trial custody;
- c. Whether the defendant constitutes a significant threat of violence to others;
- d. Whether the victim is a child or a family member of the defendant;
- e. The need for and availability of scientific testing of evidence;
- f. The age, health and circumstances of the victims and witnesses;
- g. Whether the defendant is a repeat offender;
- h. The seriousness of the crime(s);
- i. Whether the defendant is a public official;
- j. The age of the case;
- k. The availability of witnesses; and
- l. The existence of any other significant factor that requires or justifies a delay at the request of either party.

In summation, our office will continue to treat all individuals fairly while remaining aware that allegations against members of the law enforcement community warrant close scrutiny. Our office stands prepared, when necessary, to investigate these types of allegations or to seek an independent review.

Thank you for the opportunity to take part in in this important discussion. As we have said before, our door is always open. We hope that we have thoroughly and completely answered your inquiry and provided the information that was needed.

Professionally,



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