



OFFICE OF THE RAMSEY COUNTY ATTORNEY

John J. Choi

TO: All Attorneys in the Pre-Trial Justice, Trial, and Victim, Witness & Postconviction Justice Divisions

FROM: John Kelly, First Assistant Ramsey County Attorney

DATE: May 18, 2020 *JK*

SUBJECT: Interim Guidance Regarding Charging, Resolving and Sentencing Adult VOCSL 5 Possession Cases During the COVID-19 Pandemic

I. Background

On March 13, 2020, in response to the COVID-19 pandemic, Governor Tim Walz issued an Executive Order declaring a peacetime emergency. Since that time, the governor's order has been extended and modified. In response to the Governor's declaration and orders, Minnesota Chief Justice Lori Gildea has issued orders establishing certain parameters on court operations throughout Minnesota, and Second Judicial District Chief Judge John Guthmann has issued administrative orders pertaining to court operations in Ramsey County. The most direct consequence of the state and local orders has been to significantly curtail court proceedings in all types of cases commenced prior to and during the pandemic.

This reduction has created a massive backlog of court proceedings. According to the Second Judicial District, there are currently approximately 7,000 adult criminal cases awaiting a hearing in Ramsey County. While a number of these cases will be handled by city prosecutors, at least 1,600 of them are files pending a court appearance for the Pre-Trial Justice Division or Trial Division and at least 850 are awaiting a sentencing hearing. Until the courts can begin conducting criminal proceedings at a greater pace, the backlog will continue to grow.

II. Goal of the Guidance

In response to the pandemic, we are taking critical steps to protect the health and safety of our staff and our community. Due to the ongoing need to physically distance from one another to minimize the spread of COVID-19, we recognize that even as judicial leaders explore ways to safely hold in-person proceedings, our courts will likely experience diminished capacity for an extended period of time. Therefore, we need to approach the mounting backlog of cases strategically, considering both the priority for public safety and our eventual likelihood of success at trial.

This interim guidance contains factors that are to be considered by all prosecutors throughout the Pretrial Justice, Trial and Victim, Witness & Postconviction Justice Divisions. Many of these factors have already been relied upon by our Pretrial Justice Division in determining whether to charge cases, whether to request warrants, and whether to maintain cases in an active warrant status.

As remote pretrial hearings are now being scheduled, the primary focus of this interim guidance will be for prosecutors in our Trial and Victim, Witness & Postconviction Justice Divisions with respect to how they approach **VOCSL 5 possession cases**. Please know that we will continue to consider longer term strategies to amend and expand this guidance to include other offenses.

As you review your cases, there are several important factors we ask that you please consider:

- **Date of incident** – older cases are often the most difficult to prove for many reasons, including witness unavailability or unreliable memory, and other ways staleness can erode the strength of the evidence;
- **Person’s risk to another or the community** – cases involving people who pose little public safety risk (e.g. no criminal history or little history, none of which includes crimes of violence, or domestic violence, etc.) should not be prioritized over more serious cases; and
- **Resource allocation** – we must prioritize serious cases, most urgently those where people are in custody awaiting trial and be realistic about the minimal effect a significantly delayed prosecution will have for lower severity drug possession and property offenses on rehabilitation or public safety.

As ministers of justice, we must carefully weigh these factors and prioritize accordingly to ensure the most serious cases with the greatest risk to public safety get the attention and resources they deserve. This guidance, driven by present, unprecedented and temporary circumstances, is intended to identify a way to responsibly resolve as many cases as we possibly can at a time when there are numerous serious cases also facing significant delays. There will be cases requiring exception to the broad direction listed below when there are compelling reasons.

III. RCAO Interim Guidance for Prosecutors

While the interim guidance below applies to VOCSL 5 cases, if you have a different case you believe merits consideration for dismissal or offering a gross misdemeanor or misdemeanor for similar reasons, please discuss it with your supervisor. Also, in order to track the cases we resolve pursuant to the unique circumstances presented by COVID-19, when you take action on a case as a result of this interim guidance, please make a note in the case notes and flag the case in PbK.

A. Pretrial Justice Division

1. Do not charge VOCSL 5 possession cases. Until further notice, decline any case pending charging review where VOCSL 5 possession is the only charge in the complaint (and the person has only that case pending).
2. Resolve warrants whenever possible for VOCSL 5 cases and other offenses listed in the emergency delegated release authority order. When a person has been arrested or is in custody in another jurisdiction on a complaint warrant or failure to appear warrant for VOCSL 5 or any other offense that does not pose a danger to others, do not request that the person be transported to the Ramsey County jail in lieu of providing a notice of a new court date.
3. Dismiss old VOCSL 5 possession cases. Unless a case is actively in diversion or treatment court, dismiss any VOCSL 5 case with an offense date that occurred six months or more ago. Review all remaining newer VOCSL 5 possession cases for potential dismissal as well.
4. This interim guidance **does not** apply to cases that are covered by our [Charging Policy regarding the Sale of Small Amounts of Marijuana](#), dated February 28, 2019.

B. Trial Division

Dismiss old VOCSL 5 possession cases. Until further notice, dismiss any case pending pretrial/trial where VOCSL 5 possession is the only charge in the complaint (and the person has only that case pending), and the offense date is six months old or older. Review all remaining VOCSL 5 possession cases for potential dismissal as well.

C. Victim, Witness & Postconviction Justice Division

Review VOCSL 5 possession cases for potential dismissal. Where dismissal is not appropriate, evaluate for another option that promotes the purpose of this policy.

D. Offer to Expunge Eligible Cases

In any expungement-eligible case¹ you retain, offer to seal the record after the statutory waiting period has run provided the person does not have:

- any subsequent convictions;
- any convictions for serious offenses (e.g. homicide or non-age difference CSC, etc...) in their criminal history; or
- a significant current criminal history.

¹ [Expungement Statute, Minn. Stat. § 609.02A, subd. 3](#)

A person who receives an expungement offer should contact us, after the waiting period has run, via www.helpsealmyrecord.org. If you have questions about expungement, contact Tami McConkey or Jorge Saavedra.

E. Exceptions to this Interim Guidance

Exceptions to the direction above may be made upon approval by a supervisor, where compelling justification has been provided by the prosecutor.

F. Conclusion

Please direct any questions you have about this interim guidance to your supervisor. Finally, thank you all for the work you do, particularly during this public health emergency, and your abiding commitment to justice.