



**OFFICE OF THE RAMSEY COUNTY ATTORNEY**

John J. Choi

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

**FROM:** John Choi, Ramsey County Attorney *J.C.*

**DATE:** August 4, 2020

**RE:** Policy on Length of Probation for Cases Sentenced at MSGL Level 4 and Lower

**Effective August 1, 2020**

**I. Background**

Long periods of probation have been a concern of justice advocates for some time. Data from across the country demonstrates that if someone is going to fail on probation, they tend to do so within the first few years. Studies show that New York City and the state of Missouri are jurisdictions that have shortened the maximum length of probation. Those jurisdictions have not experienced an increase in recidivism. Lengthy probation does not benefit justice system stakeholders because as time goes on the cost of administering the probation outweighs its benefit to public safety. As a result, many states are shortening probationary periods. The maximum length of felony probation in the state of Washington is one year and in Florida it is two years. However, Minnesota's percentage of residents on probation is the fifth highest in the nation.

For the past several years, the average length of probation in the Hennepin County court system has averaged about three years. In 2018, the average was 3.3 years in Hennepin County and 5.9 years in Ramsey County. It therefore seemed important to ask whether Ramsey County's longer sentences provided a better public safety outcome. We participated in a Robina Institute study where our data from 2001-2016 was analyzed. The results were that 81% of felony cases are Level 4 and lower and that 78% of felony cases already received probationary sentences of 5 years or less. In considering whether three-year probationary sentences could serve the public safety, the report showed that longer sentences did not lead to shorter recidivism rates. It also showed that the link between the length of probation and recidivism is not very strong. It concluded that in both Hennepin and Ramsey Counties, the majority of revocations occur within the first two years of probation, regardless of the length of probation.

On Friday, July 24, 2020, over 40 victim/witness advocates, attorneys and law clerks met to discuss the length of probation as a tool to ensure that our response to crime involves consequences that are proportional and fairly calibrated. In fact, the Ramsey County Corrections department is already recommending three-year sentences in many Level 4 and lower cases and Ramsey County judges are agreeing and ordering them. We also discussed the important role that probation serves, and we talked about situations where a longer sentence might best protect public safety.

## **II. Policy on Probation Length for Level 4 and Lower Offenses**

Consideration: In every case where a defendant will be sentenced to a Level 4 or lower offense, prosecutors should give consideration to the length of probation that best serves the interests of justice and public safety under the facts of their case, including the factors listed below as well as other factors that are relevant, and important:

- 1) The defendant is going to receive a dispositional departure and a longer probationary sentence is a suitable substitute for going to prison;
- 2) The defendant's behavior nearly rose to the level of an offense that was above Level 4. For example, an Assault 3 case where the level of harm inflicted was almost great bodily harm;
- 3) The case involves aggravating factors, including bias;
- 4) The defendant needs a longer period of time to complete treatment or programming;
- 5) The defendant needs a longer period of time to pay restitution;
- 6) There are substantial and compelling circumstances. For example, repeated, similar offenses such as Burglary or Auto Theft within a short period of time against multiple victims, or multiple offenses within a short period of time against the same victim; or
- 7) The offense arises out of a domestic or other situation where the victim/survivor could benefit from a longer period of monitoring and supervising for the defendant. This could be true in cases involving vulnerable victim/survivors such as children or older adults as well as intimate partners. We discussed that if these cases are in our policy as presumptively having 3 years of probation, when we need to argue for longer probation lengths we risk giving the appearance that the reason for our request is coming from the victim/survivor. Since this could endanger them, it would be best to except these cases from our policy with the understanding that prosecutors can always offer 3-year sentences when they determine that they are appropriate.



Presumption for General Offenses: For offenses that will be sentenced at Level 4 and lower and do not arise out of domestic situations or situations where the victim/survivor is a vulnerable person such as a child or an elderly adult, a probationary sentence of three years is assumed unless the prosecutor's analysis of the case leads them to determine that the interests of justice and public safety can only be served by a period of probation longer than three years. When this occurs, the prosecutor should:

- inform their supervisor of the decision and the reasons for it by email;
- save the email in PbK in the Attorney Work Product folder (folder document 8, AWP ADJV);
- document the exceptions by including them in the description of the plea agreement that they place under the "Court Dates" tab of PbK; and
- either:
  - make certain that any agreement as to length of sentence is included in the plea petition; or
  - attend the sentencing hearing and argue for the longer period him or herself if they are not able to reach an agreement.

Presumption for Domestic and Vulnerable Victim/Survivor cases: For offenses that will be sentenced at Level 4 or lower and arise out of domestic situations or situations where the victim/survivor is a vulnerable person such as a child or an elderly adult, a probationary sentence that is longer than three years is presumed. The prosecutor should:

- document all reasons that support a longer period of probation by including them in the description of the plea agreement that is placed under the "Court Dates" tab of PbK; and
- make certain that if an agreement is reached, it is included in the plea petition.

Prosecutors may negotiate three-year probationary periods in domestic matters or matters with vulnerable victim/survivors when they determine that the shorter period fits the best interest of justice and public safety. They should document their reasons for this determination in the same manner.

Thank you for your contributions to this policy and to our overall work to more fully understand the consequences of the decisions that we make in our cases and our work to ensure that they are fair and just.

A handwritten signature in black ink, appearing to read "Allen", with a small mark at the end.