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MEMORANDUM

To: Rod Underhill, Norm Frink, John Bradley
From: Wayne Pearson, Jeff Howes, Fred Lenzser
cc: Elizabeth Kafel
Date: August 26, 2010
Subject: Revised Misdemeanor Procedures

This document is a revision of the first version that was published effective July 16, 2010. As a result, it reiterates material from that first version while also expanding the explanation of the treatment of some misdemeanor crimes. This new version will be implemented on Wednesday, September 1, 2010.

Since July 1, 2010, the Misdemeanor Trial Unit attorney staff has been reduced from 8 (Level 1) attorneys to 6. The Misdemeanor Intake Unit attorney staff has been reduced from 3 (Level 1) attorneys to 2. To accommodate this 27% reduction in staff, the following changes in the prosecution of misdemeanor crimes was implemented on July 16, 2010 followed by the implementation of these clarifications to be effective September 1, 2010, exclusive of cases traditionally prosecuted by the Domestic Violence Unit.

The listing of charges and the manner of issuance for each is limited to charges for which the DA's Office screens at least 5 cases per year. Charges screened less frequently will be screened on a case by case basis with the below concepts in mind.

1. Issuing

a. The following charges will be screened and ISSUED AS A CRIME:

- i. DUII
- ii. Attempt to Elude
- iii. Reckless Driving
- iv. Sexual Abuse in the Third Degree or Harassment of sexually intimate part
- v. Public Indecency or any exposure of genitalia in the presence of children
- vi. Assault in the Fourth Degree
- vii. Violation of a Stalking Order
- viii. Menacing
- ix. Recklessly Endangering another Person
- x. Furnishing False Information Charges
- xi. Prostitution related offenses
- xii. Animal Abuse
- xiii. Theft, Forgery in the Second Degree and Criminal Mischief II (value or damage \$250 or greater)

- xiv. Weapons crimes
- xv. Resist Arrest unless a stand alone charge where the only risk of injury is to the defendant.
- xvi. Other aggravated cases such as but not limited to multiple charges or egregious facts. Examples of such aggravated cases include:
 - 1. Defendant is on the NLCEP List and is not on Felony Probation or Post Prison Supervision and thus a Bench Probation sentence is being sought.
 - 2. Defendant is working with the Service Coordination Team and is not currently on Felony Probation or Post Prison Supervision and thus a Bench Probation sentence is being sought.
 - 3. Defendant is a Chronic Offender in a particular neighborhood and is not on Felony Probation or Post Prison Supervision and thus a Bench Probation sentence is being sought. Chronic Offender means that the defendant has been arrested for at least 6 prior felony or misdemeanor crimes in the past 6 months.
 - 4. Defendant is eligible for a Specialized Sentence thru the RAC Community Court.
 - 5. Defendant is a Chronic Trespasser against this particular victim. Chronic means that this is the defendant's 3rd arrest for Trespass 2—OR—that this is the 3rd observation of the defendant for committing Trespass 1 or 2 against this particular victim in the past 6 months.
 - 6. Defendant is a Chronic Shoplifter at this particular business. Chronic means that this is the defendant's 3rd arrest for Theft 2 or 3—OR—that this is the 3rd observation of the defendant committing Theft 2 or 3 against this particular victim in the past 6 months.
 - 7. Defendant is a known Graffiti Offender and thus a Bench Probation sentence is being sought. A known Graffiti Offender is a defendant who 1) uses a tag that is listed in the Graffiti Task Force database; 2) whose tag has been found on multiple properties; or 3) who has previously been arrested for a graffiti related offense.
 - 8. Defendant is charged with Interfering with Public Transportation for trespassing in a Tri Met vehicle and this is the defendant's 3rd arrest in the past 90 days.
 - 9. Defendant is charged with Theft 2 or 3, or Criminal Mischief 2, and the victim is a private person rather than a business.
 - 10. Defendant is charged with any type of Car Prowl type crime.
 - 11. Defendant is charged with residential Trespass 1.
 - 12. Defendant is charged with Offensive Littering and the incident involves commercial dumping
 - 13. Defendant is charged with Hit and Run and defendant is at fault in causing accident, but has no insurance.

14. Defendant is charged with DWS and is suspended for a DUI conviction, for refusing or failing a breath test, or for Felony Attempt to Elude.
 15. The crime constitutes a violation of a "specific," non-general, condition of a bench probation.
 16. The defendant is on felony probation for a Multnomah County case or parole but only after applying the following analysis:
 - a. The screening DDA should consider; 1) the crime for which the defendant is on probation or parole; 2) the defendant's arrests since being placed on parole or probation; 3) the relationship between the facts of the present case and the crime for which the defendant is on probation or parole; and 4) the seriousness of the facts of the present case.
 - b. Examples of cases that, if issued to remain a crime, are unlikely to form the basis for a probation revocation include, but are not limited to, Fail to Present or Carry an ODL, City ordinance alcohol crimes, Violation of Park Curfew, Unlawful Erecting Structures and Unlawful Camping.
 17. The defendant, although committing a misdemeanor, fits the Unit C criteria as an active gang member.
 - a. "In determining if the suspect is an active member, the gang prosecution unit relies upon all available information. That includes the following: (1) PPDS Printout; (2) contact with the GET Intelligence officers; (3) the nature of the specific case being referred; (4) review of prior police contacts. A case is considered to be gang related if a defendant has a gang affiliation either as a member or an associate."
- xvii. An Attempt to commit a crime listed above.
- xviii. An Attempt to commit a Class C felony other than an Attempt Theft I committed by intending to sell an item that was previously shoplifted by the defendant.
- b. All other misdemeanor crimes including, but not limited to those listed in i - xii below, not otherwise eligible for issuance as a violation at screening as delineated in subsection c below, would be ISSUED AS A CRIME, FOR REDUCTION TO VIOLATION AT ARRAIGNMENT (with the exception of those aggravated cases listed in 1. a. xvi, above which would be issued as a crime and remain a crime):
- i. Theft or Forgery in the Second Degree (commercial— value less than \$250)
 - ii. Misdemeanor Possession of a Controlled Substance offenses including residue quantities of cocaine, methamphetamine and heroin.
 - iii. Harassment (other than noted above)
 - iv. Trespass I or II that involves non-commercial property.

- v. Interfering with a Police Officer
 - vi. Interfering with Public Transportation
 - vii. Disorderly Conduct II
 - viii. Criminal Mischief in the Second Degree (other than noted above)
 - ix. Hit and Run (other than noted above)
 - x. Resist Arrests not included above– If there is reckless injury, see Assault IV above. If there is intentional injury, refer for felony prosecution.
 - xi. Theft in the Third Degree (other than noted above)
 - xii. Portland City Code Crimes
- c. Of the crimes referred-to in subsection b, those that follow will be ISSUED AS A VIOLATION AT SCREENING unless that crime fits an exception listed under subsection 1. a. xvi above.
- i. Theft III with no prior Thefts within the past 30 days.
 - ii. Any Theft related offense with a value of less than \$10.
 - iii. Disorderly Conduct II not involving an Assault or Attempted Assault.
 - iv. Interfering with a Police Officer with no priors within the last 6 months
 - v. Misrepresentation of Age by a Minor
 - vi. Non-commercial Offensive Littering
 - vii. Furnishing Alcohol to a Minor with no priors within the last 6 months
 - viii. Criminal Mischief III
 - ix. Interfering with Public Transportation (platform only cases).
 - x. Trespass I or II that is non-residential and the defendant has no prior trespass arrests involving the same victim within the last 6 months.
 - xi. Any regulatory offenses for which there exists a State regulatory administrative agency with enforcement/sanction authority such as No Alcohol Service Permit or Serving a Visibly Intoxicated Person
 - xii. Misdemeanor PCS I or II cases and all PCS III, IV and V with no prior PCS arrests within the last 6 months.
 - xiii. Fail to Display an ODL
 - xiv. DWS not involving suspensions for DUII, refusal or failure of BAC, or Felony Attempt to Elude.
 - xv. Unlawful Possession of Fireworks
 - xvi. Any of the following Portland City Ordinance Crimes:
 - 1. Indecent Exposure cases not listed in 1. a. v. above.
 - 2. Unlawful Camping
 - 3. Unlawful Erecting Structures
 - 4. Misuse of a Public Restroom
 - 5. All non-chronic City ordinance Drinking, Open Container, or Alcohol in the Park offenses. Chronic cases involve situations where the case being reviewed is the defendant's 3rd or subsequent violation of any of these alcohol ordinances within the last 6 months
 - 6. Violating Park Curfew
 - 7. Urinating/Defecating in a Park

- d. Anticipated effect of changes in issuing practices
 - i. Increase in cases referred to Community Court as violations
 - ii. Fewer defendants will opt for the community service or social service option as a method of resolving their pending cases, choosing instead to pay a fine
 - iii. Increase in violation cases to be tried in Courtroom 124
 - 1. Chief Criminal Judge Frantz has agreed to increase Courtroom 124 docket, currently held bi-weekly, to weekly – Monday afternoons.
 - iv. Reduces ability to collect restitution for victims of property crimes
 - 1. Theft/forgery (less than \$250)
 - 2. Criminal Mischief
 - v. Reduces ability to collect restitution for victims of traffic crimes involving damage to property
 - 1. Hit and Run other than those listed in section xvi (13) above.
 - vi. Loss of ability/leverage to encourage drug abusing defendants to seek treatment
 - e. As to cases listed under 1. b. or c. above, currently pending
 - i. If open, the case will be reduced to violation consistent with court policy for that process.
 - ii. If in warrant status, case will remain charged as a crime until warrant is served, at which time case will be reduced to violation at first hearing consistent with court policy for that process.
2. Staff/Coverage
- a. Reducing Intake by 1 DDA leaves Intake with minimum coverage (excluding interns) to cover 2 courtrooms and leaves one deputy to screen/issue cases. When interns are available (approximately 60% of the time) and additional one or two deputies will be available to screen/issue cases. Additional resources (deputies) will be needed to handle the daily load
 - b. The Gresham District Court deputy will be set up to screen cases remotely from Gresham as is the case with Neighborhood DA's
 - c. The Neighborhood DA's will continue to screen/issue cases from their remote locations
3. Misdemeanor Trial Unit
- a. Courtroom Coverage - trials
 - i. Currently, there are four dedicated misdemeanor trial courtrooms, hearing misdemeanor (non-DV) cases Monday through Thursday. In each courtroom, up to six trials are scheduled every day.
 - ii. Certified Law Students/Interns are intermittently available to cover misdemeanor staffing needs. Out of 12 months per year, interns are available during 7 of those months. They are not available to work during final exam periods. Additionally, interns are not available during school vacations (except summer). Finally, American Bar Association rules prohibit a full time law student from working over 20 hours per week. Only night-students are available to work full time.

- iii. When interns are available (June 1 – August 15; October 1 – November 30; January 15 – March 30), coverage of four courtrooms will be possible – with the addition of possibly one over-flow courtroom during summer months.
 - iv. Chief Criminal Judge Frantz and the Court have agreed to limit the number of dedicated misdemeanor courtrooms to **3** during times when there are no interns available.
 - 1. Judge Frantz has also agreed to alter the current trial assignment practice of front-loading the weekly schedule with DUII trials. DUII trials routinely take more than one trial day to complete. If there are 3 DUII trials that begin on Monday, it is unlikely that any/all will be completed before Tuesday, noon. As such, any trials scheduled to begin Tuesday morning will need to be delayed or rescheduled. Judge Frantz has agreed to decrease the number of DUII trials on Tuesdays and increase the number of DUII trials on Wednesdays.
 - v. Civil commitment hearings are scheduled daily, beginning at 9:00 a.m.
 - vi. Criminal Procedure Court deals with misdemeanor cases every morning (Monday through Friday).
 - vii. Mental Health Court will be transitioning to weekly hearings during July, 2010. The Senior DDA assigned to the Misdemeanor Trial Unit will continue to staff mental Health Court.
 - viii. Gresham District Court – will be staffed daily by a Misdemeanor Trial Unit DDA. That DDA will take on increased duties by remotely issuing traffic and non-traffic cases for Misdemeanor Intake
 - ix. Currently, all non-traffic, violation trials are heard in Courtroom 124 twice each month (Monday afternoons). Changes to issuing policies will result in a greatly increased number of non-traffic violation trials. Chief Criminal Judge Frantz has authorized Courtroom 124 to hear non-traffic violation trials every Monday afternoon, beginning August 2, 2010. Discussion will continue regarding whether non-traffic violation trial court will need to expand to full day, or multiple days per week.
- b. Pre-Trial Conferences
- i. Currently, pre-trial conferences occur every Friday. Two deputies/interns are assigned to each of four dockets. Even after the reduction of two DDA's, the Misdemeanor Trial Unit will continue to staff the four dockets.
 - 1. There will be a reduction in the number of cases handled on each docket as the changes in issuing policy begin to reduce case numbers
 - 2. Reducing the number of pre-trial dockets will increase the number of cases handled on each docket. If this were to occur, the number of cases resolved at pre-trial conferences through plea negotiations would be reduced – larger dockets result in

less time for defense attorneys to work with their clients toward resolution of their cases

3. To accomplish this, the Misdemeanor Trial Unit will rely upon deputies from other units to provide coverage during pre-trial conferences. This is possible due to the lack of criminal trials held on Fridays.
- c. Other coverage issues
- i. During the five months of the year when interns are not available to work in the office, the Misdemeanor Trial Unit will be at minimum staffing (3 trial courtrooms, CPC court, and civil commitments). As such, vacations will not be authorized during these time periods.