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MEMORANDUM

To: Assistant District Attorneys and Staff, Western Judicial Circuit
From: District Attorney Deborah Gonzalez
Re: Fairness and Equity in the Western Judicial Circuit District Attorney Office
Date: January 1, 2021

The goal of the Office of the District Attorney for the Western Judicial Circuit is to make the people of Clarke and Oconee counties safe. We will do so by seeking justice, bringing balance, fairness and equality to criminal prosecution, and ending this Circuit's participation in mass incarceration and the school to prison pipeline.

It is not our job to judge character. It is instead our job to assess conduct and where the evidence shows that conduct violates the law, to use the power and resources of the Office of the District Attorney to address that conduct. We will strive to make victims whole, defendants law abiding, and the community thrive.

Our approach will be inclusive and will be attentive to the voices across the community. We will hear individual voices as well as the voices of those who speak for their communities, and we will listen, mindful of difference and the need for inclusion, and mindful of the mandate of equality and fairness to all regardless of race, income or ZIP code.

We will continue to develop alternatives to incarceration, alternatives to probation, alternatives to sentencing, and alternatives to conviction. We will decline to prosecute where we find it is not in the interest of justice to do so, and we will seek non-incarceration sentences before we determine that, in a given case, incarceration is the only appropriate sentence, always aware that incarceration is, by definition, destructive of personal integrity and human potential, destructive of families and communities, inefficient and vastly more expensive than other paths.

We will always remember that probation and other actions we take that do not involve incarceration are not privileges that must be earned by the accused. These are instead actions that we take in order to do justice, hold individuals accountable for their conduct, and make our community stronger and safer.

This will be a cooperative and inclusive effort within the Office and without, and will take work, training, communication, creativity, and acceptance of our own responsibility and the impact the Office of the District Attorney can have on the individuals, families and communities.

Last, these changes in direction and focus are designed to call more attention and resources to be devoted to the offenders who are driving a significant proportion of serious and violent crime, while reducing the impact on low-level, non-violent or first-time offenders, for whom rehabilitation and second chances will be the goal.

1. Charging

Prosecutors have the power to charge or not to charge; to choose which charges to bring; to offer a plea or not, and to recommend a sentence based on those charges. These decisions substantially impact people's lives, their sense of justice, their liberty, their livelihood, and their families, in addition to the community's fundamental faith in the system. We make these decisions every day. With that in mind this Office:

- a. Will adopt an office-wide presumption not to charge multiple minimum mandatory crimes if and when one crime accounts for all the facts and circumstances of an event;
- b. Will not charge simple possession of marijuana offenses, regardless of amount and we will encourage police agencies to expand the use of civil citations of marijuana possession in lieu of criminal arrest;
- c. Will not charge simple possession of user-quantities of drugs other than marijuana or will refer to pre-trial diversion on a case-by-case basis;
- d. Will not charge possession of "drug-related object" offenses;
- e. Will consider the impact of mandatory minimum sentencing and require supervisor approval prior to pursuing charges that carry mandatory minimum sentences;
- f. Will shift resources to the front end of the prosecution process so as to thoroughly screen and review all cases before accepting them for prosecution;
- g. Will charge only offenses that we intend to be prosecuted (i.e., will not overcharge for the purpose of leveraging a guilty plea);
- h. Will hold committal hearings for all persons who remain in custody prior to trial; and
- i. Will take into account collateral consequences to undocumented defendants.

2. Diversion

The existing pre-trial diversion program will be expanded and made available to persons regardless of their income. All cases will be approached with the possibility of diversion as an alternative to conviction while still achieving accountability and justice. Policies will be established for diversion based on both the offense and the offender so as to ensure that discretionary decisions are based on uniform criteria and not determined by implicit or explicit bias.

3. Bail

The current money bail system (the requirement that money or property be posted for pre-trial release) raises issues of fundamental justice in the criminal legal system because it creates separate and unequal systems for the rich and the poor and allows punishment without conviction. In addition, money bail does not accurately support the essential function of bail, which is making sure defendants return to court.

- a. The DA Office will recommend that defendants charged with non-violent offenses should be released on "own recognizance" bonds (own recognizance is the terminology in this jurisdiction

for bond that does not require the posting of money or other security);

- b. The DA Office will recommend that defendants charged with violent offenses involving actual injury to others will be considered for own recognizance bonds on a case-by-case basis; and
- c. The DA Office will recommend that defendants charged with violent offenses in the nature of threats but whose actual conduct caused no physical injury will be presumed eligible for own recognizance bond.

4. Discovery

The office will take care to comply with all discovery rules. The main vehicle for compliance is the continuation of the existing open file policy. In addition, we will provide exculpatory evidence to the defense at the earliest possible time in the process and will make discovery available prior to arraignment or as soon as possible thereafter. We will not obstruct defense interviews of witnesses or law enforcement officers, including GBI crime lab employees and field agents.

5. Pleas

When fashioning pleas and resolutions this Office:

- a. Will continue to take into account harm to the victim and the victim's need for justice;
- b. Will continue to take defendant's rehabilitative needs and background into account and encourage defense counsel and others to provide information on those needs, including mental health or drug treatment needs;
- c. Will consider alternatives to incarceration that limit collateral consequences while accounting for public safety (i.e., house arrest), and ensure that alternatives are available to indigent defendants as readily as to defendants with significant income or assets;
- d. Will consider whether a person can safely reside in a community-based residential program, rather than in prison; and
- e. Will not impose a "trial tax" to encourage the defendant to accept a plea.

6. Sentencing

The State of Georgia has the highest per capita probation rate of any state in the United States and it has one of the highest rates of incarceration. There is no evidence that these high probation and incarceration rates make the people of our state safer or more secure. Rather, the expense of this approach to crime control has limited the resources available for rehabilitation, for substance abuse treatment, for counseling, for job training and economic development, and for policing, all of which are a better investment in the future than is money invested in punishment. Money invested in renewal is money invested in the future. Money invested in punishment is money invested in the past. Over-incarceration destabilizes families and diminishes opportunities for healthy family and work relationships, among many other benefits. Supporting these family and community connections helps prevent crime, promotes individual well-being and permits people to make a positive contribution to the community and

to the economy. This office will take a number of steps to reduce incarceration and shift resources to more effective crime prevention, restoration of community and rehabilitation of individuals.

This Office will:

- a. No longer seek the death penalty. Cases which are legally eligible for the death penalty are eligible for sentences of life without parole and life with parole eligibility after serving thirty years. Both of these sentences constitute very substantial punishment. Decisions to seek the sentence of life without parole are a sentence of death in prison. Decisions to seek sentences of life without parole must be made by the District Attorney;
- b. Recommend sentences that will increase the likelihood of successful reentry and reduce recidivism because over 95 percent of defendants who are sentenced to incarceration are released and will reenter their communities. Prosecutors will fashion sentencing recommendations that account for the individual circumstances of the case, including the victims' need for justice and recompense, as well as the defendants' needs for rehabilitation and reintegration back to society;
- c. Develop policies to reduce incarceration levels including the development of restorative justice practices that will help victims heal while also impressing upon the defendant the negative impact of his or her actions on the victim and society.
- d. Establish a sentencing review project, whereby the Office will review sentences imposed in the Western Circuit and that are currently being served. This project will include the development of guidelines regarding offense of conviction, length of sentence, characteristics of the person serving the sentence, the interest of the community and the interest of the victim so as to insure fairness and even-handedness in the review process; and
- e. Maintain and make available data via an online portal, including charge and sentencing data by race, gender, ethnicity, disposition, and other variables.

7. Reduced Use of Probation

- a. As noted above, the State of Georgia has the highest per capita probation rate of any state in the United States. There is no evidence that this higher probation rate makes the people of our state safer or more secure. Keeping in mind that the majority of probation violations occur in the first twelve months of probation, this Office will carefully consider what, if any, period of probation is appropriate to recommend in a given case; and
- b. Support the termination of probation after three years following review of probation compliance where a probation sentence is three years or longer; and
- c. Support limiting the length of probation to two years, when statutorily permissible, following a period of incarceration where sentencing is split between a period of incarceration followed by a period of probation;
- d. Support conversion to unsupervised probation after the service of two years probation, absent extenuating circumstances.

8. Probation Violations

This Office will:

- a. Work with the Georgia Department of Probation, the judiciary and defense counsel to avoid revocation for technical probation violations, such as missed curfews, failure to pay fees and fines, dirty drug screens, etc.;
- b. Oppose the issuance of probation revocation warrants in all cases where a summons is likely to be sufficient to assure the presence of the probationer in court and support the setting of own recognizance bonds in probation revocation cases where a probation warrant has been issued.
- c. Support the termination of probation after three years following the mandated statutory review for probationers sentenced to probation for three years or longer.

9. Costs and Benefits of Sentencing

- a. At sentencing, the Assistant District Attorney, will submit to the court an economic impact statement with respect to the sentence the District Attorney's Office is recommending. This statement will include the cost to the taxpayer of incarceration and/or probation supervision. It will also include a statement of reasons why the District Attorney's Office believes those costs are appropriate when balanced against the benefits, economic and otherwise, of imposing the sentence.

For instance, if the cost of incarceration for one inmate for one year in the Department of Corrections is \$25,000, and the ADA is seeking a sentence of 5 years in prison, then the ADA will put on the record, through the economic impact statement, the fact that the sentence will cost the state \$125,000 and the rationale for that expenditure of taxpayer money in the particular case. Costs will be based on Georgia Department of Corrections stated average costs for the type and length of sentence, or the Clarke or Oconee County Sheriff's Office's estimate of average costs, unless more specific information is available in a particular case or due to special circumstances.

10. Juvenile

The Georgia juvenile code sets forth that the "paramount child welfare policy of this state is to determine and ensure the best interests of its children." This Office will do its utmost to approach the potential prosecution of a juvenile with that purpose in mind. The goal is to secure for each child who comes within the jurisdiction of the juvenile court such care and guidance, preferably in the child's own home, as will secure the child's moral, emotional, mental, and physical welfare as well as the safety of both the child and community. To that end, this Office will:

- a. Operate on a presumption that children should not be prosecuted for conduct that occurred while at school other than the commission of violent assault with a deadly weapon or felony sexual assault;
- b. Immediately oppose the handcuffing and shackling of juveniles, which is currently the norm in this jurisdiction, absent exceptional circumstances;

- c. Promote alternative decision-making processes such as teen accountability courts, restorative justice practices and holistic family counseling;
- d. Be guided in all aspects of our work by the fundamental principle that kids in the juvenile system are minors who are still cognitively developing;
- e. Establish a presumption against recommending the transfer of juveniles to adult court, unless required by law. Even when required by law, the District Attorney will require review of the specifics of the case to see if an extra measure should be taken to remand the case back to the juvenile justice courts through a special filing; and
- f. Ensure that juvenile prosecutions are carried out by ADAs with appropriate experience and training in best practices for juvenile justice.

11. Record Restrictions (Expungements), Pardons and Commutations

This Office will:

- a. Support record restrictions in all cases where applicable by law;
- b. Support record restrictions for arrests for crimes that are now considered legal, as well as prior arrests for possession of marijuana and paraphernalia crimes related to marijuana possession;
- c. Support pardon applications when a person applies in connection with a crime for which there is no violence and the crime is isolated in nature, when the applicant has demonstrated sufficient rehabilitation;
- d. Support clemency applications when the crime for which the applicant is seeking relief is nonviolent in nature; and
- e. Otherwise support pardon and clemency applications as justice and fairness may require based on the circumstances. ADAs will consult with the District Attorney in these instances.

12. Other Considerations in Charging and Prosecution

This Office will:

- a. Take into account collateral consequences to undocumented victims or witnesses when deciding how to present a case; and
- b. Support eyewitness identification procedures consistent with best practices in eyewitness identification policy.

13. Transparency

Any public agency that is serious about accomplishing its stated goals will emphasize monitoring its progress and being transparent about the degree of its success. It is currently very difficult to collect,

analyze and make available to the public information regarding the Office's activities. Going forward it will be the policy of this office that transparency and the accountability to which it gives rise will be a priority.

We will do the best we can in this regard under current institutional arrangements and resource constraints and will take steps to secure additional resources to make this work possible.

This office will:

- a. Establish data collection, analysis and reporting systems that will allow our office to maintain and publish regular statistics about prosecutions and, to the extent possible, related criminal justice processes. The data will include at minimum the number of felony arrests made by the police each month, cases filed by the prosecution each month, disposition statistics, pretrial incarceration rates and length of stay by offense category, average bond for each class of offense, and race, gender, age and other demographic data, with the purpose of allowing us to assess our work and for the public to hold the District Attorney's office accountable;
- b. Coordinate with other relevant agencies so that information collected by each office can be brought together and presented to the public in a way that promotes transparency and accountability across the criminal justice system; and
- c. Release to the public dash-camera, body-camera, or other audio or video footage related to police-involved conduct as permitted by law.

Due to the important nature of the direction and guidance outlined in this document this Office is making this memo public. Nothing in this document shall create an enforceable right, entitlement, or privilege to a specific outcome in any criminal or civil matter, nor shall it constitute a waiver of the immunities available to the State or State employees.