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Harris County District Attorney



COMMUNITY ACTION PLAN

Evidence Integrity

**A Policy/Program Plan Based On
2017 Community Transition Committee Recommendations.**

Committee Members:

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Since taking office, Kim Ogg and the new Administration at the Harris County District Attorney's Office (HCDAO) have been guided by a core set of principles that have shaped policy change and resulted in the implementation of new program initiatives. Because difficult decisions arise every day during the administration of justice, the District Attorney and her staff rely upon these principles in seeking fair and equal justice for the people of Harris County. These guiding principles can be found on the HCDAO website under "The Office" tab.

Overview

The HCDAO is the front and back door of the criminal justice system. A prosecutor's role is unique and bears the responsibility for ensuring that justice is done in every criminal case. The integrity of each prosecution is significantly dependant on the integrity of the case evidence, from recovery and storage to use and preservation. Some of the guiding principles which apply are;

- **To strive for equality in the use of prosecutorial discretion;**
- **To collaborate with other governmental and law enforcement agencies so that we can solve and prosecute crimes more effectively;**
- **To act with professional integrity in every situation; and**
- **To be mindful of our duty to see that justice is done, and as representatives of the people, to be transparent in our actions.**

By working with law enforcement on policies and programs designed to insure that evidence of crimes are lawfully recovered, secured, stored, scientifically tested, and appropriately preserved, the HCDAO is working to build trustworthiness in the criminal justice system itself.

Action

HCDAO Investigations and Quality Assurance

The Intake Division of the HCDAO is responsible for review of every criminal case that law enforcement seeks to file in Harris County, making it the literal "front door" of our local criminal justice system. Unlike most jurisdictions where police officers "direct file" their cases following arrest, in Harris County, the District Attorney reviews *all cases* prior to filing charges

or authorizing the jailing of an individual. This means that traditional legal standards for probable cause must be articulated by an arresting officer to a reviewing prosecutor up front. The application of this legal standard at this early stage, prior to an accused even appearing in court, is nationally unique. The result is that many cases which do not rise to such legal standards are culled prior to anyone being jailed. The Intake Division itself offers an early quality control measure which employs legal standards from the start to each criminal case filed in Harris County. Under the Ogg administration, the Intake Division is currently being re-tooled to employ full-time attorneys and staff dedicated to those positions, instead of employing full-time prosecutors on an extra-shift for extra-pay schedule. Senior leadership manage the Intake and Grand Jury divisions in a single bureau.

Recent changes in law and internal policy changes within the HCDAO have produced notable improvements in the quality and quantity of felony and misdemeanor cases being filed. Drug policy reforms implemented by the Ogg Administration mean approximately 10,000 fewer misdemeanor Possession of Marijuana cases filed per year and approximately 2,000 fewer cocaine residue cases, known as “trace cases,” filed per year. New law now requires video-taped confessions (in most instances) and new law enforcement standards related to police identification procedures are per se improvements on chronic investigative deficits which have in the past harmed the quality of criminal prosecution in important cases. Raising scientific evidentiary standards by establishing regular quarterly meetings with the Houston and Harris County forensic institutes has already improved testing time averages and been the catalyst for more “mass disclosures” to defendants and their counsel in post-conviction matters in which Brady or other exculpatory information is disclosed to the HCDAO.

Evidence Storage

Prosecutorial responsibility for evidence collection, storage, transmission, testing, and preservation attaches when criminal charges are accepted and filed by HCDAO Intake division prosecutors. Following numerous scandals related to destruction and loss of evidence stored by various law enforcement agencies, all such agencies are now on notice to notify the HCDAO immediately. Likewise, when prosecutors discover discrepancies, the HCDAO Office of

General Counsel are on notice to notify the affected agency. All discrepancies must be reconciled before prosecutors may plead a criminal case.

Auditing the storage of evidence in the custody of law enforcement is encouraged, but fall outside the jurisdiction of the HCDAO. However, the Ogg Administration has engaged all constables in a discussion about centralizing evidence storage for all county law enforcement agencies. District Attorney Ogg is supportive of a regional “property room” and has taken such a position publicly.

The HCDAO Public Corruption Division is the appropriate division for reporting individual civil rights violations stemming from the 2016 discovery of destroyed evidence in the Pct. 4 evidence room or elsewhere.

Use of Depositions

The HCDAO has no plans to begin using depositions as they remain rare in criminal practice for many reasons, ranging from cost to due process. However, the veracity of information presented to the HCDAO Intake Division by law enforcement officers seeking to file criminal charges has taken on new prominence. Recent policy changes requiring law enforcement officers to swear under penalty of perjury to their probable cause statements transmitted electronically to HCDAO Intake Division underscore the importance of truthfulness to officers filing criminal cases. This new requirement reflects critical safeguards in testimonial evidence provided by police officer witnesses.

Crime Scene Investigation and Forensic Laboratories

It is agreed that crime scene investigators should work without bias and that independence from the investigating agency reduces the risk of bias in investigation. However, this is not yet the national or local norm in practice. While training standards for police officers are set by the State of Texas and the employing agency, the HCDAO is working with law enforcement agency leaders to improve quality control in local evidence collection. The HCDAO supports all efforts to accredit crime scene investigators and their law enforcement agencies, actively promoting collaboration between small police agencies and their larger counterparts on complicated crime scenes. Further, the HCDAO is committed to acting transparently in all actions, including

disclosure of all case information revealing improper handling/tampering with evidence, should that occur. Regularly scheduled meetings with both major crime labs in Harris County has led to better communication and increased lab efficiencies (shorter turnaround times) through a new system of prioritizing testing of evidence submissions. The result is helpful in keeping cases moving through the system at a faster pace; likewise, increased collaboration between upstream and downstream stakeholders in the criminal justice system has resulted in cost savings and swifter justice for crime victims as well as those accused. The HCDAO supports the release and distribution of regular public reports such as those published by the Houston Forensic Science Center as well as immediate disclosure of irregularities or problems that arise in the crime labs themselves. Such notices to date have included information ranging from equipment failures to changes in scientific testing processes to actual errors in collection and/or testing of evidence-- with such notices now being immediately disclosed by the HCDAO to affected defendants, their counsel, and the criminal defense bar/public defender's office. Reduction of backlogs and average turnaround time in lab testing is covered at every collaborative meeting, reflecting the ongoing commitment of DA Ogg and the HCDAO towards continual improvement.

Procedures and Training Regarding Use of Evidence

Providing relevant and culture-changing continuing legal education to prosecutors is one of Professional Development Director Yvonne Taylor's most important tasks. Insuring timely notification by the HCDAO's Conviction Integrity Division to prosecutors and to the defense bar, when and if evidentiary breaches occur, keeps the HCDAO current in their legal obligations to disclose evidentiary problems, as now required by Texas law.

Quality control in the selection of experts chosen by prosecutors for trial testimony is closely monitored by HCDAO leadership. The process of reviewing the backgrounds, qualifications, past testimony and credentials of State experts is important to the Ogg Administration so that state- sponsored testimony is ethical, unbiased and defensible on appeal. Review from accredited third parties regarding facts related to the integrity of any state sponsored expert witnesses are welcomed. Experts utilized in Capital Murder trials now undergo robust review and evaluation by HCDAO leadership prior to solicitation or sponsorship of any testimony presented by or adopted by the trial prosecutor. Accordingly, selection of expert witnesses are now made at the

highest level of HCDAO leadership. The HCDAO does not “expert shop” and does seek additional experts when evaluations of defendants are not considered favorable to the state’s case. By law, the HCDAO does not oppose requests by the defense to have the court evaluate defendants for competency. A library of expert testimony has now been established at the HCDAO, providing prosecutors previous trial transcripts of experts used in criminal cases in Texas and this contributes to the decisions of the DA in hiring or rejecting expert witnesses. Collection and maintenance of electronic recordings of expert depositions and previous testimony, when and if available, will also be explored by the HCDAO.

Police Body Cameras (BWC)

DA Ogg supports DWC policy recommendations submitted by the Criminal Justice Committee on the 2015 Mayor Turner Transition Committee. The policies closely mirror BWC policies adopted by current Houston Police Chief, Art Acevedo, during his tenure in Austin, TX. DA Ogg is open to offering input on BWC policies for all agencies equipped with cameras.

Electronic Open File Discovery Systems (EDS)

The Harris County District Clerk has been mandated to implement E Filing in Harris County’s criminal courts by January 1, 2018. The HCDAO is currently working towards participating an e-filing system. This Administration has provided assistance to the District Clerk’s Office toward this mandate. One unique challenge to expansion of technology in case filing is the number of law enforcement agencies that file cases electronically with the District Attorney’s office.

Electronic Database Storage and Retention

Ultimate technology goals for the HCDAO include a paperless system and office, with cloud storage being one option for securing an independent and safe way of maintaining hundreds of thousands of pending and disposed of files.

Drafting (Policy) Committee

The editing and reformulating of policies pertaining to evidence standards and expert testimony is a dynamic project because the HCDAO Operations Manual is a living document. DA Ogg is

committed to refining and improving policies for prosecutors reference and use as guidelines in every aspect of their employment. This, in conjunction with continued training, will help be the guideposts for insuring the integrity of physical and testimonial evidence used in prosecutions.

The Harris County District Attorney's Office and DA Kim Ogg are dedicated to continued community involvement in the criminal justice system and the application of fair and equal justice to all of Harris County. We would like to thank all the participants of Transition Team for their time and dedication to improving our criminal justice system. The communities voice will always be part of the Ogg administration.

The Harris County District Attorney's Office is comprised of 329 prosecutors, 90 investigators and 277 support personnel who are dedicated to making our community safer through evidence-based prosecution. This means guaranteeing a fair process with the goal of obtaining a just result for the victim, the accused and the community in every case.

To accomplish these goals, we promise:

- *To use taxpayer money efficiently;*
- *To make decisions about criminal cases based on evidence, not relationships;*
- *To strive for equality in our use of prosecutorial discretion;*
- *To treat all crime victims with dignity and fairness;*
- *To also treat those accused of criminal offenses with dignity and fairness;*
- *To recognize mental illness as a public-health concern;*
- *To collaborate with other governmental and law enforcement agencies so that we can solve and prosecute crimes more effectively;*
- *To utilize the expertise of specialty division prosecutors for crimes requiring subject matter knowledge;*
- *To actively seek input and participation by the diverse communities of the greater Houston area;*
- *To utilize technology to improve case management, service to our constituents, and employee accountability;*
- *To be mindful of our duty to see that justice is done, and as representatives of the people, to be transparent in our actions;*
- *To act with professionalism in every situation.*