

# Safeguarding due process in plea offers: Do's and don'ts for prosecutors

## Do: Prioritize alternatives to prosecution

It is cheaper and more effective to address certain kinds of behaviour, such as substance abuse or some misdemeanours, through community-based initiatives rather than prosecution and jail.

## Do: Screen out cases

Decline or dismiss weak cases early. Don't make a plea offer if you can't prove the charge beyond a reasonable doubt, if there are problems with police credibility, or if it is not in the public interest.

## Do: Make sure charges reflect the case

Charges should reflect the facts and circumstances of each case. Don't file the maximum possible charge as a matter of course. Limit sentencing enhancements. Offer procedures for defense attorneys to appeal to a supervising prosecutor if they think a charge or plea offer is unfair.

## Do: Ensure access to counsel

Ensure that defendants have had time and access to a lawyer sufficient to receive meaningful legal advice prior to accepting a guilty plea - even in cases and jurisdictions where legal counsel is not guaranteed.

## Do: Disclose evidence pre-plea

Defendants should have access to all available evidence, especially any potentially exculpatory material, before they are required to accept a plea offer. This should include evidence of misconduct by police officers involved in the case. The defense should be proactively notified of any newly discovered evidence.

# Safeguarding due process in plea offers: Do's and don'ts for prosecutors

## Do: Uphold and maintain the offer throughout proceedings

Offers should not become more severe because defendants take time to consider their options or exercise their rights. Unless there are extenuating circumstances, don't withdraw a plea offer once it's been made.

## Don't: Coerce pleas

Don't threaten a defendant with the death penalty, life without parole, or seek to transfer a case from juvenile to adult court, as a way of leveraging a guilty plea. Don't ask defendants to give up their rights (beyond the right to a trial) as a condition of accepting a plea. Do not permit or include waiver of appeal on the basis of newly discovered evidence.

## Do: Consider collateral consequences

Proactively provide information to defense counsel on the collateral consequences of any conviction that would follow a guilty plea, particularly in relation to immigration.

## Do: Be transparent

Publish guidelines that govern all significant decisions on intake and case screening, bail, initial charges, plea offers, deflection and diversion, and which charges to pursue at trial. Publish guidelines on charging decisions, and on the reductions of charges and sentencing discounts that can be offered in the plea process, especially for the more common types of cases, so that these are applied more equitably and transparently. Keep records of all plea offers, as well as the conditions in which an offer was made and accepted or refused.

## Do: Collect and share data

Collect data show how much the impact of factors such as pre-trial detention, sentencing and lack of access to counsel affect plea offers. De-identified data should be shared with experts for analysis.