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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

PRACTICE NOTE

MINIMUM PENALTIES

As the various components of the Safe Streets and Communities Act come into force, a number of offences in the Criminal Code, notably those relating to the sexual exploitation of children, have new or increased mandatory minimum penalties. Prosecutors familiar with firearms cases and impaired driving cases are aware of the impact that mandatory minimum penalties have on the day to day work of prosecutors. This impact is apparent when prosecutors select the charges upon which to proceed, elect the mode of procedure (summary or by indictment), or negotiate pleas and sentence. This Practice Note is intended to remind prosecutors of some of the principles contained in the Core Policies of the PPS which should be kept in mind when exercising discretion.

1. Selecting the charges upon which to proceed (or advising the police on which charges should be laid)

When the available evidence will support an offence outlined in more than one section of the Criminal Code, or in more than one statute, the guiding principle is that the charge or charges selected for prosecution must adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and provide the court with a proper foundation for sentence.

Ordinarily, the charge or charges to be pursued would be the most serious charges which could be supported by the evidence. It may be appropriate in exceptional cases to pursue a charge which is not the most serious which could be supported by the evidence when it is apparent from the outset that the expected length of trial or the usual penalty for a particular type of charge is out of proportion to the gravity of the alleged criminal conduct. In order to maintain public confidence in the administration of justice, prosecutors who withdraw or otherwise discontinue prosecution of a charge with a mandatory minimum penalty when the circumstances apparently support such a charge should be able to provide to the court and to the public a reasonable explanation for their course of action.

Although in most criminal cases there is an expectation of plea and charge negotiation, it is not appropriate to recommend serious charges, or charges with a mandatory minimum penalty, or to proceed by indictment, with the primary intention of providing scope and pressure for subsequent plea negotiation.

Plea and Sentence Resolutions

It is not appropriate for a prosecutor to take a position in resolution discussions based solely or largely on expediency. The charges to be proceeded with must reflect the true nature of the criminal conduct of the accused, and those charges, and the election for mode of procedure, must provide adequate parameters for an appropriate sentence. All of the admissible, provable facts should be presented to the court.

Similarly, the position taken by the prosecutor in regard to sentence must clearly reflect the established principles of sentencing, the facts of the case, and the background of the offender. Parliament, by establishing a minimum penalty for particular types of conduct has indicated what sort of sentence is appropriate. If a case appears to call for a mandatory minimum penalty and the prosecutor chooses or condones an approach or a sentence which avoids the mandatory minimum penalty due to truly exceptional circumstances, the prosecutor must be prepared to identify those circumstances.

Because prosecutors must also avoid the appearance of having based a sentencing position on expediency, any exceptional circumstances underlying the prosecutor's position should be outlined to the court unless those exceptional circumstances are otherwise apparent on the record.