



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CRIMINAL DIVISION CENTRAL OFFICE

1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
Main: 907.269.5100
Fax: 907.276.3697

February 1, 2019

The Honorable Shelly Hughes, Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801

Re: Prosecution Dismissal Inquiry

Dear Senator Hughes:

At the January 25, 2019 Senate Judiciary hearing, which included an overview of the Alaska Court System, a number of questions arose in regards to cases that are dismissed during the pending of a criminal matter, how vehicle thefts are charged, and a decline in driving under the influence cases. I am hopeful that the explanations below answer your questions on these issues.

Dismissals

As was discussed at the hearing, we are aware of an upward trend in the number of cases which are dismissed, especially in regards to misdemeanors. The number of misdemeanor cases the Criminal Division has prosecuted has decreased over the past five years by nearly a quarter¹. There are a myriad of reasons for this decline, including (1) fewer prosecution resources available to dedicate to misdemeanor matters; (2) reduced referrals from law enforcement statewide; (3) the Municipality of Anchorage assuming prosecutorial control over misdemeanor prosecutions in 2014 occurring within the city; and (4) a re-commitment of priorities within the Criminal Division (*i.e.*, prioritizing felonies over misdemeanors, violent offenses over non-violent offenses). It is important to note that the Criminal Division only handles approximately two-thirds of the misdemeanor prosecutions in the state—both the Municipality of Anchorage and the City of Juneau have municipal prosecutor's offices that prosecute approximately one-third of all misdemeanor cases. As a result, the number of misdemeanor cases dismissed as

¹ Although the Criminal Division has seen a decline in misdemeanor prosecutions over the past several years, the Criminal Division saw an increase of nearly 10% in misdemeanor filings between fiscal year 2017 and fiscal year 2018.

reported by the Alaska Court System does not represent the number of cases dismissed by the Criminal Division.

Further, the felony dismissal rate reported by the Alaska Court System includes cases that were reduced to misdemeanors or dismissed while the case was still in the District Court. Once a case has been transferred to the Superior Court and the decision has been made to pursue the felony, the number of cases dismissed is reduced to 7.4%. In fact, unlike misdemeanor prosecutions, felony prosecutions have actually *increased* over the past several years. Between fiscal year 2014 and fiscal year 2018, felony prosecutions have increased approximately 22%, including an increase of 16% over the past fiscal year alone. This increased workload, combined with the budget reductions, represent a significant increase in workload per prosecutor.

The committee asked for the reasoning behind the dismissal rates reported by the Alaska Court System. There are a number of reasons why a case may be dismissed. Insufficient evidence and lack of resources are just two of the reasons and those reasons are not mutually exclusive. For example, when trying to appropriately allocate limited resources, a case that has evidentiary problems is more likely to be dismissed than one that does not present those issues. Some cases are initially dismissed in District Court, but are subsequently re-charged, and indicted, in Superior Court—a process referred to as a “Criminal Rule 5 dismissal.” Further, felonies will always be prioritized over misdemeanors, and violent felonies will always take priority over property crimes. Additionally, the vast majority of misdemeanor cases, and some felony cases, are charged by law enforcement who may charge a case based upon a finding of probable cause. When a prosecutor evaluates that same case for prosecution the prosecutor is required to evaluate it based upon whether he or she believes the case can be proved beyond a reasonable doubt; a much higher standard.

When multiple cases are associated with a single offender, a prosecutor may consider dismissing a particular case in conjunction with a plea agreement in a different case. Put another way, a person may enter in to an agreement with the State that requires them to plead guilty in one case in exchange for another case being dismissed. These agreements often include a requirement to pay restitution in all cases, including the ones that are dismissed, or to serve additional jail time in recognition of the fact that the person’s conduct included other law violations. Therefore, while a dismissal rate may look relatively high, it is difficult to assess from numbers alone why dismissal rates are what they are.

Charging Vehicle Thefts

The committee also asked how Criminal Division handles multiple vehicle thefts committed by the same person. Vehicle thefts that are committed in the same course of

conduct may be charged in the same case. It is possible that a person could be charged with several vehicle thefts in the same case. A person may also be charged with several cases that include vehicle theft as a charge. When it comes to evaluating a case for prosecution, every charge within a case will be evaluated based on the weight of the evidence for each charge. If a charge cannot be proven beyond a reasonable doubt, it will be dismissed for evidentiary reasons. It is possible that a person may be suspected of committing multiple vehicle thefts, but only a small number of them can be proven beyond a reasonable doubt. The totality of a person's conduct will factor into the decision of whether to offer a plea agreement in a particular case. As mentioned above, one of the possible resolutions of the case may be that the person pleads to a consolidated charge of vehicle theft, representing all of the other vehicle thefts that the person is charged with. The person's sentence and restitution order should reflect the fact that more than one vehicle theft was committed.

Decline in Prosecutions for Driving Under the Influence

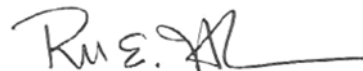
Finally, the committee asked about a decline in prosecutions for driving under the influence. The crime of driving under the influence is a class A misdemeanor. If a person is convicted of driving under the influence three times within ten years, the third conviction is elevated to a class C felony. While the Criminal Division saw a decrease in the number of misdemeanor driving under the influence prosecutions in fiscal year 2014, misdemeanor driving under the influence prosecutions have remained relatively flat since fiscal year 2015. The Municipality of Anchorage's assumed responsibility for nearly all misdemeanor prosecutions within Anchorage is a possible explanation of the decline between fiscal years 2014 and 2015. The crime of driving under the influence remains a priority for the Criminal Division given available resources.

I hope this is responsive to your questions. Please let me know if I can be of any further assistance.

Sincerely

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:



Robert E. Henderson
Deputy Attorney General
Criminal Division