



Office of the Attorney General

Washington, D. C. 20530

April 7, 2014

MEMORANDUM FOR ALL FEDERAL PROSECUTORS

FROM:  THE ATTORNEY GENERAL

SUBJECT: Revisions to Death Penalty Protocol

The death penalty protocol set forth in the United States Attorney's Manual at sections 9-10.010 to 9-10.200 describes the process by which the Department determines whether to pursue capital punishment in a given prosecution. Statistically, the Department decides not to pursue the death penalty in the vast majority of cases that contain death eligible charges. In many of those cases, the decision not to seek the death penalty can reasonably be made at the pre-indictment stage, before charges are brought. A pre-indictment decision not to seek the death penalty provides early certainty about the death penalty question, and saves enormous resources, including substantial savings of time and money by courts, prosecutors and defense attorneys. At any time, but especially in these difficult budgetary times, it is imperative that appropriate cost-saving measures be implemented in situations where it is clear, early on, that the death penalty will not be sought.

In 2011, I revised the death penalty protocol to encourage pre-indictment submission of death eligible cases, to try to expedite the process and enhance the Department's ability to focus its time and resources on those cases that warrant the most attention. After further review, of the death penalty protocol and Department-wide practices, I have decided to implement a number of protocol amendments to further enhance the death penalty review process. Submission of all capital eligible cases for pre-indictment review, previously expressed as a strong preference, is now mandatory, absent extenuating circumstances. The revised protocol gives the submitting U.S. Attorney or Assistant Attorney General discretion to determine the existence of extenuating circumstances, and provides examples, rather than an exhaustive list, of such circumstances. However, if a death eligible case is not submitted for review before indictment, the submitting office is required to send the Capital Case Section of the Criminal Division a notice, before indictment, describing the extenuating circumstances as well as providing an estimated date by which the case will be submitted for review.

At the same time, I am implementing several changes to expand, simplify and speed up the process for expedited decision cases – those types of cases where typically the death penalty is not sought. In the experience of the Capital Case Section, the submitting office in the vast majority of capital-eligible cases is able to recommend that the death penalty not be sought without first obtaining a mitigation presentation from defense counsel. These cases – which now all must be submitted pre-indictment, absent extenuating circumstances – will qualify for

expedited decision. In addition, the process for submitting and deciding several categories of expedited decision cases – proffer cases, cases ineligible for the death penalty due to the lack of evidence of a threshold intent factor or statutory aggravator, and cases requiring non-death penalty assurances in order to obtain extradition of a defendant – has been streamlined. A short form will be made available online to assist you in ensuring that those cases receive expedited treatment, and they will be processed on an expedited basis directly from the Capital Case Section to the Deputy Attorney General and then to the Attorney General, thus obviating the need for capital committee review. Several other housekeeping matters are also addressed in the revised protocol.

Together, these protocol revisions should accelerate decision times and achieve resource and cost savings for our prosecutors, the courts, and defense counsel in cases in which the death penalty clearly will not be sought. At the same time, these revisions will ensure that decisions whether to seek capital punishment continue to be made in a deliberative, even-handed and consistent manner, with proper individualized consideration of the appropriate factors relevant to each case, and that the Department's resources are appropriately focused on those cases that require the most attention and deliberation.