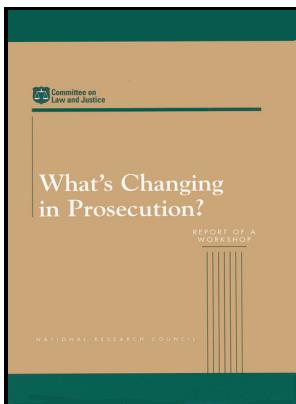


Felony drug prosecution handbook

P.J. Merriman - Prosecuting and Defending Drug Offence Cases: A Practitioner's Handbook



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Prosecution

§§ 6001-6003 or has escaped prosecution by virtue of an agreement not to prosecute.

9

In some cases, however, there may be no effective means of obtaining the person's timely cooperation short of entering into a non-prosecution agreement. Thus, occasionally it may be appropriate to enter into a plea agreement even after the usual time for making such agreements has passed. Similarly, for Department of Justice attorneys, approval authority should be vested in a Section Chief or Office Director, or such official's deputy, or in a committee which includes at least one of these individuals.

Prosecution

This means that when a guideline range is 18 to 24 months, the prosecutor has discretion to agree to recommend a sentence of, for example, 18 to 20 months rather than to argue for a sentence at the top of the range. In assessing the strength of the federal interest in prosecution, the attorney for the government should consider the sentence, or other consequence, that is likely to be imposed if prosecution is successful, and whether such a sentence or other consequence would justify the time and effort of prosecution. The rare decision to consent to pleas of nolo contendere may affect the success of related civil suits for recovery of damages.

Prosecution

Thorough knowledge of the Sentencing Guidelines, any applicable statutory minimum sentences, and any applicable sentence enhancements is clearly necessary to allow the prosecutor to accurately and adequately evaluate the effect of any plea agreement. In such cases, that approach should be attempted unless, under the circumstances, it would seriously interfere with securing the person's conviction. In many cases, depending on the seriousness of the criminal activity and criminal history of the offender, it will be appropriate to charge and pursue multiple 924 c offenses.

Prosecution

In the unusual instance where identification of an uncharged third-party wrongdoer during a plea or sentencing hearing is justified, the express

approval of the United States Attorney and the appropriate Assistant Attorney General should be obtained prior to the hearing absent exigent circumstances. In regard to the seriousness of the offense, the guilty plea should assure that the public record of conviction provides an adequate indication of the defendant's conduct. A second purpose, equally important, is to provide appropriate remedies for serious, unjustified departures from sound prosecutorial principles.

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