

CHAPTER 2

CRIME CHARGING - GENERALLY

2.01 EVIDENTIARY SUFFICIENCY

Crime charging is one of the most important functions a deputy district attorney (deputy) can perform. A deputy's primary responsibility is to determine whether there is sufficient credible evidence to warrant the filing of charges and to convict the accused of the charges. Deputies shall be familiar with the Uniform Crime Charging Manual to perform this critical function.

All felony and misdemeanor cases shall be reviewed by a deputy before filing.

Only a law enforcement officer with actual knowledge, or information and belief, of the truth of the facts stated in the complaint may sign a felony complaint.

2.01.01 BASIC CRITERIA FOR CHARGING

A deputy may file criminal charges only if the following four requirements are satisfied:

- There is legally sufficient, admissible evidence of all of the elements of the crime(s) to be charged;
- There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime(s) to be charged;
- The deputy, based on a complete investigation and a thorough consideration of all pertinent facts readily available, is satisfied the evidence proves the accused is guilty of the crime(s) to be charged; and
- The deputy has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder after hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution's evidence.

Commentary

Filing deputies are expected to go through this four-step process in evaluating a case even though these steps are integrally related and the issues often overlap. This evaluation will help prevent filing inappropriate charges because of a failure to consider one or more of these requirements.

2.01.02 IMPROPER BASES FOR CHARGING

The following factors constitute improper bases for charging:

- The race, color, religion, ancestry, national origin, sex, sexual orientation, occupation, economic class or political association or position of the victim, witness or the accused;

- The mere request to charge by a police agency, private citizen or public official when any of the four basic filing criteria are not met;
- Public or media pressure to charge;
- To facilitate an investigation; or
- To intentionally assist or impede the efforts of any public official, candidate or prospective candidate for elective or appointed public office.

2.02 CASE INVESTIGATION AND EVALUATION

Before deciding whether to charge, a deputy shall insist on a complete investigation.

2.02.01 INITIAL INVESTIGATION

All material witnesses should be interviewed, preferably in person and by trained police investigators. Statements obtained from witnesses who might be likely to change or forget them should be taped, handwritten or typed and signed, or otherwise recorded. However memorialized, all witness statements should be clear and detailed so they can be used later in court to refresh the witness's memory or for impeachment purposes, if necessary.

As a general rule, an attempt should be made to obtain a legally admissible statement from the accused. The statement should be taped, handwritten or typed and dated and signed, or otherwise recorded. The police reports should reflect if the accused refused to make a statement.

When the accused makes a statement that if true, in whole or in part, negates criminal liability, the statement should be investigated, if possible, no matter how implausible it may seem. Also, statements of potential defense witnesses should be obtained, documented and investigated.

Scientific examinations should be completed as expeditiously as possible, especially when there is some doubt as to the outcome of the examination. Attempts should be made to lift fingerprints and make comparison tests whenever relevant, even if it is unlikely the attempt will prove fruitful. Any request made to a law enforcement agency for a scientific examination should be noted in the file with the date of the request.

With the advent of technology, many law enforcement agencies have equipped officers and patrol vehicles with audio and video recording devices to record suspects and witnesses for criminal and civil liability purposes. In addition, many law enforcement officers are using personal audio and video recording devices during the course of an investigation, often times for employment-related reasons.

It is incumbent upon deputies to determine whether such recordings exist. When presented with either a misdemeanor or felony case for filing consideration, deputies should inquire of the filing officer whether any such audio or video recordings exist. If recordings exist, a request for copies of the recordings shall be made. A notation of the inquiry and response, including the date and name of the filing officer, shall be written in the file.

2.02.02 SUBSEQUENT INVESTIGATION

If the initial case investigation appears significantly incomplete for any reason, a deputy shall insist that the law enforcement agency conduct further investigation prior to filing to resolve any major deficiencies. This policy shall be observed even if it means the accused must be released from custody and rearrested after the investigation is completed. However, if the investigating officer knows of specific, articulable facts to support a firm belief that the accused will not be readily available for later arrest, a complaint may be filed if there is a reasonable likelihood of conviction based on the evidence available to the deputy.

If the initial investigation is sufficient for filing, but additional investigation is needed, the request for such an investigation shall be made on the “Further Investigation/Case Preparation Checklist” form. A deputy shall set a reasonable deadline for the completion of the investigation, preferably before the preliminary hearing. If the result of the supplemental investigation leads a deputy to believe there is a reasonable doubt as to the defendant’s guilt, the deputy shall promptly initiate the process for dismissal.

The responsibility for carrying out subsequent investigation lies with the investigating law enforcement agency. If that agency has inadequate resources to carry out such an investigation, a deputy should ask the Bureau of Investigation for assistance.

Commentary

Deputies shall make every effort to encourage thorough investigations. Investigations should include attempts to obtain probative evidence (such as admissions or fingerprints) even though these attempts may be unsuccessful. Unless there is no reasonable possibility of, for example, lifting or identifying prints, defense attorneys are free to comment on the deputy's failure to try. Such arguments are difficult to rebut.

Reliance on post-filing investigations to correct deficiencies is strongly discouraged since the deputy has not had the opportunity to thoroughly evaluate all the facts of a case. Furthermore, a deputy shall not request the issuance of an arrest warrant unless he or she has evaluated the case.

2.02.03 ADMISSIBLE EVIDENCE

Before deciding whether to charge, a deputy shall thoroughly evaluate all available evidence whether such evidence is admissible in court or not.

Before deciding whether to charge, a deputy shall:

- Review all available police reports and the accused's background and prior record; the fact that the accused's alleged conduct is consistent or inconsistent with prior proven conduct may remove or create a reasonable doubt;
- Review all written reports on relevant scientific examinations unless the result would not affect the charging decision; while a prosecutor may rely on an oral report of test results from law enforcement personnel to file a case, a deputy shall request all written reports to confirm the initial conclusions;

- Review all defense statements; and
- If possible, personally interview witnesses whose later cooperation is doubtful or whose demeanor and credibility are crucial to the outcome of the case. Such interviews should be recorded. Some examples of situations in which witnesses should be interviewed are:
 - Domestic violence victims;
 - Sexual assault victims;
 - Minor victims and witnesses;
 - Eyewitnesses who provide the only evidence of identity;
 - Accomplices who are key witnesses for the prosecution;
 - Informants who are key witnesses for the prosecution.

Commentary

Personally interviewing witnesses enables a deputy to: (1) establish a personal rapport with the witness; (2) evaluate the likelihood of future cooperation; (3) evaluate the witness's demeanor; (4) anticipate and consider problems which might develop on cross-examination; and (5) assist the witness in preparing for the various problems likely to be encountered in court.

2.02.04 INADMISSIBLE EVIDENCE

A deputy may also consider the following types of evidence in deciding whether to charge, regardless of their admissibility in court:

- Evidence which may be suppressed;
- Inadmissible statements by an accused;
- Polygraph evidence.

2.02.05 DIRECT EVIDENCE CASES

After evaluating all available, relevant evidence a deputy shall be satisfied that the evidence warrants conviction of the crime(s) to be charged.

In evaluating direct evidence cases, a deputy shall consider potential witness problems relating to:

- Eyewitness identification;
- Motive to fabricate;
- Ability to recall and communicate.

2.02.06 CIRCUMSTANTIAL EVIDENCE CASES

In evaluating circumstantial evidence cases, a deputy shall consider all reasonable interpretations of the uncontested facts. A deputy shall consider the validity of every reasonable defense and whether, under the uncontested facts, the defense might be true.

2.03 EVIDENCE OF A CORPUS DELICTI

2.03.01 EXISTENCE OF A CRIME

A deputy shall be reasonably certain a crime has been committed before charging. In cases posing novel or unclear questions of law as to whether an act is a crime, a deputy may file charges if the following requirements are satisfied:

- There is a reasonable possibility that a court will later rule that a crime has been committed;
- The act is a substantial one affecting significant personal or property rights of others; and
- A prosecutor can reasonably argue that a crime has in fact been committed.

Commentary

Questions involving the existence of a crime will rarely arise in practice. However, a deputy may do the Office, the victim, and the accused a service by obtaining a judicial resolution of novel or unclear issues. Unlike cases in which the issues involved are factual, the resolution of legal issues affects not only the outcome of the present case, but also future conduct and charging decisions.

2.03.02 EVIDENCE TO PROVE THE ELEMENTS OF A CRIME

A deputy shall be reasonably certain there is legally sufficient evidence to prove each element of the crime alleged. A deputy is responsible for knowing the relevant case law interpreting criminal statutes so that he or she can make a correct and informed filing decision. In cases posing novel or unclear questions of law as to whether legally sufficient evidence to prove any element of a crime exists, a deputy may charge if the basic criteria for charging set forth above are satisfied.

In cases in which an admissible confession clearly shows a crime has been committed, but it appears difficult to prove the existence of a corpus delicti as required by case law, a deputy should charge if the following requirements are satisfied:

- There is enough independent evidence from which a deputy can reasonably argue that the corpus delicti has been established; and
- A deputy believes there is a reasonable possibility the court will rule that a corpus delicti has been independently established.

Commentary

Only slight evidence is required to prove the existence of a corpus delicti independent of a confession. Corpus delicti problems are most difficult with crimes in which a negative must be proven as an element of the crime (e.g., making a false report) and special caution should be exercised in these cases.

2.03.03 ADMISSIBILITY OF EVIDENCE OF A CORPUS DELICTI

A deputy shall be reasonably certain that a court would rule that the evidence necessary to establish a corpus delicti is admissible under current statutory, case or constitutional law. The standard of reasonable certainty applies to both issues of law and fact relating to admissibility of evidence.

The standard of reasonable certainty should be based on an informed judgment of how the highest court entitled to decide the issue would rule if confronted with it. The fact that a local court frequently rules contrary to current appellate law should not be considered in deciding whether to charge.

Commentary

As with other legal issues, a deputy owes a duty to society, the victim, the accused, the police and the prosecution to obtain a prompt resolution of unclear constitutional issues so there will be greater certainty of action by all in the future. However, if it is reasonably clear there is not enough admissible evidence to establish a corpus delicti, a deputy shall not file a case. A deputy has a responsibility to abide by constitutional principles as defined by appellate courts regardless of a deputy's opinion of the correctness of the definition.

2.04 EVIDENCE OF IDENTITY

A deputy shall be satisfied there is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime(s) to be charged.

2.04.01 DIRECT EVIDENCE CASES

In cases resting primarily on direct evidence of identity, a deputy shall be reasonably certain the available evidence, standing alone, would result in a finding of guilt. Because of the nature of direct evidence, it will generally be clear whether this requirement has been satisfied. When identity is in issue and the proof of identity rests solely on the testimony of a single independent witness without further corroboration, a deputy shall only charge when one of the following is present:

- The witness knows the accused so there is no reasonable possibility of mistake;
- The opportunity to observe was substantial so there is no reasonable possibility of mistake;
- The perpetrator of the crime possessed unique physical characteristics similar to those possessed by the accused.

2.04.02 SINGLE PHOTOGRAPHIC IDENTIFICATION

When identity is in issue, a deputy shall not charge based solely on a single photographic identification without further corroboration. In rare and unusual circumstances, the Head Deputy may authorize a deviation from this policy.

Commentary

In certain situations, a lineup may be required before filing. The purpose of requiring a lineup is to: (1) assess the ability of an eyewitness to make an identification in court; (2) enhance the convincing force of a subsequent in-court identification; and (3) reduce the possibility of a mistaken identification. If the eyewitness is acquainted with the accused or if there is independent corroborative evidence of identification, no useful purpose is served by requiring a lineup.

2.04.03 CIRCUMSTANTIAL EVIDENCE CASES

In cases resting primarily on circumstantial evidence of identity, a deputy should not simply consider whether the evidence presented is legally sufficient to convict, but whether, in view of all reasonably foreseeable defenses relating to identity, the evidence is of such convincing force that an appellate court would sustain a conviction on appeal regardless of the defense raised at trial.

Commentary

There is a distinction between mere probable cause to arrest and legally sufficient evidence to convict. This distinction is most meaningful in circumstantial evidence cases where the evidence might warrant a strong suspicion of guilt but not a finding of guilt beyond a reasonable doubt. While a deputy is legally justified in charging based on mere probable cause, a deputy serves no useful, legitimate purpose in doing so.

2.04.04 ADMISSIBILITY OF EVIDENCE OF IDENTITY

A deputy should believe there is a reasonable possibility that a court would rule that the evidence necessary to establish identity is admissible under current statutory, case or constitutional law. The standard of reasonable possibility applies to both issues of law and fact relating to admissibility of evidence.

The standard of reasonable possibility should be based on an informed judgment of how the highest court entitled to decide the issue would rule if confronted with it. The fact that a local court frequently rules contrary to current law should not be considered in deciding whether to charge.

Commentary

The same principles that apply to the admissibility of evidence of the corpus delicti apply to the admissibility of evidence of identity. If there is a reasonable possibility that evidence of identity is admissible under current constitutional, case or statutory law, a deputy should assume, for charging purposes that it will be ruled admissible.

2.05 PROBABILITY OF CONVICTION

A deputy shall consider the probability of conviction by an objective fact finder after hearing the admissible evidence and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution evidence.

2.05.01 JURY PANELS

A deputy should not decline to charge because local juries, due to political or social attitudes, may unreasonably refuse to convict. A deputy's responsibility to enforce the law is a responsibility owed to the People of the State of California. The standard of reasonableness must inevitably be a statewide standard based upon an ideal jury drawn from a representative cross section of the community who will obey the oath of jurors to follow the court's instructions and the law and not be affected by any biases that, if revealed, would subject them to challenge for cause.

Commentary

Unreasonable jurors pose a continuing problem for prosecutors. A deputy shall not permit the likelihood of unreasonable actions by jurors to deter a deputy from carrying out the Office's assigned duty to prosecute violations of the law.

2.06 AFFIRMATIVE DEFENSES

A deputy should not decline to charge because of an alleged affirmative defense unless:

- The affirmative defense, if established, would result in the accused's complete exoneration; and
- The affirmative defense cannot be refuted by substantial evidence currently available to the prosecution.

Only if these two requirements have been satisfied should a deputy decline to charge.

Commentary

Affirmative defenses are treated differently because the facts necessary to establish them are usually unavailable at the time of filing and because the accused has the burden of raising them at trial. The most common affirmative defenses are insanity, entrapment and double jeopardy. Self-defense and defense of third parties, while technically affirmative defenses, should be carefully evaluated at the charging stages as corpus issues. Alibi and the statute of limitations are not affirmative defenses and should be treated as identity and corpus issues respectively.

2.07 CHARGE SELECTION

The filing deputy has the responsibility to select the charge or charges that appropriately describe the crime(s) committed and provide for an adequate sentence if the accused is convicted.

2.07.01 MISUSE OF CHARGE SELECTION PROCESS

The filing deputy shall not use the charging process to obtain leverage to induce a guilty plea to a lesser charge. There must be a reasonable expectation of conviction on the filed charge(s).

Commentary

The use of the charging process simply to obtain leverage without any reasonable expectation of conviction of the filed charge(s) cannot be reconciled with any legitimate prosecutorial goal.

2.07.02 OVERLAPPING STATUTES - DIFFERENT PENALTIES

When identical criminal conduct may be punished under two or more similar statutes providing significantly different penalties, a deputy should select the most appropriate charge after considering the following factors:

- Which charge most adequately and fully describes the accused's conduct;
- Which charge provides the most appropriate penalty for the accused in view of the nature of the offense and the accused's prior criminal record;
- Whether there is a specific evidentiary or prosecutorial function to be served by selecting a particular charge; and
- Whether case law or legislative intent suggests the selection of a particular charge.

Commentary

This policy applies to criminal conduct punishable under two or more statutes that provide substantially different penalties. It does not apply to special statutes that, under the law, preclude the use of general statutes.

2.07.03 OVERLAPPING STATUTES - SIMILAR PENALTIES

Alternative charges providing similar penalties may be filed when there is a specific evidentiary or prosecutorial function to be served.

2.07.04 EFFECT OF AFFIRMATIVE DEFENSES

Nothing in this section should be interpreted to preclude the filing of a greater offense when the final determination of the appropriate offense or degree of offense depends in significant part on possible affirmative defense(s).

Commentary

A common example is the filing of a murder charge even when a possible affirmative defense exists which could result in a conviction of manslaughter. However, if the evidence clearly shows the accused committed manslaughter and not murder, the lesser charge should be filed.

2.08 CHARGING MULTIPLE COUNTS

A deputy has the authority to charge all crimes committed. However, reasonable limitations, as defined below, should be placed on the exercise of this authority to avoid unwieldy prosecutions and conserve judicial resources.

2.08.01 JOINDER OF MISDEMEANORS WITH FELONIES

Misdemeanors should not be joined with felonies except in the following situations:

- The evidence relating to the misdemeanor directly or indirectly strengthens the evidence relating to the felony;
- It is necessary to charge the misdemeanor in order to adequately describe the accused's conduct;
- Conviction of the misdemeanor carries significant punitive consequences in addition to the likely consequences of a felony conviction;
- The misdemeanor involves a significant invasion of another's rights and cannot be prosecuted independently based upon *Kellett v. Superior Court* (1966) 63 Cal.2d 822 and *People v. Flint* (1975) 51 Cal.App.3d 333; or
- There is a reasonable possibility that a jury might not convict on the felony count even though the policies relating to evidentiary sufficiency set forth above have been satisfied.

Commentary

Unless one of the above exceptions applies, joining a misdemeanor with a felony typically does not benefit the prosecution. Proving a misdemeanor can waste limited resources and divert attention from the more serious felony. The above exceptions implicitly recognize that some misdemeanors carry greater penalty or stigma than some felonies, may increase punishment for future crimes or vindicate a victim's rights.

Including misdemeanor charges in a felony complaint may preclude a defendant from eligibility for mandatory drug treatment under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000. (PC § 1210.1b(2).) Precluding Proposition 36 drug treatment is an inappropriate reason to join a misdemeanor with a felony.

*This policy is not intended to discourage the filing of a misdemeanor separately when not precluded by *Kellett v. Superior Court* (1966) 63 Cal.2d 822.*

2.08.02 NUMBER OF COUNTS

A deputy shall not file a case with more than 15 counts without the approval of the Head Deputy or Deputy-in-Charge.

Commentary

The purpose of this policy is to avoid unmanageable cases and over-filing. However, it should be applied in a flexible manner and should not preclude filing more than 15 counts when appropriate.

Related Crimes

Notwithstanding the multiple punishment limitations of Penal Code § 654, a deputy should file all appropriate charges relating to a single course of conduct when:

- The policies on evidentiary sufficiency have been satisfied as to each count;
- The policies relating to the appropriate charge level have been satisfied; and

- The charge is not merely a technical one but accurately describes separate criminal conduct or a separate theory of culpability.

Unrelated Crimes

Unless the number of counts is patently excessive, a deputy should not limit the number of counts filed except as provided above. The counts charged must, of course, comply with the rules of joinder.

Exceptions can be made for certain crimes against property, such as forgery, when multiple counts stem from a single initial violation of law (e.g., theft, burglary or robbery). A deputy may restrict the number of counts filed to avoid the use of an excessive number of witnesses provided the counts charged adequately describe the accused's conduct.

Commentary

Since at least one charge will be filed, mere multiplicity of charges does not prejudice the rights of the accused. On the other hand, a deputy's case could be prejudiced by arbitrarily limiting the number of counts filed. Because consecutive sentences for charges relating to a single event are rare, there is little danger of wrongfully inducing a guilty plea. Penal Code § 654 provides adequate protection to the accused and should be applied at the time of plea or sentence.

2.08.03 NEW CHARGES AGAINST ACCUSED WITH CHARGES PENDING

If the basic requirements for charging are met, a new complaint shall be filed against an accused who has a case pending case:

- If the new crime was committed while the accused was on bail or own recognizance on a pending charge; or
- If the new charge is willful failure to appear after being released on bail or own recognizance on the pending charge.

If it appears that other felonies the accused has committed are being investigated by other agencies, a deputy shall endeavor to consolidate these cases in one place for filing.

2.08.04 CONSOLIDATION OF CASES

When there is a pending felony case in Los Angeles County, a deputy shall try to consolidate, whenever possible, the new felony filing with the pending case and add a Penal Code § 12022.1 enhancement (commission of a new crime while on bail or own recognizance).

Whenever a new felony is filed against an accused who is already being prosecuted by the Office for a felony offense, the filing deputy shall prepare a "Memorandum of Related or Pending Felony Case(s)." A copy of the memorandum should be placed in the new case file and a copy should be forwarded to the office or division handling the pending case.

In addition to preparing the “Memorandum of Related or Pending Felony Case(s),” the deputy filing the new case should contact the deputy handling the pending case in order to facilitate consolidation. In taking steps to consolidate cases, deputies should consider where the most serious offense occurred and which location will be best for the prosecution of the case and will best serve the convenience of the witnesses and the police agencies. In all cases in which consolidation is under consideration, a deputy shall confer with the appropriate supervisor.

Whenever a deputy handling a pending case becomes aware of the possibility of new felony charges against the defendant, but has not received a “Memorandum of Related or Pending Felony Case(s),” he or she should attempt to determine the status and nature of the new case and document the findings in the pending case file.

2.09 ALTERNATIVE FELONY/MISDEMEANOR CRIMES

An alternative felony/misdemeanor crime (i.e., a wobbler) shall be charged as a felony unless a deputy believes that a misdemeanor sentence is warranted under all the circumstances. The current [Penal Code § 17\(b\)\(4\) Operational Agreement Schedule I](#) delineates when a wobbler may be directly filed with a local prosecutorial agency.

2.09.01 PRESUMPTIVE FELONY FILINGS

The following factors normally warrant a felony prosecution:

Prior Record

A misdemeanor prosecution should not normally be considered if the defendant:

- Has been committed to the Department of Juvenile Justice (formerly known as the California Youth Authority or CYA) or camp or suffered more than one felony sustained petition within the previous five years; or
- Has a record of charges and/or convictions for any type of criminal conduct within the past five years demonstrating the defendant’s habitual criminality.

When the present crime involves domestic violence or child abuse, prior similar crimes or a past history of violent behavior shall be considered, even if the prior incidents were not brought to the attention of the criminal justice system. It is important to remember that crimes of domestic violence and child abuse are frequently repetitive and escalating in degree.

Severity of the Crime

A misdemeanor prosecution should not normally be considered if the defendant:

- Attempted to injure another with the use of a deadly weapon or instrument, whether successfully or not;
- Regardless of the means used, caused permanent injuries, temporary injuries requiring hospitalization, or temporary injuries substantially incapacitating another for a significant

- period. In mutual combat situations, all circumstances should be considered including the relationship between the parties and any prior criminal history of the parties;
- Physically attacked and injured in any significant way a child, an elderly or disabled person, in the commission of the crime;
 - Possessed a loaded firearm at the time of the commission of the crime, and the crime is such that a loaded firearm could be used to facilitate its commission;
 - Committed a battery on a police officer inflicting other than minor injuries; or
 - Was engaged in bookmaking related to an extensive bookmaking operation or to organized crime.

Probability of Continued Criminal Conduct

Because a probability of continued criminal conduct may be inferred from the following factors, a misdemeanor prosecution should not normally be considered if the defendant:

- Has demonstrated that he or she is a professional criminal by modus operandi, the tools used in the commission of the crime, his or her criminal associations, or other similar circumstances; or
- Has committed a crime related to gang activities or organized crime.

Eligibility for Probation

Except in unusual cases when the interests of justice demand a departure, if the accused is statutorily ineligible for probation, a felony charge should be filed.

Commentary

Penal Code § 17(b)(4) gives a prosecutor a unique crime charging tool. These policies provide a framework for considering the application of Penal Code § 17(b)(4). This framework can be systematic without being rigid. Most cases do clearly and properly fall into a felony or misdemeanor category. However, the use of the words "should not normally be considered" leave a prosecutor with the discretion necessary for reaching a proper decision in those cases that cannot be easily categorized.

The factors stated are proper factors to consider in determining whether a particular accused appears to deserve a felony or misdemeanor sentence. Factors which should not be considered include (1) the attitude of the victim, witnesses, or law enforcement toward the decision (unless it illuminates the legitimate factors for consideration), and (2) the accused's family, economic, immigration or professional status.

In applying these policies, a deputy shall consider the threatened or potential provable loss as well as the actual loss. For example, if an accused is arrested at the scene of a commercial burglary before having the opportunity to steal, a deputy shall consider what the provable loss might have been considering the nature of the premises, the time, the modus operandi, and the nature of the objects available for theft.

2.09.02 PRESUMPTIVE MISDEMEANOR FILINGS

A misdemeanor prosecution pursuant to Penal Code § 17(b)(4) should normally be considered regardless of the provisions set forth above, if the case meets the criteria delineated in the current [Penal Code § 17\(b\)\(4\) Operational Agreement Schedule I.](#)

Commentary

The criteria for direct filing delineated in the current Penal Code § 17(b)(4) Operational Agreement provide guidance when determining whether a crime should be classified as a felony or a misdemeanor. However, there are exceptions when a felony sentence may be warranted, even if the crime otherwise meets the criteria. The exceptions are difficult to define legislatively and are frequently applicable. It is, therefore, not suggested that any of these crimes be reduced by the legislature from alternate felony/misdemeanors to simple misdemeanors.

However, these crimes should not be treated as misdemeanors when the gravamen of the crime is something other than the taking of property or possession of contraband (e.g., burglary, where the gravamen of the crime may be invasion of privacy or the intent to cause a greater loss).

2.09.03 OTHER FACTORS THAT WARRANT CONSIDERATION

In close decisions regarding the use of Penal Code § 17(b)(4), a deputy may consider the following additional factors in weighing the propriety of a felony sentence:

- The defendant's cooperation as demonstrated by his or her voluntary confession, assistance in the recovery of property, information regarding other criminal activity of the accused or others, voluntary restitution, or other like factors; or
- The defendant's age if it may result in a commitment to the Department of Juvenile Justice (formerly known as the California Youth Authority or CYA) rather than to state prison.

2.09.04 MULTIPLE DEFENDANTS

When multiple defendants can be charged with a felony, and at least one appears to deserve a felony sentence for the crime(s), all should be charged initially with a felony. The legislature has expressed a preference for joining defendants as evidenced by article I § 30 of the California Constitution, and Penal Code § 1050.1.

Commentary

The use of separate felony and misdemeanor prosecutions for codefendants would waste judicial resources, unnecessarily inconvenience witnesses, and should be avoided. Misdemeanor dispositions are still possible for the eligible codefendant(s) under Penal Code § 17(b)(5).

2.10 CHARGING SPECIAL ALLEGATIONS

When a complaint is filed, a deputy shall charge all applicable special allegations that enhance the penalty or result in the mandatory denial of probation (e.g., all prior serious or violent felony

convictions, possession or use of weapons and the infliction of great bodily injury) whenever the policies on evidentiary sufficiency have been satisfied.

2.10.01 CHARGING STANDARD

A deputy shall charge a special allegation and not delay filing a complaint or information if there is sufficient evidence to establish probable cause to believe that the particular allegation is applicable. If further supporting documentation concerning the allegation is needed, the deputy shall fill out a “Further Investigation/Case Preparation Checklist” form. Such investigations should be completed before the preliminary hearing.

2.10.02 UNRESOLVED LEGAL ISSUES

If the application of a special allegation presents a novel or unclear question of law, a deputy shall allege the special allegation when there is a reasonable possibility that a court will later rule that the allegation is applicable and the evidence in support of the allegation is such that a deputy can reasonably argue that the allegation is applicable.

Commentary

Care in charging is necessary to prevent the prosecution of innocent individuals and to promote the proper and effective allocation of prosecutorial and judicial resources. Once the decision to charge has been made, however, neither purpose is served by limiting the use of special allegations when there is sufficient admissible evidence to believe the allegation is applicable. Special allegations exist to provide for the imposition of additional punishment. The choice of the appropriate penalty among a range of possible penalties should be deferred to the sentencing stage. The accused is not prejudiced by this policy. A contrary policy would prevent the later determination of an appropriate sentence and prejudice the People's case.

2.10.03 SUPPORTING DOCUMENTATION FOR CERTAIN SPECIAL ALLEGATIONS

If a prior conviction is necessary to establish the corpus delicti in a felony case (e.g., PC §§ 666, 25400(c)(1), 25850(c)(1), and 290), it is the investigating officer's responsibility to order and secure the necessary certified documentation before the preliminary hearing.

2.10.04 GREAT BODILY INJURY ALLEGATIONS

Great bodily injury allegations can greatly increase punishment for certain felonies. Accordingly, the use of such allegations should be limited to situations in which the accused:

- Has inflicted a permanent bodily injury (other than a minor scar); or
- Has inflicted serious bodily injury causing hospitalization or incapacitation for a significant period of time.

Commentary

The law defines “great bodily injury” as a significant or substantial physical injury, language that is somewhat vague. This policy is intended to avoid overcharging when the injuries are minor or temporary.

2.10.05 SERIOUS FELONY ALLEGATIONS

A filing deputy shall allege the five-year enhancement under Penal Code § 667(a)(1) when the accused has a prior serious felony conviction and the current charge is also a serious felony. This five-year enhancement must be served in addition to any term imposed under the Three Strikes law. A court may strike this allegation pursuant to the provision of Penal Code § 1385. (PC § 1385(b).) Penal Code § 1192.7(c) defines “serious felony.”

2.11 JURISDICTION

2.11.01 CRIMES CHARGEABLE IN MORE THAN ONE COUNTY

Whenever the jurisdiction for a crime is proper in another county as well as Los Angeles County, the filing deputy shall notify his or her Bureau Director, through the chain of command, prior to filing. If, after a review of the facts and a consideration of the factors listed below, there remains some doubt whether charges should be filed in Los Angeles County, an explanatory memorandum with attached police reports should be prepared and submitted as rapidly as possible to the Bureau Director. Notification by e-mail or fax is acceptable. The Bureau Director will consult with the appropriate person(s) in the other county.

If the decision is made to file the case in Los Angeles County, the filing deputy shall send a letter to the appropriate prosecutorial office in the other county notifying them of the facts of the case and the decision to charge. The investigating officer shall be instructed to notify the other law enforcement agencies involved.

Inquiries received from other counties regarding jurisdiction in a particular case shall be referred to the Director of the bureau which would prosecute the case should it be filed in Los Angeles County. If more than one bureau might be affected, the inquiry shall be referred to the Chief Deputy.

2.11.02 FACTORS TO BE CONSIDERED

In selecting the appropriate county or counties in which to prosecute a particular case, the following factors should be considered:

- The relative ability to prove that the crime was committed in whole or in part in each of the counties;
- If multiple crimes are involved, the relative ability to prove that the crimes were committed within each of the counties should be weighed against the relative seriousness of the crimes;
- The convenience of prosecution witnesses;

- The ability to consolidate and successfully prosecute the greatest number of significant appropriate charges within each county;
- The ability to consolidate and prosecute cases against multiple suspects within each county; and
- The location of the place where the most serious crime was committed.
 - In cases involving thefts when stolen property is moved from one county to another, the county where the property is recovered is the appropriate county to file charges unless it can be proven that the accused committed the theft and can be successfully prosecuted in the county where the theft took place.
 - In cases involving escapes from penal institutions, the county where the escape actually occurred is generally the appropriate county to file charges, other factors being relatively equal.

Commentary

Because of the many variables involved in the prosecution of multi-jurisdictional cases, it is impossible to formulate exact rules. Certain preferences are set forth above.

Multi-jurisdiction cases can be complex. Each of the above-described factors should be carefully considered in such cases.

2.12 HARRIS REPORT - CRIME CHARGING POLICY AND PROCEDURE

Deputies shall follow a uniform approach to writing the Statement of Facts at the time of filing. The Statement of Facts shall include the defendant's complete criminal history, facts surrounding the offense(s), and any strengths, weaknesses and possible defenses. In the event a pre-filing interview was conducted, the Statement of Facts shall include the filing deputy's impressions of the victim and the level of danger, if any, posed to the victim.

The deputy filing the case shall complete a protective order form at the time of filing a VIP category case. Protected parties should include any appropriate victim or witness in any case falling within one of the VIP categories. The deputy assigned to appear at the arraignment is responsible for presenting the protective order application to the court and shall be prepared to argue good cause for issuance of the order.

Legal Policies Manual Chapter 11, Felony Case Management, and Chapter 12, Felony Case Settlement Policy, also incorporate changes in policy effected as a result of the Harris Report.

2.13 MARSY'S LAW RIGHTS

Proposition 9, The Victims' Bill of Rights Act of 2008, also known as "Marsy's Law," was added to the California Constitution by the voters on November 4, 2008. It amended Article I, § 28 enumerating crime victims' rights. Pursuant to Article I, § 28(b)(17), victims have a constitutional right to be informed of their "Marsy's Rights" as enumerated in Article I, § 28(b), of the California Constitution. To that end, Penal Code § 679.026(c)(1), requires:

[e]very law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall, . . . at the time of initial contact with a crime victim, during follow-up

investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys, provide or make available to each victim of the criminal act . . . a “Marsy’s Rights” card.

The California Constitution defines “victim” as “. . .a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term ‘victim’ also includes the person’s spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated.” (Cal. Const. Art. I, § 28(e).)

It is the policy of this office that **all** victims who have suffered direct or threatened physical or financial harm shall be notified of their Marsy’s Law rights in **all felony, misdemeanor and juvenile filings**. In most cases prosecuted by our office where there is a crime victim, PIMS requires that the victim be named in the Complaint, Indictment, Information or Petition. Some charges, however, such as evading (VC § 2800.2 and § 2800.3), hit and run (VC § 20002 and VC § 20003), arson (PC § 451 et seq.), child pornography (PC § 311 et seq.), pimping and pandering (PC § 266 et seq.), and solicitation for prostitution (PC § 653.22) do not prompt for a victim’s name.

Special Procedures for Child Pornography/Exploitation cases

The Child Victim Identification Program (CVIP) of the National Center for Missing and Exploited Children (NCMEC) serves as the central repository in the U.S. for information relating to child victims depicted in sexually exploitative images and videos.

<http://www.missingkids.com/home> Information regarding many child pornography victims are in the NCMEC database. Some child pornography victims and/or their attorneys have requested to be notified when their images are discovered. Some victims have indicated that they never want to be informed when their images are discovered. Some victims and/or their attorneys have filed a Victim Impact Statement and have requested that this Victim Impact Statement be submitted in all cases where their images are found. Victims and/or their attorneys have made these requests via NCMEC. Prosecutors in the Cyber Crimes Division can provide direction on how to read NCMEC reports for this purpose.

In all child exploitation cases, in which a victim or victim's attorney requests notification of any defendant who possessed a specific image of child pornography depicting their client, the victim or attorney shall be sent a Marsy's Law letter. The names of victims who have requested notification shall be entered into PIMS to receive notifications of future court hearings, etc. Notification will only be provided if:

- (1) a formal written request on letterhead by a licensed attorney with a specific series and named victim seeks information from our office on a child pornography defendant possessing a named series of images of their client; and/or
- (2) a NCMEC CVIP report states the attorney's name and contact information and a request for the name of a defendant who possessed the named series of images.

Victims of child pornography are rarely called to testify. When it is anticipated that a victim will not be required to come to court to testify, the filing prosecutor is reminded to mark this on the filing worksheet so that the victim does not receive a subpoena to appear for court hearings.

Warrant or Extradition Cases

Victims in cases filed for Warrant or Extradition shall be sent a notification packet by support staff, except in cases where it is determined by the filing deputy that sending notification may endanger a victim or witness or jeopardize the prosecution of a case. In those cases, the packet shall remain in the DA file until the first court appearance at which time the notification packet will be mailed.

Office Personnel Responsibilities

In homicide cases, all personnel shall ensure that the check box indicates “deceased” after the victim’s name on the Victim/Witness screen in PIMS. Checking “deceased” ensures that letters are not addressed to and/or issued for a deceased victim. A contact name for next of kin should be entered, when known, so that the next of kin will receive notification. PIMS allows for more than one contact person to be entered.

Filing Prosecutor: It is the responsibility of the filing prosecutor to ensure that all victims are listed with the correct “witness type” code on the Felony, Misdemeanor and Juvenile Filing Worksheets regardless of whether PIMS prompts for a victim’s name. When the victim is a minor or a dependent adult, filing prosecutors are reminded to also include the minor’s parent or guardian and the dependent adult’s caretaker or conservator as a witness. When it is anticipated that a victim will not be required to come to court to testify, the filing prosecutor is reminded to mark this on the filing worksheet so that the victim does not receive a subpoena to appear for court hearings.

Head Deputies and Deputies-in-Charge: Head Deputies and Deputies-in-Charge at each office shall designate clerical support staff to send Victim Notification packets via U.S. mail on the day the case is filed. In offices that do not have a full-time Victim Service Representative (VSR), the Head Deputy and Deputy-in-Charge shall designate a primary and back up clerical support who will be responsible for forwarding all Victim Request Response forms received via FAX and U.S. mail to the assigned deputy.

Support Staff: Support staff are responsible for sending initial victim notification packets to victims when a case is filed, checking PIMS daily and sending out Marsy’s Law Notice letters when victims have requested notification.

All employees: If a notification packet is returned as “non-deliverable” the assigned deputy, Head Deputy or Deputy-in-Charge shall be notified so that they can take necessary steps to locate the victim.

2.13.01 VICTIMS' RIGHTS TO NOTIFICATION AND TO REASONABLY CONFER

Pursuant to California Constitution Article I, § 28(b)(17), victims have an automatic right to be informed of all of their Marsy's Law rights as defined in §§ 28(b)(1) – (16). For the purposes of Marsy's Law, a victim is defined in California Constitution article I, § 28(e). Upon the filing of criminal charges, the Office shall notify victims, and any identified next of kin or guardians, of these rights. Furthermore, upon request by the victim, or identified next of kin or guardian, the Office shall provide the requestor with reasonable notice of and the opportunity to reasonably confer with the prosecuting attorney regarding the arrest of the defendant, if known by the prosecutor, the charges filed, and the determination of whether to extradite the defendant. (Cal. Const. Art I., § 28(b)(6).)

2.13.02 VICTIMS' RIGHTS ASSISTANCE UNIT (VRA)

Victims have a right “to be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.” (Cal. Const. Art, I § 28(b)(1).) (See LPM § [24.02.04](#))

2.14 ALTERNATIVE MISDEMEANOR/INFRACTION CRIMES

Under the provisions of Penal Code §§ 19.8 and 17(d), specified misdemeanor offenses may be handled as infractions upon action by a prosecutor or by the court. These offenses are commonly referred to as “wobblies.” A misdemeanor offense enumerated in Penal Code § 19.8 may be prosecuted as an infraction when the prosecutor files the offense as an infraction (unless the defendant objects at the time of his or her arraignment), or when the court, with the consent of the defendant, reduces the offenses to an infraction.

2.14.01 PRESUMPTIVE MISDEMEANOR FILINGS

The following circumstances warrant a misdemeanor prosecution:

- Violations of Vehicle Code § 12500(a), where the defendant has been convicted of one or more prior violations of Vehicle Code § 12500(a) or Vehicle Code § 14601 et seq.;
- Violations of Vehicle Code § 12500(a) committed in conjunction with another misdemeanor or felony offense (See also LPM § [2.08.01](#), *ante*, on [Joinder of Misdemeanors with Felonies](#)).

Law enforcement requests for charge evaluation shall be accompanied by a standard filing packet that includes a written narrative establishing the facts of the offense and the probable cause for the arrest, as well as documents containing the defendant's CLETS, CCHRS and DMV criminal history.

2.14.02 PRESUMPTIVE REFERRALS FOR PROSECUTION AS INFRACTIONS

The following circumstances warrant a referral for handling as an infraction:

- Violations of Vehicle Code § 12500(a), where the defendant does not have any prior convictions for violations of Vehicle Code § 12500(a) or Vehicle Code § 14601 et seq.; and
- Violations of Vehicle Code § 12500(a), where the defendant is not concurrently charged with another misdemeanor or felony offense.

If both of the above circumstances exist, a law enforcement officer may issue the citation as an infraction and file the matter in traffic court for processing and adjudication.

The above policy regarding first-time Vehicle Code § 12500(a) offenses is presumptive. If circumstances exist that appear to justify a misdemeanor charge, a law enforcement officer may issue a citation as a misdemeanor and submit the offense to the Office for charge evaluation. Deputies reviewing requests for charge evaluation shall determine the appropriate charge, as well as whether an offense should be appropriately prosecuted as a misdemeanor or referred for handling as an infraction.

2.15 SUBMISSION OF LAW ENFORCEMENT REPORTS TO THE COURT

Penal Code § 964 requires that prosecutors and the courts ensure the protection of confidential personal information regarding any witness or victim contained in police, arrest or investigative reports if submitted by the prosecutor in support of a criminal complaint, indictment, or information.

For purposes of Penal Code § 964, “confidential personal information” is defined as including, but not limited to, an address, telephone number, driver’s license number, California Identification Card number, Social Security number, date of birth, place of employment, employee identification number, mother’s maiden name, demand deposit account number, savings or checking account number, or credit card number.

In order to meet the requirements of Penal Code § 964, the Office will not provide police reports to the courts upon the filing of a complaint, indictment or information unless the case is filed for warrant. Upon filing a case for felony or misdemeanor warrant, redacted copies of police reports shall be submitted to the court. It is the responsibility of the filing deputy to ensure that all “confidential personal information” is redacted from the reports before they are submitted to the court in the filing package.

In all cases other than those filed for felony or misdemeanor warrant, if a situation arises necessitating the submission of police reports to the court, the deputy submitting the reports shall ensure that all “confidential personal information” concerning witnesses and victims is redacted prior to submission of the reports. Should the court order the submission of unredacted reports, the deputy submitting the reports in compliance with this order should request on the record that

the court issue a protective order prohibiting the release of the reports to anyone not authorized by the court.

2.16 PROSECUTION OF LOCAL CITY ORDINANCES

There are 88 incorporated cities in the County of Los Angeles. Many of these cities have adopted local city ordinances creating offenses for conduct not otherwise prohibited by state law or county ordinance. These offenses can be punished as either misdemeanors or infractions. Some of the cities retain their own city attorney or city prosecutor to pursue violations of these ordinances. Others, however, rely on the Office to prosecute violations of these ordinances on behalf of the city. These cities have contracted with the County of Los Angeles for this service at standard contract rates and must reimburse the county for the cost incurred by Office staff in prosecuting these ordinances.

Whenever one of the cities with established contracts with the county asks the Office to file a criminal complaint for a violation of a city ordinance, the code for Contract Cities (CC) shall be entered in the box at the bottom of the Misdemeanor Filing Worksheet by the filing deputy. This information shall then be entered into PIMS by support staff assigned to complete the filing paperwork and prepare the case file.

In preparing the misdemeanor case file in a Contract Cities case, support staff shall attach the Contract Cities Billing Sheet to the file in lieu of the standard Misdemeanor Filing Worksheet Comments page. The Billing Sheet shall be placed in the file behind the Misdemeanor Filing Worksheet. Whenever any Office employee, including an attorney, investigator, support staff or hearing officer, handles one of these cases, the employee shall write the amount of time the employee spent handling the case, in 15 minute increments, on the Billing Sheet.

When the case is closed, a copy of the Billing Sheet shall be forwarded to Bureau of Administrative Services, Accounting Section. Accounting will calculate the charges and bill the city for Office services.

All filing documents referenced above can be located in the **DA Filing Forms** icon in Lotus Notes and in PIMS.

2.17 CASE PROCESSING IN PIMS

The utility of eFolder is enhanced when more deputies create documents electronically in PIMS. (See LPM § [26.17](#) eFolder.) In order to maximize eFolder and move toward an electronic filing system, it is necessary that all deputies who file cases learn how to electronically decline cases and create felony statements of facts in PIMS. All deputies transferred into a filing assignment shall be trained on how to electronically decline and create statements of facts within one month of the transfer. See [Filing Resources](#) on LADAnet for instructional manuals and guides to electronically file and decline cases. The Filing Deputy Training Team is able to assist with on-site training if requested.

In addition to the above training requirements, all deputies shall abide by the following filing protocols:

- All felony filings shall contain a basic statement of facts, either created using PIMS or uploaded into eFolder immediately after filing. All felony statements of facts shall contain a summary of the defendant's criminal history (including the defendant's status on probation, parole or Post Release Community Supervision), a brief summary of the facts, a list of key witnesses and the name of the Investigating Officer. Managers may require more detail in the statement of facts, depending on the needs of the office.
- Special units may choose to upload a more comprehensive opening memorandum, in addition to the statement of facts. If the memorandum contains sensitive or confidential information, it should be uploaded to the restricted Z Folder within eFolder.
- Deputies who have cases specially assigned to them, especially cases assigned for vertical prosecution, should ensure that PIMS is updated to reflect this assignment.

CHAPTER 5

DECLINING TO CHARGE

5.01 DECLINING TO CHARGE

A deputy has the responsibility to prosecute individuals who commit crimes. A deputy also has the responsibility as a member of the executive branch of government to decline to prosecute when criminal prosecution would defeat the underlying purpose of the particular statute or a deputy's duty to foster and maintain a just and lawful society. However, declining to prosecute for reasons other than evidentiary insufficiency should be done only when society would clearly be served by such action.

Commentary

The court in Taliaferro v. Locke, 182 Cal.App.2d 752, 755-56 (1960), indicated that budgetary limitations justified non-action by a prosecutor. There the prosecutor refused to abate a nuisance or prosecute for perjury where the victim and accused were ex-spouses. The court upheld the prosecutor's unfettered authority to decline to charge.

In State ex rel. McKittrick v. Wallach, 353 Mo. 312, 182 S.W.2d 313 (1944), the court specifically recognized the right to use prosecutorial discretion to determine what action would best result in general law observance and good law enforcement. The case was the subject of an annotation in Annot., 155 A.L.R. 10 (1944).

The following sections provide some examples of proper and improper reasons for the exercise of discretion not to charge. The list is not exclusive.

5.02 PROPER BASES FOR DECLINING TO CHARGE

There are valid reasons for exercising the power to decline to charge other than insufficient evidence.

5.02.01 CONTRARY TO LEGISLATIVE INTENT

It would be proper to decline to charge because the application of criminal sanctions to the accused's conduct is contrary to the legislature's intent in enacting the particular statute.

Commentary

Penal Code § 4 states, "The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice."

5.02.02 ANTIQUATED STATUTE

It would be proper to decline to charge because the statute in question is antiquated in that:

- It has not been enforced for many years;
- Most members of society generally act as if it were no longer in existence; and
- It no longer serves a deterrent or protective purpose in modern society.

Commentary

Prolonged non-enforcement of a criminal statute lulls society into an impression that certain conduct is not unlawful. Furthermore, there may be no legitimate prosecutorial purpose in enforcing an outdated statute. This exception is not to be construed as a basis for rejecting cases because the law in question is unpopular or because appellate decisions have made the law difficult to enforce.

5.02.03 VICTIM REQUESTS NO PROSECUTION

Crimes are prosecuted on behalf of the People of the State of California, not on behalf of particular individuals. The victim is neither a party to the criminal prosecution nor the prosecutor's client. Crimes are committed primarily against society and secondarily against individual members of society. There are rare situations, however, in which the secondary interest of the individual outweighs the primary interest of society.

It would be proper to decline to charge because the victim does not wish the prosecutor to file criminal charges when the case involves the following crimes: (1) in assault or battery cases when the victim has suffered little or no injury and the accused's conduct is not likely to be repeated; and (2) in crimes against property, not involving violence, when no major loss was suffered and the accused's conduct is not likely to be repeated.

When an accused has a history of violence, even though it may never have been brought to the attention of the criminal justice system, the filing deputy and his or her superior shall, with the help of the Bureau of Victim Services, encourage prosecution.

Where a criminal filing is appropriate and the case can be proved without the testimony of the victim, charges shall normally be filed, despite the victim's refusal to be a witness.

Commentary

There are rare situations, set forth here, in which the secondary interest of the individual outweighs the primary interest of society. This primary interest is outweighed when none of the four sentencing goals of deterrence, protection, punishment and rehabilitation are particularly applicable. In these cases, non-prosecution would foster harmony, good employment relations, the promotion of individual friendships, and the victim's personal privacy.

The issue described here is different from a case in which a witness is so uncooperative that successful prosecution is unlikely. The problems of proof associated with an uncooperative witness are potentially applicable in any criminal case, but in serious cases, society's interest in protection and deterrence requires deputies to try to secure the victim's or witness's cooperation.

In such cases, a deputy should be prepared to impeach the witness with his or her own prior recorded statements.

5.02.04 DE MINIMIS VIOLATION

It is proper to decline to charge because the violation is de minimis. In this rare circumstance, consider the following factors: (1) the availability of appropriate alternative charges; (2) whether the accused, if convicted, would merit any confinement or significant fine; (3) whether a deterrent purpose would be served by prosecuting the offense; and (4) possession of controlled substances cases in which the amount of the controlled substance falls below the minimum requirements enumerated in Legal Policies Manual § [4.06.03](#).

Commentary

This policy recognizes the judicial principle of “de minimis non curat lex”: The law does not concern itself with trifles. This policy may be applied to a single de minimis violation; however, a filing should be considered when multiple de minimis violations occurred and a deterrent effect or significant sentence may be obtained. In de minimis situations, alternatives to prosecution (such as office hearings) should be considered when the same purpose of criminal prosecution can be achieved without incurring the cost.

5.02.05 PROBATION VIOLATION - CONFINEMENT ON OTHER CHARGES

In certain instances, it would be proper to decline to charge because revocation of the accused's probation is imminent or the accused has been sentenced to a lengthy period of confinement on another charge.

A deputy shall consider initiating a probation violation in lieu of filing a criminal complaint when (1) there is sufficient evidence to prove the violation, and (2) the probationer's conduct that constitutes the violation is either not criminal or if criminal, (a) conviction on the new offense would not merit any significant, additional, direct or collateral punishment, (b) the new offense is not particularly aggravated, and (c) conviction on the new offense would not serve any significant deterrent purpose.

A deputy may file a probation violation in lieu of a new criminal filing when the evidence is sufficient to show probable cause (as required by California Professional Rules of Conduct, Rule 5-110) but may be insufficient to prove the charge to a jury beyond a reasonable doubt.

5.02.06 PENDING PROSECUTION ON OTHER CHARGES

It would be proper to decline to charge because the accused is facing a pending prosecution in this or another jurisdiction and:

- Conviction on the new offense would not merit any significant, additional direct or collateral punishment;
- There is a reasonable certainty that conviction in the pending prosecution is imminent;
- The new offense is not aggravated; or

- Conviction on the new offense would not serve any significant deterrent purpose.

When the new offense is a felony, a deputy needs prior Head Deputy or Deputy-in-Charge approval to decline to charge.

The quality of the evidence of the new offense is an appropriate factor to consider in close decisions regarding whether to prosecute under this policy.

Commentary

In some cases, it may be appropriate to delay the initiation of prosecution until the outcome of another pending matter is determined. A filing deputy should consider, though, whether any delay could jeopardize the People's case or an accused's right to due process and a speedy trial.

5.02.07 DISPROPORTIONATE COST OF PROSECUTION

A decision not to charge because the cost of prosecution or the burden on prosecution witnesses may be disproportionate to the importance of prosecuting the particular offense shall be made only with Bureau Director prior approval.

Commentary

The mere fact that a witness is inconvenienced does not justify declining to prosecute. In extreme situations, prosecution may be declined because of disproportionately high costs in producing witnesses or of burdens on those witnesses when compared to the importance of prosecuting the offense.

5.03 IMPROPER BASIS FOR DECLINING TO CHARGE

There are certain factors that do not justify declining to charge unless other mitigating factors are present as well.

5.03.01 RESTITUTION

It would be improper to decline to charge simply because the accused made or tendered restitution to the victim.

Commentary

The mere fact restitution has been made should not justify declining to charge. If it did, the accused would in effect be buying his or her way out of criminal prosecution. The accused would have no incentive to refrain from committing a crime. On the other hand, the fact restitution was made when combined with other legitimate factors, like the victim's request not to prosecute or the existence of a de minimis situation, might justify a decision not to prosecute.

5.03.02 EXTRADITION NOT WARRANTED

It would be improper to decline to charge simply because extradition is necessary to obtain jurisdiction over the accused. The decision to charge and the decision to extradite should be made independently.

Commentary

Failure to charge because an accused is outside the jurisdiction could cause due process, speedy trial or statute of limitations problems. Deputies should address any concerns or questions about extradition to the Extradition Services Section in the Training Division.

5.03.03 RELATION OF ACCUSED AND VICTIM

It would be improper to decline to charge simply because the victim and accused are related.

5.03.04 UNPOPULAR STATUTE

It would be improper to decline to charge simply because the statute is unpopular with a segment of the local population, the local judiciary, or even the prosecutor.

Commentary

There is an important distinction between a statute that is simply unpopular and one that is antiquated. An equal protection argument that may constitute a defense to the antiquated statute does not apply to the unpopular statute.

5.03.05 VICTIM'S LACK OF COOPERATION

A deputy shall not decline to charge simply because the victim's future cooperation is problematical. A deputy should take steps to ensure cooperation and encourage a reluctant victim to pursue his or her obligation as a citizen to see that criminal conduct does not go ignored. Bureau of Victim Services staff can assist a deputy in this regard.

Nothing in this policy, however, should be viewed as preventing a deputy from considering the victim's present lack of cooperation as a factor in determining whether the case can be successfully prosecuted.

5.03.06 SEVERE IMPACT ON THE ACCUSED OR THE ACCUSED'S FAMILY

It would be improper to decline to charge simply because prosecution will have a severe impact on the accused or the accused's family.

Commentary

Prosecutions often have a severe impact on the accused and the accused's family. The first is usually justifiable, the second is unavoidable. To decline to charge because of an accused's family status would result in an unequal administration of justice.

5.03.07 IMPROPER MOTIVES OF THE COMPLAINANT

It would be improper to decline to charge simply because the motives of the complainant in seeking prosecution are self-serving, vindictive or competitive.

Commentary

This issue is relevant in evaluating witness credibility or determining if a witness's bias will affect the successful prosecution of the case. It is otherwise irrelevant because crimes are prosecuted on behalf of the People of the State of California, not individuals.

5.03.08 COMMISSION OF PERJURY IN JUDICIAL PROCEEDING

If a defendant or a witness commits perjury during a judicial proceeding, a deputy should not decline to charge perjury simply because the defendant or a codefendant was convicted on the original charge. In deciding whether to file a charge of perjury against a person who has been sentenced on another charge or a person who gave false evidence in a proceeding, the filing deputy should consider the following factors:

- To permit perjury to occur without consequence makes it appear that the criminal justice system condones liars and that lying is a normal part of the system.
- A charge of perjury may increase a defendant's punishment.

5.04 DECLINATION PROCEDURES

A Charge Evaluation Worksheet shall be completed in PIMS in every felony and misdemeanor case for which charges are being declined. All declinations require that the filing deputy (or support staff, at his or her direction) enter into PIMS the name of the victim, the charges, and the name of the investigating or filing officer, along with the reasons for the declination.

5.04.01 FELONY DECLINATIONS

All felony declinations shall be in writing and signed by a deputy using the electronic version of the Charge Evaluation Worksheet (CEW) which can be located in PIMS. All declinations shall include the California Department of Justice letter code indicating the primary reason for the declination. Only one code may be entered because the Department of Justice only accepts one code. If multiple codes are entered into PIMS, only the first code is captured and retained. Because only one code is recorded, the selected code should be the one that most accurately represents the primary reason for the rejection. The declination should also include a written statement in the "Comments" section explaining the reason(s) for the rejection.

The following discussion of California Department of Justice letter reason codes is intended to provide guidance for filing deputies when a decision has been made to decline filing a charge and two or more possible reject codes apply. Not every fact pattern will lend itself to these suggestions and deputies shall use their best judgment in all other situations.

Lack of Corpus (A) should only be selected when there is absolutely no evidence, independent of the accused's statement(s), which would establish the corpus delicti of a crime.

Lack of Sufficient Evidence (B) should be selected when there is insufficient evidence to prove the charge beyond a reasonable doubt. It is appropriate to select **B** in narcotics cases when there is an insufficient amount of contraband to test. In domestic violence cases, **B** should be used when the victim recants and there is no other independent evidence to establish the charge(s). Reason code **B** should not be used when another, more specific reason code applies.

Inadmissible Search/Seizure (C) should be selected when the filing deputy believes that the law enforcement agency acted outside permissible 4th Amendment restrictions. Deputies should be mindful of any *Brady* implications when evaluating the facts and should not be reluctant to select this reason code if it accurately reflects the reason for the filing decision to decline prosecution.

Victim Unavailable/Declines To Testify (D) should be selected when a victim refuses to testify or has fled the jurisdiction. In these situations, **D** most accurately reflects the reason to decline to file rather than **B**. Certain witnesses and victims have statutory privileges or constitutional rights not to testify (e.g., Code of Civil Procedure § 1219 and the 5th Amendment). In these situations, **D** should be selected as the reason code with an explanation in the Comments section as to the applicable privilege.

Witness Unavailable/Declines To Testify (E) should be selected when a witness refuses to testify or has fled the jurisdiction. In these situations, **E** more accurately reflects the reason to decline to file rather than **B**.

Combined with Other Counts/Cases (F) should rarely be used. This reason code should be used if the suspect has a pending case and filing an additional charge(s) would not significantly add to the sentence or further strengthen the prosecution's case.

Interest of Justice (G) should be selected in circumstances in which judicial economy merits declination. For example, if the suspect already has been sentenced to a lengthy prison sentence on another case.

Other (H) requires deputies to indicate their reasons in the Comments portion of the CEW. This reason code would be selected primarily when the statute of limitations has passed and/or the Office does not have jurisdiction to file the charge(s).

Referred to Non-California Jurisdiction (I) should be used if the charges presented are within the purview of federal jurisdiction, military jurisdiction or more appropriately filed in another state.

Deferred for Revocation of Parole (J) should no longer be selected in felony declinations. If the charge is provable, the charge should be filed. Since the State of California has instituted non-revocable parole status, the Office cannot rely on a defendant's parole being revoked in lieu of a criminal filing. Therefore, the charge should be pursued. If the charge is unprovable, select

reason code **B** and note the defendant's parole status in the Comments section. Also, filing deputies should ensure the presenting law enforcement officer notifies the defendant's parole agent that the case was declined.

Further Investigation (K) should be used whenever a filing deputy requests a law enforcement officer/agency to conduct further investigation of the charge(s). Completing a CEW in these situations serves multiple purposes. First, selecting **K** on the CEW documents that the Office has not declined the case should the matter be presented to a city attorney/prosecutor. Second, once the CEW has been entered into PIMS with the reason code **K**, a DA case number is generated. This case number can be used to track the allegations when the agency presents the case at a later time for filing.

The filing deputy shall provide the presenting officer with a due date (first due date) for submitting the additional investigative material being requested (depending on the nature of the charge(s) and the request), and indicate the due date on the CEW. The filing deputy shall also indicate the final due date on the CEW. If a law enforcement officer is not present at the time the charge(s) are referred for further investigation, the filing deputy shall ensure that a copy of the CEW is given to the law enforcement liaison. Filing deputies shall also ensure that a copy of the initial CEW is given to support staff.

In PIMS, support staff shall note the first due date and final due date for the law enforcement agency to provide the requested materials. The Notices screen (AP111) in PIMS can be used to track the case. If the law enforcement agency does not respond to the request by the first due date, support staff shall send the agency a *Final Reminder* notice (444 B). The *Final Reminder* will inform the agency of the final due date and that the charge(s) will be declined if the requested materials are not received by the final due date. If the law enforcement agency does not present the case for filing or rejection by the final due date, the responsible staff shall notify the original filing deputy and Head Deputy or Deputy-in-Charge.

In any serious or violent felony or other significant case, the Head Deputy or Deputy-in-Charge may choose to contact command level staff at the law enforcement agency to apprise them of the filing officer's failure to conduct the requested further investigation. A conforming letter should be sent to the law enforcement agency to document any telephone conversation(s). The filing deputy shall prepare the CEW, select reason code **B**, indicate in the Comments section that the reason or part of the reason for the declination was the agency's failure to conduct further investigation as requested, and close the case. Staff shall send the investigating officer a *Prosecution Declined* letter, stating that the charges were declined.

The *Final Reminder* and *Prosecution Declined* notification letters are available in PIMS.

A weekly report is available on LADAnet ([Library>Reports>Declines for Further Investigation](#)) for cases with outstanding due dates. This report can be used to send out the notification letters to law enforcement agencies as appropriate.

Prosecutor Prefiling Deferral (L) is used for those offices that have PDP officers and submit the allegations for an office hearing. A Charge Evaluation Worksheet shall be prepared in every

instance in which a matter is referred for an office hearing. Staff shall enter the filing deputy's name and charges in PIMS. Refer to Legal Policies Manual § [6.01.02](#) et seq. for guidance on what offenses are appropriate to refer to a PDP officer.

Probation Violation In Lieu Of (M) - Revised Procedures

The Motion Requesting Revocation of Probation and Declaration In Support Thereof shall be prepared in every new case filing with a probation violation or when a probation violation is initiated "in lieu of" a new case filing. This motion is available as a Word document in PIMS under File/Document/Templates. Additionally, this document may be created in PIMS by accessing the case. If completed in this manner, the form will be prepopulated and preserved for future reference.

The following procedures should be used in all probation violation and probation violation "in lieu of" cases.

New Open Case

If a new case is filed, the filing deputy should not prepare a Charge Evaluation Worksheet. When the case is filed and the defendant is on probation, the filing deputy shall also prepare a Motion Requesting Revocation of Probation and Declaration In Support Thereof and submit all paperwork together whether the defendant is on probation in the same or different court location. If the charges presented are fileable, a new case should be filed. The decision regarding the appropriate sentence on the violation and/or new case is one that should be made by the trial judge and assigned deputy in court.

No New Open Case

A probation violation "in lieu of" a filing should only be initiated if the new charge(s) cannot be proven beyond a reasonable doubt. If charges are declined and a probation violation is initiated "in lieu of" a new case filing, the filing deputy shall prepare a Charge Evaluation Worksheet and select reason code M.

When the defendant is on probation at that court location, the filing deputy shall prepare the Motion Requesting Revocation of Probation and Declaration In Support Thereof and ensure the paperwork is filed with the court for appropriate action.

If the defendant is on probation at another court location, the filing deputy shall fax or e-mail a copy of the police reports and the Charge Evaluation Worksheet to the Assistant Head Deputy (AHD) or Deputy-in-Charge (DIC) at that location. The filing deputy shall also note this action in the Comments section of the Charge Evaluation Worksheet. The AHD or DIC shall be responsible for preparing or causing the Motion Requesting Revocation of Probation and Declaration In Support Thereof to be prepared. In addition, the AHD or DIC is responsible for ensuring the court revokes the defendant's probation, secures a no bail setting where appropriate and issues a Temporary Commitment Order (TCO) for the defendant.

Referred to City Attorney (N) should be selected when a determination is made that a wobbler should be filed as a misdemeanor and there is a city attorney/prosecutor responsible for handling misdemeanor cases in that jurisdiction. In the event a straight felony is presented and the filing deputy decides to decline prosecution, the filing deputy shall prepare the Charge Evaluation Worksheet and select the most applicable reason code, such as code **B**, or another code if more appropriate, and not use reason code N since a straight felony cannot be filed as a misdemeanor. The deputy may note in the Comments section that the presenting agency may wish to refer the case to the city attorney/prosecutor for consideration of possible misdemeanor charges arising from the same conduct (e.g., lesser related charges).

Bureau of Victim Services Referrals

The Bureau of Victim Services assists qualifying victims of crimes of violence or threat of violence whether or not a criminal case is filed. If the case involves a crime of violence or threat of violence, the filing deputy shall mark the “Victim Assistance Referral” box on the Charge Evaluation Worksheet so that eligibility for victim services can be determined.

5.04.02 MISDEMEANOR DECLINATIONS

The policy for misdemeanor declinations is the same as the policy for felony declinations, including the requirement that the filing deputy (or support staff, at his or her direction) enter into PIMS the name of the victim, the charges, and the name of the investigating or filing officer, along with the reasons for the declination. (See LPM § [5.04.01](#))

5.04.03 LAW ENFORCEMENT REQUESTS FOR REVIEW OF FILING DECISION

If an investigating officer disagrees with a filing deputy’s charging decision, the officer may appeal the decision to the Assistant Head Deputy of the branch office or division, or to the Deputy-in-Charge of the area office or section/unit. If the matter remains unresolved, the officer’s supervisor may request review by the Head Deputy.

If a deputy city attorney disagrees with a filing deputy’s decision to refer a case to the City Attorney’s Office pursuant to Penal Code § 17(b)(4), the deputy city attorney may contact the filing deputy to discuss the referral. If the matter remains unresolved, the deputy city attorney’s supervisor may request review by the filing deputy’s Head Deputy or Deputy-in-Charge. This request for review should be made at the filing stage.

5.04.04 VICTIMS’ RIGHT TO RESPECT FOR PRIVACY AND DIGNITY

Victims have a right “to be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.” (Cal. Const. Art. I § 28(b)(1).) (See LPM § [24.02.04](#))

CHAPTER 6

ALTERNATIVES TO CHARGING

6.01 PRE-FILING DIVERSION PROGRAM (PDP)

The Pre-Filing Diversion Program (PDP) diverts low-level non-violent offenders away from the criminal court process and into a voluntary supervision program. The PDP offers immediate intervention and resources to offenders and their victims. Terms of the program include, but are not limited to: intensive monitoring, treatment, counseling, restitution, community service, protective/stay-away conditions, and education. The requirements for the PDP shall be tailored to address the issues involved and may vary for each offender. The terms for each offender shall be determined by the PDP officer. Restitution shall be required in all cases involving losses.

The filing deputy shall exercise discretion in referring cases to the PDP and shall not be required to refer to the PDP every offender who may appear eligible for the program. Where the evidence, circumstances, and the interest of justice dictate that a matter should be resolved in court, the filing deputy shall exercise his or her discretion not to refer a case to the PDP.

An experienced PDP officer shall evaluate each referral to the program for the offender's eligibility and suitability, conduct an investigation into the circumstances of the crime and the offender's background, propose a global plan to address the offender's particular circumstances, and enter into a contract for supervision with the offender. At all times, the PDP officer shall be mindful of Marsy's Law and the circumstances pertaining to the victim(s).

When the referral offense constitutes misdemeanor conduct, the PDP officer shall monitor the offender's progress for at least six months. When the referral offense constitutes felony conduct, the PDP officer shall monitor the offender's progress for at least one year.

If the offender successfully completes the terms of the program, the case shall not be filed. If the offender fails to abide by the terms of the PDP, the case shall be filed, and the offender shall be prosecuted for the crimes committed.

The purpose of the PDP is to:

1. Divert adult offenders who commit misdemeanor and low-level, non-violent felony crimes from the criminal justice system;
2. Collect restitution on behalf of victims;
3. Direct the offender into counseling; mental health treatment; alcohol or substance use disorder treatment; parenting classes; and/or education classes, as appropriate;
4. Impose community service when appropriate;
5. Foster an understanding of the consequences of poor choices and redirect offenders away from criminal behavior;
6. Reduce recidivism rates;
7. Resolve minor problems before they escalate into more serious criminal conduct; and

8. Conserve resources that would otherwise be expended in the prosecution of minor offenses or disputes.

6.01.01 PROCEDURAL OVERVIEW

The following is a procedural overview of the PDP:

1. The filing deputy shall evaluate the case for filing and determine whether the offender is both eligible and suitable to participate in the PDP pursuant to this chapter.
2. If the filing deputy determines the offender is both eligible and suitable for the PDP, the filing deputy shall complete the Charge Evaluation Worksheet, using code “L” for PDP referrals.
3. A referral to the PDP does not guarantee acceptance into the program. The PDP officer has discretion to accept or reject a candidate upon the initial referral to the program, or at any time thereafter. When returning a case for prosecution, the PDP officer shall expedite the return of the case so that the filing may occur in time to maintain the original citation date. The referral shall also include a brief explanation supporting the return for prosecution.
4. The offender, victim(s), and arresting law enforcement agency shall be notified in writing when an offender has been referred to the PDP. The notice shall include the date, time and location of the PDP hearing.
 - a. The notification to the offender shall inform the offender that failure to appear and/or failure to respond to the notice may result in prosecution for the offense(s) underlying the referral to the PDP.
 - b. The notification to the victim shall inform the victim that he or she may contact the PDP officer; may request that the offender have no contact with the victim as a condition of the offender’s grant of Pre-Filing Diversion; and may request that restitution be collected from the offender on the victim’s behalf.
 - c. Upon referring a case to the PDP, a notice requesting preservation of evidence shall be sent to the arresting law enforcement agency.
5. When an offender is accepted into the PDP Program, a contract shall be signed documenting the terms of the PDP plan of supervision.
6. The PDP officer shall verify all relevant documents concerning the enrollment and/or completion of the terms of the PDP submitted by the offender. Additionally, the PDP officer shall obtain and review an updated copy of the offender’s criminal history information immediately prior to the end of the deferral period and determine whether the offender has committed any new offenses.
7. If an offender successfully completes the PDP, closing letters shall be sent to the offender, victim(s) and arresting law enforcement agency notifying them of the disposition of the case. The letter to the arresting law enforcement agency shall state that any evidence need not be preserved any longer.
8. If the offender does not successfully complete the program requirements, the PDP officer shall terminate the offender from the PDP and refer the matter to the filing deputy for filing consideration. Relevant violations include, but are not limited to: the commission of a new offense, a violation of a protective or stay-away order, failure to pay full

restitution within the period instructed by the PDP officer, and failure to participate in a required program. When returning a case for prosecution, the PDP officer shall:

- a. Include a brief explanation regarding the nature of the offender's non-compliance with the terms of the PDP.
- b. Notify the victim(s) and law enforcement agency in writing that the offender has been terminated from the PDP and the case has been referred for prosecution.
9. If the case involves the violation of a local city ordinance, the procedures described in [LPM 10.18](#) (Prosecution of Local City Ordinances) shall be followed.

Additional guidance and specific procedures, including forms to be utilized, may be found in the Pre-Filing Diversion (PDP) Manual.

6.01.02 ELIGIBILITY FOR THE PRE-FILING DIVERSION PROGRAM

Each offender who is eligible for the PDP shall be evaluated for acceptance to the PDP on a case-by-case basis. The primary consideration shall be the offender's conduct related to the current offense.

There may be exceptional cases in which the Office may choose to deviate from the enumerated eligibility criteria. However, no deviation is permitted in cases involving: family or domestic violence (Penal Code § 13700); elder and/or dependent adult abuse (Penal Code §§ 368, et seq.); or child abuse (Penal Code §§ 273a, et seq.). Without exception, those types of cases are strictly ineligible for the PDP. In all other cases, the Filing Deputy shall obtain the approval of his or her Deputy-in-Charge of the relevant area office or Head Deputy (or his or her designee) of the branch office prior to deviating from the following criteria:

1. The case shall meet the filing criteria described in the Legal Policies Manual.
2. The offender shall be at least 18 years of age at the time of the commission of the offense(s).
3. The offender shall not have suffered a prior felony conviction, nor have any criminal charge(s) pending in any court in any jurisdiction. The offender shall not be on an active grant of diversion, probation, Post-Release Community Supervision (PRCS), or parole to any other court or agency at the time of the commission of the current offense(s), or at any time during the term of the PDP. (*See "Commentary" below.*)
4. The offender shall not have suffered a sustained juvenile petition for an offense enumerated in Welfare & Institutions Code § 707(b), nor have served a commitment to the Department of Juvenile Justice (formerly the California Youth Authority).
5. The offender's record shall not indicate that he or she has participated in a misdemeanor or felony diversion program within five years prior to the commission of the alleged offense. These diversion programs include, but are not limited to: the PDP, drug court or pretrial diversion for narcotics offenders pursuant to PC §§ 1000 et seq.
6. The offender shall not have a criminal protective order or civil emergency, temporary, or permanent restraining order in effect against him or her.
7. The offender shall not have exhibited criminal sophistication in the conduct underlying the current offense(s).

8. The conduct underlying the current offense(s) shall not constitute a felony enumerated in Penal Code §§ 667.5(c) or 1192.7(c).
9. The conduct underlying the current offense(s) shall not require mandatory registration under any of the following registration sections:
 - a. Penal Code § 290(c), et seq. (Sex Offender);
 - b. Penal Code § 457.1 (Arson); or
 - c. Penal Code § 186.30 (Gang).
10. The conduct underlying the current offense(s) shall not qualify to deny a potentially dangerous person the right to possess a firearm within ten years of the date of conviction pursuant to Penal Code § 29805(a) or a lifetime ban pursuant to § 29805(b). The current offense(s) shall not be enumerated in Welfare & Institutions Code §6600(b).
11. Restitution shall not exceed \$2,500.00, except in unusual circumstances.
12. The conduct underlying the current offense(s) shall not involve:
 - a. A hate crime (Penal Code §§ 422.55, et seq.);
 - b. Human trafficking (Penal Code §§ 236.1, et seq.);
 - c. Stalking (Penal Code §§ 646.9, et seq.);
 - d. Family or domestic violence (Penal Code §13700) – no exceptions;
 - e. Elder and/or dependent adult abuse (Penal Code §§ 368, et seq.) – no exceptions;
 - f. Child abuse (Penal Code §§ 273a, et seq.) – no exceptions;
 - g. Sexual intercourse by a person over 21 upon a minor under the age of 16 (Penal Code § 261.5(d));
 - h. Gang activity;
 - i. Dissuading or intimidating witnesses (Penal Code §§ 136.1, et seq.);
 - j. Infliction of, or intent to inflict, serious bodily injury as defined in Penal Code § 243(f)(4), or great bodily injury as defined in Penal Code § 12022.7(f);
 - k. Driving under the influence of alcohol or drugs (Vehicle Code §§ 23152 or 23153);
 - l. Personal use, possession of, or principal armed with, a firearm or other weapon (*see Commentary below*);
 - m. Sale, transportation for sale, or possession for sale of a controlled substance (*see “Commentary” below*);
 - n. A quantity of a controlled substance sufficient to establish a weight enhancement allegation enumerated in the Health and Safety Code (*see “Commentary” below*); or
 - o. Animal cruelty (Penal Code §§ 597(a), et seq.) (*see “Commentary” below*).

Commentary

Where an offender is on an active grant of PRCS, the filing of a new case may render the offender ineligible for flash incarceration for the related violation.

Where a weapon is merely possessed without having been displayed or otherwise used in any manner, the circumstances may justify a deviation from the eligibility criteria.

With the approval of the Head Deputy or Deputy-in-Charge, individuals arrested for low level sales, transportation for sale, or possession for sale of narcotics charges may be eligible for

participation in the PDP where there is clear evidence that the sales activity is driven by a documented history of narcotics addiction.

Charges involving any form of animal abuse, including dog and cock fighting, require prior approval from the Animal Cruelty Case Coordinator (ACCC) and Head Deputy or Deputy-in-Charge pursuant to [LPM 10.13.01](#).

6.01.03 PROCEDURE FOR CONDUCTING PRE-FILING DIVERSION PROGRAM HEARINGS

PDP hearings shall be conducted in District Attorney facilities and be treated as informal proceedings, not restricted by technical rules of evidence or procedure. Separate meeting times for the victim and the offender are preferred. However, there may be circumstances in which a joint hearing may be appropriate. The PDP officer shall exercise his or her careful judgment on a case-by-case basis in determining whether to hold a joint hearing. The safety of the participants and office staff shall be the paramount consideration.

Attorneys for a party shall be permitted to attend in an advisory role only. The parties must speak for themselves during the hearing. Witnesses and other concerned individuals shall be excluded until their participation is needed.

At the conclusion of the hearing, the PDP officer shall state his or her recommended resolution and provide an explanation for the decision. PDP officers have discretion to fashion a resolution that fairly addresses the concerns of the parties and public safety. Outcomes include, but are not limited to: payment of restitution, stay-away directives, community service, education, and referrals to various counseling and treatment services.

If the offender is required to pay restitution to the victim, the payment shall be in the form of a cashier's check or money order. The PDP officer shall not accept cash. The PDP officer shall send the payment to the victim only after the victim has agreed in writing that the money order or cashier's check may be mailed to him or her. In all other cases, arrangements shall be made with the victim to collect the restitution at the branch or area office at a date and time mutually convenient to the victim and PDP officer. A copy of the check or money order along with the victim's driver license or any other photo identification shall be included in the case file with a written acknowledgment by the victim that restitution has been received.

6.01.04 VICTIMS' RIGHTS AND THE PRE-FILING DIVERSION (PDP) PROGRAM

California law gives crime victims the right to be treated with fairness and respect as to both their dignity and their privacy. Office policies related to these laws are detailed more thoroughly in Legal Policies Manual § [11.21](#), et seq., and the PDP Manual.

A victim's personal and contact information shall not be provided to offenders enrolled in the PDP.

PDP officers shall maintain communication with victims at each stage of PDP proceedings. Victims shall be informed in writing when a case has been: 1) referred to the PDP, 2) accepted into the PDP, 3) successfully completed pursuant to the terms of the PDP; 4) terminated from the PDP, and 5) referred for prosecution.

The PDP requires participating offenders to make restitution to the victim, as would have been required in the event of a conviction.

6.01.05 PDP STATISTICAL INFORMATION AND FILE RETENTION POLICY

In order to evaluate the efficacy of the PDP, the PDP officer shall utilize the PDP database to track each offender's referral to, and participation in, the PDP. The PDP officer shall be responsible for updating the PDP database. The system shall include statistical information both for offenders whose cases are referred to the PDP and for the program overall, as set forth in the PDP Manual.

Additionally, PDP officers shall input case information into the Prosecutors' Information Management System (PIMS).

PDP officers shall enter statistical data into the PDP database on a daily basis. At the end of the month, a report summarizing the data shall be generated.

In all cases, PDP officers shall retain a copy of the file at the appropriate branch or area office. The case files shall be retained for a minimum period of three years.

6.02 REQUESTS FOR INFORMAL HEARING BEFORE CHARGING

Requests are sometimes received from attorneys representing an accused to present the accused's side of a case at an informal hearing before a complaint is filed.

A pre-filing request for an informal hearing shall be referred to the Head Deputy or Deputy-in-Charge. When the case is presented for filing by a law enforcement agency, it should be referred to the Head Deputy or Deputy-in-Charge for processing.

If the request is granted, the attorney shall be advised that time is of the essence and unless the attorney can appear within a reasonable time, a filing may be considered without the hearing.

At the hearing, the deputy shall advise the attorney generally of the charges under consideration and that the hearing was granted solely to provide an opportunity to present information the attorney feels is relevant to the determination of whether a complaint should be issued. The deputy shall advise the attorney that this hearing is not a discovery proceeding, an opportunity to learn the facts of the case, or an opportunity to cross-examine any prosecution witnesses.

If the attorney desires to have his or her client present at the hearing, prior Head Deputy approval is required. If approved, a district attorney investigator or an investigator from the law enforcement agency must be present in addition to the prosecutor.

Taping or transcribing the hearing is not required unless the accused is present and expected to make a statement. Should formal statements be taken, the deputy can place a witness or the accused under oath pursuant to Government Code §§ 24000 and 24057. At the conclusion of the hearing, the deputy shall memorialize the substance of the hearing in a memorandum. In the event of a filing, the memorandum shall be placed in the case file. In the event of a rejection, the memorandum shall be attached to the reject form.

Suspects without counsel can also be granted pre-filing hearings. The same policies set forth above shall be followed. If a hearing is held, an investigator and a deputy shall be present. The interviewer shall make the suspect aware that he or she is welcome to be represented by counsel if he or she so desires.

If a defense attorney's request for a pre-filing hearing is directed to a filing deputy's Deputy-in-Charge, Head Deputy, or a supervisor higher in the chain of command and the request is approved, that supervisor shall notify the filing or assigned deputy and the deputy an opportunity to attend the hearing. The supervisor should inform the defense attorney that these conditions (notification and opportunity to attend) are prerequisites to granting a hearing.

6.03 VOLUNTARY COMPLIANCE

In some cases involving minor violations of consumer protection, environmental/workplace safety, administrative regulations, zoning and business license laws, voluntary compliance may be an acceptable alternative to criminal prosecution.

6.03.01 CONSUMER AND ENVIRONMENTAL CASES

In some cases involving minor violations of consumer protection or environmental/workplace safety laws, voluntary compliance may be an acceptable alternative to criminal prosecution. Voluntary compliance is an acceptable alternative to prosecution in consumer protection cases when:

- The incident is the first offense involving this type of conduct.
- The violation was not deliberate.
- The incident appears to be isolated and not part of a pattern of conduct or conspiracy.
- Complete restitution is made to all known victims.

Voluntary compliance is an acceptable alternative to prosecution in environmental cases when:

- The deputy is reasonably satisfied voluntary compliance will compensate the victim or complainant for damage done.
- The deputy is reasonably satisfied that the accused will not repeat the conduct in question.
- There is no pattern of continuing violations of the law in question.
- The violation was neither deliberate nor was the damage significant.

6.03.02 REGULATIONS, ORDINANCES, AND PUBLIC NUISANCE CASES

Voluntary compliance is an acceptable alternative to prosecution for violations of administrative regulations, zoning, building and safety, health, or other similar county ordinances, or a violation of Penal Code § 370 when:

- Voluntary compliance will compensate for past damage or is satisfactory with the victim or complainant.
- The deputy is reasonably satisfied that the accused will not repeat the conduct in question.
- There is no pattern of continuing violations of the ordinance or statute in question.

6.03.03 BUSINESS LICENSE VIOLATIONS

Voluntary compliance is an acceptable alternative to prosecution for business license violations when:

- The accused, upon request, promptly obtains the proper license.
- There is no pattern of continuing violations of the statute or ordinance in question.
- The violation was not deliberate.

6.04 CIVIL ACTION

In some cases involving minor violations of consumer protection, environmental/workplace safety, administrative regulations, zoning and business license laws, a deputy may seek civil penalties or injunctive relief without filing criminal charges.

6.04.01 CONSUMER AND ENVIRONMENTAL CASES

In some cases involving violations of consumer protection or environmental/workplace safety laws, a deputy may seek civil penalties or injunctive relief without filing criminal charges in the following situations:

- Money damages, civil penalties, or injunctive relief will be an effective deterrent to the accused and others.
- The conduct is likely to cease as a result of a successful civil suit.
- The accused's conduct does not involve a single or occasional violation for which criminal prosecution would be more expeditious and effective.

6.04.02 CIVIL ABATEMENT - PUBLIC NUISANCE CASES

When the prosecution has the right to seek a civil injunction to abate a public nuisance, a deputy may use this remedy whenever practical. Civil abatement actions are often more effective than criminal prosecutions in public nuisance cases because they are designed to correct ongoing situations rather than specific past acts.

Commentary

The primary consideration in deciding to seek an injunction is a tactical one. A deputy should select the best available means to accomplish the four goals of deterrence, protection, punishment, and rehabilitation. The legislature has given prosecutors additional tools to accomplish these goals: the right to proceed civilly as well as criminally in certain types of cases.

There are conflicting considerations a deputy should weigh. A civil lawsuit offers certain advantages that may make it the only practical remedy. The potential monetary damages are greater. Due to the lack of stigma, civil suits may lead to faster correction of the problem and resolution of the lawsuit. A deputy is generally not limited by the Fifth Amendment so the right to discovery is more effective and meaningful. The burden of proof is less than the burden in a criminal case. A civil lawsuit may, however, unnecessarily overburden the resources of the Office in lengthy litigation. All these factors should be weighed in deciding which course of action will accomplish the overall goal of remedying the interference with the freedom of others to live in a just and lawful society.

CHAPTER 10

MISDEMEANOR CASE SETTLEMENT POLICY

10.01 INTRODUCTION

The Misdemeanor Case Settlement Policy has been developed to protect crime victims and the community, punish the guilty and deter crime throughout Los Angeles County. This policy is intended to ensure case settlements throughout the county further these purposes.

The Misdemeanor Case Settlement Policy is intended to be clear and easy to apply in most situations. If conflicting interpretations arise, deputies shall adopt the interpretation that favors the victim and public, not the defendant. If a case includes charges that fall within several different guidelines, deputies shall consider all relevant policies to determine the most appropriate disposition.

10.02 BASIC PRINCIPLE OF MISDEMEANOR CASE SETTLEMENT

A defendant charged with a misdemeanor shall be required to plead guilty to the charge or charges that most accurately reflect the criminal conduct for which there is sufficient evidence for conviction. Otherwise, the case should proceed to trial.

A deputy may not accept a plea to a charge unless the facts support the charge (e.g., a plea to trespass should not be taken to a petty theft charge unless the facts show that a trespass occurred). If the facts do not support any lesser included or related offense, a deputy should consider a dismissal in the interests of justice if there is insufficient evidence for conviction. A deputy shall obtain the prior approval of his or her Head Deputy or Deputy-in-Charge before dismissing a case.

10.03 MISDEMEANOR GANG CASES

Gangs present an extreme threat to society. Gang members are often far more dangerous than a criminal acting alone. Therefore, gang members should be punished more severely than non-gang members for their crimes because of the potential danger they present to the community.

10.03.01 SENTENCING

A deputy shall seek substantial jail time if the defendant is a gang member.

If the court grants probation, deputies shall recommend the following conditions of probation if the defendant is involved in a criminal street gang:

- The defendant must be subject to search upon the request of a law enforcement officer;
- The defendant must be subject to substance abuse testing whenever permitted by law;

- The defendant may not associate with other gang members and shall stay away from specified locations frequented by gang members; and
- The defendant must not wear or display any common identifying sign or symbol of the gang, including gang colors.

10.04 MISDEMEANOR HATE CRIMES

Because of the far-reaching social implications of many hate crimes, misdemeanor hate crimes shall not be settled without the approval of the Head Deputy or Deputy-in-Charge. This policy is intended to ensure consistent case resolution throughout the county and to increase the community's confidence in the criminal justice system.

10.04.01 SENTENCING

When a court places a defendant on probation, deputies should vigorously urge the court to impose a counseling program, victim restitution, and other relevant conditions for hate crimes pursuant to Penal Code § 422.85.

Deputies shall notify the Hate Crimes Unit of all hate crimes case settlements. Penal Code § 13023 requires local prosecutorial agencies to report all hate crimes statistics to the Attorney General's Office. The Hate Crimes Unit collects, compiles, and reports these statistics.

10.05 MISDEMEANOR DOMESTIC VIOLENCE

Deputies shall seek at least minimal time in custody in every misdemeanor domestic violence case settlement. In unusual cases, the Head Deputy or Deputy-in-Charge may approve a deviation from this policy.

10.05.01 SENTENCING

In determining the appropriate amount of custody time, a deputy shall consider the following factors:

- The level of injury inflicted;
- Prior history of assaultive conduct;
- Future dangerousness and victim safety; and
- The likelihood actual custody time may be reduced by jail crowding.

Domestic violence treatment programs, by themselves, are not sufficient punishment in a domestic violence case. Each sentence should include actual jail time to reinforce the message that that domestic violence is criminal conduct and will not be tolerated. In addition to any jail time imposed, all domestic violence sentences should include an additional, lengthier jail sentence imposed and suspended pending the defendant's successful completion of probation. The goal of stopping violence can best be achieved by having the abuser serve actual time in jail with a suspended jail sentence available for any violations of the terms of probation. Deputies shall request at least a three-year term of probation. A list of appropriate probationary terms and

conditions is contained in Penal Code § 1203.097 and in the *Probation and Sentence Hearings* chapter of this manual.

10.05.02 DISMISSAL

A domestic violence case may not be dismissed or otherwise compromised simply because the victim expresses an unwillingness to participate in the prosecution. Instead, recognizing the continuing vulnerability of domestic violence victims, deputies should use all available resources, such as the Bureau of Victim Services, to encourage cooperation.

Commentary

The continuing vulnerability of domestic violence victims makes it necessary to view their efforts to abandon prosecution with extreme care, or even skepticism. These victims usually remain subject to the continuing threat of physical abuse. This threat is greatly compounded by the social, economic and psychological pressures that are associated with the prosecution of one's spouse or domestic partner, no matter how abusive that person may be.

The combined supportive efforts of law enforcement, victim services representatives and prosecutors touch only a small portion of a victim's daily life while a criminal case is pending. At the same time, the cohabitating defendant is in a position to exert continuing influence over the victim. A victim's reluctance to cooperate is usually born of factors extraneous to the merits of the case and, in itself, should not result in a dismissal. Rather, available resources should be used to counsel victims and foster cooperation.

As in all violent crimes, an objective assessment of the defendant's culpability and propensity for violence should determine the ultimate case disposition.

10.06 MISDEMEANOR ASSAULTS ON PEACE OFFICERS

Deputies shall seek custody time in every assault or battery upon a peace officer case settlement. In unusual cases, a Head Deputy or Deputy-in-Charge may approve a deviation from this policy. A deputy shall have prior approval before making any settlement offer or entering into any plea agreement which does not include custody time.

10.06.01 SENTENCING

In determining the appropriate amount of custody time, a deputy shall consider the following factors:

- The degree of injury inflicted or intended; and
- The defendant's prior history of criminal conduct, particularly any prior history of assaultive conduct.

10.07 DRIVING UNDER THE INFLUENCE

Settling a driving under the influence (DUI) case requires special care.

10.07.01 PLEA BARGAINING

Penal Code § 1192.7 (Proposition 8) prohibits plea bargaining in any case involving driving “while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof,” unless:

- There is insufficient evidence to prove the case.
- The testimony of a material witness cannot be obtained.
- A reduction or dismissal would not result in a substantial change in sentence.

The following guidelines have been adopted to aid deputies in determining what constitutes insufficient evidence.

10.07.02 BLOOD ALCOHOL LEVEL OF .08% OR HIGHER

A deputy may not reduce charges in a DUI case involving a blood alcohol level of .08% or higher unless there are significant factual weaknesses that make successful prosecution unlikely. A deputy must have prior Head Deputy or Deputy-in-Charge approval to reduce the charge(s) in a DUI case involving a blood alcohol level of .08% or higher.

10.07.03 BLOOD ALCOHOL LEVEL BETWEEN .05% AND .08%

A deputy may reduce or dismiss a case involving a blood alcohol level between .05% and .08% unless any one of the following circumstances exist:

- Grossly erratic driving;
- Sufficient symptoms of being under the influence; or
- Physical evidence of drug ingestion.

10.07.04 BLOOD ALCOHOL LEVEL BELOW .05%

A deputy may dismiss a case involving a blood alcohol level below .05% unless both of the following circumstances exist:

- Physical evidence of drug ingestion; and
- Sufficient symptoms of drug intoxication.

10.07.05 REFUSAL TO TAKE A CHEMICAL TEST

A deputy may not reduce a case involving the refusal of a chemical test without prior Head Deputy or Deputy-in-Charge approval.

10.07.06 PLEAS

A deputy may settle a DUI case charging violations of both Vehicle Code §§ 23152(a) and (b) by a plea to either count.

10.07.07 DRIVING UNDER THE INFLUENCE WITH INJURY

A deputy may not reduce a Vehicle Code § 23153 case in which there was an injury without prior Head Deputy or Deputy-in-Charge approval.

10.07.08 PRIOR CONVICTIONS

A deputy may not strike a prior DUI conviction unless it is clearly invalid or there are significant proof problems.

10.07.09 IGNITION INTERLOCK DEVICES

This policy pertains to offenses committed on or after July 1, 2010.

Vehicle Code §§ 23700 and 13386 create a pilot program, effective July 1, 2010, that mandates the installation and use of an ignition interlock device (“IID”) for all persons convicted of violating Vehicle Code § 23152 or 23153.

It is the policy of the Office, pursuant to VC §§ 23700 and 13386, to request the following condition of probation for all defendants who are convicted of violating Vehicle Code § 23152 or 23153, or Penal Code § 191.5:

“The defendant is ordered to comply with any and all requirements imposed by the Department of Motor Vehicles regarding the installation and use of an ignition interlock device.”

Furthermore, it is also the policy of the Office, pursuant to Vehicle Code § 23575, that deputies shall request a court-ordered IID in any of the following circumstances:

- The defendant’s measured blood-alcohol level was .20 or higher;
- The defendant’s measured blood-alcohol level was .15 or higher, and the vehicle driven by the defendant is known to have collided with a moving or stationary object;
- The defendant refused the implied consent blood-alcohol test; or
- The defendant committed a violation of Vehicle Code § 23153.

In unusual cases, the Head Deputy or Deputy-in-Charge may approve a deviation from this policy.

If a defendant attempts to circumvent a court-ordered IID by filing a declaration that he or she does not own or operate a motor vehicle, the declaration should be signed under penalty of perjury and co-signed by an interpreter if one was used to assist the defendant at the time of sentencing.

10.08 DRIVING WITH A REVOKED OR SUSPENDED LICENSE

Driving with a revoked or suspended license (VC §§ 14601, et seq.) may be reduced unless:

- The defendant has a prior Vehicle Code § 14601, 14601.1 or 14601.2 conviction; or
- There is satisfactory proof of service of the suspension or revocation by the Department of Motor Vehicles and the defendant has failed to obtain a valid license.

10.09 MISDEMEANOR CHARGES THAT SHOULD NOT BE REDUCED

- Hit-and-run driving (Vehicle Code § 20002)
- Under the influence of drugs (Health and Safety Code § 11550)
- Petty theft (PC § 484)
- Crimes involving concealed or loaded firearms (PC §§ 25400(a)(1)-(a)(3), 25800(a), and 25850(a))
- Indecent exposure (PC § 314)
- An alternative felony/misdemeanor offense charged as a misdemeanor.

Commentary

When an alternative felony/misdemeanor offense is charged as a misdemeanor pursuant to Penal Code § 17(b)(4), there should be no further reduction except in unusual cases. Since the pending charge has already been reduced from the felony to a misdemeanor, a further reduction would not be warranted unless the evidence fails to support the charge.

10.10 MISDEMEANOR SPECIAL ALLEGATIONS

Special allegations, if found true, may increase punishment or limit a court's sentencing options. If the evidence is sufficient to sustain a special allegation, a deputy should vigorously litigate the allegation or require an admission if the defendant pleads guilty.

10.11 SENTENCE COMMITMENTS IN MISDEMEANOR CASES

Some courts handling misdemeanor cases sentence a defendant immediately after a guilty plea without the benefit of a probation report. The sentences may or may not involve custody time. A deputy should enter into case settlements containing specific sentence commitments with care. At a minimum, deputies should review the defendant's rap sheet and advise the court of the defendant's criminal history.

10.11.01 SENTENCE COMMITMENTS EXCLUDING JAIL TIME

A Head Deputy or Deputy-in-Charge may agree to a misdemeanor sentence that excludes jail time. The Head Deputy or Deputy-in-Charge may delegate responsibility to another deputy to make this determination. When deciding whether to enter into any such agreement, a deputy shall take into account the defendant's prior record and the severity of the offense. The reasons for the disposition shall be noted in the file.

10.11.02 RESTITUTION

Deputies are to seek the maximum appropriate restitution fine and penalty assessment. In addition, deputies shall seek restitution for the victim for actual losses or damages.

10.11.03 STIPULATION TO PROBABLE CAUSE

Deputies shall not attempt to obtain a stipulation that there was probable cause to arrest a defendant in exchange for a reduction or dismissal of a criminal charge. The California Rules of Professional Conduct, Rule 5-100, prohibit an attorney from threatening to present a criminal charge to obtain an advantage in a civil dispute.

10.12 DEPARTURE FROM POLICY

Departure from this Misdemeanor Case Settlement Policy may be made in cases not enumerated in Penal Code § 1192.7 in two instances:

- When the admissible evidence is legally insufficient to establish the defendant's guilt; or
- When unusual or extraordinary circumstances exist that demand a departure in the interests of justice.

Unusual or extraordinary circumstances that may justify a departure from policy include circumstances that will result in indirect or collateral consequences to the defendant in addition to the direct consequences of the conviction. A departure from policy in a misdemeanor case based on unusual or extraordinary circumstances requires the prior approval of the Head Deputy or Deputy-in-Charge.

In those rare cases when a settlement is proposed based upon one or more of the factors listed above, prior approval by the Head Deputy or Deputy-in-Charge shall be obtained and the proposed disposition and its reasons shall be noted upon the file and signed by the Head Deputy or Deputy-in-Charge.

Commentary

Collateral consequences can, in some cases, have a greater adverse impact on a defendant than the conviction alone. When collateral consequences will have so great an adverse impact on a defendant that the resulting "punishment" will be disproportionate to the punishment other defendants would receive for the same crime, a departure from policy may be warranted.

The California Rules of Court include collateral consequences in the rules that courts are to follow when imposing sentence. Rule 4.414 lists the criteria to be considered when deciding whether or not to grant probation for a defendant who has suffered a felony conviction. These criteria are divided into (a) factors relating to the crime and (b) factors relating to the defendant. One of the factors relating to the defendant is: "(6) The adverse collateral consequences on the defendant's life resulting from the felony conviction."

A departure from policy based on collateral consequences may only be made in unusual or extraordinary circumstances that demand a departure in the interest of justice. All departures from policy based on collateral consequences shall be approved by the appropriate supervisor.

10.12.01 CONSIDERATION OF ADVERSE IMMIGRATION CONSEQUENCES

Pursuant to Penal Code § 1016.3(b), deputies shall consider the avoidance of adverse immigration consequences as one factor in reaching a just resolution of a case at all times when engaged in the plea negotiation process.

If deviation from case settlement policy is warranted due to these considerations, prior approval by the Head Deputy or Deputy-in-Charge shall be obtained. The proposed disposition and the reasons for the disposition shall be noted in the file and signed by the Head Deputy or Deputy-in-Charge.

10.13 ANIMAL CRUELTY

It has been established that a correlation exists between intentional animal abuse and other forms of criminality. Other forms of animal cruelty, such as neglect and illegal animal fighting, are also associated with various negative behaviors and consequences. Neglecting an animal can lead to prolonged suffering or death, and is often indicative of other types of dysfunction within an environment. Illegal animal fighting not only impacts the animals involved, it also adversely affects the quality of life of citizens who reside in areas where illegal animal fighting occurs.

Consequences for mistreating animals should be consistent and uniform. It is essential that sentences for animal cruelty crimes impart the message that no form of animal cruelty is acceptable. Sentences should appropriately address the crime by including terms and conditions designed to prevent similar future conduct. Sentences should also be structured in such a way that they protect the victims of the abuse, as well as potential future victims.

In an effort to ensure that animal cruelty crimes are vigorously prosecuted, animal cruelty cases shall not be sent to EDP courts and, whenever possible, should be vertically prosecuted by designated Animal Cruelty Deputies.

Deviation from this policy requires prior head deputy or deputy-in-charge approval.

10.13.01 ANIMAL CRUELTY CASE DISPOSITIONS

Sentences in animal cruelty cases should convey the message that animal cruelty is a serious crime. To ensure that dispositions are appropriate, specific disposition guidelines have been established for animal cruelty cases.

No one other than an animal cruelty designee or the Animal Cruelty Case Coordinator (ACCC) shall make offers in cases involving animal cruelty charges.

The [animal cruelty case disposition guidelines](#) include terms and conditions that are mandated by law, as well as conditions that are designed to provide adequate oversight of defendants. The disposition guidelines shall be followed by all deputies. Deviation from this policy requires prior approval from the ACCC and the Head Deputy or Deputy-in-Charge.

The [disposition guidelines](#) are available on LADAnet, under Library > Animal Cruelty > Filing, Litigating, and Sentencing Your Case.

Dismissals and Reductions: Charges involving any form of animal abuse, including dog and cock fighting, should not be dismissed, reduced or “diverted” without prior approval from the ACCC and Head Deputy or Deputy-in-Charge.

This policy applies in all cases, regardless of whether the case only involves charges of animal cruelty, or if there are other charges filed, as well.

Diversion: Those who violate any of the animal cruelty statutes are eligible for misdemeanor military diversion under the provisions of Penal Code § 1001.80. When appropriate, deputies should vigorously argue against diversion in animal cruelty cases, especially when the animal-related charges are “priorable” offenses. When the court is considering granting diversion, the deputy shall state the facts of the case, ask the court to review evidence, such as photos and/or video, and present the argument that the defendant may be eligible, but not suitable, for diversion.

Counseling: Depending upon the animal cruelty charge(s) of which the defendant is convicted, counseling may be mandated by law (PC § 589(h).) Judges should be informed of the counseling requirement in cases where counseling is mandated. In all cases that include animal cruelty charges, requiring animal cruelty classes as a term of probation is highly advisable, regardless of whether classes are mandated by law.

When sentencing a defendant to animal cruelty counseling, the designee shall complete a counseling form and email or fax the form to the address or number found at the bottom of the form. A defendant will not be permitted to enroll unless the program had received a copy of the form from the prosecutor.

Database: Upon disposition of a case involving animal cruelty charges the form in the Animal Cruelty Database shall be updated.

10.14 GRAFFITI

Whenever a defendant is granted probation in a graffiti case, a deputy shall request the court to impose specific terms and conditions of probation. Forms detailing the required terms and conditions of probation in adult and juvenile matters are available in LADAnet, as attachments to [SD 10-07](#). Head Deputies and Deputies-in-Charge are responsible for periodically auditing graffiti cases to determine if these terms and conditions are being imposed by courts. Deviation from this policy requires prior Head Deputy or Deputy-in-Charge approval.

10.15 MILITARY PRETRIAL DIVERSION PROGRAM

Penal Code §§ 1001.80 et seq. authorize a court, at its discretion, to grant a pretrial diversion program to current or former members of the United States military who may be suffering from a form of trauma or substance abuse as a result of their military service and are charged with a

misdemeanor offense. Subdivision (a)(2) permits the court to request an assessment to aid in deciding whether a veteran qualifies for military pretrial diversion. Deputies should familiarize themselves with the provisions of the military pretrial diversion program contained in Penal Code §§ 1001.80 et seq.

If a court determines that a defendant is eligible for a military pretrial diversion program and the defendant consents and waives his or her right to a speedy trial, the defendant may participate in the program over the prosecution's objection. Deputies shall object on the record when the defendant has failed to meet eligibility requirements, or is unsuitable for the program based upon the facts of the case or the defendant's criminal history.

Except in unusual cases in which a Head Deputy or Deputy-in-Charge approves a deviation from this policy, deputies shall object to diversion on domestic violence offenses because of the inherently serious nature of such crimes. Deputies shall also object to diversion for driving under the influence, if a military veteran has previously been granted diversion for driving under the influence under this section or is otherwise unsuitable based on their criminal history. In the instance where a victim has suffered a significant financial loss, deputies shall object to diversion on the grounds that the victim will be denied their right to receive restitution under California Constitution § 28, Article 13(A-B) and Penal Code § 1202.4(f).

In all cases where the court places a defendant into a military pretrial diversion program where the defendant is charged with a violation of Vehicle Code § 23153 (a) or (b), deputies shall notify the victim that the defendant is being diverted. Deputies shall advise the victim of the potential consequences of the diversion process, including the fact that the victim will be unable to obtain court-ordered restitution due to the lack of a conviction. If the victim requests, deputies shall make every effort to provide the victim an opportunity to be heard prior to diversion being granted by the court.

Although the ability of a court to enforce a restitution order in the absence of an actual conviction is not established law, deputies shall request appropriate terms and conditions of diversion, including but not limited to: victim restitution, protective and stay-away orders, orders prohibiting firearm possession, participation in specific programs, community service, and search and seizure conditions.

Marsy's Law requires that victims who have requested notification be informed of case outcomes. When a defendant is diverted and the victim has requested notifications, victims shall be contacted by the handling deputy and informed of the following: (1) the court has granted diversion; (2) if the defendant successfully completes diversion and the case is dismissed, the law does not provide for the payment of restitution for any loss arising out of the crime, including medical expenses; (3) if the victim wishes to obtain damages for his or her loss arising out of the crime, he or she will have to timely seek and obtain a civil judgment; (4) when the defendant has successfully completed diversion; and (5) when the defendant has been terminated from diversion and prosecution reinstated. In cases where victims have suffered significant financial losses related to crimes and the court diverts, deputies shall notify victims regardless of a request to be notified.

If diversion is granted for driving under the influence, deputies shall do the following to ensure public safety and prevent recidivism:

- Request that the court order the defendant to attend all standard DUI programs and install an ignition interlock device (IID) where appropriate; and
- Have the military veteran being diverted acknowledge the Watson advisement.

Deputies who become aware of a violation of the terms imposed by the court at any time during the period of pretrial diversion are expected to notify the court and move for termination of diversion and reinstatement of criminal proceedings. Relevant violations include, but are not limited to: the commission of a new offense, a violation of a protective or stay-away order, failure to pay full restitution within the period ordered by the court, or failure to participate in a program. Deputies shall obtain and review an updated copy of the defendant's criminal history information immediately prior to the end of the deferral period to determine whether the defendant has committed any new offenses.

Commentary

In the interest of public safety, deputies are encouraged to request that the court confirm the defendant's claim that he or she is, or was, a member of the United States military. Deputies should also request that the defendant provide documentation from a medical professional that he or she suffers from a mental health problem as a result of his or her military service.

10.16 COURT ADMINISTERED DEFERRED ENTRY OF SENTENCING

Former Penal Code §§ 1001.94 et seq. authorized a Deferral of Sentencing Pilot Program (“Program”), at the court’s discretion. The Program expired by operation of law (PC § 1001.99) on January 1, 2018.

10.17 DIVERSION FOR DEVELOPMENTALLY DISABLED DEFENDANTS

Penal Code § 1001.21 provides that a defendant evaluated by a regional center to have a cognitive developmental disability may seek diversion of pending misdemeanor charges, including offenses reduced from felonies, at any stage of the criminal proceedings. When a defendant is diverted under this section, the prosecutor, the Probation Department, and the regional center for the developmentally disabled must fulfill specified, time-sensitive responsibilities. If a defendant successfully completes diversion, the misdemeanor charges are to be dismissed.

A defendant is eligible for diversion under § 1001.20 et seq. if each of conditions stated in Penal Code § 1001.21 is satisfied. A developmentally disabled defendant may be eligible for diversion regardless of the defendant’s criminal history or the nature of the pending charge. Deputies should be aware that some misdemeanor offenses, such as driving under the influence of alcohol or drugs, are statutorily excluded from diversion, with the exception of military diversion. (PC § 1001.80(l); VC § 23640; see *People v. Weatherill* (1989) 215 Cal.App.3d 1569, 1580; see LPM § 10.15.)

If the court suspects that the defendant may have a cognitive developmental disability, and the defendant consents to diversion and waives his or her right to a speedy trial, the court will order

the prosecutor, the Probation Department, and the regional center to prepare separate reports. Penal Code § 1001.22 imposes specific timelines for producing the reports as well as specified information which must be included in the reports from each agency. If the deputy recommends against this form of diversion, he or she shall file a written declaration that states the grounds for the opposition to diversion.

After reviewing the reports prepared by the Probation Department, the prosecutor, and the regional center, the court must decide whether to place the defendant on this form of diversion. A defendant may be eligible but arguably unsuitable for diversion. While the court may divert a developmentally disabled defendant notwithstanding the prosecutor's opposition, it is the obligation of the Office to ensure that the rights of victims and the interests of public safety are maintained. A deputy shall object on the record when a defendant is deemed an unsuitable candidate for the program.

When evaluating a developmentally disabled defendant's suitability for diversion under this section, deputies shall carefully consider the facts and circumstances surrounding the commission of the underlying offense, the nature of the charge, and the defendant's criminal history.

Except in unusual cases in which a Head Deputy or Deputy-in-Charge approves a deviation from this policy, deputies shall object to diversion on cases involving domestic violence, child abuse, elder abuse, or sexual assault because of the inherently serious nature of such crimes.

Also, consequences that follow convictions for certain crimes may be particularly important as to a given defendant and case, rendering a grant of diversion under this section inappropriate. For example, convictions for specified arson and sex related misdemeanor offenses require registration with the Department of Justice. (PC §§ 457.1, 290 et seq.) Additionally, a conviction for a misdemeanor that involves violence or the threat of violence will frequently deny a potentially dangerous defendant the right to possess a firearm within 10 years of the date of conviction (PC § 29805(a)) or a lifetime ban in the case of a misdemeanor violation of PC § 273.5 (PC § 29805(b)).

In every instance in which the court diverts a developmentally disabled defendant under this section, deputies shall request that the court provide the victim with notice and an opportunity to be heard if the victim has made such a request. Appropriate terms and conditions should be imposed as conditions of diversion, including but not limited to: victim restitution; court-ordered protective orders and stay-away orders, as may be appropriate; an order prohibiting firearm possession; and search and seizure conditions.

Deputies who become aware of a violation of the terms imposed by the court during the period of pretrial diversion shall notify the court and move for termination of diversion and reinstatement of criminal proceedings. Possible violations include, but are not limited to: the commission of a felony (after the defendant has been bound over for trial for the subsequently charged felony); a violation of a protective or stay-away order; or an unsatisfactory performance in the diversion program. Deputies shall obtain and review an updated copy of the defendant's criminal history information immediately prior to the completion of the diversion period to

determine whether the defendant has committed any new felonies.

10.18 PROSECUTION OF LOCAL CITY ORDINANCES

There are 88 incorporated cities in the County of Los Angeles. Many of these cities have adopted local city ordinances creating offenses for conduct not otherwise prohibited by state law or county ordinance. These offenses can be punished as either misdemeanors or infractions. Some of the cities retain their own City Attorney or City Prosecutor to pursue violations of these ordinances. Others, however, rely on the Office to prosecute violations of these ordinances on behalf of the city. These cities have contracted with the County of Los Angeles for this service at standard contract rates and must reimburse the county for the cost engendered by Office staff in the prosecution of these ordinances.

Whenever one of the cities with established contracts with the county asks the Office to file a criminal complaint for a violation of a city ordinance, the code for Contract Cities (CC) shall be entered in the box at the bottom of the Misdemeanor Filing Worksheet by the filing deputy. This information shall then be entered into PIMS by support staff assigned to complete the filing paperwork and prepare the case file.

In preparing the misdemeanor case file in a Contract Cities case, support staff shall attach the Contract Cities Billing Sheet to the file in lieu of the standard Misdemeanor Filing Worksheet Comments page. The Billing Sheet shall be placed in the file behind the Misdemeanor Filing Worksheet. Whenever any Office employee, including an attorney, investigator, support staff or PDP officer, handles one of these cases, the employee shall write the amount of time the employee spent handling the case, in 15 minute increments, on the Billing Sheet.

When the case is closed, a copy of the Billing Sheet shall be forwarded to Bureau of Administrative Services, Accounting Section. Accounting will calculate the charges and bill the city for Office services.

All filing documents referenced above can be located in the **DA Filing Forms** icon in Lotus Notes and in PIMS.

CHAPTER 12

FELONY CASE SETTLEMENT POLICY

12.01 INTRODUCTION

The purpose of the criminal justice system is to protect the rights of society in general, and crime victims in particular, by appropriately punishing those who have been lawfully convicted of crimes. The Office has developed a Felony Case Settlement Policy to ensure case dispositions throughout the County will further this purpose.

The Felony Case Settlement Policy has been developed to protect crime victims and the community, punish the guilty and deter crime throughout Los Angeles County. This policy is intended to ensure that case settlements throughout the county further these purposes.

The Felony Case Settlement Policy is intended to be clear and easy to apply in most situations. If conflicting interpretations arise, deputies should adopt the interpretation that favors the victim and public, not the defendant. If a case includes charges that fall within several different guidelines, deputies shall consider all relevant policies to determine the most appropriate disposition.

12.02 MARSY'S LAW - THE VICTIMS' BILL OF RIGHTS ACT OF 2008

On November 4, 2008, California voters passed Proposition 9, The Victims' Bill of Rights Act of 2008, also known as "Marsy's Law." Proposition 9 amended article I, § 28, of the California Constitution, enumerating crime victims' rights (see LPM § [11.21](#)). If there is a conflict between the provisions of the California Constitution and this Felony Case Settlement Policy, the California Constitution is controlling.

12.02.01 PLEA BARGAINING

Penal Code § 1192.7(b) defines "plea bargaining" as:

. . . any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

Penal Code § 1192.7 prohibits plea bargaining in any case in which the information or indictment charges a serious felony, a felony in which the defendant personally used a firearm, or driving under the influence unless:

- There is insufficient evidence to prove the People's case, or
- Testimony of a material witness cannot be obtained, or

- The reduction or dismissal would not result in a substantial change in sentence.

When one or more of these three statutory exceptions apply, any case settlement or sentence commitment shall conform to the Felony Case Settlement Policy.

12.03 SELECTION OF CHARGES

In all felony cases, a defendant must plead guilty to the provable charge(s) that most accurately describe his or her criminal conduct.

12.03.01 SERIOUS FELONY CASES

A defendant must plead guilty to every provable felony listed in Penal Code § 1192.7 that is separately punishable under Penal Code § 654.

12.03.02 MURDER OR MANSLAUGHTER CASES

If a defendant is charged with multiple counts of murder, voluntary manslaughter, involuntary manslaughter or vehicular manslaughter, the defendant must plead guilty to all counts involving different victims.

12.03.03 PRIOR CONVICTION AND CONDUCT ENHANCEMENT ALLEGATIONS

A defendant must admit all prior felony conviction allegations and any special conduct enhancement allegations involving weapons, great bodily injury, amount of contraband, age of victim, value of property destroyed, or amount of loss resulting from theft that may increase punishment or limit sentencing options, or deputies shall vigorously litigate these allegations.

12.03.04 DISPOSITION REPORT

A Disposition Report shall be prepared at the conclusion of every felony case. Within 10 business days after a case has concluded, the deputy handling the case shall prepare a Disposition Report, sign it, place it in the felony case file and submit the file to the Head Deputy, Head Deputy's designee, or Deputy-in-Charge for review. The Head Deputy, Head Deputy's designee, or Deputy-in-Charge shall review the file to ensure it is in proper form for closing, sign the Disposition Report and forward the file to support staff for case closing.

Disposition reports are to be completed at the conclusion of every felony case with the following exceptions. Cases in which the defendant receives pretrial diversion, pursuant to Penal Code § 1000 et seq., or is sentenced pursuant to Proposition 36 are exempt from this requirement, except where one or more counts or one or more special allegations are dismissed in order to render a defendant eligible for those programs. Under those circumstances, a disposition report shall be completed. Disposition reports shall be reviewed and signed by the Head Deputy or the Head Deputy's designee.

Upon successful completion of pretrial diversion, and dismissal of the case, a disposition report need not be prepared.

Deputies shall obtain *prior* Head Deputy or Deputy-in-Charge approval and provide an explanation in the Disposition Report when:

- A defendant pleads guilty to a charge or charges that could result in less than the maximum sentence;
- A defendant, charged with multiple offenses separately punishable under Penal Code § 654, does not plead guilty to all offenses;
- A deputy strikes a special enhancement, prior conviction or probation ineligibility allegation as part of a case settlement; or
- A defendant is allowed to plead guilty to a misdemeanor.

12.04 SENTENCE COMMITMENTS IN FELONY CASES

The rights of the victim and the public are the most important considerations in making a sentence recommendation. When appropriate, deputies are encouraged to solicit input from the investigating officer regarding a sentence commitment. All sentence commitments must be based on an objective evaluation of the case and not on a particular judge's sentencing practices.

12.04.01 FELONY SENTENCING GUIDELINES - CALIFORNIA RULES OF COURT

The California Rules of Court establish the basic guidelines for any felony sentence commitment. Rule 4.420(b) provides that selection of the lower term is justified only if, after a consideration of all the relevant facts, the circumstances in mitigation outweigh the circumstances in aggravation. Accordingly, no commitment to a low term prison sentence shall be made unless both of the following requirements are met:

- The defendant and the crime(s) committed meet one or more of the circumstances in mitigation as stated in Rule 4.423; and
- The circumstances in mitigation clearly outweigh the circumstances in aggravation as stated in Rule 4.421.

Any commitment for concurrent or consecutive sentences must be based upon the criteria affecting concurrent or consecutive sentences in Rule 4.425. A "no immediate state prison" commitment must be based upon the criteria regarding probation in Rule 4.414 and the criteria affecting probation in unusual cases in Rule 4.413.

12.04.02 APPROVAL FOR FELONY DISPOSITIONS

A Disposition Report shall be prepared at the conclusion of every felony case. Within 10 business days after a case has concluded, the deputy handling the case shall prepare a Disposition Report, sign it, place it in the felony case file and submit the file to the Head Deputy, Head Deputy's designee, or Deputy-in-Charge for review. The Head Deputy, Head Deputy's

designee, or Deputy-in-Charge shall review the file to ensure it is in proper form for closing, sign the Disposition Report and forward the file to support staff for case closing.

Disposition reports are to be completed at the conclusion of every felony case with the following exceptions. Cases in which the defendant receives pretrial diversion, pursuant to Penal Code § 1000 et seq., or is sentenced pursuant to Proposition 36 are exempt from this requirement, except where one or more counts or one or more special allegations are dismissed in order to render a defendant eligible for those programs. Under those circumstances, a disposition report shall be completed. Disposition reports shall be reviewed and signed by the Head Deputy or the Head Deputy's designee.

Upon successful completion of pretrial diversion, and dismissal of the case, a disposition report need not be prepared.

A deputy shall obtain *prior* Head Deputy or Deputy-in-Charge approval and provide an explanation in the Disposition Report when:

- A defendant pleads guilty to an alternative felony charge with a misdemeanor sentence commitment; or
- A defendant pleads guilty to a felony charge with a “no immediate state prison” sentence commitment.

12.04.03 SENTENCING TERMS - EXPLANATION TO DEFENDANT

If a defendant pleads guilty to a felony charge with a sentence commitment, the deputy shall advise the defendant at the time of the plea that the People will urge the court to set aside the plea if the probation report or any other source reveals any facts or circumstances indicating the sentence was contrary to the California Rules of Court and/or Penal Code § 1192.7.

Prosecutors currently have a range of felony sentencing options available to them in criminal cases. A court can impose a grant of formal probation, with or without local jail time or prison time suspended. Alternatively, a court can impose a prison sentence, whether that is served locally or in traditional state prison. A split sentence is an intermediate ground: It is a prison term served locally in which the available time is “split” between a custodial portion (served in the county jail as local prison) and a supervisory portion (referred to as “mandatory supervision”).

If a defendant pleads guilty to a felony charge and is placed on probation, the deputy shall advise the defendant, on the record, of the possibility of a subsequent local or state prison commitment, or the imposition of a split sentence, if the defendant violates the terms or conditions of probation. The deputy shall explain the minimum and maximum local or state prison terms, including potential parole terms.

At the time of a plea, deputies shall state the disposition on the record in open court. Deputies shall not make off-the-record dispositions, agreements or understandings unless a matter legitimately requires confidentiality.

12.04.04 RESTITUTION

Deputies are to seek the maximum appropriate restitution fine and penalty assessment. In addition, deputies shall seek restitution for the victim for actual losses or damages.

12.04.05 STIPULATION TO PROBABLE CAUSE

Deputies shall not attempt to obtain a stipulation that there was probable cause to arrest a defendant in exchange for a reduction or dismissal of a criminal charge. The California Rules of Professional Conduct, Rule 5-100, prohibit an attorney from threatening to present a criminal charge to obtain an advantage in a civil dispute.

12.04.06 CASE SETTLEMENT - VICTIM IMPACT PROGRAM CASES

Case settlement offers on all felony cases assigned to be vertically prosecuted by the Victim Impact Program (VIP) shall be approved by the VIP Deputy-in-Charge (VIP DIC). All applicable felony case settlement policies contained in the Legal Policies Manual, special directives and general office memoranda shall be followed by the VIP DIC in making such offers. This policy does not supersede any authority given to a Head Deputy District Attorney within the Legal Policies Manual, special directives or general office memoranda, nor does it preclude the Head Deputy District Attorney's authority to make felony case settlement offers.

Before such an offer is communicated to defense counsel, all reasonable efforts shall be made to notify the victim and to provide the victim with an opportunity to be heard.

12.05 THREE STRIKES

All qualifying prior felony convictions shall be alleged in the pleadings pursuant to Penal Code § 1170.12(d)(1). Prior to seeking dismissal of any strike, the prior strike case files shall be reviewed, if available, in order to fairly evaluate mitigating and aggravating factors. If it is determined that proof of a prior strike cannot be obtained or that the alleged strike is inapplicable, dismissal of the strike shall be sought after obtaining Head Deputy approval.

12.05.01 THIRD STRIKE CASES

If a defendant has two or more qualifying prior felony convictions, the case shall be filed as a third strike case when at least one of the new charged offenses is pled as a/an:

- Serious or violent felony;
- Controlled substance offense with an allegation pursuant to Health and Safety Code §§ 11370.4 or 11379.8 after being admitted or found true (weight enhancement);
- Felony offense pursuant to Penal Code § 261.5(d) (sexual intercourse by a person over 21 upon a minor under the age of 16), or pursuant to § 262 (spousal rape);
- Felony offense requiring mandatory sex offender registration pursuant to Penal Code § 290(c), other than the following: § 266 (enticing a minor into prostitution); § 285

(incest); § 286(b)(1) (sodomy with a minor); § 286(e) (sodomy while confined in state prison); § 288a(b)(1) (oral copulation with a minor); 288a(e) (oral copulation while confined in state prison); § 314 (indecent exposure); or § 311.11 (possession of child pornography).

- Offense during which the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

If the defendant has two or more qualifying prior felony convictions, but none of the new charges offenses are enumerated in 12.05.01, a number of prior convictions will qualify a defendant for three strikes sentencing. These prior convictions include:

- A sexually violent offense, as defined in Welfare and Institutions Code § 6600(b);
- Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Penal Code § 288a; sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by § 286; or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by § 289;
- A lewd or lascivious act involving a child under 14 years of age, in violation of § 288;
- Homicide and attempted homicide offenses within the meaning of §§ 187 (murder) through 191.5 (vehicular manslaughter while intoxicated);
- Solicitation to commit murder as defined in § 653f;
- Possession of a weapon of mass destruction, as defined in Penal Code § 11418(a)(1);
- Assault upon a peace officer or firefighter with a machine gun as defined in § 245(d)(3);
- Any serious and/or violent felony offense punishable in California by life imprisonment or death.

If the current offense does not involve the use or possession of a firearm or deadly weapon, injury to a victim, or violence or the threat of violence, a Head Deputy may authorize seeking dismissal of a strike after consideration of all of the following:

- Remoteness of the strikes;
- Whether the strikes involved the use or possession of a weapon, injury to a victim, violence or the threat of violence;
- Whether the strikes arose from one incident or transaction; and
- Any other mitigating or aggravating factors enumerated in the California Rules of Court, Rules 4.421 and 4.423.

12.05.02 SECOND STRIKE CASES

Unless the above criteria in LPM §12.05.01 for charging a third strike case are met, a case against a defendant shall be filed as a second strike case.

In all instances in which a third strike case is pursued as a second strike case, all Penal Code § 667.5(b) priors shall be pled and proved or admitted.

12.05.03 DISPOSITION REPORT

If a Head Deputy authorizes dismissal of a strike in a third strike case, the Disposition Report shall discuss the applicability of the factors set forth in this case settlement policy.

12.05.04 SECOND STRIKE CASE DISPOSITIONS

When a case is charged as a second strike case, a Head Deputy may authorize the dismissal of strike(s) in the interests of justice and agree to an appropriate prison or probationary sentence only when all of the following factors exist:

- The strike offense occurred more than 10 years ago;
- The strike offense did not involve the use or possession of a firearm or deadly weapon, injury to a victim, violence or the threat of violence;
- There exist mitigating factors enumerated in the California Rules of Court, Rules 4.421 and 4.423.

Whenever a Head Deputy authorizes the dismissal of a strike an explanation shall be included in the Disposition Report.

12.05.05 CASE SETTLEMENT

The decision whether to seek dismissal of a strike shall be made at the earliest practical stage. Once that decision is made, it shall be promptly communicated to the court and defense counsel. This procedure shall be followed even if a defendant chooses to proceed to trial.

12.05.06 EARLY RELEASE OF SECOND STRIKE INMATES

The California Department of Corrections and Rehabilitation (CDCR) is required to lower inmate population by granting early parole to inmates convicted of non-violent offenses who have a prior strike conviction (i.e., second strike inmates). Specifically, CDCR evaluates second strike inmates convicted of non-violent offenses to determine if parole should be granted after the inmate has served 50% of the sentence. The CDCR created a protocol that was implemented by the Board of Parole Hearings (BPH). As part of that protocol, the BPH must request a written letter from the District Attorney's Office in each second strike case where the Office objects to early parole.

The Office must provide the written response within 30 calendar days of the date of the BPH's letter notifying the Office it is considering granting early parole. Upon receipt of any correspondence from the BPH or the CDCR on early parole of second strike inmates, the deputy receiving the notice shall immediately contact the Head Deputy of the Parole Division. The Parole Division shall contact the Bureau of Victim Services to ensure efforts are made to contact any victim(s) impacted by the potential early release of the inmate.

12.05.07 DISTRICT ATTORNEY STATEMENT OF VIEW

A District Attorney's Statement of View shall be filed in every case in which a defendant is sentenced to death or an indeterminate sentence, including life sentences imposed in third strike cases. Refer to Legal Policies Manual § [17.02.01](#) for a discussion of the documentation that shall be submitted in a Statement of View.

12.06 CONTROLLED SUBSTANCES

12.06.01 SALE AND POSSESSION FOR SALE CASES

In controlled substances cases, deputies may not reduce a sale or possession for sale charge to a lesser offense unless there is insufficient evidence to prove the charge.

12.06.02 STATE PRISON SENTENCES FOR STREET DRUG DEALERS

In cases involving sale or possession for sale of cocaine, heroin or PCP, deputies are to seek the maximum appropriate sentence.

In cases involving sale or possession for sale of cocaine, heroin, or PCP, if probation is legally permissible and the case is a first offense involving nominal quantities, deputies are to urge the sentencing judge to impose a felony sentence with a minimum 6 to 12 months in custody as a condition of probation. When a court grants probation, deputies shall urge the court to order the defendant to submit his or her person and property to search and seizure at any time of the day or night by any law enforcement officer with or without a warrant as a condition of probation.

In all subsequent cases involving the above-described offenses, deputies are to urge sentencing judges to impose state prison sentences for the appropriate term.

A court must not grant probation in any case in which restrictions pursuant to Penal Code §§ 1203.07 and/or 1203.073 are alleged.

12.06.03 NO WORK FURLough OR WORK RELEASE FOR STREET DRUG DEALERS

In any narcotics case involving possession for sale or sale in which the court sentences the defendant to county jail, deputies shall urge the court to order that the defendant is ineligible for work furlough or work release programs.

12.06.04 NO BAIL FOR REPEAT STREET DRUG DEALERS

Whenever a defendant is on probation for the sale of or possession for sale of narcotics and the Office files a probation violation, it is Office policy that the defendant shall remain in custody without bail until the case is resolved.

12.06.05 RE-ARRESTED NARCOTICS DEALERS WHILE OUT ON BAIL

Narcotic dealers often post bail. While out on bail many dealers continue to sell narcotics. If a defendant is arrested on narcotics charges while on bail, the filing deputy shall:

- Recommend the court set bail at \$50,000 or higher on the new case;
- File a Penal Code § 1275.1 motion (Source of Bail) on the new case; and
- Make a motion to consolidate the cases pursuant to Penal Code § 954 because they involve the same class of crimes.

12.07 CRIMINAL STREET GANGS

Commentary

Criminal street gangs present an extreme threat to society; street gang members are often far more dangerous than the typical, individual criminal acting alone. Street gang members should be punished more severely than non-gang members for their crimes because of the danger they present to the community. Deputies shall aggressively seek harsher sentences for street gang members in every case whether or not the instant offense was gang related. The objective is to use every opportunity to remove gang members from the streets. For crimes for which the usual sentence is a county jail sentence, if the defendant is a gang member, deputies shall seek a state prison commitment.

12.07.01 CASE SETTLEMENT IN STREET GANG CASES

A street gang defendant must plead guilty to all charges in any case settlement. Deputies may reduce the charged offense or dismiss counts only when warranted in the interests of justice. Deputies may consider the following factors in making this determination:

- Insufficiency of the evidence;
- The testimony of a material witness cannot be obtained;
- A reduction or dismissal of counts would not result in a substantial change in the maximum sentence for all charged offenses and enhancements; or
- The information or testimony of a defendant is necessary for the conviction of other defendants.

12.07.02 SENTENCING IN STREET GANG CASES

Deputies shall aggressively seek the maximum appropriate sentence on all counts for which a street gang defendant is convicted. Street gang membership is an aggravating factor that outweighs virtually any mitigating factor. Before the sentencing hearing, deputies should submit a Memorandum of Points and Authorities detailing all factors in aggravation. Deputies shall advise the court the defendant is a gang member and argue that factor as a basis for substantially increasing the punishment imposed.

12.07.03 PROBATION CONDITIONS IN STREET GANG CASES

Deputies shall recommend that the court impose the following conditions on any defendant involved in a street gang who is placed on probation:

- The defendant must be subject to search upon the request of a law enforcement officer;
- The defendant must be subject to substance abuse testing whenever permitted by law;
- The defendant must not associate with other street gang members and shall stay away from specified locations frequented by street gang members; and
- The defendant must not wear or display any common identifying sign or symbol of the street gang.

12.07.04 POSSESSION OF CONCEALED OR LOADED FIREARMS BY GANG MEMBERS

A violation of Penal Code § 25400(a) (carrying firearm concealed within a vehicle or concealed upon a person) or § 25850(a) (carrying a loaded firearm) is punishable as a felony under certain circumstances, e.g.:

- The person has a prior felony conviction. (PC §§ 25400(c)(1), 25850(c)(1).)
- The firearm was stolen and the person knew or had reasonable cause to know that it was stolen. (PC §§ 25400(c)(2), 25850(c)(2).)
- The person is an active participant in a criminal street gang as defined in Penal Code § 186.22(a). (PC §§ 25400(c)(3), 25850(c)(3).)
- The person is not in lawful possession of the firearm. (PC §§ 25400(c)(4), 25850(c)(4).) Lawful possession is defined as lawfully owning the firearm or having the consent or permission of the lawful owner to possess the firearm. A person who takes the firearm without permission does not have lawful possession.
- The person in possession of the firearm had the ammunition in his or her possession or the ammunition was readily accessible to that person and he or she is not the registered owner of the firearm or the person is not the registered owner of the loaded firearm.

Active Participant in a Criminal Street Gang

A person who is in possession of a concealed or loaded firearm and who is an active participant in a criminal street gang as defined in Penal Code § 186.22(a), is guilty of a felony. To prove a violation of Penal Code §§ 25400(c)(3), 25850(c)(3), the People must prove that the person who possessed a concealed or loaded firearm:

- actively participates in a criminal street gang;
- with knowledge that its members engage in or have engaged in a pattern of criminal gang activity; and,
- willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang. (See *People v. Robles* (2000) 23 Cal.4th 1106.)

In all appropriate cases where the elements of Penal Code § 186.22(a) can be proven, and the person is in possession of a concealed or loaded firearm, it shall be the policy of the Office to charge the offenses under Penal Code §§ 24500(c)(3) or Penal Code § 25850(c)(3) as a felony and to seek a state prison sentence.

Other Firearm Possession Charges by a Gang Member and Gang Enhancements

In addition to the felony firearm charge of possession when an active participant in a criminal street gang, there are additional felony charges listed in Penal Code §§ 24500 and 25850. In cases in which *all* the elements of Penal Code § 186.22(a) cannot be proven, but there is sufficient evidence for purposes of sentencing to demonstrate that the person in possession of a firearm actively participates in a criminal street gang, felony charges and a state prison sentence should be pursued under any of the other provable felony sections. For example, a firearm possessed by an active gang member may not be registered to that gang member pursuant to Penal Code §§ 24500(c)(4) and 25850(c)(4) or may be stolen pursuant to Penal Code §§ 24500(c)(2) and 25850(c)(2).

Compliance with Office Policy

Deviation from this policy requires prior Head Deputy approval.

Commentary

Criminal Street gang members are responsible for many of the serious and violent felonies, including more than half of all murders, committed in Los Angeles County. Handguns are used to commit most of these crimes. In order to reduce the impact and magnitude of gang violence, it shall be the policy of the Office to vigorously prosecute all provable incidents of illegal possession of firearms by gang members. This policy shall apply to the prosecution of violations of Penal Code §§ 25400 and 25850

12.08 HATE CRIMES

Deputies may not settle felony hate crimes cases without consulting with a member of the Hate Crimes Unit. This procedure will ensure consistent case dispositions throughout the county and enable the Office to more effectively communicate the results to the community.

12.08.01 STATE PRISON FOR FELONY HATE CRIMES

Deputies shall seek a state prison sentence for a felony hate crime whenever the facts and/or the defendant's prior record indicate that state prison is appropriate. State prison may be an appropriate sentence for a felony hate crime even if the underlying conduct, without hate motivation, would be misdemeanor conduct. (PC § 422.7)

12.08.02 PROBATION CONDITIONS FOR HATE CRIMES

In all hate crimes cases in which the defendant is granted probation, deputies shall vigorously urge the sentencing court to impose a counseling program, victim restitution and other relevant conditions pursuant to Penal Code § 422.95. For further discussion of probation conditions for hate crimes, refer to the *Probation and Sentence Hearings* chapter of this manual.

12.08.03 CASE SETTLEMENT NOTIFICATION TO HATE CRIMES UNIT

Deputies shall notify the Hate Crimes Unit of all hate crimes case settlements. Penal Code § 13023 requires local prosecutorial agencies to report all hate crimes statistics to the Attorney General's Office. The Hate Crimes Unit collects, compiles and submits these statistics.

Commentary

Hate crimes have far-reaching social implications. Hate crimes not only harm those who are victims, but also generate concern, fear and anger within vulnerable populations and the general public. Hate crimes are serious offenses; at sentencing deputies shall emphasize the long-term damage to the victim and the community that crimes committed out of hate cause. Deputies shall make every effort to obtain a sentence that is substantial yet appropriate in light of the charges and the facts.

12.09 ARMED OR VIOLENT OFFENDERS

Defendants charged with felonies involving violence and/or weapons listed in Penal Code § 1192.7 must plead guilty to every count and admit every enhancement and special allegation sufficient to expose them to the maximum sentence. The term “maximum sentence” is the maximum sentence that can lawfully be imposed considering the court rules, case law and statutes relating to sentencing. It is Office policy that all prior felony convictions shall be alleged in the pleadings at the earliest possible time.

In any case involving violence and/or weapons in which a judge gives the defendant an “indicated” sentence lower than the maximum sentence, the deputy shall state on the record the People’s opposition to the indicated sentence and require the defendant to plead guilty to all charges and admit all enhancements and special allegations.

12.09.01 PRIOR APPROVAL REQUIRED FOR CASE DISPOSITION

A Head Deputy or Deputy-in-Charge must approve any departure from this policy prior to the case disposition and then only for the following reasons:

- There is insufficient evidence to prove the charge, enhancement or special allegation;
- A necessary material witness cannot be located; or
- In exceptional cases, a reduction or dismissal is in the interests of justice.

With the exception of approving a disposition in the interests of justice, a Head Deputy may delegate approval for dispositions outlined above to a Deputy District Attorney IV.

12.10 DOMESTIC VIOLENCE

12.10.01 FELONY SENTENCING

A deputy assigned to vertically prosecute a felony domestic violence case shall vigorously seek a state prison sentence or one year in the county jail if the court grants probation. A Head Deputy must approve a recommendation for less than one year in county jail. Deputies must seek a state prison sentence when the defendant:

- Personally used a firearm or dangerous or deadly weapon;
- Inflicted serious injuries by use of a dangerous or deadly weapon;
- Inflicted serious bodily injury;
- Has more than two convictions for Penal Code §§ 273.5 or 243(e)(1); or
- Has a lengthy or serious prior record that warrants a state prison commitment under the California Rules of Court guidelines.

If the court grants a defendant a probationary sentence, deputies should urge the court to suspend a state prison sentence.

12.10.02 TERMS AND CONDITIONS OF PROBATION

In addition to the mandatory terms and conditions of probation as set forth in Penal Code § 1203.097, deputies shall request the following conditions of probation for a defendant convicted of domestic violence when a court grants probation:

- The defendant may not own or possess a firearm or other dangerous or deadly weapon;
- The defendant must complete an approved one-year Batterer's Treatment program, with quarterly reports to the court. If children are present in the defendant's home, the program should include a parenting skills component;
- The defendant may not contact, harass or annoy the victim, if appropriate. (Deputies must prepare a written order to be included in the court file. The deputy must give the victim and defendant copies of the order.);
- The defendant must complete a substance or alcohol abuse program, if appropriate;
- The defendant must be admonished regarding witness intimidation (PC § 136);
- The defendant must support his or her dependents;
- The defendant must receive actual time in custody absent unusual circumstances;
- The defendant must comply with any Dependency Court orders;
- The defendant must pay a fee of \$500 to the Domestic Violence fund;
- The defendant must perform community service; and
- The probation term shall be five years in felony cases.

Work furlough should not be available in place of actual custody for the more serious offenders, and deputies shall strongly oppose electronic monitoring in all domestic violence cases. If the court approves work furlough, deputies shall request an order that the defendant stay away from the victim during the defendant's participation in the work furlough program.

12.11 SEXUALLY VIOLENT PREDATORS

Welfare and Institutions Code § 6250 permits the involuntary hospitalization of persons convicted of sexually violent offenses following the completion of their criminal sentence. Sexually violent offenses are defined in Welfare and Institutions Code § 6600.

Deputies shall advise defendants who plead guilty to a sexually violent offense that if the defendant is found to meet the criteria set forth in Welfare and Institutions Code §§ 6600-6602, the defendant may be involuntarily committed to state mental hospital for two years following the completion of his or her prison sentence. Moreover, the involuntary commitment may be renewed, in two year increments, for as long as the defendant continues to meet these criteria, and could result in a commitment for life.

12.12 ASSAULTS ON PEACE OFFICERS

A deputy assigned to prosecute a felony assault or battery upon a peace officer shall seek a state prison sentence when the defendant:

- Used a deadly or dangerous weapon to commit the assault or battery;
- Inflicted other than a minor injury regardless of the means used; or
- Has a history of assaultive conduct or other than a minor criminal history.

If probation is appropriate, deputies shall seek a suspended state prison sentence. A Head Deputy must approve any sentencing recommendation that includes less than one year in county jail.

12.13 DEPARTURE FROM POLICY

The Felony Case Settlement Policy shall be strictly adhered to in all cases enumerated in Penal Code § 1192.7. Departure from this policy may be made in cases not enumerated in Penal Code § 1192.7 in two instances:

- When the admissible evidence is legally insufficient to establish the defendant's guilt; or
- When unusual or extraordinary circumstances exist that demand a departure in the interests of justice.

Unusual or extraordinary circumstances include circumstances that will result in indirect or collateral consequences to the defendant in addition to the direct consequences of the conviction.

Commentary

Collateral consequences can, in some instances, have a greater adverse impact on a defendant than the conviction alone. When the potential collateral consequences would result in a "punishment" disproportionate to the punishment other defendants would receive for the same crime, a departure from policy may be warranted.

California Rules of Court Rule 4.414 lists the criteria to be considered when deciding whether to grant probation for a defendant who has suffered a felony conviction. These criteria are divided into factors relating to the crime and factors relating to the defendant. One of the enumerated factors relating to the defendant is: "The adverse collateral consequences on the defendant's life resulting from the felony conviction."

A departure from policy based on collateral consequences may only be made in unusual or extraordinary circumstances that demand a departure in the interest of justice.

When the departure is based on the legal insufficiency of the evidence, the action must be approved as follows:

Major Crimes/Significant Cases: Prior written Head Deputy approval must be obtained and the proposed action must be communicated, through the chain of command, to the Chief Deputy.

All Other Cases: In all other cases, prior written Head Deputy or Deputy-in-Charge approval must be obtained.

When the departure from policy is based on unusual or extraordinary circumstances in the interests of justice, prior written Head Deputy approval must be obtained.

Whenever any departure from policy is made, the deputy prosecuting the case shall prepare a Disposition Report setting forth the reasons for the departure. The Disposition Report shall be signed by the deputy's supervisor and placed in the case file before the action is taken.

12.13.01 CONSIDERATION OF ADVERSE IMMIGRATION CONSEQUENCES

When not inconsistent with Penal Code § 1192.7 and pursuant to Penal Code § 1016.3(b), deputies shall consider the avoidance of adverse immigration consequences as one factor in reaching a just resolution of a case at all times when engaged in the plea negotiation process.

If deviation from case settlement policy is warranted due to these considerations, prior approval by the Head Deputy or Deputy-in-Charge shall be obtained. The proposed disposition and the reasons for the disposition shall be noted in the file and signed by the Head Deputy or Deputy-in-Charge.

12.14 DISPOSITION REPORT

12.14.01 CONCLUSION OF THE CASE

A Disposition Report shall be prepared at the conclusion of every felony case. Within 10 business days after a case has concluded, the deputy handling the case shall prepare a Disposition Report, sign it, place it in the felony case file and submit the file to the Head Deputy, Head Deputy's designee or Deputy-in-Charge for review. The Head Deputy, Head Deputy's designee, or Deputy-in-Charge shall review the file to ensure it is in proper form for closing, sign the Disposition Report and forward the file to support staff for case closing.

Disposition reports are to be completed at the conclusion of every felony case with the following exceptions. Cases in which the defendant receives pretrial diversion, pursuant to Penal Code § 1000 et seq., or is sentenced pursuant to Proposition 36 are exempt from this requirement, except where one or more counts or one or more special allegations are dismissed in order to render a defendant eligible for those programs. Under those circumstances, a disposition report shall be completed. Disposition reports shall be reviewed and signed by the Head Deputy or the Head Deputy's designee.

Upon successful completion of pretrial diversion, and dismissal of the case, a disposition report need not be prepared.

12.14.02 SENTENCING RECOMMENDATION

A Disposition Report is used to make a sentencing recommendation concerning a case disposition. When preparing a Disposition Report, trial and calendar deputies shall include a concise statement of facts, the sentence recommendation and the reasons for the disposition and obtain approval, if required, before settling a case.

In a calendar court, it is the calendar deputy's responsibility to prepare a Disposition Report and secure Head Deputy approval before the recommended action is taken. However, Head Deputies may orally authorize the recommended action to be taken before a written recommendation has been prepared. In that event, a Disposition Report shall thereafter be prepared and processed.

In special units, it is the trial deputy's responsibility to prepare a Disposition Report and secure Head Deputy approval before the recommended action is taken. However, Head Deputies may orally authorize the recommended action to be taken before a written recommendation has been prepared. In that event, a Disposition Report shall thereafter be prepared and processed.

If a defendant pleads guilty to any count significantly different from the charges originally filed or if the sentence imposed fails to meet the minimum penalties of the Felony Case Settlement Policy, the deputy handling the case shall provide an explanation in the Disposition Report. The report should include the efforts made to obtain a sentence consistent with this policy and an assessment of the reason(s) why a less severe sentence was imposed.

12.14.03 CDCR NOTIFICATION TO VICTIMS OF VIOLENT CRIMES

Penal Code § 679.03 places a duty on prosecutors to assist victims, next of kin and witnesses who were threatened by the defendant after his or her arrest in obtaining information from the Department of Corrections and Rehabilitation (CDCR). This statutory obligation arises when a defendant is convicted of a violent offense as defined in Penal Code § 29905 and sentenced to state prison. In such cases, deputies present at sentencing shall alert support staff to send a CDCR 1707 form to each victim, next of kin, and witness who was threatened after arrest by the defendant. Deputies shall notify support staff via the Disposition Report by checking the "CDCR 1707 Form Required" checkbox. Staff shall send the 1707 form along with an explanatory notice that advises victims and witnesses of their right to receive parole release notification directly from CDCR by filling out and submitting the CDCR 1707 form. The CDCR 1707 form must be provided within 30 days following sentencing.

The deputy present at sentencing shall also complete a California Department of Corrections Mailing List and provide this form to the support staff. This form, generated at the time of filing, lists the names and addresses of all victims and next of kin known at the time of filing. Support staff shall place the Mailing List in the case file, underneath the Disposition Report. If victims, witnesses or next of kin are added after the case is filed, or if a witness is threatened by the defendant while the case is pending, or if an address has changed, the deputy present at

sentencing shall make the necessary changes or additions to the Mailing List. The deputy shall also check the appropriate box on the Mailing List indicating the status of the person who is to receive the CDCR 1707 form (i.e., victim, next of kin, or threatened witness). The CDCR Mailing List shall be placed behind the Disposition Report when the file is submitted for review and closing.

Support staff shall ensure that the CDCR 1707 form and the explanatory notice (which is also available in Spanish) are sent to the appropriate victims, next of kin, or threatened witnesses within 30 days of sentencing. If no address is listed for a victim, next of kin, or witness, or if the address is listed as "Care of I/O," the documents shall be sent directly to the investigating officer. If the notice is later returned to the Office, support staff shall staple the envelope to the back of the returned documents and place the materials in the case file under Section H.

Deputies prosecuting serious and violent felonies, hate crimes, domestic violence and sexual assault cases shall also personally notify the victim(s) if the case is dismissed or the defendant is acquitted. A victim services representative may notify the victim(s) on behalf of the deputy handling the case. The deputy or a member of the Bureau of Victim Services (BVS) shall explain the reasons for the dismissal or acquittal to the victim(s). (See Penal Code §§ 1192.7 and 667.5(c) for a complete listing of serious and violent felonies.)

12.15 COMMUNICATING RESULTS

Members of the public have a strong interest in the outcome of criminal cases in which they are a victim or witness.

12.15.01 COMMUNICATION WITH CRIME VICTIMS

In the settlement of a serious case, a decision not to pursue one or more counts and/or allegations charged, particularly those involving physical or mental trauma or great financial loss, can have far-reaching negative effects on the victim. If not handled appropriately and carefully, a dismissal or case settlement can leave a victim with the belief that a criminal wrong has not been redressed. A victim may feel angry, resentful, vulnerable and abandoned. A traumatized victim of a serious crime may be shocked to discover, after the fact, that the Office has dismissed the count pertaining to that victim or settled it for a lesser charge. Deputies cannot expect victims to readily appreciate, without an explanation, the problems of the law of search and seizure, mental defenses and the limitations on consecutive sentencing.

Pursuant to Penal Code § 679.02(a), victims of violent felonies (as defined in Penal Code § 667.5(c)) have a right to be notified of a pretrial disposition. Victims of any felony may request to be notified of a pretrial disposition. Accordingly, within reason, a deputy settling a felony case shall attempt to notify the victim or next of kin before the plea is entered. A deputy may use any reasonable means available to make the notification. A victim services representative may make notification on behalf of the deputy. If it is not possible to notify the victim of the disposition before the plea is entered, the deputy shall ensure that notification is made later, either by the Office or by the Probation Department.

12.16 PENAL CODE § 290 POLICY

Failure to register as a sex offender is a serious offense. Penal Code § 290 provides law enforcement with a powerful tool to ensure public safety, protect law-abiding citizens, and monitor offenders to deter further criminal activity. This policy is promulgated to provide uniformity in the settlement of these cases.

12.16.01 CASE SETTLEMENT

Where the Penal Code provides for a felony, state prison is presumed. The nature of the current violation, the gravity and circumstances of the underlying registrable offense, and the defendant's record shall be considered in determining an appropriate disposition.

Strike Cases

A violation of Penal Code § 290 may qualify as a presumed second strike case. In a presumed second strike case, a state prison sentence is presumed. Head Deputy approval is required to settle the case for less than the low-term doubled. Mitigating circumstances shall be clearly documented in the Disposition Report. In appropriate cases, Head Deputies should seek Director approval to proceed as a third strike case.

Probation

A person convicted of a felony Penal Code § 290 violation may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted, the court shall enter the circumstances indicating that the interests of justice would best be served by the disposition, into the minutes. (PC § 290.018(e).) For felony cases in which probation is granted, or if the imposition or execution of the sentence is suspended, the judge must, as a condition of probation or suspension, order the registrant to serve at least 90 days in county jail. (PC § 290.018(c).)

12.16.02 CASE SETTLEMENT GUIDELINES

Deputies should evaluate whether the circumstances of a Penal Code § 290 violation demonstrate that the offender intended to thwart the statutory scheme for tracking sex offenders or solely failed to comply with a technicality. Deputies should consider the following factors when recommending an appropriate sentence to the court:

Nature of Current Offense:

The following circumstances might mitigate the offense:

- Has the defendant been registering regularly prior to the current Penal Code § 290 violation;
- Is the failure to register less than 30 days late;
- Did the defendant register at the new residence but fail to register at the former residence.

Nature of Underlying Offense and Defendant's Record:

The following circumstances might aggravate the offense:

- Was the defendant sentenced to state prison on the underlying registrable offense;
- Does the defendant have multiple prior registrable offenses;
- Does the defendant have other prior strikes, felony convictions or state prison commitments;
- Does the defendant have a history of use of force, violence or weapons;
- Was the victim of the underlying registrable offense vulnerable.

A Head Deputy must approve any sentencing recommendation which deviates from this policy.

12.17 ANIMAL CRUELTY

It has been established that a correlation exists between intentional animal abuse and other forms of criminality. Other forms of animal cruelty, such as neglect and illegal animal fighting, are also associated with various negative behaviors and consequences. Neglecting an animal can lead to prolonged suffering or death, and is often indicative of other types of dysfunction within an environment. Illegal animal fighting not only impacts the animals involved, it also adversely affects the quality of life of citizens who reside in areas where illegal animal fighting occurs.

Consequences for mistreating animals should be consistent and uniform. It is essential that sentences for animal cruelty crimes impart the message that no form of animal cruelty is acceptable. Sentences should appropriately address the crime by including terms and conditions designed to prevent similar future conduct. Sentences should also be structured in such a way that they protect the victims of the abuse, as well as potential future victims.

In an effort to ensure that animal cruelty crimes are vigorously prosecuted, animal cruelty cases shall not be sent to EDP courts and, whenever possible, should be vertically prosecuted by designated Animal Cruelty Deputies.

Deviation from this policy requires prior Head Deputy or Deputy-in-Charge approval.

12.17.01 Animal Cruelty Case Dispositions

Sentences in animal cruelty cases should convey the message that animal cruelty is a serious crime. To ensure that dispositions are appropriate, specific disposition guidelines have been established for animal cruelty cases.

No one other than an animal cruelty designee or the Animal Cruelty Case Coordinator (ACCC) shall make offers in cases involving animal cruelty charges.

The animal cruelty case disposition guidelines include terms and conditions that are mandated by law, as well as conditions that are designed to provide adequate oversight of defendants. The guidelines shall be regularly requested by deputies as part of the disposition of all animal cruelty

cases. Deviation from this policy requires prior approval from the ACCC and the Head Deputy or Deputy-in-Charge.

The disposition guidelines are available on LADAnet, under “Library” > ”Animal Cruelty” > “Filing, Litigating, and Sentencing Your Case.”

Dismissals and Reductions: Charges involving any form of animal abuse, including dog and cock fighting, should not be dismissed, reduced or “diverted” without prior approval from the ACCC and Head Deputy or Deputy-in-Charge.

This policy applies in all cases, regardless of whether the case only involves charges of animal cruelty, or if there are other charges filed, as well.

Diversion: Those who violate any of the animal cruelty statutes are eligible for misdemeanor military diversion under the provisions of Penal Code § 1001.80. When appropriate, deputies should vigorously argue against diversion in animal cruelty cases, especially when the animal-related charges are “priorable” offenses. When the court is considering granting diversion, the deputy shall state the facts of the case, ask the court to review evidence, such as photos and/or video, and present the argument that the defendant may be eligible, but not suitable, for diversion.

Counseling: Depending upon the animal cruelty charge(s) of which the defendant is convicted, counseling may be mandated by law (PC § 589(h).) Judges should be informed of the counseling requirement in cases where counseling is mandated. In all cases that include animal cruelty charges, requiring animal cruelty classes as a term of probation is highly advisable, regardless of whether classes are mandated by law.

When sentencing a defendant to animal cruelty counseling, the designee shall complete a counseling form and email or fax the form to the address or number found at the bottom of the form. A defendant will not be permitted to enroll unless the program has received a copy of the form from the prosecutor.

Database: Upon disposition of a case involving animal cruelty charges, the form in the Animal Cruelty Database should be updated.

12.18 DRIVING UNDER THE INFLUENCE

12.18.01 IGNITION INTERLOCK DEVICES

This policy pertains to offenses committed on or after July 1, 2010.

Vehicle Code §§ 23700 and 13386 create a pilot program, effective July 1, 2010, that mandates the installation and use of an ignition interlock device (“IID”) for all persons convicted of violating Vehicle Code § 23152 or 23153.

It is the policy of the Office, pursuant to VC §§ 23700 and 13386, to request the following condition of probation for all defendants who are convicted of violating Vehicle Code § 23152 or 23153, or Penal Code § 191.5:

“The defendant is ordered to comply with any and all requirements imposed by the Department of Motor Vehicles regarding the installation and use of an ignition interlock device.”

Furthermore, it is also the policy of the Office, pursuant to Vehicle Code § 23575, that deputies shall request a court-ordered IID in any of the following circumstances:

- The defendant’s measured blood-alcohol level was .15 or higher;
- The defendant has two or more prior moving traffic violations;
- The defendant refused the implied consent blood-alcohol test;
- The defendant committed a violation of Vehicle Code § 23153.

In unusual cases, the Head Deputy or Deputy-in-Charge may approve a deviation from this policy.

If a defendant attempts to circumvent a court-ordered IID by filing a declaration that he or she does not own or operate a motor vehicle, the declaration should be signed under penalty of perjury and co-signed by an interpreter if one was used to assist the defendant at the time of sentencing.

12.19 HARRIS REPORT - CASE SETTLEMENT POLICY AND PROCEDURE

All authorizations necessary for case disposition shall be documented in written form using a disposition report prior to an offer being placed in the case file or conveyed to the defendant. In cases alleging strike priors, Head Deputy authorization to strike a strike shall be obtained and noted in the file in conjunction with the entry of the disposition offer.

12.20 NARCOTICS ASSET FORFEITURE CASES

A contested narcotics civil asset forfeiture case involving less than \$25,000 in cash or cash equivalents requires the conviction “of a defendant” for violating Health and Safety Code §§ 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, 11383, or a felony violation of 11366.8, or for a conspiracy to violate one of these sections. In any case in which property has been seized for forfeiture, the filing deputy will note “Agency seeking forfeiture filing” on the case summary to alert subsequent deputies of the potential forfeiture case.

If it appears from the criminal case file that a forfeiture action may be an issue, the deputy handling the criminal case should contact the Asset Forfeiture Section to determine the status of any forfeiture action. If a forfeiture action has been rejected, or if the potential claimants have failed to respond to the forfeiture notice, no further action need be taken by the court nor the deputy handling the criminal case.

If the forfeiture case is still pending, the deputy handling the criminal case shall be aware that any negotiation with respect to a settlement of the criminal case could impact the forfeiture case. The forfeiture case may be resolved by way of settlement instead of trial if all potential claimants have been served with Notice of Forfeiture and the time has passed for filing any further claims. Before settling a forfeiture case, the deputy handling the criminal case should contact the Asset Forfeiture Section.

Evaluation of the criminal matter shall not be dictated by the forfeiture case. If a case is worth reducing to a simple possession in the absence of a forfeiture action, it is worth the same disposition with a forfeiture action pending, even though such a disposition would mean the loss of the forfeiture. Nor should the amount of the potential forfeiture allow a criminal defendant to bargain away what he or she should receive by way of charge or sentence. The deputy handling the criminal case shall not negotiate a case settlement that includes the return of seized property without consulting with the Asset Forfeiture Section.

12.21 HIV/AIDS TESTING OF DEFENDANT FOR SPECIFIED SEX OFFENSES

Prosecutors have a mandatory obligation to advise victims of specified sexual assault offenses of the right to HIV/AIDS testing and disclosure of results. (PC §§ 1524.1, 1202.1; H&S §§ 121055.) The Los Angeles County Department of Health Services is statutorily required to perform both pre and post-conviction disclosure of results to crime victims.

12.21.01 PRE-CONVICTION AIDS TEST UNDER HEALTH & SAFETY CODE § 121055

This section allows named victims of specified charged sex crimes to request the district attorney's office to seek a petition and an order from the court to draw and test the blood of the defendant or minor against whom a petition has been filed. The petition can be filed as soon as the complaint or juvenile petition is filed and must include a written request from the victim. The court then must promptly hold a hearing. If the court determines there is probable cause to believe that blood, saliva, semen or other bodily fluid was possibly transferred between the defendant and the victim, the court shall order that the defendant provide two blood samples for testing. Copies of the test results are delivered to each requesting victim and the defendant.

12.21.02 PRE-CONVICTION HIV TEST UNDER PENAL CODE § 1524.1

Under Penal Code § 1524.1, once a complaint, information, indictment or juvenile petition has been filed, the court may issue a search warrant to test the blood or saliva of the defendant or minor for HIV. The search warrant may be ordered upon request of the victim and after the court finds that there is probable cause to believe that the defendant committed the charged offense and that there is probable cause to believe that a bodily fluid capable of carrying HIV was transferred from the defendant to the victim.

This section applies to any victim of any charged crime where the possibility exists that bodily fluid capable of transmitting HIV was transferred from the defendant to the victim. However, if

the defendant is charged with a specified sex offense, the victim of an uncharged sex offense may also obtain a search warrant to have the defendant's blood drawn and tested.

The deputy is required to inform the victim of the right to request the warrant and shall refer the victim to a "local health officer" for pre-request counseling to assist the victim in determining whether to make the request. The results of the HIV test are to be disclosed by the local health officer to the victim requesting the test.

The test results shall not be used in any criminal proceeding as evidence of guilt or innocence.

12.21.03 POST-CONVICTION AIDS TEST UNDER PENAL CODE § 1202.1

Upon conviction or a juvenile petition sustained or admitted of one of the following offenses, the court shall order the defendant to submit to a blood or buccal swab test for evidence of AIDS:

- Rape in violation of PC §§ 261 or 264.1;
- Unlawful sexual intercourse with a person under 18 years of age in violation of PC §§ 261.5 or 266c;
- Rape of a spouse in violation of PC §§ 262 or 264.1;
- Sodomy in violation of PC §§ 266c or 286; and
- Oral copulation in violation of PC §§ 266c or 288a.

If the conviction or petition was sustained or admitted for one of the following offenses, the court shall order the defendant to submit to an AIDS test, only upon a finding that there was probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim:

- Sexual penetration in violation of PC §§ 264.1, 266c or 289;
- Aggravated sexual assault of a child in violation of PC § 269;
- Lewd or lascivious conduct with a child in violation of PC § 288;
- Continuous sexual abuse of a child in violation of PC § 288.5; and
- An attempt to commit any of these offenses.

This duty applies whether the defendant was sentenced to prison or placed on probation. The testing must be completed within 180 days. The deputy or Bureau of Victim Services advocate shall advise the victim of his or her right to obtain the results and refer the victim to a local health officer for counseling. The local health officer is responsible for disclosing the test results to the victim. If the test results are positive, the results cannot be disclosed without offering or providing counseling to the victim.

12.22 GRAFFITI

Whenever a defendant is granted probation in a graffiti case, a deputy shall request the court to impose specific terms and conditions of probation. Forms detailing the required terms and conditions of probation in adult and juvenile matters are available in LADAnet, as attachments to [SD 10-07](#). Head Deputies and Deputies-in-Charge are responsible for periodically auditing

graffiti cases to determine if these terms and conditions are being imposed by courts. Deviation from this policy requires prior Head Deputy or Deputy-in-Charge approval.

CHAPTER 14

DISCLOSURE OF EXCULPATORY AND IMPEACHMENT INFORMATION

14.01 INTRODUCTION

A California prosecutor's obligation to provide exculpatory and impeaching information arises from the federal Due Process Clause of the Fourteenth Amendment, as applied by the United States Supreme Court in *Brady v. Maryland* (1963) 373 U.S. 83, and California's Criminal Discovery Statute, as codified in Penal Code section 1054.1(e). Additionally, Rule 5-110 of the California Rules of Professional Conduct requires that prosecutors timely disclose all evidence or information that tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when relieved of this responsibility by a protective order of the court.

The failure to provide exculpatory and impeaching information may violate Rule 5-220 of the Rules of Professional Conduct, Penal Code section 141(a), and trigger a report to the State Bar if the reversal of a judgment is based in whole, or in part, on prosecutorial misconduct. Moreover, the United States Supreme Court has indicated that the prudent prosecutor should resolve doubtful questions in favor of disclosure.

The Office's policy is to adhere to these obligations regardless of materiality to ensure defendants receive a fair trial and to preserve the integrity of convictions. All deputies are required to comply with the law regarding the disclosure of exculpatory and impeaching information, to resolve doubtful questions in favor of disclosure, and to follow the policies and procedures set forth herein.

14.02 THE BRADY RULE

A deputy has an affirmative duty to disclose all favorable material evidence on the issue of guilt or punishment possessed by the prosecution team, irrespective of a defense request. Favorable evidence consists of exculpatory information or impeaching information that undermines the credibility of a prosecution witness.

Examples of exculpatory evidence include information that:

Directly opposes guilt;

Negates an element of a charged offense;

Supports defense testimony;

Supports an affirmative defense;

Supports a defense motion;

Mitigates punishment;

Examples of impeaching evidence include:

- Felony convictions involving moral turpitude;
- Misdemeanor or other conduct that reflects on believability;
- Misconduct involving moral turpitude;
- False reports by a prosecution witness;
- Pending criminal charges against a prosecution witness;
- Parole or probation of a prosecution witness;
- Evidence contradicting a prosecution witness's statements or reports;
- Evidence undermining a prosecution witness's expertise (e.g. inaccurate statements or expert opinions);
- Evidence of misconduct by a Board of Rights or Civil Service Commission that reflects on a prosecution witness's truthfulness, bias, or moral turpitude;
- Evidence that a prosecution witness has a reputation for untruthfulness;
- Evidence that a prosecution witness has a racial, religious, or personal bias against the defendant individually or as a member of a group; and
- Promises, offers, or inducements to a prosecution witness, including a grant of immunity.

When favorable material evidence is contained in the prosecuting attorney's file, the deputy is in actual possession of the evidence and shall disclose it. Additionally, a deputy shall disclose favorable material evidence in the possession of the "prosecution team," including "information possessed by others acting on the government's behalf that [was] gathered in connection with the investigation" (Strickler v. Greene (1999) 527 U.S. 263, 281). "Prosecution team" includes crime labs and sexual assault response teams (People v. Uribe (2008) 162 Cal.App.4th 1457).

A deputy's opinion regarding trial issues is work product and not discoverable under Brady. In contrast, deputies have a duty to immediately correct the testimony of a People's witness known to be false or misleading.

Occasionally, deputies may learn that a peace officer's personnel file contains potentially impeaching information when, for example, they find out a peace officer is placed on administrative leave. In those circumstances, deputies shall inform the defense of the possible existence of impeaching information and may file a Pitchess motion to access the information.

When a Pitchess motion is made by the prosecution or the defense and the court releases the impeaching information, a deputy shall ensure a protective order is issued pursuant to Evidence Code section 1045(e) and place the information in a sealed envelope in the DA file indicating it is protected pursuant to Evidence Code section 1043. The deputy shall send a memorandum, along with all moving papers, to the Discovery Compliance Unit (DCU) stating the court ordered the disclosure of impeaching evidence, but shall not inform the DCU of the specific information disclosed. The DCU shall enter the witness's name into the DCS and note a Pitchess motion was granted.

California courts have held that prosecutors must disclose impeachment information before a defendant pleads guilty or no contest. Information establishing the factual innocence of a defendant, or that is otherwise materially exculpatory, shall be disclosed as soon as it becomes known. Plea waivers are neither intelligent nor voluntary if they are entered without knowledge of material evidence withheld by the prosecution. The Office's policy, therefore, is to disclose impeachment information prior to obtaining a plea of guilty or no contest from a defendant.

Commentary

Although the Brady rule does not require the disclosure of impeaching evidence before a defendant pleads guilty or no contest, the California courts have upheld a due process requirement to do so. The integrity of the conviction requires disclosure of impeachment information prior to obtaining a plea of guilty or no contest from a defendant.

14.03 PENAL CODE SECTION 1054.1

Penal Code section 1054.1 provides:

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney, or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

- (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
- (b) Statements of all defendants.
- (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
- (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
- (e) Any exculpatory evidence.
- (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the

results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

Penal Code section 1054.1(d) imposes a broader statutory duty upon a deputy to disclose all felony convictions of a material witness, not just felony convictions involving moral turpitude as required by Brady and its progeny. The duty to disclose felony convictions extends to those that have been expunged pursuant to Penal Code section 1203.4.

Penal Code section 1054.1(e) expands the Brady rule, requiring a prosecutor to disclose to the defendant any exculpatory evidence, not just material exculpatory evidence. Similar to their Brady obligation, deputies may also file a Pitchess motion to comply with their Penal Code section 1054.1(e) duties. If, in this circumstance, a People's Pitchess motion is filed and granted, the deputy shall notify the defense of such. The deputy shall request permission from the court to disclose any exculpatory or impeaching information obtained from the Pitchess to the defense along with a protective order prohibiting the defense from disseminating the information beyond the prosecution of the case.

Commentary

Deputies shall not utilize Chapter 14 as a substitute for researching legal issues that may arise in a case. Prior to trial, deputies should meet with the investigating officer to review their entire file to make certain they are in possession of all evidence relevant to the case.

14.04 TIMING OF DISCLOSURE

For felonies, deputies shall disclose any potentially exculpatory and/or impeaching information before the preliminary hearing, including evidence that may impeach a witness's statement introduced at the preliminary hearing pursuant to Proposition 115. Deputies shall also disclose any potentially exculpatory and/or impeaching evidence learned after the preliminary hearing as soon as it becomes known.

For misdemeanors, deputies shall disclose any potentially exculpatory and/or impeaching information before any substantive hearing or at least 30 days before trial. If the information is not known or reasonably accessible to the deputy 30 days before trial, it shall be disclosed as soon as it becomes known.

During trial, a deputy shall continue to comply with Brady and Penal Code section 1054(e)'s discovery obligations and provide potentially exculpatory and/or impeachment evidence as soon as it becomes known. After trial, a deputy who acquires information which casts doubt upon the correctness of a conviction shall promptly disclose to the defense the new, favorable evidence.

Commentary

In certain situations, deputies may request that the court deny or restrict discovery disclosures. Penal Code section 1054.7 permits discovery disclosures to be denied, restricted, or deferred upon a showing of good cause, i.e., concerns for witness safety, for the possible loss or destruction of evidence, or for the possible compromise of other investigations by law enforcement.

14.05 DISCOVERY COMPLIANCE SYSTEM

The Discovery Compliance System (DCS) is a secure computer program comprised of the Brady and Officer and Recurrent Witness Information Tracking System (ORWITS) databases, which contain summaries of impeaching and potentially impeaching information regarding recurrent witnesses obtained from a variety of sources. The term “recurrent People’s witness” includes peace officers, experts, and other witnesses whom the Office reasonably expects to testify in multiple cases.

The DCU shall maintain the DCS, along with the underlying documents for each entry. The DCU shall also determine whether information pertaining to a recurrent witness shall be placed into the Brady or ORWITS databases. The DCS is interfaced with the Adult and Juvenile Subpoena Management Systems to notify a deputy by way of the Master Witness List (MWL) that a recurrent People’s witness is in the DCS.

Whenever the MWL indicates “Check BRADY/ORWITS” alongside a subpoenaed recurrent witness’s name, the handling deputy shall manually access the DCS to check the accuracy of the MWL prior to making any disclosures regarding a recurrent witness. When a deputy adds a recurrent witness to the MWL, or corrects information therein, he or she shall simultaneously check the DCS for an entry associated with the individual.

Through an icon on their computer workstations, deputies and paralegals can manually search the DCS by entering a DR number, court case number, or DA case number and the recurrent witness’s name or employee number. Deputies and paralegals shall be authorized to access the DCS only as necessary to perform their official duties. A security log is built into the DCS which tracks every inquiry. Misuse of this system may subject an employee to disciplinary action.

A deputy has an on-going duty to disclose exculpatory and impeaching information contained within the DCS. To meet this obligation, a deputy shall, at a minimum, check the DCS prior to the preliminary hearing and 30 days before trial.

Commentary

The effectiveness of the DCS/Subpoena Management interface system relies on the complete and accurate input of the names and employee numbers of recurrent witnesses into PIMS by Office support staff members at the time of case filing. Filing deputies and support staff members shall proactively seek to obtain full and accurate names and employee numbers of all recurrent witnesses before case filing, or as soon as possible thereafter. Support staff members shall bring post-filing corrections of recurrent witnesses’ names or employee numbers to the attention of handling deputies so that the handling deputies may conduct a manual check of the DCS with the corrected information.

Deputies reviewing matters for filing shall check the DCS before filing complaints, if practical. Deputies presenting cases to the Grand Jury shall check the DCS before eliciting testimony from a recurrent witness. If practical, deputies reviewing declarations in support of arrest warrants and affidavits in support of search warrants shall check the DCS before approval. If a declarant or affiant is listed in the DCS, deputies shall recommend using another

peace officer as a declarant or affiant or disclosing a summary of the potential impeachment material for the magistrate's consideration.

14.05.01 BRADY DATABASE

The BRADY database shall contain all exculpatory and impeaching information of recurrent witnesses that is discoverable per se. This includes felony and misdemeanor convictions or other misconduct that reflects on the credibility of a witness. This information shall be disclosed to the defense even if the recurrent witness will not be called to testify.

14.05.02 ORWITS DATABASE

ORWITS is an informational database that contains material on recurrent witnesses that may be constitutionally or statutorily discoverable depending on the facts of a case. The handling deputy shall make this determination after consultation with his or her Deputy-in-Charge (DIC) or Head Deputy. The decision whether to disclose information obtained from the DCS shall be made before the preliminary hearing, and for misdemeanors, before any substantive hearing.

Information in ORWITS may not appear impeaching on its face, but may become relevant in a proceeding. Reasonable minds may differ on whether information is impeaching. Additionally, the relevance of potentially impeaching information to the particular facts of a case can vary greatly. Accordingly, ORWITS information shall be kept separate and apart from Brady information.

Commentary

Maintaining information in ORWITS shall: (i) keep deputies informed of its existence; (ii) protect recurrent witnesses from having the information improperly raised in a court proceeding; and (iii) protect the integrity of convictions.

14.06 DISCLOSURE OF INFORMATION OBTAINED FROM DCS

Deputies shall note information learned from the DCS database in the DA file and make certain the information remains confidential. Use or disclosure of the material beyond that necessary to prosecute the case shall be avoided. Disclosure of DCS information shall be made on the record or in writing and noted in the DA file. The disclosing deputy shall request a protective order, limiting use of the information to the case before it is provided to the defense. A template for a protective order can be found in the Lotus Notes database under the DCS icon.

Opinions contained within the DCS are privileged work product, pursuant to Code of Civil Procedure section 2018.030(a), and not discoverable under Penal Code section 1054 or the California Public Records Act (CPRA). The exemption from CPRA disclosure is not waived when a deputy, in the discharge of his or her legal obligations, provides defense counsel with potentially impeaching information learned from the DCS, because its disclosure is required by law (Government Code section 6254.5 subdivision (b)).

14.07 ENTRY INTO DCS AND THE REVIEW PROCESS

The DIC of the DCU shall enter all information into the DCS. Information entered into this system is not an endorsement or a final determination of its validity. Entries of recurrent witnesses into the DCS shall be removed only in cases of mistaken identity.

14.07.01 CONFIDENTIAL NOTIFICATION TO RECURRENT WITNESS AFFECTED BY DCS ENTRY

When the DCU enters information involving a peace officer or expert witness into the DCS, the DIC of the DCU shall simultaneously notify the recurrent witness, his or her employing agency's head, the Office's Law Enforcement Liaison, and the Chief of the Bureau of Investigation by confidential correspondence. The correspondence shall also inform the recurrent witness of the process by which entries into the DCS may be reviewed and that materials submitted may be discoverable.

14.07.02 ENTRY INTO THE BRADY DATABASE

When a recurrent witness is entered into the BRADY database, the recurrent witness may, at any time, seek reconsideration of the DCU's decision by submitting a letter to the DIC of the DCU. The letter shall include the reasons challenging the entry along with any supporting documents.

Within 90 calendar days of receiving the letter, the DIC of the DCU shall review the materials submitted and decide if the recurrent witness shall remain in the BRADY database, be transferred into ORWITS, or be removed entirely from the DCS due to mistaken identity. If the DIC of the DCU decides the recurrent witness shall remain in the BRADY database, the recurrent witness may address that decision in writing to the Bureau of Prosecution Support Operations (BPSO) Bureau Director. If requested by the recurrent witness, final review of the BPSO Bureau Director's decision shall be based on the material provided and conducted by three legal Bureau Directors designated by two Assistant District Attorneys.

14.07.03 ENTRY INTO THE ORWITS DATABASE

Entries of recurrent witnesses into ORWITS shall not be reviewed except in cases of mistaken identity. Recurrent witnesses may, however, submit documentation to the DCU to address their entry into the database. The submitted documents shall be included as part of the recurrent witness's ORWITS entry and accessible to all deputies carrying out their official functions. In certain circumstances, the DCU may transfer a recurrent witness from ORWITS into the BRADY database when additional information is received indicating such a transfer is warranted. When a transfer occurs, the DCU shall notify the recurrent witness and their agency head by confidential correspondence.

When the DCU is notified that a court has granted a Pitchess motion, the DIC of the DCU shall enter the recurrent witness's name into ORWITS. Thereafter, the DIC shall notify the recurrent witness and their agency head of the ORWITS entry by confidential correspondence.

14.08 DEPUTY REFERRALS OF POTENTIALLY IMPEACHING INFORMATION

Deputies shall refer potentially impeaching information regarding recurrent witnesses to the DCU.

14.08.01 FILINGS AND DECLINATIONS

Deputies shall forward to the DCU a copy of all filings and declinations that list a recurrent witness as a defendant or suspect. Forwarded information shall include a copy of the complaint and supporting documentation.

14.08.02 DEPUTY REFERRALS

Deputies who learn of potentially impeaching information about a recurrent witness shall promptly inform their Deputy-in-Charge (DIC) or Head Deputy. When a deputy refers potentially impeaching information about a recurrent witness to his or her DIC, the DIC shall also inform his or her Head Deputy of the referral. The Head Deputy shall consult with the recurrent witness' agency head, or their designee to ensure the information is complete and accurate. In consulting with the agency head, or their designee, the Head Deputy shall avoid obtaining information from a recurrent witness's personnel file.

The Head Deputy in conjunction with the deputy shall then prepare a referral memorandum through the chain of command detailing the information. Supporting documentation, if any, shall be attached to the memorandum. Referrals shall be worded carefully. Premature conclusions shall be avoided.

When the Bureau Director receives the information, he or she shall reach out to the recurrent witness's employing agency head, or their designee, and inform them of the referral to the DCU. The Bureau Director shall then forward the memoranda to the Bureau of Prosecution Support Operation (BPSO) Bureau Director for entry into the DCS. The BPSO Bureau Director, in consultation with the DIC of the DCU, shall review the information to determine whether it shall be placed in the Brady or ORWITS database.

When the BPSO Bureau Director determines that a referral involves potential criminal conduct of a peace officer, the BPSO Bureau Director shall forward the memorandum to the Head Deputy of the Justice System Integrity Division (JSID) for review. If the BPSO Bureau Director determines that a referral involves potential criminal conduct of a recurrent People's witness other than a peace officer, he or she shall forward the memorandum to the appropriate Line Operations supervisor. When appropriate, the BPSO Bureau Director shall instruct the DIC of the DCU to enter the information into the DCS pending a filing decision by JSID or Line Operations.

When the information is potentially impeaching, but does not involve criminal conduct, the BPSO Bureau Director shall instruct the DIC of the DCU to enter the information into the DCS.

14.09 DISCOVERY COMPLIANCE SYSTEM MANUAL

In addition to the LPM, deputies shall consult the Discovery Compliance System (DCS) Manual for guidance in fulfilling their discovery obligations. The DCS Manual has been uploaded to LADAnet under Library>Office Manuals>[DCS Manual](#).

