

SUBJECT:
Deadly Weapons and Firearms

Policy Number: 4.03
Date: January 1, 2010

I. FILING DISPOSITION

Prosecutors will pay special attention to cases in which defendants are armed with or use deadly weapons or firearms. All applicable charges and enhancements supported by the evidence should be filed initially with one exception discussed below. Where the charged offense may be pled as either a felony or a misdemeanor, the preference should be for a felony filing unless there is clear evidence of a mitigating factor.

The firearm enhancements available under Penal Code Section 12022.53 should generally not be filed at the outset. These enhancements are not subject to plea negotiations and may not be dismissed once filed in a complaint or information. The filing prosecutor should use other alternatives such as Penal Code Section 12022.5 instead. However, if the evidence is strong and the crime aggravated, the filing prosecutor does have the discretion to charge a Section 12022.53 enhancement initially.

In conducting disposition negotiations in cases in which Section 12022.53 enhancements are applicable although uncharged, the prosecutor should clearly inform defense counsel that, if the case proceeds to trial, the prosecutor will move to amend to add the appropriate Section 12022.53 enhancement. If the case goes to trial, the prosecutor must follow through with the amendment.

The assigned prosecutor has the same discretion as the filing prosecutor to determine during the preparation of the case that the evidence of guilt is so clear and the facts so aggravated that charging a Section 12022.53 enhancement is warranted regardless of its impact on disposition negotiations.

In conducting disposition negotiations in all cases in which a defendant was armed with or used a deadly weapon or firearm, the goal of the prosecutor should be to obtain a conviction by plea or verdict to document that fact in the defendant's criminal history. These charges and enhancements should not be used as leverage to obtain a plea to another offense which would not result in a record that a defendant committed a crime while armed with or through the use of a deadly weapon or firearm. If the assigned prosecutor believes that a weakness in the evidence makes it unlikely that the defendant will be convicted of the charge or enhancement, the prosecutor should discuss the case with his or her supervisor.

II. DESTRUCTION OF DEADLY WEAPONS OR FIREARMS

Prosecutors assigned to cases involving deadly weapons or firearms seized as evidence will insure that the sentencing court enters a disposition order pursuant to Penal Code Section 12028 for that evidence. Prosecutors will also insure that the disposition order is noted in the evidence release memo sent to the law enforcement agency when the case file is closed following sentencing.

III. DEADLY WEAPONS OF Deadly Weapons OR FIREARMS AS EXHIBITS

Whenever a deadly weapon or a firearm will be used in court as an exhibit, it is the assigned prosecutor's duty to insure the exhibit is in a safe condition. The prosecutor should give consideration to presenting the evidence in photographic form rather than bringing the actual evidence into court. Where, in the prosecutor's discretion, the actual item should be presented in court, the prosecutor will inform the bailiff and allow the bailiff to inspect the exhibit prior to its use. The prosecutor is also responsible for insuring that the deadly weapon or firearm is closely guarded at all times and that unauthorized persons do not have access to the weapon.