


SPECIAL DIRECTIVE 17-05

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOHN K. SPILLANE   
Chief Deputy District Attorney

SUBJECT: REVISED PENAL CODE 17(B)(4) OPERATIONAL AGREEMENT

DATE: FEBRUARY 8, 2017

**This Special Directive replaces General Office Memoranda 01-98 and 03-51. The Special Directive impacted the following sections of the Legal Policy Manual: 2.09 Alternative Felony Misdemeanor Crimes; 2.09.01 Presumptive Felony Filings; 2.09.02 Presumptive Misdemeanor Filings; 4.02.04 Presumptive Misdemeanor Filings; 4.02.05 Referral to City Attorney; 4.05.01 Charging Criteria; and 4.10 Auto Theft. Those sections will be updated in the soon to be released, online revision of the LPM.**

In March 2011, the Los Angeles County Prosecutors Association (“CPA”), Los Angeles City Attorney’s Office and the Office entered into an Inter-Agency Operational Agreement (“Operational Agreement”) regarding Penal Code section 17(b)(4) referrals. The Operational Agreement implemented “policies and procedures ... in order to accomplish consistent, predictable, and equitable investigation of cases in order to ensure and enhance the fundamental right of the people we represent to a safe and just society.” (See Operational Agreement.) It is intended to streamline the filing process for all parties by authorizing individual police agencies to directly seek a misdemeanor filing for all cases meeting the attached criteria without first seeking review from the Office.

The Operational Agreement permits the city prosecutor to refer the case back to the Office if, after an initial review, the case appears to be more appropriately handled as a felony. The Office shall make the final determination as to whether the matter shall be charged as a felony or referred back to the city prosecutor.

The Operational Agreement includes specific guidelines (“Schedule I”) regarding the direct filing of alternative felony/misdemeanor charges (AKA “wobblers”). On December 1, 2016, CPA approved a revised version of Schedule I. (See attached Schedule I.)

It is expected that the Schedule I will continue to be refined and modified in the future. **Please ensure that you are using the most current version when reviewing a criminal case.** The most recent version will be located under “Filing Resources,” located on LADAnet under the “Office Manuals” drop-down menu. While the latest version of Schedule I will be formally distributed to all law enforcement and local prosecutorial agencies, please continue to communicate with your local criminal justice partners to make sure that they are aware of the latest version of Schedule I.

Inter-office and intra-office trainings will be organized in the coming year regarding the updated version of Schedule I and other issues relating to the Operational Agreement. More details on this training will follow.

*Commentary: While the Operational Agreement is not necessarily binding on other prosecutorial agencies, it is the policy of this Office to follow the guidelines of the Operational Agreement.*

ljk

Attachments

**INTER-AGENCY OPERATIONAL AGREEMENT**  
**PENAL CODE §17(b)(4) REFERRALS**

**THIS AGREEMENT** is made this

THE LOS ANGELES CITY ATTORNEY'S OFFICE ("LACA"),

THE LOS ANGELES COUNTY PROSECUTORS ASSOCIATION ("CPA")

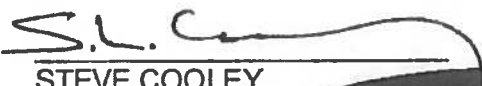
**AND**

THE LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE ("LADA")


All Parties believe that it is essential to ensure that prosecutorial agencies having potential jurisdiction over a criminal case have policies and procedures in place in order to accomplish consistent, predictable, and equitable investigation and prosecution of cases in order to ensure and enhance the fundamental right of the people we represent to a safe and just society.

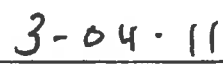
LADA has jurisdiction over the prosecution of all felonies occurring in Los Angeles County and misdemeanors occurring in certain sections of the County in which jurisdiction over misdemeanor offenses have not been assumed by a city (*Government Code §§41803.5; 72193*). There also exists numerous offenses providing alternate penalties of county jail or state prison. Such offenses are commonly referred to as "wobblers."


Penal Code §17(b)(4) provides discretion to prosecutors as to the charging of wobblers. The Parties to this Agreement have established guidelines and procedures for the prosecution of wobbler offenses to achieve the objects of this Agreement. Those guidelines and procedures are contained within the Appendices and Schedules, attached hereto and incorporated by reference.

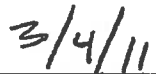
  
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STEVE COOLEY  
District Attorney of Los Angeles County

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
CARMEN A. TRUTANICH  
Los Angeles City Attorney

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
MICHAEL WEBB  
President, Los Angeles County Prosecutors Association

  
\_\_\_\_\_  
Date

## **INTER-AGENCY OPERATIONAL AGREEMENT PENAL CODE §17(b)(4) REFERRALS**

### **SUMMARY OF THE AGREEMENT\***

#### **Direct Filing Procedure**

- **General Guidelines for Case Review**
  - LADA – Original jurisdiction to review for prosecution all potential felony cases (this includes straight felonies and wobblers)
  - City Attorneys and City Prosecutors - Original jurisdiction to review for prosecution all misdemeanors occurring in the relevant city
  - Unless specified, a wobbler presented for review to a City Attorney or City Prosecutor will be immediately referred to LADA for consideration unless presented with a Charge Evaluation Worksheet (CEW) documenting that the case has been declined for felony prosecution – LADA will not decline to file or refer a case to another prosecutorial agency verbally; a written record is required and will be documented on the CEW
  - As to original jurisdiction, this Agreement incorporates investigations undertaken by a prosecutorial agency in support of case review and evidence collection for cases considered for filing of criminal charges
- **Initial Case Review Procedure**
  - Crimes for which a direct referral to a City Attorney or City Prosecutor is appropriate are specified. (Schedule I)
  - In circumstances where the City Attorney or City Prosecutor reviews a case within this agreement but believes that the circumstances of the crime or the criminal history of the defendant(s) warrant a review of the case for felony prosecution, a referral to LADA should be pursued as specified in the agreement.
  - In cases filed by a City Attorney or City Prosecutor, even when previously declined for felony prosecution, where evidence is developed that reasonably changes the posture of the case so that reconsideration should be given for felony prosecution, a referral to LADA should be pursued as specified in the agreement

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\* *The Summary is intended for general guidance only. Please refer to the attached Appendices and Schedules governing this Agreement for specifics regarding the Agreement.*

## **INTER-AGENCY OPERATIONAL AGREEMENT**

### **PENAL CODE §17(b)(4) REFERRALS**

#### **Implementation**

- **Inter-Agency Liaison Committee (IALC)**
  - Establish and promote direct, effective, open lines of communication between agencies on §17(b)(4) issues
  - Oversee and organize formation of working groups that are formed based upon office location and/or subject matter issues
  - Recommend policies and procedures for adoption to department heads
- **Inter-Agency Liaison Groups (IALG)**
  - Local and/or subject matter communication between deputies with filing responsibilities for each agency (Schedule II)
  - Implementing and coordinating training and other lines of communication with local law enforcement agencies.

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**APPENDIX A**  
**DIRECT FILING PROCEDURE**

LADA has the authority for initial review in all cases involving wobbler offenses. LADA can determine if the filing of felony charges is appropriate following a direct review of the case as submitted by the investigating agency or whether the wobbler offense(s) should be a direct referral to the City Attorney or City Prosecutor by the local police agency for consideration of a misdemeanor filing without first being reviewed by the District Attorney.

Based upon a review of filing guidelines consistent with the established filing policies and procedures of the relevant prosecutorial agencies, the City Attorney or City Prosecutor and LADA are adopting direct filing procedures for offenses that meet specified criteria. The agencies joining in this agreement are committed to improving communications to ensure that each case is suitably reviewed in order to achieve a just result and ensure public safety. The procedures are also designed to maximize workflow efficiency and reduce the need for the burdensome practice of requiring filing officers for law enforcement agencies to transport the reports for review to multiple prosecutorial agencies.

The direct filing of appropriate wobbler offenses shall therefore only be conducted in a manner consistent with the following:

**1. GENERAL GUIDELINES FOR CASE REVIEW**

If either the facts of the case or the charges presented warrant consideration of a felony filing, the investigating law enforcement agency must first bring the case to LADA for filing consideration. If a decision is made not to file a felony charge, a *Charge Evaluation Worksheet* (CEW), an example of which is attached, will be generated and provided to the filing officer. Verbal referrals or declinations are outside the policy of LADA and shall not be relied upon. A written declination or referral is mandated and must be recorded on the CEW. The CEW has also

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### **PENAL CODE §17(b)(4) REFERRALS**

been informally called a *blue sheet* or a *reject form*. The CEW requires the signature of the deputy district attorney responsible for reviewing the submitted case as well as the signature of the law enforcement officer submitting the case for review. The case can be declined for felony filing or referred for further investigation.

A referral for further investigation does not mean that a case has been rejected for felony filing. Rather, it means that the deputy district attorney reviewing the case has requested that the law enforcement agency conduct additional investigation or provide further information required by the deputy to make an informed decision as to whether a felony charge is appropriately filed. Cases referred for further investigation continue under the filing consideration authority of the district attorney's office and are not yet in a posture for consideration of misdemeanor filing by the local misdemeanor prosecutor. When a case is not immediately filed, a copy of the CEW must be provided to the filing officer in all cases and will record whether the case was declined for filing or referred for further investigation.

If the case is declined for filing, the reason for the declination, using Department of Justice (DOJ) codes, will also be recorded. Protocols limit the designation of a single DOJ code per CEW. If, in the assessment of the deputy district attorney reviewing the case for a felony filing, there is insufficient evidence to file the case the appropriate code will be entered (B). The comments section of the CEW will provide specific reasons for this assessment. If, in the assessment of the reviewing deputy, the evidence presented in the case does not rise to the threshold established for a felony prosecution, the CEW will reflect the DOJ code indicating that the case has been referred to the local city prosecuting agency for consideration of misdemeanor charges.

When a case is initially presented by law enforcement to a special unit of LADA, the deputy assigned to review the case for the special unit may render a decision

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that the case does not meet the filing criteria for the special unit. This does not mean that the case has been rejected for a felony filing. It could mean something as simple as the fact that a threshold dollar amount of loss was not established by the evidence presented. In such circumstances, the case should be reviewed for felony filing by the appropriate Branch or Bureau and a CEW obtained by the law enforcement agency clearly declining the case for felony prosecution before it is taken to the local misdemeanor prosecutor for misdemeanor filing consideration.

The Victim Impact Program ("VIP") was first implemented in 2001 by LADA. The core mission of VIP is to obtain justice for victims of crimes involving domestic violence, sex crimes, stalking, elder abuse, hate crimes, and child physical abuse/endangerment (referred to as VIP Category cases) through vertical prosecution of cases occurring in the jurisdiction covered by Branch and Area Operations. In the Central Judicial District, these offenses are routinely prosecuted by special units. The program represents a firm commitment by LADA for trained and qualified deputies to prosecute crimes against individuals who often target victims because of an individual's vulnerability. The goal of the program is to obtain justice for victims while holding offenders justly accountable for their criminal acts.

LADA recognizes its duty as the gatekeeper on all cases it classifies as felony VIP Category cases, which include some of the most serious cases the office prosecutes. However, there are cases which may be more appropriately referred directly to the local city prosecutor with misdemeanor jurisdiction for filing consideration and prosecution. All parties are committed to working together to ensure that cases are filed and reviewed in a just manner, with efficient procedures. Any concern regarding whether a case involving VIP category charges should be directly filed, should be resolved by contacting the LADA VIP Deputy-in-Charge assigned to the jurisdiction.



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Cases submitted for felony filing consideration involving serious injury, conduct that would ordinarily warrant a felony filing, or a defendant with a criminal history that would ordinarily warrant a felony filing, which are declined for filing should be carefully evaluated prior to a decision to file the case as a misdemeanor. In such circumstances, a deputy district attorney has determined that legally sufficient admissible evidence is not available supporting a likelihood of conviction by a reasonable and objective fact finder after considering the most plausible and reasonably foreseeable defense. In some circumstances, this decision could be based upon sufficient evidence being present; however, a victim or witness is unavailable or unwilling to participate in the prosecution of a case. In other circumstances, the potential sentence for a felony charge and/or the statute of limitations on the potential felony charges could justify caution in filing a misdemeanor because, for certain classes of crimes, evidence may require additional time to develop that would justify delaying a filing decision pending development of sufficient evidence to meet the criteria of a felony filing.

In cases declined for felony filing for which immediate consideration of a misdemeanor filing is appropriate, the case should be promptly presented for misdemeanor filing consideration to the local misdemeanor prosecutor, with a copy of the CEW, by law enforcement. Delays in presenting cases declined by LADA to the local misdemeanor prosecutor might result in the inability to file appropriate misdemeanor charges based upon the statute of limitations for the relevant charge(s).

## **2. INITIAL CASE REVIEW PROCEDURE**

For those crimes specified in Schedule I of this Agreement, local law enforcement agencies shall take the case directly to the local misdemeanor prosecutor for a misdemeanor filing.

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In the event that a wobbler not specifically enumerated in these criteria is presented to a local misdemeanor prosecutor by a law enforcement agency, the initial review of the case should include a request to review the CEW completed by LADA. If there is no CEW, the local misdemeanor prosecutor should assume that the case has not been reviewed by LADA. LADA shall make the final determination as to whether the matter shall be charged as a felony or returned to the local misdemeanor prosecutor for further review regarding filing of possible misdemeanor charges.

There may be circumstances in which the local misdemeanor prosecutor believes that a reasonable basis exists for a referral for felony charge consideration to LADA when a case is directly submitted for review to the local misdemeanor prosecutor in compliance with this policy. In such circumstances, the case should be referred to the appropriate office of LADA for review. Upon resubmission for consideration, a supplemental report from the law enforcement agency detailing any newly developed evidence should be included. A brief written summary from the local misdemeanor prosecutor requesting reconsideration containing the basis for reconsideration should also be submitted. LADA shall make the final determination as to whether the matter shall be charged as a felony or returned to the local misdemeanor prosecutor for further review regarding filing of possible misdemeanor charges.

In some cases filed by the local misdemeanor prosecutor, evidence is developed that might change the posture of a case that was initially assessed as appropriate for a misdemeanor filing. When this occurs, it is important for the assigned local misdemeanor prosecutor to notify a supervisor for a further review of the case. If the supervisor believes that the evidence now supports further review by LADA for the filing of felony charges, the supervisor of the appropriate office of LADA should immediately be contacted and apprised of the change in circumstances so that the matter can be thoroughly reviewed.

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**CAVEAT**

*All alternative felony-misdemeanor cases involving an allegation of police misconduct or public official corruption shall be immediately forwarded by the investigating agency to the district attorney.*

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**APPENDIX B**  
**IMPLEMENTATION**

In order to implement these procedures, it is essential to communicate effectively at all levels between agencies. Establishing professional relationships between staff responsible for supervision of geographic areas and special units is the first step in formalizing systemic communication. Efforts will be undertaken to institute regular meetings between leaders of both agencies on a local level in order to ensure open lines of communication. Later stages of implementation will include formal training for all relevant staff members and law enforcement.

**3.1 Inter-Agency Liaison Committee**

- (A) A permanent Inter-Agency Liaison Committee ("IALC") will be established, jointly chaired by one Director from LADA and two members of the Executive Board from the Los Angeles County Prosecutor's Association (LACPA), together with additional members from both LACPA and LADA as appropriate.
- (B) IALC will meet on a monthly basis during the six months following the execution of this Agreement, thereafter the IALC shall determine its own schedule based on periodic need, however IALC shall meet at least once every 4 months.
- (C) IALC shall oversee and organize the initial meeting of the Inter-Agency Liaison Groups ("IALG") as further described below, and shall set the agenda for subsequent meetings of the various IALGs.

**3.2 Inter-Agency Liaison Groups**

- (A) LACPA members and LADA exercise their respective jurisdictions over filing cases throughout Los Angeles County. The Inter-Agency Liaison Groups ("IALG") shall comprise working groups based on the geographical location of deputies with filing responsibilities (Branch IALGs), as well as working groups based on subject matter or classes of crimes (Subject Matter IALGs – including representatives of LADA Branch

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based Victim Impact Program ("VIP") Teams). The IALGs initially identified are listed in Schedule 2 of this Agreement, attached hereto and incorporated by reference.

- (B) Each IALG shall comprise at least one senior deputy with filing responsibility from LACPA agencies and LADA, as well as any additional deputies as deemed appropriate.
- (C) Each IALG shall develop, maintain, and share contact information so that as issues over any particular filing decisions arise, those issues can be resolved expeditiously.
- (D) Each IALG, as identified below, shall initially meet on at least a monthly basis to discuss the implementation of and adherence to this Agreement.
- (E) A report of the monthly meeting shall be submitted to the IALC for review.
- (F) In the event that any issue cannot be resolved within the IALC, the matter shall be communicated to the IALC for decision.
- (G) All IALGs shall adhere to the case filing criteria set forth in Paragraph 4 of this Agreement.
- (H) Further, Subject Matter IALGs shall identify relevant and appropriate additional code sections for inclusion in this Agreement. The Subject Matter IALGs shall then formulate and publish a draft of proposed case filing criteria consistent with those set forth in Schedule 1 of this Agreement. A copy of each Subject Matter case filing criteria shall be submitted to the IALC for approval.
- (I) As soon as each IALG has met and agreed upon the implementation of this Agreement, the IALC shall organize a meeting with the senior officer from the appropriate division of the Los Angeles Police Department (LAPD) or Los Angeles County Sheriff's Department (LASD) or the local law enforcement agency filing with the local misdemeanor prosecuting agency the working of this Agreement and to resolve any operational issues arising therefrom. Following this introductory meeting, individual IALGs shall set meetings with designated members of law enforcement as needed to resolve issues related to the terms of this Agreement.

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- (J) The IALC shall also be a forum in which other issues arising under §17(b)(4) can be discussed and, if appropriate, procedures developed to meet the goals expressed in this agreement.

# **INTER-AGENCY OPERATIONAL AGREEMENT**

## **PENAL CODE §17(B)(4) REFERRALS**

### **SCHEDULE I**

#### **DIRECT REFERRAL CRITERIA FOR PENAL CODE §17(b)(4) OFFENSES**

**Alternative felony/misdemeanor offenses meeting the following criteria are eligible for direct filing with the local prosecutor.**

##### **Grand Theft (Penal Code §487(a))**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related offenses within the last five years
- The theft did not involve the use of credit cards or constitute a form of identity theft
- Aggregated value of attempted or actual theft is \$2,500 or less

##### **Auto Burglary (Penal Code §459)**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related offenses within the last five years
- Burglary of a single vehicle
- Aggregated damage is \$2,500 or less

##### **Forgery Charges Punishable under Penal Code section 473(a)**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No prior felony or misdemeanor convictions for theft or fraud related offenses within the last five years
- No incident of identity theft (e.g., phony license, possession of multiple credit cards with different names)
- Forgery of a single document
- Aggregate value of attempted or actual theft is **\$2,400** or less

##### **Passing a Non-Sufficient Funds Check exceeding \$950 (Penal Code §476a(a))**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related offenses within the last five years
- No incident of identity theft (e.g., phony license, possession of multiple credit cards with different names)
- Forgery of a single document
- Aggregate value of attempted or actual theft is \$2,500 or less

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#### **Hit and Run Driving Causing Injury to Another Person (Penal Code §20001)**

- No significant injury

Examples of non-significant injuries, include, but are not limited to:

- Complaint of pain only
- Minor bruising
- Swelling
- Abrasions

Examples of significant injuries include, but are not limited to:

- Loss of consciousness
- Injuries requiring admission to the hospital
- Bone fractures
- Injuries requiring sutures

**If at the scene there is only a complaint of pain, the investigating officer should interview the injured party, family member of the injured party or medical personnel in order to assess whether the injury is non-significant or significant prior to presenting the case for filing. This interview should be incorporated in a supplemental report. If the injury is non-significant the case may be directly referred to a city attorney or city prosecutor for misdemeanor filing consideration.**

#### **Driving Under the Influence Causing Bodily Injury (Vehicle Code §23153) (Excluding offenses punishable under Vehicle Code §§ 23560, 23566(a) & 23566(b))**

- No significant injury

Examples of non-significant injuries include, but are not limited to:

- Complaint of pain only
- Minor bruising
- Swelling
- Abrasions

Examples of significant injuries include, but are not limited to:

- Loss of consciousness
- Injuries requiring admission to the hospital
- Bone fractures
- Injuries requiring sutures

**If at the scene there is only a complaint of pain, the investigating officer should interview the injured party, family member of the injured party or medical personnel in order to assess whether the injury is non-significant or significant prior to presenting the case for filing. This interview should be incorporated in a**



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**supplemental report. If the injury is non-significant the case may be directly referred to a city attorney or city prosecutor for misdemeanor filing consideration.**

#### **Vandalism (Penal Code §594)**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No prior felony or misdemeanor convictions for vandalism.
- No indication that the crime was motivated by gang involvement or that the crime is hate related
- Property damage is \$2,500 or less

#### **Weapons Possession<sup>1</sup>**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No prior convictions for weapons or assault crimes
- Weapon was not used in the commission of a crime
- Defendant is not a gang member or associate gang member
- The weapon is not a firearm

#### **Commercial Burglary (Penal Code §459 (Not during business hours or amount exceeding \$950))**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related offenses within the last five years
- No tools were used in the entry
- No electrical devices were used to defeat alarms

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<sup>1</sup> Penal Code §§ 20310, 21110, 20410, 22210, 30210(b), 24310, 24410, 20510, 30210(a), 20610, 21810, 22010, 20710, 22410, 20910, 21310.

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#### **Possession of a Controlled Substance (Health and Safety Code §§11375/11382)**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No prior felony or misdemeanor convictions for drug related offenses within the last five years
- No evidence of sales activity connected with the current offense
- Quantity possessed clearly demonstrates possession for personal use

#### **Unlawful Driving or Taking of a Vehicle (Vehicle Code §10851; Penal Code §487(d)(1))**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related offenses within the last five years
- No prior felony or misdemeanor convictions for auto theft; including vehicle tampering within last five years
- The theft was not related to a criminal enterprise or chop-shop operation
- No pursuit involved in apprehension or arrest
- No significant damage to victim’s vehicle

#### **Counterfeit of Registered Mark (Penal Code §350(a))**

- Street value of the goods is \$2,500 or less
- Defendant has no prior felony convictions
- Defendant has no prior counterfeit or piracy convictions within the last five years

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#### **Assault with Force Likely to Produce GBI (Penal Code §245(a)(4))<sup>2</sup>**

- No serious or violent felony prior convictions (“Strikes”) or 290 registration requirement
- No prior felony or misdemeanor convictions involving violence, threats of violence or weapons
- No weapon was used, brandished or mentioned in the commission of the offense
- No significant injuries<sup>3</sup>

Examples of non-significant injuries include, but are not limited to:

- Minor redness
- Swelling
- Scratches, or
- Moderate bruising

Examples of significant injury include, but are not limited to:

- Extensive bruising
  - Open wounds that required stitches or other medical care
  - Broken bones, and
  - Petechiae<sup>4</sup>
  - Loss of consciousness
- 
- No child present as a witness
  - No strangulation or suffocation of victim

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<sup>2</sup> For cases involving family members or intimate partners, please refer to the standards for violations of §273.5 PC below.

<sup>3</sup> If medical intervention is warranted, even if the victim declines, the case should be first seen by the District Attorney’s Office.

<sup>4</sup> Petechiae are defined as minute discolored spots on the surface of the skin or mucous membrane, caused by an underlying ruptured blood vessel. The presence of petechiae is often indicative of significant internal injury.

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#### **Criminal Threats (Penal Code §422)**

- No serious or violent felony prior convictions (“Strikes”) or 290 registration requirement
- No prior felony or misdemeanor convictions involving violence, threats of violence or weapons
- No weapon was used, brandished or mentioned in the commission of the offense
- No child present as a witness

**All domestic violence related<sup>5</sup> criminal threats must be initially reviewed by the District Attorney’s Office.**

#### **Unlawful Sexual Intercourse (Penal Code §261.5)**

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No prior investigation or arrest for committing a sexual offense
- Suspect is 20 years of age or younger
- Victim is 16 years of age or older
- Sex is non-forcible
- No alcohol or drugs involved
- No traumatic condition (including pregnancy) in the instant case

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<sup>5</sup> See Penal Code § 13700 [victim is a spouse or former spouse, cohabitant or former cohabitant, person with whom suspect has or had a child, person with whom suspect is having or has had a dating or engagement relationship] and Family Code § 6211 [abuse is perpetrated against current or former intimate partners, a child of a party, or any other person related by consanguinity or affinity within the second degree (parents, grandparents or siblings-by blood or marriage)].

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#### Intimate Partner Battering (Penal Code §273.5)<sup>6</sup>

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No prior felony or misdemeanor convictions involving violence, threats of violence or weapons
- No weapon was used, brandished or mentioned in the commission of the offense
- No significant injury (see footnote 3)

Examples of non-significant injuries include, but are not limited to:

- Minor redness
- Swelling
- Scratches, or
- Moderate bruising

Examples of significant injury include, but are not limited to:

- Extensive bruising
  - Open wounds that required stitches or other medical care
  - Broken bones, and
  - Petechiae (see footnote 4)
  - Loss of consciousness
- No child present as a witness
  - No strangulation or suffocation of victim
  - No direct referral in cases where:
    - The victim is pregnant and where the suspect directed physical force at the victim’s abdomen or where there are verbal threats against the pregnancy
    - The victim was particularly vulnerable (asleep, developmentally disabled, physically impaired)
    - The suspect has a history of making suicide threats
    - The suspect previously engaged or is currently engaging in stalking behavior
    - The suspect has threatened to abduct and/or injure children or other family members
    - The suspect caused an injury to a pet(s)

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<sup>6</sup>See Penal Code § 13700 and Family Code § 6211.

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#### **Child Abuse/Endangerment (Penal Code §273a (a)/273d<sup>7</sup>)**

The victim is **over** the age of 8 and the following criteria apply:

- No prior serious or violent felony convictions (“Strikes”) or 290 registration requirement
- No prior felony or misdemeanor convictions involving violence, threats of violence, or weapons
- No prior DCFS contact (the results of a check of both ESCARS and the Family and Children’s Index (FCI) confirming that there is no record of prior DCFS contact must be included in the police report submitted for review)
- No deadly weapon was used, brandished or mentioned in the commission of the offense
- No significant injury (see footnote 3)

Examples of non-significant injuries, include, but not limited to:

- Minor redness
- Swelling
- Scratches, or
- Moderate bruising

Examples of significant injury include, but are not limited to:

- Extensive bruising
- Injuries requiring admission to the hospital
- Open wounds that required stitches or other medical care
- Broken bones, and
- Petechiae (see footnote 4)
- Loss of consciousness

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<sup>7</sup> Penal Code §273d specifically deals with the infliction of cruel and unusual corporal punishment or infliction of an injury resulting in a traumatic condition upon the child. Depending upon the circumstances of the offense, the case may be brought for review as either a violation of section 273a(a) or a 273d with a statement from the suspect that conduct was discipline related. A parent has a right to reasonably discipline by punishing a child and may administer reasonable punishment. However, discipline is unjustifiable when it is not warranted by the circumstances, not necessary, or when such punishment, although warranted, was excessive. The severity of physical injury suffered by the child is only one factor in determining whether the case should be prosecuted as a felony or a misdemeanor.

**INTER-AGENCY OPERATIONAL AGREEMENT**  
**PENAL CODE §17(B)(4) REFERRALS**

**LOS ANGELES DISTRICT ATTORNEY WILL REVIEW ALL CASES INVOLVING:**

- ☐ Penal Code §646.9 – Stalking
- ☐ Penal Code §422.7 – Hate Crimes
- ☐ Penal Code §368 – Elder Abuse
- ☐ Penal Code §136.1 – Witness Intimidation
- ☐ Penal Code §243(c)(1), (2) – Crimes Against Peace Officers
- ☐ All allegations involving police misconduct or public official corruption