SUTTER COUNTY
DISTRICT ATTORNEY'S OFFICE

ACKNOWLEDGMENT AND ACCEPTANCE

This Policy Manual is intended as a guide for polices, benefits, and/or general information. These guidelines are NOT and should NOT be considered as a contract. The District Attorney and the County of Sutter reserve the right to make any changes in these policies, benefits or guidelines and their application as deemed appropriate. These changes may be made without notice. Provisions within Memoranda of Understanding with employee unions supersede the provisions within this Policy Manual for represented employees.

The following documents govern the administration of the District Attorney's Office:

a) Sutter County Ordinance Code
b) Sutter County Personnel Rules and Regulations
c) Sutter County Rules Governing Employee Compensation, Benefits and Working Conditions
d) Policy Manual
e) Professionalism: A Sourcebook of Ethics and Civil Liability Principles for Prosecutors (2011)

Your signature below certifies that you have read this Policy Manual and that you understand, accept and will abide by the provisions stated in the Manual and above.

_____
Signature

_____
Printed name

_____
Date

PLEASE RETURN THIS SIGNED FORM DIRECTLY TO THE DISTRICT ATTORNEY NO LATER THAN THIRTY (30) DAYS AFTER RECEIPT OF THIS MANUAL

TABLE OF CONTENTS

CHAPTER 1 - PERSONNEL - RELATED PROCEDURES

CHAPTER 1

PERSONNEL - RELATED PROCEDURES

A. PROSECUTION ETHICS

Every prosecutor will comply with Business and Professions Code section 6068, the Rules of Professional Conduct of the State Bar and the guidelines set forth in the CDAA publication, Professionalism: A Sourcebook of Ethics and Civil Liability Principles for Prosecutors (2011).

PROSECUTOR'S CODE OF ETHICS

As a Prosecutor, I pledge myself to truth and the protection of the community. I will safeguard lives and property. I will protect the peaceful against violence. I will protect the weak and the innocent against deception, oppression and intimidation. I will respect the constitutional rights of all people to liberty, equality and justice.

I will not tolerate crime and will relentlessly prosecute criminals. I will strive to convict the guilty and to exonerate the innocent. I will never support unnecessary force or violence. I will maintain confidences and confidential information pursuant to the law, and the regulations of my office. I will maintain courage and calm in the face of danger, scorn or ridicule.

I will enforce the law courteously and appropriately without malice, fear, or favor. I will not accept gratuities in the exercise of my professional discretion.

I will be honest in thought and deed in my personal life as in my profession. I will be exemplary in obeying the law of the land. I will demonstrate self-restraint and be constantly mindful of the welfare of others.

I recognize the badge of my office as a symbol of public trust. I accept it as an honor to be held so long as I am true to the ethics of prosecution.

B. STANDARDS OF CONDUCT

As representatives of the People, every person associated with this office has a special responsibility to maintain a consistently high standard of conduct and performance.

The United States Supreme Court established the standard for professional responsibility of an employee of the District Attorney's Office in Berger v. United States (1935) 295 U.S. 78, 88:

> "The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as

> compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such he [or she] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer. He (or she) may prosecute with earnestness and vigor – indeed, [the prosecutor] should do so. But, while [the prosecutor] may strike hard blows, he [or she] is not at liberty to strike foul ones. It is as much [the prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Conduct during or outside work hours that reflect discredit upon this office, the employee, the effective performance of duties of others in the public service or impede the operations of this office is a violation of our policies and cause for discipline.

Personnel will not knowingly maintain a personal association with persons who are under criminal investigation or indictment and/or who have an open and notorious reputation in the community for criminal activity, where such association would be detrimental to the image of the Department. Arellanes v. Civil Service Commission of Los Angeles County, (1995) 41 Cal.App.4th 1208).

Conduct deemed to constitute cause for corrective action, up to and including discharge, includes but is not limited to the following:

1. Failure to support the Constitution and laws of the United States and this State or failure to comply with their mandates and prohibitions;

2. Promoting and/or demonstrating disrespect to the courts of justice, judicial officers, or officers of the court;

3. Attorney failure to comply with Business and Professions Code section 6068, the Rules of Professional Conduct of the State Bar or the standards prescribed in the CDAA manual PROFESSIONALISM A Sourcebook of Ethics and Civil Liability Principles for Prosecutors (2011);

4. Failure to maintain only such actions as appear to be legal or just;

5. Failure to employ only such means as are consistent with truth and never seek to mislead a judge or judicial officer;

6. Using or having access to confidential information available by virtue of District Attorney employment for private gain or advantage or providing confidential information to persons to whom issuance of the information has not been authorized;

7. Failure to maintain necessary employment standards of position, e.g. driver's

license, professional certification or bar license, etc.;

8. Misuse of badge or identification; and,

9. Violating Sutter County Personnel Rules and Regulations.

C. CONFIDENTIAL INFORMATION

An employee will not reveal confidential information of any kind to persons without a right and need to know.

An employee will not use his or her position in the District Attorney's Office to obtain access to confidential information, which he or she has no right and need to know, by accessing files, rap sheets, police reports, computer programs, contacting law enforcement agencies or by any other means.

Employees may not discuss or provide written or verbal information on any aspect of a pending, open or closed case or the internal procedure and operation of a case to any unauthorized person unless such information has previously been required to be disclosed by a court hearing.

Requests for information contained in our files or records should be made in writing unless the release is made to defense counsel through the normal discovery process. Any questions concerning this policy and all written requests for information pursuant to the Freedom of Information Act will be directed immediately to the Assistant District Attorney.

Comment

As used in this section, "confidential information" includes virtually any information, whether case-related or administrative, which is not a matter of public record.

Any breach of security can lead to serious consequences in case results and can jeopardize the safety of officers, witnesses and victims.

It is the policy of this office that matters, beyond the public record, are not to be discussed with persons not connected to this office. Any indiscretion regarding confidential information will result in discipline up to and including termination.

D. ABSENCES FROM WORK

1. WORK HOURS:

Regular work hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, with one fifteen-minute break in the morning, one fifteen-minute break in the afternoon, and a one hour lunch break.

E. SICKNESS AND OTHER EMERGENCIES: NOTIFICATION PROCEDURES

Any employee unable to report to work will personally notify his or her supervisor. Notification will include the expected date of return, the nature of the illness and a phone number where the employee can be reached.

If the illness or emergency requires the employee to leave during the course of the work day, the employee will notify his or her immediate supervisor before departing from work.

Upon returning to work, the employee will complete the office's Leave/ Overtime Request form, stating the date(s), hour(s) and reason for absence.

An employee remains responsible for assigned tasks and court appearances until he or she is specifically relieved by his or her supervisor. Such responsibility is satisfied if the absent employee makes direct arrangements with another employee to perform the tasks or to make the court appearances and this is communicated to his or her supervisor.

F. VACATION/ANNUAL LEAVE REQUESTS

Requests for vacation will be submitted in advance to an employee's immediate supervisor. Final approval for all employee vacation or compensated time off remains with the District Attorney.

Approval is predicated on assignments at the time of decision. Vacations may be postponed for employees under special review because of performance issues or employees who are in training.

Attorneys assigned to major prosecutions have the responsibility of avoiding significant case events during scheduled vacations. Consequently, the effect of a case reassignment on a scheduled vacation will be considered and resolved before a reassignment is final.

Comment

Every effort will be made to accommodate requests. All employees are encouraged to take vacations every year. Prosecutorial responsibilities will take precedence over vacation needs.

G. EMPLOYEE OVERTIME APPROVAL

1. OVERTIME

Overtime is time worked in excess of forty (40) hours in a seven (7) day work period by nonexempt employees.

Supervisors will, insofar as possible, plan assignments so as to limit the need for overtime work.

Employees will secure prior approval for overtime from their supervisors.

Advance approval insures that their supervisors have continuing knowledge of calendar and team needs.

In all cases, overtime claims must be submitted to their supervisors on the next regular workday after such work is performed.

2. OVERTIME MANAGEMENT

Appropriate fiscal management requires supervision of overtime use.

Supervisors will (1) plan assignments so as to limit the need for overtime work, and (2) reduce accumulated overtime whenever possible.

H. INJURIES WHILE ON DUTY

Employees who suffer work related injuries, whether or not medical attention is necessary, will immediately notify their immediate supervisor of any injury.

All employees are to adhere to Sutter County Rules Governing Employee Compensation, Benefits and Working Conditions section 27.0 On-the-Job Injury, Workers' Compensation.

I. SAFETY

Sutter County District Attorney employees are expected to perform their duties in a safe manner for their protection as well as others with whom they come in contact. If an employee has a question on the safest way to do a job, or suggestion for improved employment/employee safety, his or her supervisor should be notified.

Employees will comply with all safety laws and ordinances and every attempt will be made to reduce the possibility of accident occurrence. Safety of employees, the public and our operations will be paramount.

J. BADGES/I.D. CARDS/OFFICE LETTERHEAD

1. BADGES/I.D. CARDS

The District Attorney issues badges, identification cards, and business cards solely for the performance of official business. Any other use is improper and may result in disciplinary action.

Upon termination of employment, each employee will return his or her badge, identification card and business cards to the District Attorney.

2. OFFICE LETTERHEAD

Use of office stationery for purposes other than routine official business requires the approval of an Assistant District Attorney or District Attorney.

In no case will office stationery be used for personal business**.**

K. EMPLOYEE PERSONNEL FILES

1. GENERALLY

The confidential information in personnel files will not be revealed to outside sources except as required or permitted by law, or with the written consent of the employee. The Human Resources Director may reveal the following information regarding an employee, or an ex-employee, in response to outside inquiries:

a. Employee Name;

b. Classification Title and Department;

c. Employment Status;

d. Salary; and,

e. Hire Date and/or Departure Date.

No disciplinary document will be placed in the employee's personnel file until such employee has had the opportunity to review the document and to receive a copy of the same. An employee has the right to file a response to any counseling or disciplinary documents placed in the employee's personnel file.

2. NON-PEACE OFFICER DEPARTMENTAL FILES

The District Attorneys maintain a departmental file on each employee. Any employee may review his or her departmental file. Review will occur after request to the District Attorney, who will provide such files to the employee for inspection. The departmental file is not an employee file but rather a departmental file for notes needed to compile an employee evaluation.

3. PEACE OFFICER BACKGROUND CHECKS

a. When law enforcement agencies seek background information regarding current or former employees who are being considered for a peace officer position, Government Code Section 1031.1 applies.

1) This section only applies if the subject employee is applying for a

peace officer position, the inquiring agency is a law enforcement agency, and the subject employee is not currently employed as a peace officer.

2) If Government Code Section 1031.1 is applicable, the request for information from the law enforcement agency must be in writing, must be accompanied by a notarized authorization that the job applicant has released the County from liability, and the request must be presented by a sworn officer or other authorized representative of the law enforcement agency seeking the information.

3) If the request for information meets all of these requirements, the department is obligated to provide written information in connection with job applications, performance evaluations, attendance records, disciplinary actions, eligibility for rehire, and other information relevant to peace officer performance.

b. All requests for this information will be forwarded to the District Attorney.

1) The information provided will be limited to written information.

L. EXPENDITURES / EMPLOYEE REIMBURSEMENTS

1. EXPENDITURES

Before any commitment is made to incur a non-case specific expense and/or any purchase is made on behalf of the office, expenditure approval must be secured from the District Attorney, or Assistant District Attorney in the District Attorney's absence.

2. REIMBURSEMENTS FOR OFFICIAL BUSINESS

District Attorney employees who are required to travel outside of the county on official business may receive reimbursement for meals, mileage, and incidental expenses in accordance with the county per diem guidelines. Any funds advanced will be deducted from the total amount of per diem expense the employee is otherwise entitled.

All claims for reimbursement of travel expenses will be submitted for payment by the end of the month in which the travel is concluded, on the "Travel Expense Claim" form. In accordance with County policy, all claim forms will contain the exact date and time of departure from the County, as well as the date and time of return to the county.

3. ADVANCE FUNDS

Funds may be provided in advance upon approval of the District Attorney.

4. MILEAGE

Required use of an employee's personal car for office business is reimbursed at the rate set by the county.

5. MOTEL/OUT OF COUNTY

Required actual room costs will be reimbursed as shown on the receipt, provided advance approval has been obtained from the District Attorney.

6. OTHER

Required, actual taxi, pay telephone, telegraph, bridge, parking fees and road tolls will be reimbursed. (Receipts are required)

M. OUTSIDE EMPLOYMENT AND MEMBERSHIPS

1. EMPLOYMENT

A Deputy District Attorney will not maintain a private law practice. A District Attorney Investigator will not engage in outside employment or private investigation of any kind without the written authorization of both the Chief Investigator and the District Attorney.

Other outside employment requests will be evaluated by the District Attorney in accordance with Sutter County Personnel Rules and Regulations, Section 19.0.

2. ENDORSEMENTS

An employee will obtain the written approval of the Assistant District Attorney or District Attorney before endorsing any product or private enterprise, whether commercial or nonprofit, where such endorsement could appear to constitute representation of the office.

N. SPEAKING ENGAGEMENTS

1. OFFICIAL CAPACITY

An employee will not accept a request by an outside group to speak on behalf of the office without first obtaining the approval of an Assistant District Attorney or the District Attorney.

The request for approval will set forth the time, place, topic and group, including the compatibility of the presentation with the employee's workload.

An employee will not accept compensation for any presentation given on behalf of the office.

2. PRIVATE CAPACITY

An employee will clearly state that his or her views are personal and not those of the office whenever speaking unofficially to a group that might otherwise assume that the views expressed are those of the Sutter County District Attorney's Office.

O. POLITICAL ACTIVITIES

1. IN GENERAL

Limited political activity, even while on duty, may be constitutionally guaranteed as long as the activity is reasonable and is not disruptive to the office routine. While not on duty and not on county premises, employees are free to engage in political activities as they see fit.

a. County officers and employees have the right to engage in the following activities:

1) Campaign for ballot measures and candidates for public office during nonworking hours.

2) Attend political rallies or other political gatherings during nonworking hours.

3) Wear political badges or buttons, except in the courtroom. If questioned by a member of the public, the employee will state that the insignia represents the employee's individual opinion and not that of the District Attorney or the County of Sutter.

4) Express opinions as individuals privately and publicly on political subjects and candidates involving matters of public concern. Office personnel issues are not considered matters of public concern.

5) Make voluntary campaign contributions during nonworking hours.

6) Display political stickers on their privately owned cars.

7) During nonworking hours, employees may solicit and/or receive funds related to ballot measures that will affect their working conditions. (Govt. Code Section 3209)

b. County employees may not use County property, including bulletin boards, to post political material. The posting of material advocating a measure or candidate on bulletin boards or walls in corridors and other common areas is also forbidden.

2. INCOMPATIBLE OFFICES

An employee of the District Attorney's Office will not hold multiple incompatible government offices.

P. SEMINARS

Obtaining and maintaining the credits necessary to meet MCLE, POST or other job related educational requirements are the employee's personal responsibility.

1. TUITION COSTS

In order to encourage and support employees in meeting their continuing education obligations, the District Attorney's Office will pay the reasonable tuition costs for each employee to attend seminars.

2. WAGES AND COMP. TIME

The office will pay the employee's normal wage during his or her attendance at the seminar, provided the seminar is held during regular work hours.

Q. GIFTS/HONORARIA

An employee may not, without the consent of the Assistant District Attorney or District Attorney, accept any fee, compensation, gift, payment of expense, or any other thing of monetary value, presented and/or given in connection with an employee's service, duties, and employment with the District Attorney's Office.

Letters of Commendation are permissible and can be sent to the District Attorney. Reference should be made in the letter to the specific project, action or program for which the employee is being commended.

Exceptions to this rule, such as flowers or a box of candy shared by the entire office, may be approved by the Chief Investigator, Victim Witness Coordinator or an Assistant District Attorney.

R. PERSONAL DEMEANOR AND APPEARANCE

While the District Attorney's Office is a county agency, it is also a law office. All employees represent this office when interacting with the court, other county agencies, and

the public and should always project a professional image. Employees are expected to demonstrate good judgment and professionalism in their attire. All employees should represent the office in a professional manner and with a professional appearance. While in the performance of official duties, employees must adhere to the following guidelines:

1. COURT APPEARANCES

When making any court appearance, attorneys and investigators should wear conservative business attire. Men should be dressed in business suits with ties, dress shirts and dress shoes. Women should be dressed in business attire and wear dress shoes. Victim advocates, clerical staff and others not seated at counsel's table should wear conservative business attire which includes suits, shirts, blouses, or sweaters with slacks or skirts. Tattoos must be concealed by clothing for any employee attending court.

2. OFFICE AND OTHER NON-COURTROOM LOCATIONS

Attorneys, investigators and law clerks should always be in professional attire. Clothing should be clean and not revealing or otherwise inappropriate for an office setting. Victim advocates, clerical and other staff should wear conservative business attire which includes shirts, blouses, or sweaters with slacks or skirts. No sports or athletic wear (i.e. sweat suits, exercise clothing) should be worn at any time.

3. PERSONAL GROOMING

Poor hygiene, including messy clothes and body odor, projects an unprofessional image and can adversely affect others. Adequate personal hygiene must be maintained. Precautions should be taken to prevent unpleasant breath or offensive body odor. Hand washing and the use of hand sanitizers are advised and products are available in the restrooms. You are encouraged to use them for sanitary purposes and to protect against the spread of illnesses. Please be mindful when using perfume or cologne. Excessive use can affect people with allergies and create an unpleasant situation for other employees. Hair should be clean, combed, and neatly trimmed or arranged. Unkempt hair is not permitted. All facial hair (beards, goatees and mustaches) must create an overall neat, polished and professional look. Men's facial hair should be trimmed and neatly groomed. Sideburns shall be neatly trimmed and groomed.

4. SPECIAL ASSIGNMENTS OR CASUAL DAYS

Casual business wear allows you to be comfortable at work yet always look neat and professional. Employees serving search or arrest warrants, going to the firearms range, moving, conducting file maintenance, etc. should wear appropriate attire for safety and comfort. On court holidays, casual clothing may be worn.

5. THE FOLLOWING ITEMS SHALL NOT BE WORN AT ANY TIME:

- Logo t-shirts
- Camisoles or tops with “spaghetti” straps
- Shorts
- Leggings (unless covered by a top that goes down to the mid-thigh area)
- Clothing that shows a bare midsection (e.g. half shirts, crop tops, midriffs)
- Casual capris – dress pant capris are allowed
- Denim except on permissible days. Jeans shall not be faded or torn.
- Flip flops
- Sneakers
- Offensive or inappropriate tattoos must be concealed

Exceptions to the dress code may be obtained on an individual basis by the department head as work situations require. Failure to adhere to these guidelines will result in the employee being sent home on their own time to change into appropriate attire. If there are subsequent failures to adhere to these guidelines, employees will be dealt with on an individual basis. The goal is to provide a workplace environment that is comfortable and inclusive for all employees.

S. COUNTY VEHICLE USE

The District Attorney’s Office maintains a fleet of vehicles for use by employees. All employees who drive a fleet vehicle must have a valid California driver’s license. Employees must follow all traffic laws when driving a fleet vehicle.

1. TAKE HOME VEHICLES

Travel from work to home and from home to work under the conditions set forth herein. No employee is required to take their assigned vehicle home and taking home a County owned vehicle shall not entitle an employee to overtime, stand-by pay, or any other compensation as a result of driving the vehicle. This policy may be rescinded or modified at any time at the sole discretion of the District Attorney and shall not be considered in any way to be compensation or a benefit for the individual employee. An employee who elects not to take their vehicle home is not entitled to any other compensation or benefit. Use of a County owned vehicle shall be subject to the following regulations:

a) Vehicles shall be locked when unattended.

b) District Attorney's staff will be permitted to drive their assigned county vehicles

from work to home and from home to work.

c) Employees completing their last assignment after work hours at a location away from the office may drive from their last assignment to home. Employees whose first assignment commences before normal work hours may drive from home to their first assignment at the commencement of the work day.

d) Employees may drive to and from continuing education classes unless the class is at a distance where other transportation will be less expensive. All travel arrangements out of Sutter County must always be approved in advance.

e) Off-street parking at the employee's residence must be provided for the vehicle.

f) County owned vehicles shall not be used for the sole purpose of conducting personal business or family transportation.

g) County owned vehicles shall not be used for travel to, from or during outside employment.

h) The employees shall be responsible for appropriate maintenance of their assigned vehicles. Vehicles will be taken to the county shop for repairs and maintenance as requested and needed. The vehicles shall be maintained in good operating order at all times.

i) If the employee will be away from the office for five or more consecutive days, that employee shall leave their assigned county vehicle at the work place.

j) The following sections apply only to District Attorney Senior Criminal Investigators:

    a. No weapons of any kind shall be left in the County owned vehicles unless secured by an approved locking system.

T. PROFESSIONAL REFERRALS

Employees will not refer business to, or otherwise recommend, private attorneys or law firms.

U. RECORDS SECURITY

1. PURPOSE

The purpose of this policy is to establish a uniform method of obtaining, using, releasing, storing and destroying records of a confidential or restricted nature.

2. POLICY

All employees of the Sutter County District Attorney's Office are responsible for knowing, following, and carrying out the provisions of this directive.

Misuse of California Law Enforcement Telecommunications System (CLETS) or Criminal Offender Records (CORI) is a criminal offense. Violations of this policy regarding CLETS and CORI may result in suspension, dismissal, and/or criminal or civil prosecution.

3. GENERAL

a. The Chief Investigator, or the Chief Investigator's designee, is hereby designated as the records security officer and the agency terminal coordinator (ATC) for the Sutter County District Attorney's Office.

b. Access to the CLETS system is limited to business purposes and only when there is a need to know.

1) Access for non-business purposes is strictly prohibited.

c. FBI fingerprint check.

1) All persons, including non-criminal justice technical or maintenance personnel, with access to CLETS or to CORI, are required to undergo a background check.

d. Access to CLETS equipment will be restricted to specific employees designated by the District Attorney or his or her representative.

1) Employees will not operate CLETS equipment or access CORI/DMV until a background investigation is completed and approved by the District Attorney.

Comment

Any access, as indicated in Penal Code section 502, et seq., without both the "need to know" and the "right to know" will be deemed to be without permission.

e. Release of CORI/DMV Documents

1) Criminal Offender Record Information (CORI) may be released, on a need to know basis, only to authorized agencies or authorized persons.

2) Each division of the District Attorney's Office will keep a record of each release of CORI. This record will contain the following: the date of release, the name or names of the persons to whom the

information pertains, the name of the requesting agency (and the name of the receiving agency or the name of the receiving person, if possible), the information released, how the information was transmitted, a legible signature of the District Attorney employee releasing the information, and a legible signature of the person receiving the information. The record will be retained and available for inspection for a period of not less than three years.

3) Whenever CORI/DMV records are released by the District Attorney's Office, the original rap sheet/DMV documents will be retained by the District Attorney's Office and photocopies will be made for the person receiving the information.

4) Except for extremely unusual circumstances CORI will only be released in person.

f. Destruction of CORI/DMV documents

Whenever CORI/DMV documents are destroyed, they will be destroyed in such a manner that the identity of the subject can no longer reasonably be ascertained.

g. Training

All employees of the District Attorney's Office will receive training as mandated by CLETS operating policies, practices, and procedures manual.

h. Defense Discovery-Witness Rap Sheets

CORI and DMV records of any witness will not be released to a defendant or a defense attorney. If CORI or any other official type of rap sheet reflects that a witness has, or may have a felony conviction, and/or has, or may have, a misdemeanor conviction dealing with moral turpitude or is presently on felony or misdemeanor probation, that information will be disclosed to the defendant or his or her attorney in a memorandum upon request. A copy of the memorandum will be placed in the case file. The memorandum will contain the following: a copy of the witness name, code and section violated, the date of conviction, the county of violation, the court, and the court number.

V. NOTIFICATION BY EMPLOYEE OF CRIMINAL OR CIVIL ACTIONS

1. NOTIFICATION REQUIREMENTS

The Assistant District Attorney or District Attorney must be immediately notified, in writing, of the arrest, criminal or civil subpoena, or any other involvement in a pending case of a District Attorney employee, volunteer, or a relative or close

associate of an employee or volunteer. This notification will enable an Assistant District Attorney to determine the appropriate course of action.

2. COUNTY VEHICLES

Please see the attached County Vehicle Policy Accidents involving a county vehicle.

The District Attorney will be notified in writing within twenty-four hours of any traffic citation, including parking citation, received by any employee involving a county-owned vehicle.

W. CONFIDENTIALITY

In all cases, employees must scrupulously adhere to confidentiality policies. Employees will refrain from attempting to obtain information about any case involving themselves, a fellow employee, a volunteer, or a relative or close associate of themselves or a fellow employee or volunteer from any District Attorney employee or from any documents in the District Attorney's Office. The supervisor of the involved employee will take all necessary steps to prevent access to the file by the employee to avoid even the appearance of impropriety.

X. RECUSAL

1. RECUSAL OF INDIVIDUAL

Where a complaint is received alleging potential criminal conduct by a District Attorney employee, one or more of the following will occur:

a. Where a member of the Administration Group (as defined below) is the defendant or the complaining witness, recusal is always required.

b. Where a District Attorney employee is the defendant, recusal is usually required.

c. Where a relative or close friend of a District Attorney employee is the defendant or complaining witness or a District Attorney employee is the complaining witness, recusal may be required. The recusal decision will be made on a case-by-case basis.

d. Where the complaining witness is the defendant in another recusal case, recusal is not usually required.

e. Where the District Attorney or Deputy District Attorney represented the defendant prior to joining the District Attorney's office, recusal is rarely required. The decision will be made on a case-by-case basis.

f. Where the defendant or complaining witness is an employee of another agency that has significant contact with the District Attorney's Office, e.g., a bailiff or county sheriff, recusal is not required unless ordered by the court or other special circumstances are present.

2. DOCUMENTATION PROCEDURE

In all cases involving an employee, volunteer, or a relative or close associate of an employee or volunteer, the file will be annotated with the following information:

a. The notification of the Assistant District Attorney.

b. The notification of the employee not to have contact with or access to the file.

c. Notification, on the record, to the defense attorney and the Court of the relationship.

Comment

Penal Code section 1424 establishes procedures for recusal of a District Attorney. It requires notice of 10 days to the District Attorney and Attorney General. A recusal motion may be granted only upon evidence "that a conflict of interest exists, such as would render it unlikely that the defendant would receive a fair trial." The District Attorney or Attorney General may appeal a recusal order and such order would be stayed pending appeal.

Y. PRESS RELATIONS

1. GENERAL POLICY

The public has the right to know about its criminal justice system. The District Attorney's Office has the responsibility to provide that information. The obligation of the District Attorney's Office is to be cooperative, frank, accurate, and prompt in our relations with the public and the news media. This duty will be discharged without compromising the integrity of an investigation or the duty as officers of the court to obey state laws and court orders and to ensure a fair trial.

2. SPOKESPERSONS FOR THE DISTRICT ATTORNEY'S OFFICE

The District Attorney and Assistant District Attorney are the spokespersons for the District Attorney's Office. No other member of the staff will, without prior authorization from a spokesperson, directly or indirectly publicly represent himself or herself to be a spokesperson for the District Attorney's Office.

3. LIAISON TO THE NEWS MEDIA

The District Attorney and Assistant District Attorneys are the office liaisons to the

news media. Inquiries from the news media will generally be referred to the District Attorney or Assistant District Attorney. Any information about a case, the office, or any other matter that may be of significant interest to the news media should be promptly conveyed to the District Attorney and Assistant District Attorney.

4. NEWS RELEASES

News releases should be in writing. Only the District Attorney or the Assistant District Attorney will issue news releases. Except for extraordinary circumstances, news releases will be uniformly available to the media.

5. PROTECTIVE ("GAG") ORDERS

A protective order or "gag" order is an order by a court prohibiting all parties from communicating information concerning a case to the public. A Deputy District Attorney will not, without prior approval from the Assistant District Attorney or District Attorney, consent to the issuance of a protective order. A deputy will request the court to postpone issuance of the order until the deputy is able to confer with a supervisor.

All employees of the District Attorney's Office will comply with protective orders.

Z. INSPECTION OF RECORDS/ SUBPOENAED PERSONNEL

1. INSPECTION OF DISTRICT ATTORNEY RECORDS PURSUANT TO PUBLIC RECORDS ACT (GOVT. CODE SECTION 625 ET. SEQ.)

Only the Assistant District Attorney and District Attorney are authorized to approve requests for inspection of District Attorney records or to accept service of a subpoena duces tecum.

All requests for inspections or subpoenas duces tecum for District Attorney records will be referred to the Assistant District Attorney, who will follow these guidelines:

a. Requests generated by another governmental agency will be referred to the originating agency.

Where the requesting party is a crime victim or a witness, the employee will assist in referring the requesting party to the proper person at the law enforcement agency.

b. Non-privileged information from "closed" case files will be provided either in response to a subpoena duces tecum or a written request which gives notice to all opposing counsel.

c. No information from or relating to an "open" file will be provided where its disclosure may prejudice a pending prosecution, except pursuant to court order. If a subpoena demands we provide such information, a Motion to Quash (Code Civ. Proc. '' 1987.1 and 2020 et. seq.]) will be filed.

Comment

This statute applies to all District Attorney files relating to felonies, misdemeanors, and civil matters. Juvenile files are outside the scope of the Public Records Act and are confidential.

The California Public Records Act declares that the records of all government agencies are subject to inspection and copying by members of the public during business hours. The statute contains certain sections which exempt documents from the disclosure requirement.

2. SUBPOENAED EMPLOYEES

Whenever an employee is subpoenaed, he or she will:

a. Notify his or her supervisor; and,

b. Refer any request for District Attorney records to the District Attorney or Assistant District Attorney.

Receptionists are not authorized to accept service of a subpoena directed at another employee.

3. LAW ENFORCEMENT REQUESTS FOR INFORMATION

a. Case File Information

Deputy District Attorneys and District Attorney Investigators may release information on cases to which they are assigned after verifying the identity and the need to know of the requesting party. Where the request and/or the response are not in writing, the release of information will be documented in the case file. Verification of identity should, at minimum, include obtaining a call-back number to the requesting party's agency or insisting on a written request or a personal meeting. The right to know and/or need to know requirements will be applied strictly, case information will not be released to the merely curious.

Clerical employees may release only information which is generally available to the public, such as an appearance date. A Probation Officer may review a case file in the office to obtain necessary information for a bail, review, diversion screening, or sentencing.

b. Office Statistics, Etc.

Statistics and other information not related to individual cases may be released only by the District Attorney. The information will be released only after verification of the identity and need to know of the requesting party. Requests from out-of-county agencies must be in writing and addressed to the appropriate person.

4. PRIVATE CITIZEN REQUESTS FOR INFORMATION

Requests for case information by private citizens, other than pursuant to the Public Records Act, will be referred to the assigned attorney or supervisor. Normally, only information generally available to the public will be released to an inquiring citizen.

AA. SEXUAL HARASSMENT POLICY

The District Attorney's Office is committed to maintaining a work environment free of discrimination. In keeping with this commitment, the office strongly disapproves, and will not tolerate, any harassment of an employee by any co-worker, manager, or supervisor.

Each employee must be familiar with the Sutter County Discriminatory Workplace Harassment Policy. See Sutter County Personnel Rules and Regulations Section 23.1.

BB. ALCOHOL AND DRUG ABUSE

Each employee must be familiar with the Sutter County Alcohol and Drug Abuse Policy. See Sutter County Personnel Rules and Regulations, Section 24.

CC. ORGANIZATION

The District Attorney's Office's organizational structure is designed to provide every area of Sutter County with skilled and experienced employees, to promote operational efficiency and to provide every employee the opportunity to fully develop his or her professional skills.

1. PROSECUTION

The Prosecution Unit is supervised by the Assistant District Attorney and consists of a team of prosecutors who are responsible for evaluating, filing, and prosecuting all cases arising in their jurisdiction.

Training, assignments, performance reports, and other administrative responsibilities remain with the Assistant District Attorney.

Failure to comply with the directions of the Assistant District Attorney in the operations of the office is insubordination and will be dealt with by disciplinary action up to and including dismissal.

2. INVESTIGATIONS

The Investigations Unit is responsible for discharging the investigative responsibilities of the District Attorney. The Investigations Unit is supervised by the Chief Investigator and consists of Investigators and an Investigative Aide.

3. ADMINISTRATION

The Administration Unit consists of the legal secretarial pool and the Accountant. The secretaries are supervised by the Supervising Legal Secretary. The Accountant is supervised by the District Attorney.

4. VICTIM SERVICE PROGRAM

The Victim Services Program employees consist of advocates and an office assistant. These employees are supervised by the Victim Services Program Manager.

CHAPTER 2

CRIMINAL INVESTIGATIONS

A. DISTRICT ATTORNEY INVESTIGATOR

The term District Attorney Investigator is used to designate persons employed by the District Attorney's Office, with full peace officer authority. The District Attorney Investigator functions in the criminal justice system between the police department and sheriff's office and the prosecuting attorney. The role of the investigator varies from the traditional functions of criminal investigations and trial preparation to specialized assignments in the District Attorney's Office.

B. AUTHORITY OF DISTRICT ATTORNEY INVESTIGATORS

CALIFORNIA PENAL CODE SECTION 830.1 (a)
[A]ny inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer.

C. JURISDICTION

The District Attorney is both the public prosecutor and the chief law enforcement officer of the county and is charged with the duty of investigating, as well as prosecuting. His or her authority to investigate the facts before acting is unlimited and discretionary. His or her jurisdiction applies to any civil or criminal offense taking place within the county. The District Attorney is equally charged with the duty to investigate and prosecute crime and these functions are inseparable. No one may institute criminal proceedings without the concurrence, approval or authorization of the District Attorney. Pearson v. Reed 6 Cal.App.2d 277.

Investigation and gathering of evidence relating to criminal offenses are responsibilities which are inseparable from the District Attorney's prosecutorial function. The Investigations Unit is the law enforcement entity which performs this part of the prosecutorial function. The District Attorney has no peace officer powers but by law has the authority to hire sworn peace officers to assist in his or her duties, thus creating the tandem relationship that facilitates his or her full and discretionary authority to both prosecute and investigate the facts unilaterally in any jurisdiction.

D. ORGANIZATION

1. CHAIN OF COMMAND

The importance of the chain of command cannot be overemphasized and will be strictly followed. In the proper chain of command, each Investigations Unit employee is responsible to the District Attorney through his or her supervisor, the Chief Investigator.

An investigator will follow the advice and direction of a Deputy District Attorney in matters pertaining to the legal requirements and pre-trial direction of a specific case. In all other matters, the chain of command will be followed.

2. DISTRICT ATTORNEY

The District Attorney is the chief executive officer of the department and is the final authority in all matters dealing with the District Attorney's Office.

3. CHIEF INVESTIGATOR

The Chief Investigator is the commander of the Investigations Unit. His or her role is a multipurpose one in that he or she assumes the responsibilities for the administration of the unit and direct supervision of the investigative staff.

The Chief Investigator reports to the Assistant District Attorney.

4. INVESTIGATORS

a. Each investigator is responsible for the following:

1) Proper execution of assigned duties;

2) Enforcement of laws;

3) Maintenance of discipline;

4) Maintenance of proper public relations;

5) Adherence to rules, regulations and policies;

6) Reporting through channels any development that may unusually affect the office or the public; and,

7) Proper care and use of office equipment and materials. All manuals and equipment will be available for immediate inspection.

E. DUTIES

1. COMPLY WITH ALL LAWFUL ORDERS

a. All orders when issued by a supervisor are presumed to be lawful. Employees will obey orders promptly and willingly.

1) No supervisor will knowingly and willfully issue any order in

violation of any law, ordinance, or departmental regulation or policy.

2) Employees will refrain from public criticism or comment on orders they have received.

b. The failure or deliberate refusal of any employee to obey an order given by a supervising officer of the department will be deemed insubordination. Insubordination may be cause for discipline, up to and including dismissal from the department.

c. An employee who has been given an order and subsequently given a conflicting order will call this fact to the attention of the person giving the second order.

1) The supervisor issuing the second order has the authority to direct the sequence in which the orders will be accomplished.

2) The employee has the right of appeal after orders have been carried out.

d. Employees who are given lawful orders they feel are unjust or in contradiction to rules, regulations, or policies, will first obey the order to the best of their ability and then may appeal the order.

1) An *unlawful* order by a supervisor will not be obeyed. An unlawful order is an order given by a supervisor that is either illegal, a violation of departmental policy, or unethical.

2) The employee receiving the unlawful order will point out the unlawfulness to the supervisor for the purposes of alternative orders.

2. <u>INVESTIGATIVE SUPPORT</u>

a. After the initial complaint has been filed, an investigator may be required to assist deputies in preparing a case for trial.

b. An investigation is typically opened after the defendant has been held to answer at the preliminary hearing.

1) Cases are not opened prior to the preliminary hearing, without the approval of the Chief Investigator.

2) The testimony at the preliminary hearing may disclose weaknesses in the evidence and the need to strengthen this area with additional

investigation.

3) Defense witnesses will be made available only after the preliminary hearing and prior to trial.

c. During trial, a Deputy District Attorney will sometimes request immediate investigation of a detail of a case that has been brought to light for the first time during trial testimony.

d. During the course of the investigation, the investigator will follow any leads developed in his or her investigation without the need of additional investigation requests.

e. If an investigator receives a request that he or she feels is inappropriate or unethical, the investigator will confer with the Chief Investigator. The investigator will not refuse the request for investigation.

1) If the Chief Investigator agrees that there is a question concerning the request for investigation, the Chief Investigator will confer with the Assistant District Attorney.

F. EVIDENCE

1. EVIDENCE ROOM

a. The Chief Investigator serves as the Evidence Custodian for the Investigations Unit.

b. The District Attorney evidence room will be used to store items of evidence in pending District Attorney investigations and may be used in pending prosecutions, subject to the following guidelines and procedures:

1) Only evidentiary items may be stored in the evidence room; and,

2) Items of evidence collected and/or analyzed by other law enforcement agencies should normally be maintained at those agencies.

c. Exceptions to the above guidelines require the approval of the Chief Investigator.

G. SURREPTITIOUS RECORDING

1. GENERAL POLICY

All Deputy District Attorneys and Investigators will be familiar with Title 15,

Chapter 1.5 (Section 630, et seq.) of the Penal Code, and will conform to the law at all times. Except in the course of an authorized investigation, a District Attorney employee may not surreptitiously record or otherwise intercept a confidential communication involving any other person. Deputy District Attorneys will obtain approval from the Assistant District Attorney and will request investigative assistance if the need for a surreptitious recording is anticipated.

2. ATTORNEY SUSPECTS

Except in an emergency, an attorney may not be the subject of a surreptitious recording without the authorization of the District Attorney. When an unauthorized recording of an attorney is made in an emergency, it will be immediately reported, in writing, to the District Attorney.

Comment:

Deputy District Attorneys and Investigators are empowered by Penal Code section 633 to make surreptitious recordings in the course of criminal investigations. However, because of considerations of personal and county liability, office policy further limits the authority of Deputy District Attorneys in this area.

H. REQUESTS FOR ASSISTANCE OR INVESTIGATION BY LAW ENFORCEMENT AGENCIES

a. The Investigations Unit periodically receives requests to lend assistance in personnel, equipment, training, or expertise to other governmental agencies, including law enforcement.

b. Requests that this office assume responsibility for conducting or completing pre-filing investigations will be made in writing by the requesting department. Requests for investigative assistance should be made to the District Attorney. In the absence of the District Attorney, requests may be made to the Assistant District Attorney. Only the District Attorney or the Assistant District Attorney can authorize agency assists.

c. In emergency situations, the Chief Investigator can authorize agency assists but the Chief Investigator must make the District Attorney aware of the activity as soon as possible.

d. The Chief Investigator is authorized to engage in non-confidential intelligence sharing with any law enforcement agency.

e. Requests for investigative assistance by Deputy District Attorneys on any non-filed case will be made to the Assistant District Attorney. Upon approval, the request will be sent directly to the Chief Investigator.

I. COMMENDATIONS

1. It will be the duty of all employees to furnish the Chief Investigator information of a commendatory nature regarding any employee.

2. Upon receipt of the commendation and verification, the Chief Investigator will notify the District Attorney.

3. Under no circumstances will an investigator solicit a commendation letter for their benefit or enhancement.

J. JURY DUTY/ WITNESS LEAVE

1. District Attorney Investigators defined under Section 830.1 of the Penal Code may be exempted from jury duty by Section 202.5 of the Code of Civil Procedure.

2. Any employee who is required to be absent from work by a subpoena will be allowed the time necessary to be absent at his or her regular pay to comply with such subpoena.

K. CARE OF PROPERTY AND EQUIPMENT

1. MAINTENENCE AND CARE

It will be the responsibility of all members of the Investigations Unit to properly care for and maintain in working order any county equipment issued to them or used by them in the performance of their duties.

a. The loss, damage, or unserviceable condition of such equipment shall be immediately reported to the Chief Investigator.

b. If the loss, damage, or unserviceable condition of any equipment is determined to have been caused by the employee's negligence, that employee may be subject to disciplinary action and/or financial liability.

2. INSPECTION OF EQUIPMENT

a. A bi-annual inspection will be conducted by the Chief Investigator to ensure that the equipment is serviceable and being properly maintained.

b. The Chief Investigator will conduct random inspections throughout the year to ensure that employees possess the necessary equipment needed to perform their duties.

L. LAW ENFORCEMENT POLICY MANUAL

For additional law enforcement rules and regulations refer to the Investigations Policy Manual.

CHAPTER 3

CASE RELATED POLICIES AND PROCEDURES

A. ASSISTANCE TO LAW ENFORCEMENT AGENCIES

1. SEARCH WARRANTS

The District Attorney's Office is available to provide legal assistance to law enforcement agencies in drafting and reviewing search warrants.

2. CRIME SCENES

The District Attorney's Office is committed to responding to a law enforcement agency's request for assistance at the scene of a homicide or other major crimes.

a. During Office Hours

The Assistant District Attorney or the District Attorney will assign an appropriately experienced Deputy District Attorney to assist the requesting agency during office hours.

b. After Office Hours

The District Attorney maintains a Call Out list with the assigned Assistant or Deputy District Attorney. That list is distributed to local law enforcement agencies. The attorney assigned to respond for their rotation should make every effort to be available. If they are planning to be out of town, they should make arrangements for another attorney to cover call outs.

3. OFFICER-INVOLVED SHOOTINGS/FATAL INCIDENTS

This policy includes all fatal incidents caused by a law enforcement officer whether on or off duty. It does not include incidents involving unintentionally caused deaths, such as vehicular accidents or incidents which do not involve a civilian fatality.

The Yuba Sutter Officer Involved Shooting Team MOU will control the scene, investigation, and report.

Notification – When an agency requests assistance, the Chief Investigator should promptly notify the District Attorney.

Completion of the Investigation – When the investigation has been completed, the District Attorney will determine whether or not the action was lawful, and if not,

whether criminal charges should be filed. A written decision will be issued and directed to the head of the employing agency.

If criminal charges are not filed against any of the parties involved, the District Attorney's Office will notify the head of the employing agency.

4. REQUESTS BY GOVERNMENTAL DEPARTMENT HEAD FOR DISTRICT ATTORNEY TO CONDUCT CRIMINAL INVESTIGATION

a. The Investigations Unit may lend assistance in personnel, equipment, training, or expertise to any governmental agency, including law enforcement.

b. Requests that this office assume responsibility for conducting or completing pre-filing investigations will be made in writing by the requesting department head to the District Attorney.

B. ASSISTANCE TO THE SUTTER COUNTY GRAND JURY

The institution of the Grand Jury is of very ancient origin. It had its origin at a time when there was a fierce conflict between the rights of the subject and the power of the crown. It was established to secure to the subject a right of appeal to his peers under the immunity of secrecy before the government could bring him to trial.

Under the Constitutions of the United States and of the State of California, the Grand Jury was adopted both as a means of protection to the citizen and as an aid to securing public justice.

The laws of California define the Grand Jury as a body of persons, nineteen in number, drawn from the citizens of the County, and sworn to inquire into public offenses committed or triable within the County.

The Grand Jury is an investigatory body and a part of the Court created for the protection of society and enforcement of the law. It is not a separate political body or an individual entity of government, but is a part of the judicial system and, as such, each Grand Juror is an officer of the Court. Those serving as members of the Grand Jury are to examine any corruption in public office and to investigate certain phases of County government.

1. CRIMINAL INDICTMENTS WILL NOT BE BROUGHT BEFORE THE STANDING SUTTER COUNTY GRAND JURY

Pursuant to Penal Code section 904.6, a special Grand Jury will be impaneled from the jury panel to hear and return a criminal indictment.

Prior to seeking a special Grand Jury, the approval of the Assistant District

Attorney will be obtained.

2. RELATIONSHIP TO THE GRAND JURY

The District Attorney's Office will appear before the Grand Jury to give information and advice relative to any matter before the Grand Jury.

The District Attorney's Office will assist the Grand Jury in the issuing and serving of subpoenas and the questioning of witnesses before the Grand Jury.

The District Attorney will act as liaison between the District Attorney's Office and the Grand Jury. It will be his or her responsibility to assist the Grand Jury in any matter which it is investigating.

C. CASE RELATED EXPENDITURES

1. GENERAL POLICY

No employee will be reimbursed for an expense without prior written authorization. All expenditure requests related to criminal cases will be initially reviewed by the Assistant District Attorney or District Attorney.

2. EXPERT WITNESSES RETAINED BY DISTRICT ATTORNEY'S OFFICE

Prior to submitting an expenditure request to retain an expert, the case deputy will:

a. Obtain concurrence from the Assistant District Attorney.

b. Contact the expert and obtain an estimate of the expert's fee at the lowest hourly rate for the expert to prepare, consult and testify in the case. ("Per diem" charges should be avoided)

Following approval by an Assistant District Attorney, the case deputy will direct a letter to the expert (cc-Accountant) setting forth the terms of the fee arrangement and requesting that the expert forward the invoice directly to the District Attorney's Office.

The case deputy will keep an accurate record of any time spent with the expert, including conference time and court time. A copy of this record will be forwarded to the Assistant District Attorney upon conclusion of the case.

Comment

Every effort should be made to limit the expert's billable time. For example, appointments for consultation should be set up well in advance so that the expert does not have to cancel other appointments. The appointment should be at the expert's office in order to avoid paying expert travel time. If the expert is needed to testify, arrangements should be made for a specific time to appear. The court should be advised that the witness may need to be taken out of order.

3. TRANSCRIPTS

No employee will request a transcript of proceedings without first obtaining approval from the Assistant District Attorney.

D. CONFLICT OF INTEREST/RECUSAL

A Deputy District Attorney will not appear on a motion to recuse the District Attorney's Office without first discussing the motion with the Assistant District Attorney.

A Deputy District Attorney will promptly forward any motion to recuse to the Assistant District Attorney together with a cover memorandum. The cover memorandum will include a brief description of the case and alleged conflict. It will also include the Deputy's opinion regarding the merits of the motion. The cover memorandum and copy of the motion will be forwarded as soon as possible following receipt of the motion. The Assistant District Attorney will take appropriate action including contacting the Attorney General.

E. FILES

Every employee in possession of an office file has the responsibility to preserve its accuracy and work product.

F. SUBPOENAS

The District Attorney's Office will generate and issue subpoenas as necessary. The subpoenas will be directed to the appropriate agency for service.

- The agencies (Sutter County Sheriff's Office (SCSO), Yuba City Police Department (YCPD) and California Highway Patrol (CHP)) must return the subpoenas either with proof of service, or as "unable to serve" no later than three (3) business days before the designated court date for that witness's appearance.
  - It is the agency's responsibility to see that the subpoenas are brought to the DA's Office.
- Each Monday, a legal secretary will email the appropriate agency employee a list of cases for that week with outstanding subpoenas. This email will remind the agencies that those specific subpoenas must be returned by the next day.
- Every subpoena that is returned to the DA's Office for service will be given by the secretaries to the DA Investigative Aide.
  - The secretaries will enter each subpoena into the Subpoena Tracking List.
- The investigative aide will be responsible for attempting to serve those subpoenas as soon as possible. As these are for pending court dates, this should be a top priority for the investigative aide.
- If the investigative aide believes there could be a safety concern about the service of a specific subpoena, he/she is directed to take it to the Chief Investigator so that it can be re-assigned to an investigator.
  - The Chief Investigator shall enter the re-assignment into the Subpoena

Tracking List.

- The investigative aide or investigator who receives the subpoena shall update the Subpoena Tracking List with their efforts to serve the subpoena and any results.

G. DISCOVERY

1. GENERAL POLICY - DEFENSE DISCOVERY

Full and complete discovery pursuant to the guidelines in Penal Code section 1054 will be provided to the defense on a continuing basis. This will be done with or without a formal request from the defense.

Any attempt by a court to impose additional obligations beyond those constitutionally mandated and those contained in the provisions of the Penal Code, will be resisted pursuant to Penal Code section 1054.5.

If discoverable information is known to be in the possession of the investigating agency, this office will facilitate discovery and inspection of the same.

2. GENERAL POLICY PROSECUTION DISCOVERY

As a matter of prudent trial strategy, discovery from the defense as provided by Penal Code section 1054.3 will be vigorously pursued.

3. PROTECTION OF ADDRESS AND TELEPHONE NUMBERS OF VICTIMS AND WITNESSES

Pursuant to Penal Code Section 1054.2, discovery will not be supplied to any defendant or other person except those employees of defense counsel or those acting as couriers for defense counsel.

4. SPECIFIC POLICIES DEALING WITH DISCOVERY

a. All felony cases will require a standard documentation that all discovery has been either provided or offered to the defense thirty days prior to trial.

b. Discovery at preliminary hearings

1) The standard provisions of Penal Code Section 1054 do not apply to preliminary hearings. However, the due process clause as defined in Brady v. Maryland (1963) 373 U.S. 83 does apply. Brady requires that the prosecution must turn over all material, exculpatory evidence. Material evidence is evidence which if not disclosed creates a reasonable probability of altering the outcome.

2) Preliminary hearings require only sufficient evidence to show that a crime has been committed and that there is sufficient cause to believe the defendant is guilty. Penal Code section 872(a). Additionally, pursuant to Penal Code section 866(b) preliminary hearings "shall not be used for purposes of discovery."

3) Attorneys should oppose any effort on behalf of the defense to insist on discovery beyond the police reports, prior to the preliminary hearing.

Comment

The federal Constitution may require the prosecution to provide discovery beyond that described in Penal Code section 1054. 1.

United States Supreme Court decisions address "evidence favorable to the accused and evidence that is material to punishment." Brady v. Maryland (1963), 373 U.S. 83 Evidence is material if it "undermines confidence in the outcome, i.e., It may make the difference between conviction and acquittal if used effectively." United States v. Bagley (1985), 473 U.S. 667).

To satisfy statutory and constitutional obligations, it is the policy of this office to provide early, broad and continuing discovery voluntarily. It is also the policy of this office to rely on Penal Code section 1054.6 and relevant case law to shield prosecution work product from the defense.

c. Computer Records – Victim's Right to Privacy

1) It is the policy of the District Attorney's Office that we do not participate in any general exploratory search of a victim's computer records or hard drives unless there is a good cause that will further our case.

2) We will not obtain or take possession of any computer equipment or records unless there is a clearly articulated reason for doing so and then only those records pertaining to that issue.

(a) It is not relevant whether or not the victim gives their consent.

(b) The victims do not know how much information can be retrieved from the computer records and the methods in which defense could use such information to damage the case and the victim even outside the case i.e., sharing financial information with defendants or using it to intimidate the victim or his/her family.

H. BRADY

1. PURPOSE

Law enforcement personnel records are protected from disclosure by the statutory procedure for *Pitchess* motions. (Pitchess v. Superior Court (1974) 11 Cal.3d 531; Evidence Code sections 1043-1047; Penal Code section 832.7.) Additional important protections regarding personnel records are contained in the Public Safety Officers Procedural Bill of Rights Act (Government Code section 3300 et seq.) and in the right to privacy under the California Constitution (Article I, section 1). At the same time, the District Attorney and law enforcement ("Prosecution Team") have a constitutional obligation under Brady v. Maryland (1963) 373 U.S. 83, to provide criminal defendants with exculpatory evidence, including substantial evidence bearing on the credibility of prosecution witnesses. In several respects under current law, the scope of these obligations under *Brady* exceeds the information available to the defense under *Pitchess*. (City of Los Angeles v. Superior Court (Brandon) (2002) 29 Cal.4th 1, 12, 14.)

This duty of disclosure extends to evidence in possession of the "prosecution team," which includes the investigating law enforcement agency. (People v. Superior Court (Barrett) (2000) 80 Cal.App.4th 1305; Brandon, supra, at p. 8; see Brandon at p. 12, fn. 2.) In addition, there is federal court authority that police have a due process obligation to disclose exculpatory evidence to the prosecution. (Jean v. Collins (4th Cir. 2000) 221 F.3d 656; Newsome v. McCabe (7th Cir. 2001) 256 F.3d 747, 752.)

The District Attorney and Sutter County law enforcement agencies are committed to full compliance with the rights of criminal defendants to a fair trial and due process of law. We recognize that effective enforcement and prosecution of crimes are jeopardized by failure to comply with discovery laws and that such violations may result in the reversal of convictions, sometimes years after the trial is concluded, and in punitive actions against members of the prosecution team. More importantly, we recognize that the honesty of law enforcement employees is a cornerstone of our criminal justice system. On those rare occasions when a law enforcement employee has engaged in conduct that has a negative bearing upon his or her credibility, we are obligated to disclose this information as required by law.

The following procedures were carefully drafted to protect the privacy interest of law enforcement personnel to the extent provided by law, while also ensuring that prosecutors and law enforcement agencies are able to satisfy their constitutional responsibility to provide the defense with evidence favorable to the accused.

It is anticipated that changes in these procedures will be necessary as developments occur in the case law interpreting *Brady*. Also, our experiences with these procedures may lead to the need to make modifications. Prosecutors, law enforcement agencies and peace officer associations will be kept apprised of any changes that are made.

a. External policy:
Prosecutorial inspection of law enforcement personnel records for purposes of *Brady* compliance would be unnecessarily intrusive upon the privacy rights of law enforcement employees in their personnel files. (People v. Superior Court (Johnson) 2015 WL 4069243.) In light of the above, we have adopted a procedure in which the law enforcement agencies, on a case-by-case basis, advise the District Attorney's office of the names of law enforcement personnel who have information in their personnel files that may require disclosure under *Brady.* The District Attorney will maintain the "Brady List," adding the names of any personnel as notified by law enforcement agencies to the External Brady List. In each case where that law enforcement personnel is a potential witness, the District Attorney's Office will notify the defense attorney that the witness has a potential *Brady* issue. (See Attachment A, Sample Disclosure Letter.) Only the District Attorney or Assistant District Attorney have authority to sign and discover *Brady* letters and/or evidence.

b. Internal policy:
In the event that the District Attorney's Office is the holder of any potential *Brady* information concerning a member of law enforcement, further disclosure is required. The District Attorney's Office will add the names of any such law enforcement personnel to the Internal Brady List. In each case where that law enforcement personnel is a potential witness, the District Attorney's Office will notify the defense attorney that the witness has a potential *Brady* issue. The District Attorney's Office will also discover the internal *Brady* evidence to the defense attorney. This discovery must be appropriately redacted to protect the personal information of witnesses and/or victims. (Internal *Brady* discovery will be maintained in later sections of the Brady Manual.) Only the District Attorney or Assistant District Attorney have authority to sign and discover *Brady* letters and/or evidence.

c. *Pitchess* motions:
Should the defense attorney file a *Pitchess* motion, the criminal case is not suspended. Instead, the *Pitchess* hearing itself operates parallel and separate to the criminal case. The District Attorney's Office is not party to a *Pitchess* motion filed by a defense attorney.

There may be occasions when the District Attorney's Office files a *Pitchess* motion, whereby potential impeachment or exculpatory material is gathered by the agency so it can be reviewed in-camera by a court. This utilizes an appropriate judicial forum to reconcile a defendant's constitutional right to a fair trial with a law enforcement employee's right to confidentiality. The *Pitchess* procedure described herein shall also

apply to personnel records of employees of the District Attorney's office.

2. BRADY MATERIAL DEFINED

The District Attorney is obligated to provide the defense in criminal cases with exculpatory evidence that is material to either guilt or punishment. (Brady v. Maryland, supra, 373 U.S. 83, 87.) Reviewing courts define "material" as follows: "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (People v. Roberts (1992) 2 Cal.4th 271, 330.) "Exculpatory" means favorable to the accused. This obligation includes "substantial material evidence bearing on the credibility of a key prosecution witness." (People v. Ballard (1991) 1 Cal.App.4th 752, 758.) Such impeachment evidence must disclose more than "minor inaccuracies." (People v. Padilla (1995) 11 Cal.4th 891, 929, overruled on other grounds, People v. Hill (1998) 17 Cal.4th 800, 823, fn. 1.)

The government has no *Brady* obligation to "communicate preliminary, challenged, or speculative information." (United States v. Agurs (1976) 427 U.S. 97, 109 fn. 16.) However, "the prudent prosecutor will resolve doubtful questions in favor of disclosure." (Id. at p. 108.) See also Kyles v. Whitley (1995) 514 U.S. 419, 439, which warns prosecutors against "tacking too close to the wind" in withholding evidence.

Impeachment evidence is defined in Evidence Code section 780 and in CALJIC 2.20. Examples of impeachment evidence that may come within *Brady* are as follows:

a. The character of the witness for honesty or veracity or their opposites. (Evid. Code § 780(e).)

b. A bias, interest, or other motive. (Evid. Code § 780(f).)

c. A statement by the witness that is inconsistent with the witness's testimony. (Evid. Code § 780(h).)

d. Felony convictions involving moral turpitude. (Evid. Code § 788; People v. Castro (1985) 38 Cal.3d 301, 314.) Discovery of all felony convictions is required regarding any material witness whose credibility is likely to be critical to the outcome of the trial. (Penal Code § 1054.1 (d); People v. Santos (1994) 30 Cal.App.4th 169, 177.)

e. Facts establishing criminal conduct involving moral turpitude, including misdemeanor convictions. (People v. Wheeler (1992) 4 Cal.4th 284, 295-297.)

f. False reports by a prosecution witness. (People v. Hayes (1992) 3 Cal.App.4th 1238, 1244.)

g. Pending criminal charges against a prosecution witness. (People v. Coyer (1983) 142 Cal.App.3d 839, 842.)

h. Parole or probation status of a witness. (Davis v. Alaska (1974) 415 U.S. 308, 319; People v. Price (1991) 1 Cal.4th 324, 486.)

i. Evidence undermining an expert witness's expertise. (People v. Garcia (1993) 17 Cal.App.4th 1169, 1179.)

j. Evidence that a witness has a racial, religious or personal bias against the defendant individually or as a member of a group. (In re Anthony P. (1985) 167 Cal.App.3d 502, 507-510.)

For purposes of this policy, "*Brady* material" in personnel files of law enforcement agency employees is defined to include:

a. Any sustained finding of misconduct that reflects upon the truthfulness or bias of a witness. A complaint is considered sustained for purposes of this policy when it has been approved by the agency head after a hearing pursuant to Skelly v. State Personnel Board (1975) 15 Cal.3d 194, if applicable, or when the discipline has been imposed, whichever occurs first. If a sustained complaint has already been overturned by a reviewing body or court based on lack of evidence of misconduct, the incident will not be considered *Brady* material and need not be reported to the District Attorney's office. If a sustained complaint has been overturned based only upon the degree of discipline imposed, it shall still be considered a sustained complaint and shall be reported to the District Attorney's office. If the law enforcement agency has notified the District Attorney's office of *Brady* information and the law enforcement employee later successfully appeals the sustained complaint to a reviewing body or court, the officer should provide the District Attorney's Office with a copy of the decision on appeal so that the District Attorney's Office may re-evaluate the matter.

b. Any past conviction or pending criminal charge for a felony or moral turpitude offense.

Because Brady obligations are shared by the prosecution team, it is essential that each agency's relevant duties be carried out by a qualified representative of the law enforcement agency.

3. PROCEDURE FOR JUDICIAL REVIEW

a. In order to meet constitutional *Brady* obligations and to ensure that law enforcement's statutory right to confidentiality is upheld, when a case is set for trial, the assigned deputy district attorney shall request that the law enforcement agency search its records concerning employees of that agency who are witnesses in that case. "Employees" shall include all Peace Officer employees, Sheriff's Service Technicians, Police Services Specialists, Community Service Officers, Criminologists, Evidence Technicians, Dispatchers, and other employees whose job duties may include handling evidence, documenting incidents relating to criminal cases, or who are likely to testify in criminal cases.

b. The District Attorney will not assert a right under Penal Code section 832.7, subdivision (a), to inspect personnel records, due to the delegation to the police agency of the initial determination of substantiveness.

c. The law enforcement agency will designate a records custodian or other representative of the agency who will review the personnel records of the employees described above for sustained allegations of misconduct, or convictions or pending criminal charges for felony or moral turpitude offenses, that might require disclosure.

d. A request form shall be used in each case which: (1) lists the witnesses on the case employed by, or previously employed by, the agency; (2) requests a response if "no *Brady* documents are located for any of the above-listed employees;" and (3) asks the agency to "identify the name, ID number and employment status of any such employee on this form" where *Brady* documents exist. The agency representative shall respond directly to the deputy district attorney within seven (7) calendar days of the date that it was sent to the agency. If the agency representative needs additional time and if the trial date permits, upon request, the deputy district attorney may grant an extension to respond. No actual materials from the file will be provided to the District Attorney's Office at that time.

e. The law enforcement agency shall provide the same written notification of its findings to the involved employee. Prior to forwarding the name to the District Attorney, the law enforcement agency may choose to give the employee the opportunity to meet with them so the employee can express any disagreement he or she has with the agency's decision to forward his or her name to the District Attorney.

f. Once the name of the employee has been forwarded to the District Attorney, the employee may petition the District Attorney and ask for a meeting to convince the District Attorney that the documents in his or her personnel file are not *Brady* documents. However, in order to have this

meeting the District Attorney would have to come into possession of the *Brady* material. **The employee and law enforcement shall be advised that once the District Attorney comes into possession of this material, confidentiality of these documents may be waived.**

g. After a notification has been made, if the law enforcement agency learns of additional potential *Brady* material regarding an employee, the agency shall notify the District Attorney's Office of the existence of the additional information.

h. The Deputy District Attorneys shall maintain a list of law enforcement employees for whom law enforcement agencies have given notification that possible *Brady* material may exist, as described above. This list, in some cases, will obviate the necessity of the deputy district attorney from making a request on certain witnesses when law enforcement agencies have previously disclosed that the personnel file of those witnesses may contain *Brady* information. This list will be accessible only to attorneys. Deputy district attorneys must review the list during trial preparation to determine whether a law enforcement employee who is subpoenaed by or who will testify on behalf of the prosecution is on the list. Upon the request of any employee or former employee of a law enforcement agency, the Deputy District Attorney shall immediately advise the employee whether he or she is included on the list. In the event of changes in circumstances, the law enforcement agency may also petition the District Attorney to have an employee's name taken off of the list.

i. When the District Attorney's Office subpoenas or intends to call a law enforcement officer for whom notification of possible *Brady* material has been given, the District Attorney shall disclose that information to the Defense Attorney. Either the defense or the District Attorney's office may apply to the court for in-camera review of the records. The request for in-camera review shall be made pursuant to *Pitchess* (see Evidence Code sections 1043, 1045; Alford v. Superior Court (2003) 29 Cal.4th 1033, 1046) and/or Brady (United States v. Agurs, supra, 427 U.S. at p. 106; U.S. v. Dupuy (9th Cir. 1985) 760 F.2d 1492, 1502; Brandon, supra, at p. 14). As to non-sworn employees, the request shall be made pursuant to Evidence Code sections 1040 and 915(b). (*See Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 525-526; Johnson v. Winter (1982) 127 Cal.App.3d 435.) At the time of application, the opposing party, the involved employee and the employing law enforcement agency will be notified of the request for in-camera review.

j. If, following in-camera review, the court orders disclosure under *Pitchess* and/or *Brady*, disclosure shall only be made to the defendant's attorney of record (or to defendant if not represented by counsel), to the involved employee, to the employing law enforcement agency, to those members of

the District Attorney's Office as needed for handling of the case, and to the court pursuant to law. The prosecuting attorney or the law enforcement agency may request that the court issue a protective order against disclosure of the material in other cases pursuant to Evidence Code section 1045, subdivisions (d) and (e). (See Alford v. Superior Court, supra.)

k. It is unclear under present law whether court-ordered disclosure to the prosecution of material from peace officer personnel files gives rise to an obligation that the prosecution disclose the information in future cases pursuant to *Brady*. (Compare Alford, supra, at p. 1046, fn. 6 (plurality opinion) with p. 1056, fn. 8 (concurring opinion of Baxter, J.).) In order to ensure that officers' privacy rights in their personnel files are protected, the District Attorney's office shall not maintain a repository of information obtained from personnel files pursuant to an in-camera hearing. Instead, *Brady/Pitchess* motions shall be made in each future case in which the officer is a material witness.

l. The District Attorney must make the ultimate determination for each law enforcement personnel in maintaining and updating the *Brady* list. In the event that the District Attorney is walled off from a pertinent case and the *Brady* evidence is internal, the Assistant District Attorney will make the *Brady* determination on that case.

4. INVESTIGATIONS NOT COVERED BY THIS PROCEDURE

California Penal Code section 832.7, subdivision (a), provides that investigations or proceedings concerning the conduct of police officers or a police agency conducted by a Grand Jury or District Attorney's Office or the Attorney General's Office are not subject to the Evidence Code disclosure procedures. A 1993 opinion of the California Attorney General states, "As long as the investigation of the officer's conduct is a part of the prosecutor's duties. . . a District Attorney need not follow the provisions of Evidence Code Section 1043 in obtaining access to the personnel records in question." (66 Ops. Cal. Atty. Gen. 128.) The Sutter County District Attorney's Office will not seek access to peace officer personnel records pursuant to section 832.7(a) except: (a) when the peace officer is a suspect in an investigation and is not merely a witness in a criminal case, or (b) as ordered by the court pursuant to the in-camera review procedure of this policy.

5. CONCLUSION

The purpose of this policy is to ensure that prosecutors and the defense receive sufficient information to comply with the constitutional requirements of *Brady*, while protecting the legitimate privacy rights of law enforcement witnesses. This policy is not intended to create or confer any rights, privileges, or benefits to defendants or prospective or actual witnesses.

I. USE OF INFORMANT WITNESSES

The use as witnesses of "jailhouse" informants and others seeking leniency in return for testimony carries with it special risks which may have an impact beyond that involved in the case.

Accordingly, although a deputy's analysis will carry great weight, such witnesses will not be called, nor will any agreement involving any form of leniency, be arrived at, without the approval of the Assistant District Attorney.

1. NOTICE TO SUPERVISOR

   The Deputy District Attorney's (DDA) supervisor will be immediately notified when an informant pursuant to this section comes forward.

2. DOCUMENTATION

   All stages of dealings with an informant will be fully documented by a District Attorney Investigator or a police officer. A Deputy District Attorney who is contacted directly by an informant will document that contact and will immediately involve an investigator or police officer.

J. RELOCATION OF WITNESSES

1. The Sutter County District Attorney's Office participates in the California Witness Relocation and Assistance Program (CALWRAP). The California Witness Relocation Program is a state program administered by the California Department of Justice. CALWRAP provides relocation and assistance for witnesses in criminal proceedings where there is evidence of substantial danger of witness intimidation or retaliatory violence.

2. CALWRAP provides relocation and assistance for witnesses, their families, friends, and associates who are endangered due to ongoing or anticipated testimony. Witnesses testifying in gang, organized crime, narcotic trafficking or other cases that have a high degree of risk to witnesses will be given priority.

3. The Sutter County District Attorney's Office will follow the procedures and directives as mandated by Penal Code sections 14020-14033, as well as the policy and procedures as noted below.

4. If an attorney, investigator or advocate identifies a victim or witness that they feel is in need of services under the witness relocation program, they will immediately notify the Assistant District Attorney or District Attorney. The Assistant District Attorney or District Attorney will review the situation and if they also feel that the witness relocation program is necessary, they will contact the Chief Investigator.

a. No employee shall promise any person that they will be admitted into the witness relocation program.

5. The assigned DDA shall vigorously challenge any attempt by the defense and use every lawful method possible to ensure the location of the involved party is kept confidential.

6. Relocation and Assistance of Witnesses.

d. The original documents of the relocation and assistance package will be kept in a secure filing system.

b. The District Attorney Staff Analyst shall maintain a separate accounting system (Witness Relocation Fund) to track expenses regarding relocated and assisted witnesses. ALL witnesses under relocation shall be referred to by their assigned CALWRAP witness number for accounting purposes.

K. ASSET FORFEITURE CASES

1. Asset Forfeiture laws are contained within Health & Safety Code sec. 11469, et seq.

2. Due to the time and document intensive nature of these cases, the assets should be worth at least $2,000 in order to accept a case for forfeiture.

a. The Assistant District Attorney or the District Attorney may agree to accept a case for forfeiture that does not fall within the above parameters.

3. An asset forfeiture proceeding is initiated by the seizing agency. The seizing agency has 15 days after the property is seized, if it is not being held as evidence, to refer the matter in writing to the DA's office to begin forfeiture proceedings.

4. In an asset forfeiture trial, costs are assessed much as they are in a civil trial. Thus, the jury fees must be posted and interpreters must be paid. As these costs would come out of the District Attorney's Office budget, any jury trial or other costs must be approved in writing by your supervisor PRIOR to requesting those services.

5. Any deputy assigned an asset forfeiture case must familiarize himself/herself with the Asset Forfeiture laws and case procedures.

CHAPTER 4

CRIME CHARGING POLICY

A. STATEMENT OF POLICY

This statement of the District Attorney's Crime Charging Policy applies to all criminal matters including adult prosecutions and juvenile adjudications.

1. OBJECTIVES

Prosecutors are entrusted with the responsibility to promote and preserve a free, just, and lawful society.

The crime charging function is the core of a prosecutor's work. The quality of its exercise determines the character and nature of our system of justice.

The public must be assured by the persistent vigilance of this office, that before any complaint is filed, there is an informed evaluation of all available evidence and all potentially applicable laws.

Those prosecuted should know by consistent reinforcement, that when charges are filed, there is the evidence and the resolve to take the prosecution to judgment.

The objective of this Crime Charging Policy is to promote aggressive, vigorous, and successful prosecution balanced by governing ethical obligations.

Comment

Each deputy is required to be fully acquainted with this office's policy and the Manual and to be guided by both in crime charging decisions.

2. BASIC CRITERIA FOR CHARGING

The filing deputy will file charges only if the following four basic requirements are satisfied:

a. Based on a complete investigation and a thorough consideration of all pertinent data readily available, the filing deputy is satisfied that the evidence shows the accused is guilty of the crimes to be charged.

b. There is legally sufficient, admissible evidence of a corpus delicti.

c. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged.

d. The deputy has considered the probability of conviction by an objective

fact-finder hearing of the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction by a reasonable and objective fact-finder after hearing all the evidence available to the deputy at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the deputy.

Comment

The broad discretion given to the deputy in determining whether to file charges, when to file them, and in choosing the particular charges to be made requires the greatest effort to insure this power is used objectively, fairly, and uniformly.

The four criteria were promulgated for this purpose. They are sanctioned by the California District Attorneys Association as crime charging standards for California counties.

The criteria underscores the substantial difference between the existence of evidence to sustain a guilty verdict and the existence of evidence which will in fact convince the designated fact finder to return a guilty verdict.

3. IMPROPER BASES FOR CHARGING

The following factors constitute improper bases for charging:

a. The race, religion, nationality, gender, occupation, economic class, or political association or position of the victim, the witnesses, or the accused;

b. The mere request to charge by a police agency, private citizen, or public official;

c. Public or journalistic pressure to charge; or,

d. The facilitation of an investigation.

4. ATTORNEY REVIEW

Each prospective case presented for filing will be reviewed individually. The deputy will conduct an impartial evaluation of the facts and the evidence.

> "In exercising his [her] discretionary power, the screening assistant must realize that he [she] is fulfilling a quasi-judicial function and, therefore, initially does not act as an advocate for either side. Only after he [she] has made the decision to charge does his [her] roles revert to that of an advocate for the prosecution." (National District Attorneys Association, The Prosecutor's Screening Function - Case Evaluation and Control, 27 (1973).

If a police officer, agency investigator or private citizen is dissatisfied with the deputy's filing decision, a review by the supervisor of the filing deputy is available.

Upon review, the matter will be considered de novo. A decision will then be made after consultation with the deputy who made the original decision.

Any further review should be referred to the Assistant District Attorney.

Comment

Decisions to charge or not to charge are based upon the reviewing deputy's assessment of the adequacy of the evidence to meet filing standards.

The promulgated standards are explicit. Depending upon trial experience, interpretation of the evidence and other factors, deputies may honestly disagree. The review process serves to recognize this reality. It provides the opportunity for reconsideration of critical decisions. It promotes office-wide uniformity in crime charging.

It is recognized that those not vested with a prosecutor's perspective may not understand a decision not to prosecute. Consequently, attorneys are directed to promote an effective and ongoing dialogue with law enforcement, victims, and the public.

B. CASE INVESTIGATION: SCOPE OF IVESTIGATION

Before making the decision to charge, the filing deputy should insist upon a complete investigation. Failure to do so promotes the guilty being freed and the factually innocent being charged.

1. INITIAL INVESTIGATION

At minimum, the following should be contained in the initial investigation:

a. All material witnesses should be interviewed in person by trained sworn police investigators. Written and signed or recorded statements should be obtained from any witness who may forget pertinent details or change testimony. These statements should be clear in detail.

b. Scientific examinations should be completed as expeditiously as possible, especially where there is some doubt about the outcome.

c. An attempt should be made in accordance with Constitutional guidelines to obtain a statement from the suspect.

d. Whenever feasible, if a statement is made, it should be audio or video recorded.

Comment

A statement from the suspect, legally taken and accurately presented, significantly enhances law enforcement's ability to secure a proper verdict.

If the suspect committed the crime, everything is either an admission or a lie. Lies, even minor ones, are devastating to the defense.

The statement gives predictability to the case. At trial, the statement will be either consistent with the defense or the defense will be forced to admit the defendant lied.

The statement provides law enforcement with the opportunity to disprove a defense prior to the time constraints of trial.

Recorded statements, whether audio or video, provide the most professional and most accurate records of suspect and witness statements and demeanor.

A recorded statement protects the case investigator and the case. It can clearly rebut defense charges of harassment and intimidation.

As to the suspect, a recorded statement can refute claims of defective Miranda admonitions. When taken in proximity to the offense, a recorded statement can rebut such potential defenses as intoxication, diminished capacity, and insanity.

An audio/video record can unequivocally negate contentions of fabrication or faulty recollection on the part of the agency investigator.

As an investigative tool, recorded statements provide a detailed record of information received and are far superior to summaries that are inherently limited to the officer's ability to identify and record critical information. Experienced investigators know that information that may seem trivial at the time can become significant as other facts are brought to light. As a trial tool, recorded statements are springboards for refreshing the recollection of witnesses and the basis for impeaching recalcitrant and uncooperative witnesses.

e. When the suspect makes a statement that, if true, negates criminal liability, the statement should be investigated, no matter how implausible it may seem. Statements of potential defense witnesses should be obtained.

2. SUBSEQUENT INVESTIGATION

If the initial investigation is incomplete, the reviewing deputy will Reject the case and complete an Information Request indicating that further investigation is needed. This document will be returned forthwith to the investigating agency to provide for the opportunity for further action.

a. As a general principle, this standard should be observed even if it means that the suspect must be released from custody and re-arrested later on a warrant.

If the investigating officer knows of specific, articulable facts to support a firm belief that the suspect will not be readily available for arrest later, then this guideline may be waived if there is a reasonable likelihood of conviction based on the evidence already presented to the deputy.

b. The responsibility for carrying out the subsequent investigation lies with the investigating law enforcement agency.

C. DOCUMENTARY PREREQUISITES TO CASE EVALUATION

As a general rule, all documents and materials reasonably necessary and available to fully evaluate, process, and successfully prosecute prospective cases must be presented prior to review.

To require less would compromise the legal duties of this office.

1. IN OR OUT-OF-CUSTODY SUSPECTS

The following documents are required prior to review of the complaint:

a. Two complete sets of copies of all investigation reports and supplemental investigation reports for each suspect.

Investigative reports must include either a statement from the suspect(s) or an indication of the suspect(s) invocation of rights. Where a suspect cannot be located, an investigative report describing the efforts to locate the suspect should be provided.

b. Drug analysis reports.

c. Where necessary to effectively evaluate or prosecute a case, transcriptions of taped statements.

d. When applicable, a copy of the search warrant(s), affidavit(s), and return(s).

e. Complete suspect identification, including DOB and physical description.

f. Rap sheets on suspect as well as DMV rap sheets for incidents related to motor vehicles.

g. Sufficient witness information for the issuance of subpoenas.

h. A completed Complaint Request Form.

Comment

As a standard of practice, complaints are not to be filed until the investigating agency completes its work on the case.

Once filed, case focus shifts from investigation to prosecution.

A new layer of procedural rights emerges to the benefit of the suspect. When the right to a speedy trial is thwarted by sheriff, police, or prosecutor delay or inefficiency, the law can compel dismissal. Law enforcement discovery obligations not timely addressed give rise to monetary sanctions or the exclusion of evidence.

On occasion, compelling circumstances preclude pre-filing completeness. When the information presented in the document package otherwise meets filing standards, a complaint may be filed without the requisite paperwork in certain limited circumstances:

1. There must be a commitment documented by the investigating agency that the missing documents will be provided by the investigative agency by a specified date or at least 72 hours before a specified case occurrence; and,

6. The agency represents that because of custodial status or other identified reasons there is insufficient time to present the document(s) prior to filing; or,

7. There is a reasonable likelihood that a case disposition will be reached without the necessity of preparing the document.

The responsibility for transcribing recorded statements is vested with the agency that takes the statement.

The responsibility for identifying in a responsible and considerate manner the need for transcriptions and the time for production is on this office.

D. SCOPE OF PROSECUTORIAL REVIEW

Before deciding to charge, the filing deputy will make a thorough evaluation of all data pertinent to the issue of the suspect's guilt of the crime to be charged and whether such data is admissible in court as evidence or not.

1. ADMISSIBLE EVIDENCE

The filing deputy will do the following before deciding whether to charge.

a. Review all available investigative reports. (A deputy will not file a case upon an oral presentation);

b. Require written reports on all relevant scientific examinations unless the result reported orally is deemed reliable or the result would not affect the decision to charge;

c. Carefully review all defense statements and consider, in an impartial manner, whether there is a reasonable possibility the statements are true;

d. Consider, when practical, personally interviewing witnesses where their demeanor and credibility will significantly influence the outcome of the case or whose later cooperation in the prosecution is uncertain. The following are typical examples of situations where witnesses should be interviewed:

1) Victims of crimes of a sexual nature;

2) Accomplices; or,

3) Victims of crimes committed in a familial setting involving domestic violence or victims under the age of 18.

2. EVALUATION OF EVIDENCE

After evaluating the investigation and all available pertinent data, the filing deputy should be satisfied that the evidence proves the accused is guilty.

a. Direct Evidence

In evaluating cases where the resolution of key issues rests primarily on direct evidence, the deputy should consider potential problems including the following:

1) A witness' mistake (especially mistaken identity);

2) A witness' motive to fabricate; and,

3) A witness' inability to recall or relate properly.

b. Circumstantial evidence

In evaluating cases where the resolution of key issues rests primarily on circumstantial evidence, the deputy should consider the possibility that there is another rational explanation for the uncontested facts.

1) The filing deputy should consider and analyze every reasonable defense, whether offered or not.

2) The filing deputy should then consider whether, consistent with the uncontested facts, the defense might be true.

E. LEGALLY SUFFICIENT, ADMISSIBLE EVIDENCE OF A CORPUS DELICTI

Prior to the filing of charges, the investigative reports must set forth legally sufficient, admissible evidence of a corpus delicti.

1. EXISTENCE OF A CRIME

The filing deputy has the responsibility to be reasonably certain that a crime has been committed before filing charges.

In cases posing novel or unclear questions of law, the filing deputy may file charges if the following requirements are satisfied:

a. There is a reasonable possibility that a court will rule that a crime has been

committed;

b. The violation, if it is in fact a violation, is a substantial one affecting significant personal or property rights of others; and,

c. The prosecution can reasonably argue that a crime has in fact been committed.

2. EXISTENCE OF EVIDENCE SUFFICIENT TO PROVE ELEMENTS OF CRIME

The filing deputy must be reasonably certain that there is legally sufficient evidence to prove each element of the crime in question.

a. The filing deputy is responsible for knowing the relevant case law interpretations of each criminal statute so he or she can make a correct and informed decision to file charges.

b. In cases posing novel or unclear questions of law relating to the presence of legally sufficient evidence to prove any element of a crime, the deputy may file charges if the requirements set forth above are satisfied.

Comment

The prosecution has the burden of proving the existence of a corpus delicti independent of a confession. Pursuant to case law, the burden of proving corpus delicti is by slight evidence. Corpus problems are most difficult with crimes where a negative must be proven as an element of the crime (e.g., making a false report). Special caution should be exercised in those cases.

3. ADMISSIBILITY OF EVIDENCE OF A CORPUS DELICTI

The filing deputy should believe that there is a reasonable possibility that a court of law would rule that the evidence necessary to satisfy this standard is admissible under current statutory, case, or constitutional law.

a. The standard of a reasonable possibility should be based on an informed judgment of what the highest court entitled to rule on the issue in question would rule, if confronted with it. If a local court frequently rules contrary to current appellate interpretations, such a possibility should not be weighed in considering whether to file charges.

b. The standard of a reasonable possibility applies to both issues of law and fact relating to admissibility of evidence.

F. LEGALLY SUFFICIENT, ADMISSIBLE EVIDENCE TO IDENTIFY

Prior to filing charges, there must be legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime.

1. DIRECT EVIDENCE CASES

In cases resting primarily upon direct evidence of identity, the filing deputy should be reasonably certain that the evidence submitted, standing alone, will result in a conviction. Due to the nature of direct evidence, it will generally be clear whether this requirement has been satisfied. The deputy should consider whether the establishment of one or more elements of the offense also rests on circumstantial evidence.

2. CIRCUMSTANTIAL EVIDENCE CASES

In cases resting primarily upon circumstantial evidence of identity, the deputy should evaluate whether there is legally sufficient evidence to convict. The deputy should also consider, in view of all reasonably foreseeable defenses relating to identity, whether the evidence is of such a quality that an appellate court would uphold a conviction upon appeal regardless of the defense raised at trial.

G. PROBABILITY OF CONVICTION

The filing deputy must evaluate the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder. In determining the probability of conviction, the filing deputy should not only evaluate all the evidence available to him or her at the time of charging, but also analyze the most plausible, reasonably foreseeable defenses that could be raised by the evidence presented.

1. JURY PANELS

In determining what constitutes an objective fact-finder, the filing deputy should not reject a case on the basis that local juries, due to political or social attitudes, unreasonably refuse to convict, whereas a reasonable jury in another locality would be likely to convict under the facts of that particular case. The standard of reasonableness is a statewide one. It is a standard under which the ideal jury is drawn from a representative cross-section of citizens who freely obey their oaths to follow the court's instructions and not be affected by any conscious or unconscious bias which, if revealed, would subject them to being challenged for cause.

2. SPECIAL PROOF PROBLEMS

a. Identity

Where identity is in issue, and the proof of identity rests solely on the testimony of an independent witness or witnesses, without further corroboration, the filing deputy should generally file charges where at least one of the following situations is present:

1) The witness or witnesses already knew the suspect prior to the incident, thus eliminating the reasonable possibility of mistake;

2) The witness or witnesses had substantial opportunity to observe the suspect, thus eliminating the reasonable possibility of mistake;

3) Investigative standards relating to identity evidence have been satisfied and the witness or witnesses can furnish an adequate description of the accused; or,

4) The perpetrator of the crime possessed unusual physical characteristics similar to those possessed by the suspect.

b. Informants

When an informant was utilized during the investigation of a case, the filing deputy should assume that the defense will seek disclosure of the identity of the informant. The filing deputy should further assume that in a motion to disclose the identity of the informant, the defense will support such a motion with the most plausible, reasonably foreseeable grounds for disclosure suggested by the evidence available at the time of the filing. The filing deputy should determine whether there is a reasonable possibility that such a motion can be successfully opposed, either by citation of applicable law and argument, or by the use of an in-camera hearing procedure (Evidence Code section 1042).

If it appears there is no reasonable possibility that such a motion can be successfully opposed, then the case will be rejected unless the two following conditions are met:

1) The investigating agency agrees it will disclose the identity of the informant if and when the motion is granted. This fact must be noted by the issuing deputy on the complaint issuance memorandum, and,

2) The investigating agency agrees it will keep track of the whereabouts of the informant. This fact must be noted by the

issuing deputy by a memorandum to the case file.

If it appears that it will be necessary for the informant to personally testify at the in-camera hearing, the filing deputy will obtain the written assurance of the investigating agency that the informant will be available for that hearing. If such assurance is denied, charges will be rejected.

Comment

No purpose would be served by filing charges in a matter while the informant is clearly material and his or her materiality cannot be refuted at an in-camera hearing unless the police are willing to disclose the informant's identity and keep track of his or her whereabouts. However, a deputy should not decline to file charges merely because a disclosure order is possible. If there is a reasonable possibility that the motion can be successfully opposed, either by argument and citing applicable law or by an in-camera hearing, then charges should be filed.

The filing deputy should assume that the suspect will move the court to order the disclosure of the informant's identity in all cases in which an informant was used by the police during the investigation of a case. For such a motion to be granted, the suspect must show a "reasonable possibility" that the informant can offer exonerating evidence or evidence that tends to benefit the suspect's case, i.e., is a "material" witness for the suspect. To a large extent, the adequacy of such a showing depends upon the theory of exoneration propounded by the accused, e.g., "the informant will say it's not my heroin."

In considering the likelihood of the court ordering disclosure, the deputy should assume that the suspect will propose the most plausible, reasonably foreseeable theory of exoneration under the evidence then known to the deputy.

c. Crimes Committed in a Familial Setting

Crimes of violence which occur in a marital or co-habitational relationship are no less criminal than those involving strangers. It has been consistently demonstrated that such violence recurs frequently between the parties, escalating in intensity often to life-endangering behavior, disfigurement, and even homicide. It is the policy of the District Attorney's Office to file and prosecute all provable cases involving domestic violence.

Comment

Once a case is filed, if a victim requests dismissal of charges, the victim should be informed that the case will not be dismissed at their request.

Deputies will exercise sensitivity to the victim's needs. However, except in the most unusual case, prosecution will proceed as per policy.

d. Violations of The Political Reform Act

It is the policy of the office of the District Attorney that the District Attorney Public Integrity Unit will review all submitted investigations involving violations of the Political Reform Act (Government Code Sections 81000-91014). In those cases where a violation of the Political Reform Act has occurred, a determination will be made as to whether the matter will be referred to the Fair Political Practices Commission for

administrative prosecution and/or retained for local criminal prosecution.

No case will be filed pursuant to this section without the prior approval of the Assistant District Attorney or District Attorney.

The determination to file charges will be made by considering the following factors:

1) The seriousness of the offense and/or conduct;

2) The actual and potential harm to the public;

3) Whether the conduct is an isolated event or shows a pattern of criminal conduct;

4) The existence of any prior criminal or administrative Political Reform Act violations;

5) The motive of the defendant, i.e., any actual or potential gain to the defendant; and,

6) The amount of any money illegally contributed if a violation of Government Code Section 84301 is alleged.

In addition, prior to making a filing decision, the filing deputy may contact the Enforcement Division of the California State Fair Political Practices Commission to assist the deputy in making the filing decision and/or to assist in a joint investigation.

Nothing in this policy statement will be construed to limit the District Attorney's statutory enforcement authority of the Political Reform Act.

Comment

State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth or position in society. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free of biases caused by their own financial interests or the financial interests of persons who have supported them. Receipts and expenditures in election campaigns should be fully and truthfully disclosed so that the voters may be fully informed, and so that improper practices may be prevented. The District Attorney's policy statement further incorporates the findings and purposes of the Political Reform Act. (See Government Code Section 81002)

H. AFFIRMATIVE DEFENSES

The filing deputy should not reject a case because of an alleged affirmative defense unless:

1. The affirmative defense is of a nature that, if established, would result in a

complete exoneration of the suspect from liability within the criminal justice system, and,

2. The affirmative defense is not subject to refutation by substantial evidence available to the prosecution.

If these two requirements have been satisfied, the filing deputy should reject the case.

Comment

For purposes of this section, an affirmative defense is one which in effect admits the truth of the principal allegations contained within the complaint, indictment, or information, but which asserts other matters which, if true, exonerate the suspect from criminal liability in whole or in part. These are matters which the suspect has the burden of raising.

Affirmative defenses are treated differently because the data necessary to establish them is usually unavailable at the charging stage and because the suspect has the burden of raising them at trial. Common examples of 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 stage as corpus issues. Alibi and the statute of limitations are not affirmative defenses and should be treated as identity or corpus issues, respectively.

CHAPTER 5

CHARGE SELECTION

A. CHARGE LEVEL

The filing deputy has the responsibility to select the charge or charges which most accurately reflect the criminal conduct and which provide for the most appropriate sentence.

1. MISUSE OF CHARGE SELECTION PROCESS

The charging process will not be used as leverage to induce a plea to a lesser charge prior to trial. There will be a reasonable expectation of conviction of the designated charge.

2. OVERLAPPING STATUTES -- DIFFERENT PENALTIES

When identical criminal conduct is legally punishable pursuant to multiple statutes which provide significantly different penalties, the filing deputy should select the most appropriate charge after considering the following factors: which charge most accurately and fully reflects the conduct of the suspect, which charge provides the most appropriate penalty for the suspect in view of the nature of the offense and the suspect's prior criminal record, whether there is a specific evidentiary or prosecutorial function to be served by utilizing one charge as opposed to the other, and whether there is an indication that the Legislature intended that one charge be used as opposed to another.

3. OVERLAPPING STATUTES -- SIMILAR PENALTIES

Alternative charges which provide similar penalties should not be filed. However, alternative charges may be filed if there is a specific evidentiary or prosecutorial function to be served.

4. PROSPECTIVE EFFECT OF AFFIRMATIVE DEFENSE

Nothing in this section should be interpreted as precluding the filing of a greater offense when the final determination of the correct charging level or degree depends in significant part on the application of a possible affirmative defense or defenses.

Comment

The most common example is the filing of murder charges where it appears that the accused ultimately may be convicted of manslaughter. Of course, if the evidence clearly shows that the accused only committed manslaughter, the lesser charge should be filed.

B. MULTIPLE CHARGING

The District Attorney's Office has the responsibility to file charges for all crimes which have been committed. However, reasonable limitations, as defined below, may be placed on this duty in order to facilitate more efficient prosecution of cases and in order to promote the better utilization of resources within the criminal justice system.

1. MULTIPLE COUNTS

a. Unrelated Crimes

Unless the prospective number of counts is patently excessive, the filing deputy should not limit the number of counts filed in a particular case. Penal Code section 954 provides that a complaint may charge "two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts."

b. Related Crimes

The filing deputy should file all applicable charges relating to a single course of conduct, regardless of the provisions of Penal Code section 654. All charges, including felonies, misdemeanor and/or infractions, should be filed together if they relate to a single course of conduct.

Comment

Since at least one charge will be filed in any event, mere multiplicity does not prejudice the rights of a suspect. The general disuse of consecutive sentences for charges relating to a single event means that there is little danger of wrongfully inducing a guilty plea from an innocent person. On the other hand, the prosecutor's case could be prejudiced by needlessly limiting case options at the outset. Penal Code section 654 provides adequate protection to the suspect and should be applied at the appropriate stage, which is at the time of sentencing.

2. PENDING PROSECUTION

The fact that the suspect is pending prosecution in the same jurisdiction or in another jurisdiction for a crime should have no effect on the filing deputy's decision to file additional charges in a particular case.

C. SPECIAL ALLEGATIONS

Whenever the policies relating to evidentiary sufficiency have been satisfied, the filing deputy will charge all applicable special allegations which will enhance the penalty and/or which will result in the presumptive and/or mandatory denial of probation.

1. UNRESOLVED LEGAL ISSUES

On occasion, the possible application of a special allegation presents a novel or

unresolved question of law. In such an instance, the filing deputy should file the special allegation in the complaint or information under the following circumstances: where there is a reasonable possibility that a court will later rule that the allegation is applicable, and where the evidence in support of the allegation is such that it can reasonably be argued that the allegation is applicable.

Comment

A thorough knowledge of the law relating to special allegations is necessary for the proper performance of the duties of a prosecutor. Failure to pursue appropriate special allegations, where appropriate, compromises the prosecutorial function.

2. EVIDENTIARY CRITERIA

The filing deputy should file the allegation and not delay the filing of a complaint or information unless there is sufficient evidence to establish probable cause to believe that the particular allegation is true.

D. FELONY-MISDEMEANOR ALTERNATIVES (Penal Code section 17(b))

An alternative felony-misdemeanor charge should be initiated as a felony unless the deputy determines that a misdemeanor sentence is warranted under all the circumstances of the case.

1. PRIMARY FACTORS RELEVANT TO APPROPRIATENESS OF FELONY SENTENCE

The following factors will be considered in determining whether a felony charge is warranted:

a. Prior Record

A felony charge normally should be filed when:

1) The suspect has previously been convicted of a felony charge or a Penal Code section 17(b) charge for the same type of crime within the previous five years;

2) The suspect has previously been convicted and was sentenced to a state prison commitment within the previous 10 years;

3) The suspect has a juvenile record consisting in part of a commitment to the California Youth Authority or camp or has previously sustained several felony-level petitions within the previous five years; or,

4) The suspect has a record of several convictions for any crime, felony or misdemeanor, within the previous 10 years.

b. Severity of the Crime

A felony charge normally should be filed when:

1) The suspect attempted to injure another with the use of a deadly weapon;

2) The suspect has, regardless of the means used, caused injuries, in the commission of the crime in question;

3) The suspect possessed a loaded firearm at the time of the commission of the crime;

4) The suspect committed a battery on a police officer inflicting other than minor injuries; or

5) The suspect committed a crime against the property of another of an aggregate value in excess of $1,000.

c. Probability of Continued Criminal Conduct

A felony charge normally should be filed when:

1) The suspect demonstrated he or she is a professional criminal by his or her modus operandi, the tools used in the commission of the crime in question, his or her criminal associations, his or her addiction to narcotics or drugs, or other similar circumstances; or

2) The suspect has committed a crime related to gang activities or organized crime.

d. Special Cases

The following crimes, while not special interest cases, should receive special handling. The following should be charged as felonies:

1) Welfare Fraud in excess of $2,000;

2) Driving under the influence with injury;

3) Theft of fruits, vegetables, nuts, livestock and agricultural products;

4) Theft of a firearm;

5) Sexual assault;

6) Use of force or violence against an executive officer;

e. Eligibility for Probation

In any event, a misdemeanor prosecution should not be considered if the suspect is ineligible for probation under the provisions of Penal Code section 1203 or Health and Safety Code section 11370.

Comment

The filing of a felony charge is a statement that the case merits a felony sentence. A felony is not to be filed to extract a 17(b) plea.

The monetary guidelines set forth apply only when the suspect's prior record and modus operandi are such that a misdemeanor sentence is otherwise warranted.

The filing deputy should consider the threatened or potential loss as well as the actual loss. For example, if a suspect is arrested at the scene of a commercial burglary before having the opportunity to steal, the filing deputy should consider what the loss might have been had the suspect not been arrested. The filing deputy should consider the nature of the premises, the time of the offense, the modus operandi, and the nature of the objects available for theft.

2. MULTIPLE DEFENDANTS

If the filing deputy is confronted with a situation in which two individuals may be charged in a single accusatory pleading with a felony offense, and one of the two appears to merit a felony sentence for the crime in question, both should be charged initially with a felony regardless of the eligibility of the other for a misdemeanor treatment.

Comment

Duplicative trials and unnecessary inconvenience for witnesses should be avoided. Dispositions at the misdemeanor level are still possible on the eligible co-defendant under Penal Code section 17(b).

3. DRUNK DRIVING OFFENSES WITH INJURY

When a drunk driving case involving injury is submitted for filing and the elements can be proven, the filing deputy should normally file felony drunk driving charges (Vehicle Code section 23153).

Misdemeanor Vehicle Code section 23153 will be filed only in cases where both of the following criteria exist:

(1) the suspect has no prior convictions for Vehicle Code sections 23152 (or the prior section 23102) or 23153; and,

(2) the injuries are not serious or significant.

E. DEATH PENALTY/LIFE WITHOUT PAROLE

1. STATEMENT OF POLICY AND OBJECTIVES

The Death Penalty is both an appropriate punishment for certain crimes and an effective deterrent for future criminal conduct.

The Death Penalty will be sought only after a careful review of objective criteria applied to each particular fact.

It is the intent of the District Attorney to apply these guidelines in such a manner that justice is done. A decision to seek the Death Penalty will be made in such a manner as to not be arbitrary and capricious. All decisions as to a penalty will be made only after careful and sober reflection.

2. AUTHORITY TO FILE

A homicide case with special circumstance will only be filed with the approval of the Assistant District Attorney and District Attorney.

A special circumstance will be charged when there is sufficient evidence to establish probable cause to believe that the special circumstance is applicable.

3. SPECIAL CIRCUMSTANCES REVIEW

The assigned attorneys will review all cases where special circumstances are alleged pursuant to Penal Code section 190.2.

In accordance with the guidelines set forth in this Manual, the deciding attorneys will meet, discuss and consider all relevant matters including factors in aggravation and mitigation.

a. Guidelines for Determination of Appropriateness of Death Penalty

A determination that the Death Penalty is appropriate in a special circumstance case will only be made when the aggravating circumstances so substantially outweigh the mitigating circumstances that death is warranted instead of life without parole. This determination will be made after careful deliberation, taking into account any matter relating to aggravation and mitigation, including, but not limited to:

1) The circumstances of the charged crime and special circumstance. In assessing the gravity of the circumstances, the following will be considered.

(a) Whether the actions of the defendant disclosed a high degree of cruelty, sadism, viciousness, callousness, or lack of remorse.

(b) The conduct and statements of the defendant after the completion of the crime (i.e., whether the defendant admitted responsibility and seemed remorseful after the crime or, conversely, related a false story or a series of false stories to avoid responsibility).

(c) Whether the victim was particularly vulnerable.

(d) Whether the defendant took advantage of a position of trust or confidence to commit the offense.

(e) Whether or not the victim was a participant in the defendant's homicidal conduct or any related illegal acts or whether the victim consented to the homicidal act.

(f) The extent to which the defendant deliberated and premeditated the murder or the special circumstances.

(g) The extent to which the defendant directly and actively participated in the commission of the offense.

(h) Whether there are multiple special circumstances as enumerated in Penal Code section 190.2.

(i) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(j) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be moral justification or extenuation for his or her conduct.

(k) Whether or not the defendant acted under extreme duress or under the substantial domination of another.

(l) Whether or not, at the time of the offense, the capacity of the defendant to appreciate the criminality of his or her

conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental disease or the effects of intoxication.

(m) Any other matters that may be relevant.

2) All available information relevant to the defendant's character, background, entire criminal history, and mental and physical condition, including, but not limited to the following factors:

(a) The presence or absence of past criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence, or the infliction of significant suffering on a victim.

(b) The presence or absence of any prior felony conviction.

(c) The extent to which the defendant poses a threat of physical dangerousness to others, both in a custodial setting and in the community, should the defendant ever be released.

(d) The age of the defendant at the time of the crime.

(e) Whether the defendant has had prior opportunities for rehabilitation and, if so, how he or she responded.

(f) Whether life without parole is appropriate punishment in light of the defendant's age, health, interests, and previous incarcerations.

(g) Any other circumstance which extenuates the gravity of the crime even though it does not amount to a legal excuse for the crime.

F. THREE STRIKE CASES

The Legislature and the voters of California enacted the Three Strikes legislation to protect the public from repeat offenders. This law directs prosecutors to identify and prosecute recidivist criminals whose prior convictions are qualifying strikes and, upon conviction, to seek the longest possible sentence which is consistent with the furtherance of justice. To comply with that directive, the following procedures should be followed.

1. FILING RESPONSIBILITY

Penal Code section 1170.12(c) requires a prosecutor to plead and prove all known

prior felony convictions. The prosecutor retains the discretion to file a wobbler either as a felony or a misdemeanor.

2. MOTION TO DISMISS STRIKE PRIORS

a. Proof Problems with Prior Strikes

When there is insufficient evidence to support a conviction for a prior strike, or it is determined that the alleged strike is inapplicable, then the deputy handling the case may move to dismiss the strike after receiving prior approval from the Assistant District Attorney.

b. Proof Problems with Current Case

If the state of the evidence as to the charged offense is such that a reasonable probability exists that the fact finder will not convict the defendant, justice will be served by moving to strike one or more prior allegations to obtain a guilty plea, when failing to do so would result in the likely release of a dangerous felon into the community. The deputy handling the case may move to dismiss the strike after receiving prior approval from the Assistant District Attorney.

c. All three strike cases will be referred to the Assistant District Attorney to determine whether the case is appropriate for three strike treatment.

3. COURT MOTION

Courts retain authority to dismiss strike allegations and to reduce a wobbler offense by sentence to a misdemeanor. When a trial court indicates its intent to dismiss strike priors or reduce a wobbler to a misdemeanor and such action would be inconsistent with this policy, the deputy should object on the record. If the Assistant District Attorney believes the court abused its discretion, the matter should be submitted to the Attorney General for appropriate appellate action.

Any departure from the policies set forth in this section requires the advance approval of the Assistant District Attorney.

CHAPTER 6

PROSECUTORIAL ALTERNATIVES

A. DISCRETION NOT TO CHARGE

The filing deputy has the responsibility to file charges against individuals who commit crimes. Declining to prosecute for reasons other than evidentiary insufficiency is rarely appropriate.

The following are examples of proper and improper bases for declining to charge. The list is not exhaustive.

1. PROPER BASES FOR EXERCISING DISCRETION TO DECLINE TO CHARGE

   a. Present Confinement on Other Charges

      In extremely rare cases, it is proper to consider rejecting charges because:

      1) Revocation of the probation or the parole of the suspect is imminent or the suspect has been sentenced on another charge to a lengthy period of confinement; and,

      2) Conviction of the new offense would not result in any additional direct or collateral punishment;

   b. Highly Disproportionate Cost of Prosecution

      In rare cases, it is proper to reject a case because the cost to the taxpayers of locating or transporting prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question.

Comment

Since extradition may be declined because extradition is too costly, so also 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 in question. This exception is to be applied in extreme situations only. The mere fact that a witness is inconvenienced does not justify a decision to decline to prosecute.

2. INADEQUATE OR IMPROPER BASES FOR DECLINING TO CHARGE

   There are factors which do not justify a decision to decline to file charges.

   a. Restitution

      It is improper to reject a case simply because the suspect made or tendered

restitution to the victim.

b. Extradition Not Warranted

It is improper to reject a case simply because extradition is necessary to obtain jurisdiction over the suspect's person.

Comment

There is always the possibility that the suspect will return to the jurisdiction. A delay in filing charges could cause due process, speedy trial, or statute of limitations problems.

c. Relation of Suspect to Victim

It is improper to reject a case simply because the suspect is related to the victim.

d. Unpopular Statute

It is improper to reject a case simply because the statute is unpopular with a segment of the local population, the local judiciary, or the deputy.

Comment

As the court stated in State ex rel. Johnston v. Foster, 32 Kan. 14, 43, 3 P. 534, 538 (1884):

> *"If a law enacted by the legislature has not the support of public sentiment, this may be under some circumstances, a reason for its amendment or repeal, but it is not a good defense for a county attorney, upon whose lips is fresh the oath of office, for refusing to attempt its enforcement."*

e. Victim's Future Cooperation Problematical

It is improper to reject a case simply because the victim's future cooperation is problematic. Steps should be taken to ensure cooperation in doubtful cases by explaining to the victim his or her legal obligation as a witness and the fact that the case is being prosecuted by the State, not the victim.

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

f. Severe Impact on Suspect or Family

It is improper to reject a case because prosecution will have a severe impact on the suspect or suspect’s family.

Comment

Prosecutions often have severe impact on the suspect and the suspect's family. The former is justifiable. The latter is unavoidable.

g. Improper Motives of the Complainant

It is improper to reject a case simply because the motives of the complainant in seeking prosecution are different from those properly associated with criminal prosecution.

h. Imminent Deportation

It is improper to reject a case simply because the suspect is undocumented and faces deportation.

B. IMMUNITY AND RELATED GRANTS OF LENIENCY

1. GENERAL GUIDELINES

This section covers grants of immunity or leniency to a suspect or defendant who is jointly responsible and/or jointly charged with criminal offense(s) committed with another suspect or defendant.

It is proper to consider a grant of leniency or immunity to a suspect or co-defendant in order to prosecute another in any of the following circumstances:

a. The testimony is essential to a successful prosecution, and the prospective witness is less culpable;

Comment

In assessing relative culpability, the following factors relating to the prospective witness will be considered: his or her involvement in the present case, his or her overall involvement in criminal activity, and his or her cooperation in the present case, coupled with the continued viability of other alternatives, such as probation revocation and prosecution on other charges.

b. Although the prospective witness' culpability is not less than that of a co-participant's, the interests of justice demand a successful prosecution and the prospective testimony is necessary to securing a conviction;

c. The testimony is necessary to expose matters of great public interest, which outweighs prosecuting the person to whom leniency is to be offered; and,

d. The testimony is necessary to exculpate another who may be unjustly suffering a penalty.

Comment

As part of the balancing process, it may be necessary to be lenient with one individual so a conviction can be secured on another. The decision is a tactical one. It is one of the most well recognized examples of prosecutorial discretion and is explicitly approved by statute. (See Penal Code Section 1324. See also, Attorney General v. Tufts (1921), 239 Mass. 488, 132 N.E. 322.)

2. GENERAL PROCEDURES

a. Authorization

1) The District Attorney or Assistant District Attorney must give approval for the granting of leniency to a suspect or co-defendant.

b. Written Agreement

If approval for the granting of immunity or leniency is obtained and the co-defendant or suspect to be offered leniency desires the grant, the case deputy will prepare a written agreement suitable for admission into evidence in lieu of filing a Petition and Order pursuant to Penal Code section 1324. The written agreement will, at a minimum, include:

1) A summary of the agreement;

2) A disclaimer that the District Attorney's Office reserves the right to void the agreement, if it determines at any time that the potential witness has provided false information;

3) A disclaimer that any false statement by the potential witness may be the basis for criminal charges, if it appears that an innocent person has been falsely implicated in a crime or that any criminal statute has been violated. (In a death penalty case, the written agreement should specifically contain a reference to Penal Code section 128 and should state that a perjurer may himself be subject to the death penalty.);

4) A promise by the witness that he or she will tell the complete truth regarding the matter at issue and matters regarding his or her credibility;

5) An acknowledgment by the potential witness that he or she is acting freely and voluntarily; and,

6) A promise by the witness that he or she will not elicit any further information from the suspect.

Comment

Formal immunity is granted pursuant to Penal Code section 1324. Case law recognizes the existence and validity of informal grants of immunity, (See e.g., People v. Brunner 32 Cal.App.3d 908, and People v. Superior Court (Crook), 83 Cal.App.3d 335).

C. DEFERRED ENTRY OF JUDGMENT

In cases involving enumerated drug charges, the court may summarily grant deferred entry of judgment or may refer the defendant to the probation department for an evaluation and recommendation, if the court determines the following: 1) The defendant will benefit from the deferred entry of judgment; (2) The defendant consents to the deferred entry of judgment; (3) The defendant enters a plea of guilty to the charge(s); and, (4) The defendant waives time for the pronouncement of sentence.

Entry of judgment may be deferred for a minimum of eighteen months up to a maximum of three years.

If the defendant successfully completes the drug program, the court dismisses the charge(s). If, however, the defendant fails the drug program, or if the defendant is convicted of any felony or misdemeanor which reflects a propensity for violence, or if the defendant engages in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court renders a finding for guilty, enters the judgment, and schedules a sentencing hearing. A motion for entry of judgment may be brought by the prosecutor, by the probation department, or by the court itself.

1. The evaluation of a defendant's eligibility for deferred entry of judgment is to occur as soon as possible after the initial filing of the charges. Therefore, a determination of the defendant's eligibility should be made as part of the filing process.

2. Filing deputies will complete a fill-in-the-blank declaration form which addresses the defendant's eligibility for deferred entry of judgment.

D. RECOVERY COURT

The Sutter County Recovery Court Program is designed to provide a structured recovery based alternative for the substance abuse offender. In order to enter the program, there must be a determination of eligibility and suitability for the program. The rules of Recovery Court are outlined in Penal Code Section 1000 et al.

E. PROPOSITION 36

Proposition 36 mandates probation and drug treatment for defendants convicted of a "nonviolent drug possession offense." Penal Code Section 1210.1(a). The rules of 1210 Probation are outlined therein.

F. INDICTMENT

1. CASES WHICH MAY BE CONSIDERED FOR PRESENTATION TO THE GRAND JURY

Any case where justice may best be served by utilization of the indictment process should be considered for presentation to a criminal Grand Jury. After obtaining approval from the Assistant District Attorney or District Attorney, a Special Grand Jury will be impaneled.

Each of the following types of cases should be considered for presentation to the Grand Jury. This list is neither exhaustive nor exclusive.

a. Cases involving official misconduct or corruption;

b. Cases in which there is a need to temporarily protect the identity of a victim or witness;

c. Multiple cases which are connected together with repetitive factual elements, such as a series of cases stemming from a law enforcement "sting operation" or "buy program;"

d. Cases of great notoriety, or which have the potential for great notoriety, in which public disclosure of factual information could cause harm to the case or contribute to a motion to change the venue of the trial from this county;

e. Cases in which there is a need to hold the pretrial hearing intermittently or over a period of time and in which seeking a Grand Jury Indictment would save the public substantial time and money;

f. Cases which pose substantial security problems;

g. Cases involving multiple defendants and defense counsel in which presentation to the Grand Jury would avoid delays in holding the preliminary hearing or would avoid delays caused by the need for separate preliminary hearings;

h. Investigations in which the subpoena power and investigative power of the Grand Jury will contribute to the ascertainment of the truth;

i. Cases in which an indictment is needed for extradition purposes to prevent the flight of the suspect;

j. Cases involving organized criminal activity, such as criminal syndication, in which the investigative power and the subpoena power of the Grand

Jury will assist in determining whether crimes have been committed and in determining the scope or degree of criminal syndication; or,

k. Cases that have been arraigned but have not had a preliminary hearing within 60 days due to defense continuances.

2. PRIOR AUTHORIZATION

Approval of the District Attorney or Assistant District Attorney will be secured prior to proceeding with a Grand Jury indictment.

CHAPTER 7

SPECIAL PROCEDURES RELATED TO CRIME CHARGING

A. RESPONSIBILITIES OF THE FILING DEPUTY

1. A filing deputy is responsible for reviewing complaints, for bringing prospective cases of special interest to the attention of the Assistant District Attorney, for filing complaints, for answering questions from law enforcement personnel regarding filing issues, and for consultation regarding legal issues relating to investigations not yet presented to the District Attorney.

2. The filing deputy's discharge of his or her complaint review/filing responsibilities will be exercised in conformity with this Policy Manual.

3. In-custody suspects are to be given priority.

B. COMPLAINT PROCESSING

1. GENERAL MATTERS

a) Rejections

The deputy will state the legal and factual basis for the rejection. The deputy will indicate whether further investigation is required.

b) Review of Decision

If a victim or agency disagrees with the deputy's decision, he or she may request that the deputy's supervisor review the decision.

2. SPECIAL MATTERS

a. Homicides

The District Attorney will be notified of all homicide cases.

b. Public Integrity Cases

All cases involving governmental crime, charges of public corruption, and misconduct by public officials will be referred to the Public Integrity Unit.

CHAPTER 8

PRETRIAL, TRIAL AND POST TRIAL PROCEDURES

A. DISQUALIFICATION OF A JUDGE

1. CHALLENGE FOR CAUSE
(CODE OF CIV. PROC. SECTION 170.1

A Deputy District Attorney will not challenge a judge for cause without first obtaining the approval from the Assistant District Attorney or District Attorney.

2. PEREMPTORY CHALLENGE IN AN INDIVIDUAL CASE (CODE OF CIV. PROCEDURE SECTION 170.6)

A Deputy District Attorney will not peremptorily challenge a judge in a case without first obtaining approval from the Assistant District Attorney or District Attorney.

B. PRO TEMPORE ("PRO TEM") JUDGES

A Judge Pro Tem may be either a private attorney sitting as a judge or a commissioner sitting as a judge in a criminal matter.

In order to hear a criminal matter, both the prosecution and the defense must stipulate to the judge pro tem.

A deputy will not stipulate to a person serving as a judge "pro tem" without the approval of the Assistant District Attorney or District Attorney.

C. WAIVER OF JURY

A deputy assigned a case for trial may waive the People's right to a jury trial.

a. Deciding whether or not to waive a jury is a decision that involves a lot of thought. It is important to remember that both the defendant and the People are entitled to a trial by way of jury. A decision to waive jury should only be made as a matter of strategy, not as a matter of convenience for the defense or the court. If the attorney feels that the judge will be a better trier of fact than a jury, only then should a jury trial be waived. An attorney may wish to waive jury because the victim is not particularly 'likeable' or because the case involves a difficult legal concept for jurors to understand. It is always best to run the pros and cons of waiving a jury by more experienced attorneys.

D. COMMUNICATIONS WITH JURORS AFTER VERDICT

State Bar Rules of Professional Conduct 5-320(D) reads as follows: "After discharge of the jury from further consideration of a case, a member will not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service."

Code of Civil Procedure section 206 provides that jurors have an absolute right to discuss or not to discuss the deliberation or verdict with anyone. Subsection (b) authorizes counsel to discuss the case with consenting jurors at a reasonable time and place. Subsections (c) and (d) require a report to the trial judge of any "unreasonable contact with a juror," and provides for monetary sanctions pursuant to Code of Civil Procedure section 177.5.

District Attorney employees should carefully consider the potential consequences of sharing with the jurors facts about the case or the defendant which were not introduced at trial. The right of a juror as a citizen to know certain matters, especially matters of public record, should be balanced with the likelihood of prejudicing a juror's future jury service.

Although the applicable ethical rules directly affect only attorneys, all employees will apply the same standards.

E. COMMUNICATIONS WITH PROBATION OFFICERS AND THE COURT

1. EX PARTE COMMUNICATIONS WITH PROBATION OFFICERS

   Prosecutors may communicate with probation officers in the absence of defense counsel. However, such communications must be conducted with due respect for the independence of probation officers and the right of defendants to know all information considered by the court in sentencing.

2. EX PARTE COMMUNICATION WITH THE COURT

   Do not communicate directly or indirectly with, or argue to, a judge or a judicial officer about the merits of a matter unless the communication takes place in open court, or in the presence of all other counsel, or in writing furnished to all other counsel.

F. PROBATION AND SENTENCING HEARINGS

A proper sentence will be commensurate with the severity of the offense and will reflect:

1. The adequate protection of society from individuals who pose a danger to persons or property;

2. The appropriate punishment of individuals who violate the law; and,

3. The deterrence of the individual defendant at bar, and members of the general public, from posing a similar danger in the future.

Whenever it appears that a victim suffered a loss due to the actions of a defendant, the deputy will request an order requiring restitution to the victim.

G. ALLEGATIONS OF PROSECUTORIAL MISCONDUCT

NOTIFY YOUR SUPERVISOR immediately of any allegations of prosecutorial misconduct so that he or she may appoint another prosecutor to represent you at the hearing. Prepare a written memorandum of the facts and allegations. Obtain relevant transcripts. Assist your representative in preparing a written opposition and be prepared to testify if necessary. DO NOT REPRESENT YOURSELF AT THE HEARING**.**

CHAPTER 9

VICTIM SERVICES PROGRAM

A. GENERAL POLICIES

In accordance with the legislative intent, the mission of the Victim Services Program is to:

1. Establish and maintain local comprehensive centers to provide services to victims of violent crimes;

2. Reduce the trauma and insensitive treatment that victims and witnesses may experience in the wake of crimes;

3. Improve the criminal justice system's understanding of the needs of victims and witnesses and empower victims to participate in the administration of justice;

4. Empower victims to recover from the effects of crimes through crisis intervention and related support services of the victim/witness assistance center; and,

5. Provide assistance to victims of crime in applying for state compensation and in seeking restitution.

B. JURISDICTION OF THE VICTIM SERVICES PROGRAM

1. CASES

Cases are referred to the program by law enforcement, deputy district attorneys, Child Protective Services, Family Services, battered women's shelters, other governmental and non-governmental community agencies, friends and family members of victims, and/or victims themselves.

2. PERSONS QUALIFYING FOR PROGRAMS SERVICES

a. All qualifying victims of violent crimes, regardless of age or race, are eligible for program benefits, with priority given to victims of the following crimes:

1) Homicide;
2) Robbery;
3) Forcible Rape;
4) Aggravated Assault;
5) Child Sexual Abuse;
6) Domestic Violence;
7) Elder Abuse;

8) Drunk Driving with Injury;
9) Vehicular manslaughter;
10) Stalking; and,
11) Hit and Run with Injury.

b. Derivative Victims are also eligible for program benefits.

1) Derivative Victims are related to the victim by blood, marriage, registered domestic partnership, or adoption as defined in 2 Section CCR 649 (a)(19) and the Policy and Procedures Claims Manual as follows:

(a) Specified family members or others with a close relationship with the victim who are eligible for specific program assistance based solely on the relationship to the direct victim.

(b) The law defines eligible derivative victims as:

1) At the time of the crime was the parent, sibling, spouse, or child of the victim;

2) At the time of the crime was living in the household of the victim;

3) Had previously lived in the household of the victim for at least two years in a relationship substantially similar to a parent, sibling, spouse, or child of the victim; or,

4) Was another family member of the victim, including the victim's fiancé, and witnessed the crime.

C. ORGANIZATION

1. PROGRAM MANAGER

a. The Program Manager is responsible for the management of the Victim Services Program and all persons assigned to the unit.

b. The Program Manager reports to the District Attorney.

2. VICTIM ADVOCATES

a. The Victim Advocates provide direct mandated services to victims.

b. The services provided to victims by these advocates include:

1) Crisis intervention.
2) Resource and Referral.
3) Orientation to the criminal justice system.
4) Court support.
5) Assistance in completing the Victim of Crime Applications.

c. The Victim Advocates are responsible to the Program Manager.

3. OFFICE ASSISTANT

a. The Office Assistant provides clerical support to the Victim Services Program as needed.

b. The Office Assistants report to the Program Manager.

D. POLICIES

1. GENERAL POLICIES

The General Policies found in Chapter One of this Policy Manual apply to all personnel assigned to the Sutter County District Attorney's Office.

2. APPEARANCE GUIDELINES

a. It is important to recognize that personnel assigned to the Victim Services Program are representatives of the District Attorney's Office, and as such, must present themselves to the public, to law enforcement, to their fellow colleagues, and to the victims that they serve in a professional manner. The appearance of Victim Services staff is a reflection of the professional standards to which the District Attorney's Office adheres.

b. The details of the appearance standards are outlined in this manual.

3. IN-HOME CALLS

a. Occasionally, it is necessary for the advocate to visit victims in their homes.

b. In the event that home-calls are necessary, prior approval must be obtained from the Program Manager.

4. SAFETY PRACTICES

a. Victim Advocates are oftentimes required to work in the field.

b. Because of safety and management requirements, every employee in this division must use the eBoard when they are going to be out of the office.

5. STATISTICS

a. The Victim Services Program is grant funded.

1) The need to have accurate and complete record-keeping is vital to the operation of this unit.

(a) It provides accurate information on the program goals.

(b) It also provides objectives to the grant administrator.

2) Quarterly statistics are due not later than ten working days after the last day of the reporting period.

6. REFERRALS

a. The log is a summary of the case being worked and is entered into a centralized data base.

1) Cases are entered into the Case Management System and updated as contact is made by the advocate. Each advocate is responsible for keeping cases assigned to them updated.

CHAPTER 10

MARSY'S LAW AND VICTIM'S RIGHTS

A. MARSY'S LAW

1. On November 4, 2008, the People of the State of California approved Proposition 9, the Victims' Bill of Rights Act of 2008: Marsy's Law.

2. A "victim" is defined under the California Constitution 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."

    a. 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.

    b. The term victim does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interest of a minor (Cal. Const. Art. 1 sec. 28(e).

3. In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

    a. 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.

    b. To be reasonably protected from the defendant and persons acting on behalf of the defendant.

    c. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

    d. To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment or which are otherwise privileged or confidential by law.

    e. To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

f. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present, and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

g. To be heard, upon request, at all proceedings, including any delinquency proceeding involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

h. To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

i. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

j. To receive, upon request, the pre-sentence report when available to the defendant, except those portions made confidential by law.

k. To be informed, upon request, of the conviction, sentence, place, and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

l. To restitution.

1) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

2) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

3) All monetary payments, monies, and property collected from any person who has been ordered to make restitution first shall be applied to pay the amounts ordered as restitution to the victim.

m. To the prompt return of property when no longer needed as evidence.

n. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the

parole or other release of the offender.

o. To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.

p. To be informed of the rights enumerated above.

4. A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney, upon request of the victim, may enforce the above rights in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such request.

B. RESTITUTION - PROCEDURES

1. It is the responsibility of prosecutors handling cases involving victims who have sustained losses to ensure that both restitution fines and restitution orders are obtained in appropriate amounts in every appropriate case.

   a. Statutes mandate that a restitution fine be levied against every convicted defendant, whether or not a victim sustained losses, unless there are compelling and extraordinary reasons for the court to suspend or waive the fine. Inability to pay the fine is not a compelling or extraordinary reason Penal Code 1202.4(c)). Prosecutors should ensure that restitution fines are ordered in appropriate amounts in all cases.

      1) The defendant is presumed to be able to pay the minimum restitution fine and the statue expressly placed the burden on a defendant to prove lack of ability to pay the minimum fine.

   b. In addition, restitution orders must be obtained when a victim has suffered an actual loss.

2. Both prior to and after sentencing, some victims of violent crimes are eligible to receive compensation for expenses incurred as a result of the crime through the California Victim Compensation and Government Claims Board (VCGCB). These benefits cover medical/dental claims, counseling, funeral/burial expenses, wage loss, and relocation. The maximum amount that can be paid on behalf of a victim is $70,000 per crime. Payments made by VCGCB on behalf of a victim must be recovered from charged defendants in the form of restitution orders levied by the court during the sentencing process. Significant sums are recovered by VCGCB from a defendant's prisoner wages and prisoner trust accounts.

3. Every case must have a restitution fine imposed. Every defendant/minor must pay a restitution fine per Penal Code section 1202.4(b)/Welfare & Institution Code section 730.6.

a. Misdemeanor fines must be at least $100 and can be up to $1,000.

b. Felony fines must be at least $200 and not more than $10,000. Penal Code section 1202.4(b)(2) provides a suggested formula for setting felony restitution fines by computing $200.00 x years sentenced x felony counts convicted.

4. Every case in which a victim sustained a loss must have a Restitution Order. Every victim who incurs any economic loss as a result of a crime must receive restitution pursuant to Penal Code Section 1202.4(a) and Welfare & Institutions Code section 730.6.

5. The Deputy District Attorney handling the case and/or calendar should be prepared to present proof of restitution claims at the Preliminary Hearing.

6. If the amount of restitution is unknown at the time of the Preliminary Hearing, the order should be for an amount to be determined.

7. For an enforceable judgment, the defendant must have had a restitution hearing, waived the hearing or stipulated to restitution. Incorporating the restitution hearing with the Preliminary Hearing will satisfy this requirement and must be so indicated in the restitution order.

8. When restitution is ordered, the law requires that the defendants prepare and file a statement of assets prior to the date of sentencing that is available to victims. Courts require that Judicial Council Form CR-115 be used for this purpose.

9. Who is entitled to restitution?

a. Victims include but are not limited to the immediate surviving family of a victim of the crime, any corporation, business trust, estate, government entity or any other legal or commercial entity, when that entity or any other legal or commercial entity is a direct victim of a crime, and individuals who have specified relationships to the victim and have sustained economic loss as a result of a crime. Penal Code section 1202.4(k)(1)-(3).

b. A defendant is entitled to credit against a criminal restitution order for payments made by his or her insurer. People v. Bernal (2002) 101 Cal.App.4th 155.

c. Insurance companies are not victims entitled to restitution by virtue of the fact they have paid for some of the victim's losses. A victim that has been reimbursed for losses by their insurance company is still entitled to an order for full restitution. People v. Birkett (1999) 21 Cal.4th 226.

d. The State Victim Compensation Board is also entitled to restitution for payments made on behalf of victims. Penal Code section 1202.4(f)(4) provides that when the State Board makes a payment to, or on behalf of a victim, the amount will be presumed to be the result of that offender's criminal conduct and will be included in the amount of restitution ordered.

10. Restitution Hearing Procedures

a. The trial court is required to grant a defendant's request for a hearing to dispute the determination of the amount of restitution order. Penal Code section 1202.4(f)(1).

b. However, a defendant's due process rights at a restitution hearing are very limited.

1) Hearsay evidence is admissible, including statements reported in the probation report.

2) The defendant's rights are protected when the probation report gives notice of the amount of the restitution claimed and the defendant has an opportunity to challenge the figures in the probation report at the preliminary hearing. Penal Code sections 1202.4(f)(1), 1203.1d, and 1203.1k; People v. Baumann (1985) 176 Cal.App.3d 67, 81; People v. Cain (2000) 82 Cal.App.4th81 at 86.

3) Evidentiary requirements for establishing a victim's economic losses are minimal and a court may base its determination on "the amount of loss claimed by the victim, or any other showing to the court." Penal Code section 1202.4(f).

(a) Victims may estimate their losses if the exact amount is difficult to determine. People v. Goulart (1990) 224 Cal.App.3d 71.

(b) A victim's losses must be proven by a preponderance of the evidence. Once a showing has been made that the victim incurred economic losses, the burden of proof shifts to the defendant to prove that the losses claimed exceed the losses incurred. The court can order restitution relating to charges not filed and/or dismissed within the scope of a Harvey waiver. People v. Baumann (1985) 176 Cal.App.3d 67, 80, 81.

C. RESTITUTION ENFORCEMENT AND VICTIM SERVICES

1. The District Attorney's victim service programs were established to help ensure that the prosecutors properly assist victims and witnesses, are prepared to request appropriate restitution fines, and facilitate victims' rights to present their claims for restitution to the courts and the State Victim Compensation Board. Restitution enforcement staff also provides assistance on complex restitution issues

2. Victims of violent crimes seeking recovery from the State Restitution Fund by filing claims are represented by Victim Assistance advocates who will help them submit claims and supporting documentation to the State Victim Compensation Board through the Restitution Enforcement Restitution Claims Unit (JPA).

3. Victim/Witness NOTIFICATIONS

   a. Victim/Witness Notification Policy

      1) Deputy District Attorneys handling cases will ensure that legally mandated victim/witness notifications required by prosecutors are accomplished in accordance with mandates established by the Penal Code.

   b. Notices to Victims and Witnesses

      1) Notice of Pretrial Disposition: Penal Code section 679.02 entitles the victim of any felony to request notification by the District Attorney's Office of a pretrial disposition. If it is not possible to notify the victim or next of kin of the pretrial disposition before the change of plea is entered, they must be notified as soon as possible after the plea. Notice by any reasonable means available is permitted.

      2) Notice of Final Disposition: Penal Code section 11116.10 provides that upon the request of a victim or witness to a crime, prosecutors will, within 60 days, inform the victim or witness by letter of the final disposition of the case, including prosecutor reasons for not filing the case, dismissal, acquittal, or imposition of a sentence by a court. This requirement does not apply to minors being handled in juvenile court. Notice by any reasonable means available is permitted. If it is not possible to notify the victim or next of kin of the pretrial disposition before the change of plea is entered, they must be notified as soon as possible after the plea.

      3) Victims of Violent Felony: Penal Code section 679.02(a)(12) provides that victims and witnesses of a crime are "to be notified by the District Attorney's Office where the case involves a violent

felony, as defined in subdivision (c) of Penal Code section 667.5, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition before a change of plea is entered before a judge."

4) Prosecutors are required to notify victims of violent felonies of potential dispositions prior to the change of plea. Therefore, deputies are responsible for knowing whether the case is a violent felony as listed in Penal Code section 667.5(c).

5) Any deputy assigned to a violent felony case must ensure that victims are advised of the readiness or disposition date and possible disposition. In the event the disposition is unknown prior to the disposition date, the victim or victim's next of kin must be informed of their right to appear at the hearing to learn of any final plea.

6) Victims Right to Request Notice of Conviction: Victims have a right to be notified by the District Attorney's Office of their right to request, upon a form provided by the District Attorney's Office, and receive a notice, if the defendant is convicted of any of the following offenses:

(a) Assault with intent to commit rape, sodomy, oral copulation, or any violation of section 264.1, 288, or 289, in violation of section 220;

(b) A violation of section 207 or 209 committed with the intent to commit a violation of section 261, 262, 286, 288, 288a or 289;

(c) Rape, in violation of section 261;

(d) Oral copulation, in violation of section 288a;

(e) Sodomy, in violation of section 286;

(f) A violation of section 288;

(g) A violation of section 289.

4. Sentencing: Victims, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim, if the victim has died, will be notified of all sentencing proceedings, and of the right to appear, to reasonably express his or her views, have those views preserved by audio or video means as provided in Penal Code Section 1191.16, and to have the court consider his or her statements,

as provided by Penal Code sections 1191.1 and 1191.15.

5. Juvenile Disposition Hearings: Victims, the victim's parents or guardian, if the victim is a minor, or the next of kin of the victim, if the victim has died, will be notified of all juvenile disposition hearings, in which the alleged act would have been a felony, if committed by an adult, and of the right to attend and to express his or her views, as provided by Welfare and Institutions Code section 656.2.

6. Witnesses Fees: Witnesses will be notified that they may be entitled to witness fees and mileage, as provided by Penal Code section 1329.1.

7. Subpoenaed Witnesses: Notice must be provided as soon as feasible that a court proceeding to which a witness is subpoenaed has been rescheduled or canceled, if the prosecutor determines the witness's presence is no longer required.

8. Right to Civil Recovery and State Compensation: Deputy District Attorneys handling cases and their assisting victim advocates should make reasonable efforts to ensure that victims are provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the State Restitution Fund Pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code and Penal Code section 1191.2.

9. Inmate Re-entry Work Furlough or Escape: Victims or the next of kin of the victim, if the crime was a homicide, may request to be notified of an inmate's placement in a re-entry or work furlough program, or notified of the inmate's escape as provided by section 11155 of the Penal Code. If such a request is made known to deputies handling cases, they should assist where practical to help ensure that custodial agencies make such notifications.