


SPECIAL DIRECTIVE 19-05

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO  
Chief Deputy District Attorney

SUBJECT: NEW POLICIES AND PROCEDURES FOR  
CHILD VICTIMS AND WITNESSES

DATE: APRIL 8, 2019

Every reasonable effort shall be made to minimize trauma to all victims and witnesses, especially children. It is the policy of the Office that a coordinated approach to cases involving child victims and witnesses benefits the children involved and minimizes their trauma. When feasible, deputies shall participate in multidisciplinary teams and utilize the services of forensic interviewers when handling cases involving child victims and witnesses.

Accordingly, Legal Policies Manual (LPM) §§ 4.01 (Sex Crimes), 4.01.02 (Pre-filing Interview), 4.02 (Domestic Violence), 4.03 (Child Abuse), 4.03.01 (Charging Criteria), 11.03.01 (Hearsay Preliminary Hearings – Proposition 115), and 24.03 (Preference for Victim and Witness Interviews) are modified. LPM § 24.02.06 (Measures to Minimize Trauma to Children) is also added. The specific language of the additions and modifications is set forth below.

**LPM § 4.01 (Sex Crimes)** is modified to read as follows:

**4.01 SEX CRIMES**

Victims of sex crimes often suffer severe trauma, both physical and emotional. Deputies shall make every effort to be sensitive to the victim's needs and emotional state at all stages of a case. The assignment of a specially trained vertical prosecutor and the use of a Victim Services Representative (VSR) help achieve this objective. Whether a case is filed or declined, sexual assault victims shall be referred to a VSR for assistance with counseling referrals, medical bills, and court support.

**LPM § 4.01.02 (Pre-Filing Interview)** is modified to read as follows:

**4.01.02 PRE-FILING INTERVIEW**

Pre-filing interviews shall be conducted prior to making a filing decision to the extent possible. The investigating officer and, if the victim would like, a support person, shall be present for the pre-filing interview. Pre-filing interviews help to:

- Evaluate the victim's credibility;
- Evaluate the victim's memory and ability to recall the facts;
- Evaluate the victim's competency to testify (young child or elder or disabled adult);
- Evaluate the victim's ability to articulate the details of the assault (number and type of acts, date, time, location) and to withstand direct and cross-examination;
- Evaluate any potential defenses (e.g. if consent or a reasonable belief that the victim consented is a possible defense to the crime being considered);
- Establish a rapport with the victim/family;
- Explain the court process to the victim; and
- Provide an opportunity for the victim/family to meet with a VSR.

A deputy shall always be sensitive to, and aware of, the initial investigation that law enforcement conducted and any medical examinations or procedures a victim has experienced before the pre-filing interview.

A decision not to conduct a pre-filing interview shall be made after consideration of the following factors:

1. The availability of the victim/family within the statutory period for filing, if the suspect has been arrested;
2. The sufficiency of the evidence to prove the case beyond a reasonable doubt based only upon the reports presented at filing (the victim's credibility is not an issue, or the state of the evidence is of such convincing force that the case, as presented, satisfies Office crime charging standards); and
3. The ability to prove the case without the testimony of the victim.

Approval of the VIP Deputy-in-Charge in a Branch office, the Assistant Head Deputy or Head Deputy of the Sex Crimes Division, or the Deputy-in-Charge of the Juvenile Office, is required prior to filing a case without a pre-filing interview. If a case is filed without a pre-filing interview, an interview with the victim shall be conducted as soon as possible prior to the preliminary hearing or adjudication.

All efforts shall be made to accommodate the victim of a sex crime. The assigned deputy shall meet the victim at his or her location (e.g., home, hospital, school or place of business) when an interview at the Office would create an unreasonable hardship.

A deputy shall interview a victim in the presence of an investigator. The investigator shall prepare a report documenting the interview. The deputy shall provide a copy of the report to the defense.

Especially where the victim is a young child (12 or younger) or a person with a disability, deputies shall attempt to have a forensic interviewer conduct a pre-filing interview of the victim at the earliest possible opportunity. Often victims, both adults and children, develop a reticence to discuss these incidents and may forget details, all of which can occur due to the passage of time as well as the traumatic and emotional nature of these crimes. This forensic interview can

serve in lieu of a pre-filing interview conducted by a deputy; however, the assigned deputy shall meet with the victim as soon as possible to establish rapport.

See [\*VIP Manual Chapter VII “Child Interviews and Testimony;” LPM § 24.02.06\*](#) (Measures to Minimize Trauma to Children); and [\*LPM § 24.03\*](#) (Preference for Victim and Witness Interviews) for multi-disciplinary team coordination of child interviews and forensic interviews.

**LPM § 4.02 (Domestic Violence)** is modified to read as follows:

#### **4.02 DOMESTIC VIOLENCE**

Deputies shall vigorously prosecute misdemeanor and felony domestic violence cases with or without victim cooperation, as long as there is legally sufficient evidence to support a conviction. Same sex relationships are included in this policy. (See Penal Code §§ 13700(a) and 13700(b) for definitions of abuse and domestic violence, respectively.) The filing decision in a domestic violence case shall not rest on whether a victim is cooperative. When a victim is uncooperative, the filing deputy shall look for other independent, corroborative evidence to support the charges, such as:

- Other witnesses to the crime or injuries;
- Medical reports of traumatic injury;
- A 911 tape with the victim's spontaneous statements;
- Videotape of the crime being committed;
- A victim's prior inconsistent statements;
- Physical evidence (e.g., photos, torn clothing, evidence of a physical altercation);
- A suspect's prior acts of domestic violence with any partner;
- A suspect's admission or confession; and
- Evidence of motive, especially reported and/or witnessed threats involving the victim.

A pre-filing interview of the domestic violence victim shall be conducted when, in the judgment of the filing deputy, it is necessary to establish the appropriate charges. When the domestic violence case also involves allegations of sexual assault, a pre-filing interview shall be conducted. However, the inability to conduct an interview because the victim is unavailable or uncooperative shall not delay a filing if the facts warrant prosecution.

In domestic violence cases in which a child was present, deputies may wish to interview the child to determine if the child is a victim of child endangerment or a witness to the crime(s). See [\*VIP Manual Chapter VII “Child Interviews and Testimony;” LPM § 24.02.06\*](#) (Measures to Minimize Trauma to Children); and [\*LPM § 24.03\*](#) (Preference for Victim and Witness Interviews) for multi-disciplinary team coordination of child interviews and forensic interviews.

Successful domestic violence prosecutions depend heavily on the cooperation of victims. A deputy shall explain to an uncooperative victim that in the state of California, the victim does not

“press charges” or “drop charges.” That decision rests solely with the Office. The victim’s duty to appear in court as a witness and testify truthfully shall be explained in a positive light rather than in a way that may dissuade or discourage a victim from accepting this duty.

Where available, a VSR from the Bureau of Victim Services serves as an important resource to victims: both to encourage them to cooperate with the prosecution and to lessen the trauma caused by participation in the judicial process. These services shall be made available to victims as soon as possible. When a felony domestic violence case is filed, copies of the police reports shall be forwarded to the VSR.

A domestic violence victim shall be notified of his or her right to have both a counselor and a support person present during a law enforcement, District Attorney or defense interview. (PC § 679.05.) A domestic violence victim also has the right to have two persons of his or her own choosing for support in the courtroom. (PC § 868.5(a).)

**LPM § 4.03 (Child Abuse)** is modified to read as follows:

#### **4.03 CHILD ABUSE**

Child abuse may be charged as a felony or misdemeanor pursuant to Penal Code §§ 273a(a) or 273d. To a large extent, these two statutes overlap and it is a matter of prosecutorial discretion, rather than a matter of law, which charge shall be filed and whether a particular charge shall be filed as a felony or misdemeanor.

Child endangerment, whether it results in physical injury or not, may be charged as a felony under Penal Code § 273a(a) or a misdemeanor under Penal Code § 273a(b).

In addition to Penal Code §§ 273a and 273d, filing deputies shall consider other child abuse charges and special allegations, including, but not limited to:

- Penal Code § 206 – torture;
- Penal Code § 273ab - assault on a child under 8 causing death;
- Penal Code § 273.4 - female genital mutilation;
- Penal Code § 647.6 – annoying or molesting a child under 18; and
- Penal Code § 12022.95 – child endangerment resulting in death allegation.

**LPM § 4.03.01 (Charging Criteria)** is modified to read as follows:

#### **4.03.01 CHARGING CRITERIA**

Child abuse cases shall be thoroughly reviewed and processed as expeditiously as possible. It is the responsibility of the filing deputy to determine whether, based upon all available evidence, charges can be proven beyond a reasonable doubt and whether prosecution is warranted.

The filing decision shall be made by a deputy thoroughly familiar with the applicable criminal laws and procedures concerning child abuse. Documents that shall be reviewed in the filing decision, include, but are not limited to:

- Investigative reports that include property reports and statements from the victim(s), percipient witnesses, fresh complaint witnesses, mandated reporters, the suspect;
- The suspect's complete criminal history;
- Any prior reports of past abusive or assaultive conduct committed by any of the involved parties;
- Medical records prepared by paramedics, doctors, nurses, or other medical professionals;
- Expert witness reports concerning the cause of injuries suffered, the results of any examinations performed, and any opinions reached;
- Results of any examinations or interviews of siblings;
- Forensic reports (e.g., blood, hair or DNA);
- Photos of the crime scene, weapons, other criminal instruments, injuries, the suspect's appearance, or the victim body;
- Relevant documentary evidence such as birth certificates, consent to search forms, school records, Suspected Child Abuse Reports (SCARs), dependency records, any Department of Children and Family Services records, and search warrants; and
- Any current or prior protective orders concerning the victim or other family or household members.

If some reports are not included, the filing deputy shall determine whether there is sufficient evidence to file or whether further investigation is necessary.

In appropriate cases, the filing deputy shall interview the child or consider scheduling a forensic interview to ensure that the child is competent to testify and can recall and recount the details of the event, determine if there is any additional evidence not previously identified, and establish rapport with the child.

See [VIP Manual Chapter VII](#) "Child Interviews and Testimony;" [LPM § 24.02.06](#) (Measures to Minimize Trauma to Children); and [LPM § 24.03](#) (Preference for Victim and Witness Interviews) for multi-disciplinary team coordination of child interviews and forensic interviews.

**LPM § 11.03.01 (Hearsay Preliminary Hearings – Proposition 115)** is modified to read as follows:

#### **11.03.01 HEARSAY PRELIMINARY HEARINGS - PROPOSITION 115**

Hearsay evidence shall be offered only by officers involved in the case investigation or the defendant's arrest, except in unusual circumstances. Proposition 115 does not authorize a finding of probable cause based on the testimony of a non-investigating officer or "reader" merely reciting the investigating officer's police report. Only qualified officers who are subject to meaningful cross-examination regarding the circumstances under which the out-of-court statement was made may testify to hearsay evidence.

Deputies may use hearsay evidence for witnesses who establish the corpus of a crime (e.g., the vehicle owner whose car was stolen or the homeowner whose home was burglarized). Live testimony shall be presented for all other necessary witnesses, except in unusual circumstances.

Deputies may consider using hearsay evidence when a child has previously participated in a recorded forensic interview which has been preserved. In cases in which a recorded forensic interview has been conducted of a child witness and preserved, deputies shall review the tape to determine if the interview clearly establishes that the child will qualify as a witness at trial. Deputies shall also consider if having the child testify at a preliminary hearing will cause undue trauma to the child or unnecessarily increase the likelihood of inconsistent statements. Deputies shall also consider whether it is necessary to memorialize testimony in cases in which it is likely that the child will be unavailable at trial.

Deputies shall obtain Head Deputy, Assistant Head Deputy, or Deputy-in-Charge approval before presenting hearsay testimony.

**LPM § 24.02.06 (Measures to Minimize Trauma to Children)** is added as follows:

#### **24.02.06 MEASURES TO MINIMIZE TRAUMA TO CHILD VICTIMS AND WITNESSES**

Every reasonable effort shall be made to minimize trauma to all victims and witnesses.

Witnesses in child abuse cases are entitled to up to two support persons while they testify. *See* P.C. § 868.5(a).

All child victims shall be referred to the Bureau of Victim Services to receive appropriate assistance. If a Kids in Court program or similar program is available to assist the child in understanding the court process, deputies are encouraged to have the child participate in the program. *See* P.C. § 13835.5 and [LPM § 24.01](#) (Communication with Victims and Witnesses).

Deputies are encouraged to consider requesting a Victim Services K9 Unit facility dog to assist child victims during interviews and while testifying. In the event a child requests a facility dog be present when the child testifies, deputies shall consider filing a motion to request a facility dog accompany the child to the witness stand.

**LPM § 24.03 (Preference for Victim and Witness Interviews)** is modified as follows:

#### **24.03 PREFERENCE FOR VICTIM AND WITNESS INTERVIEWS**

Victims and witnesses shall be personally interviewed by the assigned deputy as soon as practical to acquaint the deputy with the facts and nuances of the case. A third party, preferably an investigator, shall be present during interviews to prevent the deputy from becoming a witness in his or her own case. Witnesses shall be interviewed separately. The substance of any interview shall be

documented. A victim may have a support person of his or her choosing present during the interview.

During an investigation or prosecution of crimes involving child victims and witnesses, deputies shall consider a multi-disciplinary team approach and forensic interviews, when available, for conducting pre-filing or post-filing interviews of child victims and witnesses.

### Multi-Disciplinary Team Coordination

When possible in cases involving child victims or witnesses of sexual assault, physical abuse, endangerment or neglect, human trafficking, child abduction, or kidnapping, deputies are encouraged to pursue a multi-disciplinary team (MDT) approach to interviewing the child victims or witnesses. An MDT response to child abuse allegations typically includes representation from law enforcement, child protective services, prosecution, mental health, medical and victim advocacy professionals.

The purpose of interagency collaboration is to coordinate intervention and share information that optimizes results and reduces potential trauma to children and their families. It also improves services, while preserving the rights and obligations of each agency to pursue their respective mandates. Multi-disciplinary interventions, particularly when provided in a neutral, child-focused setting, are associated with less anxiety, fewer interviews, increased support, and more appropriate and timely referrals for needed services.

Multi-disciplinary interview centers (MDIC) are child-friendly facilities where law enforcement, child protective services, prosecution, mental health, medical and victim advocacy professionals work together to investigate abuse, help children heal from abuse, and hold offenders accountable. MDICs also provide forensic interviews of children.

See [\*VIP Manual Chapter VII\*](#) “*Child Interviews and Testimony*” for suggestions on how to minimize trauma to child witnesses.

See LPM § 4.01.02 (Pre-Filing Interview) for specific Office policy concerning interviews of sexual assault victims.

### Forensic Interviews

When children are victims or witnesses, deputies are encouraged to consider scheduling a forensic interview of the child. A forensic interview is a developmentally sensitive and legally sound method of gathering factual information regarding allegations of abuse or exposure to violence, conducted by a competently trained, neutral professional utilizing research and practice-informed techniques as part of a larger investigative process, and are best conducted within a multidisciplinary team context, when available. These recorded forensic interviews can be very persuasive evidence at trial and often facilitate pre-trial dispositions.

In determining whether to schedule a forensic interview the following factors may be considered:

1. Level of sensitivity of the case;
2. Length of the criminal activity;
3. Age of the child;
4. Developmental abilities of the child; and
5. Availability of a forensic interviewer in the child's preferred language.

Deputies shall check the Electronic Suspected Child Abuse Report System (ESCARS) prior to scheduling a forensic interview of a child. (See [LPM § 4.03.03](#) Suspected Child Abuse Reports (SCARs)). SCARs may provide important background information on previous incidents that may need to be addressed in the interview as well as a more complete picture of the family dynamics and reasons that a child might not be forthcoming.

kc