

### 12.13 DEPARTURE FROM POLICY

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

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

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

#### *Commentary*

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

*California Rules of Court Rule 4.414 lists the criteria to be considered when deciding whether to grant probation for a defendant who has suffered a felony conviction. These criteria*

*are divided into factors relating to the crime and factors relating to the defendant. One of the enumerated factors relating to the defendant is: "The adverse collateral consequences on the defendant's life resulting from the felony conviction."*

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

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

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

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

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

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

#### **12.13.01 CONSIDERATION OF ADVERSE IMMIGRATION CONSEQUENCES**

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

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