

CHAPTER 12

FELONY CASE SETTLEMENT POLICY

12.01 INTRODUCTION

The purpose of the criminal justice system is to protect the rights of society in general, and crime victims in particular, by appropriately punishing those who have been lawfully convicted of crimes. The Office has developed a Felony Case Settlement Policy to ensure case dispositions throughout the County will further this purpose.

The Felony Case Settlement Policy has been developed to protect crime victims and the community, punish the guilty and deter crime throughout Los Angeles County. This policy is intended to ensure that case settlements throughout the county further these purposes.

The Felony Case Settlement Policy is intended to be clear and easy to apply in most situations. If conflicting interpretations arise, deputies should adopt the interpretation that favors the victim and public, not the defendant. If a case includes charges that fall within several different guidelines, deputies shall consider all relevant policies to determine the most appropriate disposition.

12.02 MARSY'S LAW - THE VICTIMS' BILL OF RIGHTS ACT OF 2008

On November 4, 2008, California voters passed Proposition 9, The Victims' Bill of Rights Act of 2008, also known as "Marsy's Law." Proposition 9 amended article I, § 28, of the California Constitution, enumerating crime victims' rights (see LPM § [11.21](#)). If there is a conflict between the provisions of the California Constitution and this Felony Case Settlement Policy, the California Constitution is controlling.

12.02.01 PLEA BARGAINING

Penal Code § 1192.7(b) defines "plea bargaining" as:

. . . any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

Penal Code § 1192.7 prohibits plea bargaining in any case in which the information or indictment charges a serious felony, a felony in which the defendant personally used a firearm, or driving under the influence unless:

- There is insufficient evidence to prove the People's case, or
- Testimony of a material witness cannot be obtained, or

- The reduction or dismissal would not result in a substantial change in sentence.

When one or more of these three statutory exceptions apply, any case settlement or sentence commitment shall conform to the Felony Case Settlement Policy.

12.03 SELECTION OF CHARGES

In all felony cases, a defendant must plead guilty to the provable charge(s) that most accurately describe his or her criminal conduct.

12.03.01 SERIOUS FELONY CASES

A defendant must plead guilty to every provable felony listed in Penal Code § 1192.7 that is separately punishable under Penal Code § 654.

12.03.02 MURDER OR MANSLAUGHTER CASES

If a defendant is charged with multiple counts of murder, voluntary manslaughter, involuntary manslaughter or vehicular manslaughter, the defendant must plead guilty to all counts involving different victims.

12.03.03 PRIOR CONVICTION AND CONDUCT ENHANCEMENT ALLEGATIONS

A defendant must admit all prior felony conviction allegations and any special conduct enhancement allegations involving weapons, great bodily injury, amount of contraband, age of victim, value of property destroyed, or amount of loss resulting from theft that may increase punishment or limit sentencing options, or deputies shall vigorously litigate these allegations.

12.03.04 DISPOSITION REPORT

A Disposition Report shall be prepared at the conclusion of every felony case. Within 10 business days after a case has concluded, the deputy handling the case shall prepare a Disposition Report, sign it, place it in the felony case file and submit the file to the Head Deputy, Head Deputy's designee, or Deputy-in-Charge for review. The Head Deputy, Head Deputy's designee, or Deputy-in-Charge shall review the file to ensure it is in proper form for closing, sign the Disposition Report and forward the file to support staff for case closing.

Disposition reports are to be completed at the conclusion of every felony case with the following exceptions. Cases in which the defendant receives pretrial diversion, pursuant to Penal Code § 1000 et seq., or is sentenced pursuant to Proposition 36 are exempt from this requirement, except where one or more counts or one or more special allegations are dismissed in order to render a defendant eligible for those programs. Under those circumstances, a disposition report shall be completed. Disposition reports shall be reviewed and signed by the Head Deputy or the Head Deputy's designee.

Upon successful completion of pretrial diversion, and dismissal of the case, a disposition report need not be prepared.

Deputies shall obtain *prior* Head Deputy or Deputy-in-Charge approval and provide an explanation in the Disposition Report when:

- A defendant pleads guilty to a charge or charges that could result in less than the maximum sentence;
- A defendant, charged with multiple offenses separately punishable under Penal Code § 654, does not plead guilty to all offenses;
- A deputy strikes a special enhancement, prior conviction or probation ineligibility allegation as part of a case settlement; or
- A defendant is allowed to plead guilty to a misdemeanor.

12.04 SENTENCE COMMITMENTS IN FELONY CASES

The rights of the victim and the public are the most important considerations in making a sentence recommendation. When appropriate, deputies are encouraged to solicit input from the investigating officer regarding a sentence commitment. All sentence commitments must be based on an objective evaluation of the case and not on a particular judge's sentencing practices.

12.04.01 FELONY SENTENCING GUIDELINES - CALIFORNIA RULES OF COURT

The California Rules of Court establish the basic guidelines for any felony sentence commitment. Rule 4.420(b) provides that selection of the lower term is justified only if, after a consideration of all the relevant facts, the circumstances in mitigation outweigh the circumstances in aggravation. Accordingly, no commitment to a low term prison sentence shall be made unless both of the following requirements are met:

- The defendant and the crime(s) committed meet one or more of the circumstances in mitigation as stated in Rule 4.423; and
- The circumstances in mitigation clearly outweigh the circumstances in aggravation as stated in Rule 4.421.

Any commitment for concurrent or consecutive sentences must be based upon the criteria affecting concurrent or consecutive sentences in Rule 4.425. A "no immediate state prison" commitment must be based upon the criteria regarding probation in Rule 4.414 and the criteria affecting probation in unusual cases in Rule 4.413.

12.04.02 APPROVAL FOR FELONY DISPOSITIONS

A Disposition Report shall be prepared at the conclusion of every felony case. Within 10 business days after a case has concluded, the deputy handling the case shall prepare a Disposition Report, sign it, place it in the felony case file and submit the file to the Head Deputy, Head Deputy's designee, or Deputy-in-Charge for review. The Head Deputy, Head Deputy's

designee, or Deputy-in-Charge shall review the file to ensure it is in proper form for closing, sign the Disposition Report and forward the file to support staff for case closing.

Disposition reports are to be completed at the conclusion of every felony case with the following exceptions. Cases in which the defendant receives pretrial diversion, pursuant to Penal Code § 1000 et seq., or is sentenced pursuant to Proposition 36 are exempt from this requirement, except where one or more counts or one or more special allegations are dismissed in order to render a defendant eligible for those programs. Under those circumstances, a disposition report shall be completed. Disposition reports shall be reviewed and signed by the Head Deputy or the Head Deputy's designee.

Upon successful completion of pretrial diversion, and dismissal of the case, a disposition report need not be prepared.

A deputy shall obtain *prior* Head Deputy or Deputy-in-Charge approval and provide an explanation in the Disposition Report when:

- A defendant pleads guilty to an alternative felony charge with a misdemeanor sentence commitment; or
- A defendant pleads guilty to a felony charge with a “no immediate state prison” sentence commitment.

12.04.03 SENTENCING TERMS - EXPLANATION TO DEFENDANT

If a defendant pleads guilty to a felony charge with a sentence commitment, the deputy shall advise the defendant at the time of the plea that the People will urge the court to set aside the plea if the probation report or any other source reveals any facts or circumstances indicating the sentence was contrary to the California Rules of Court and/or Penal Code § 1192.7.

Prosecutors currently have a range of felony sentencing options available to them in criminal cases. A court can impose a grant of formal probation, with or without local jail time or prison time suspended. Alternatively, a court can impose a prison sentence, whether that is served locally or in traditional state prison. A split sentence is an intermediate ground: It is a prison term served locally in which the available time is “split” between a custodial portion (served in the county jail as local prison) and a supervisory portion (referred to as “mandatory supervision”).

If a defendant pleads guilty to a felony charge and is placed on probation, the deputy shall advise the defendant, on the record, of the possibility of a subsequent local or state prison commitment, or the imposition of a split sentence, if the defendant violates the terms or conditions of probation. The deputy shall explain the minimum and maximum local or state prison terms, including potential parole terms.

At the time of a plea, deputies shall state the disposition on the record in open court. Deputies shall not make off-the-record dispositions, agreements or understandings unless a matter legitimately requires confidentiality.

12.04.04 **RESTITUTION**

Deputies are to seek the maximum appropriate restitution fine and penalty assessment. In addition, deputies shall seek restitution for the victim for actual losses or damages.

12.04.05 **STIPULATION TO PROBABLE CAUSE**

Deputies shall not attempt to obtain a stipulation that there was probable cause to arrest a defendant in exchange for a reduction or dismissal of a criminal charge. The California Rules of Professional Conduct, Rule 3.10 (Threatening Criminal, Administrative, or Disciplinary Charges), prohibit an attorney from threatening to present a criminal charge to obtain an advantage in a civil dispute.

12.04.06 **CASE SETTLEMENT - VICTIM IMPACT PROGRAM CASES**

Case settlement offers on all felony cases assigned to be vertically prosecuted by the Victim Impact Program (VIP) shall be approved by the VIP Deputy-in-Charge (VIP DIC). All applicable felony case settlement policies contained in the Legal Policies Manual, Special Directives and General Office Memoranda shall be followed by the VIP DIC in making such offers. This policy does not supersede any authority given to a Head Deputy District Attorney within the Legal Policies Manual, Special Directives or General Office Memoranda, nor does it preclude the Head Deputy District Attorney's authority to make felony case settlement offers.

Before such an offer is communicated to defense counsel, all reasonable efforts shall be made to notify the victim and to provide the victim with an opportunity to be heard.

12.05 **THREE STRIKES**

All qualifying prior felony convictions shall be alleged in the pleadings pursuant to Penal Code § 1170.12(d)(1). Prior to seeking dismissal of any strike, the prior strike case files shall be reviewed, if available, in order to fairly evaluate mitigating and aggravating factors. If it is determined that proof of a prior strike cannot be obtained or that the alleged strike is inapplicable, dismissal of the strike shall be sought after obtaining Head Deputy approval.

12.05.01 **THIRD STRIKE CASES**

If a defendant has two or more qualifying prior felony convictions, the case shall be filed as a third strike case when at least one of the new charged offenses is pled as a/an:

- Serious or violent felony;
- Controlled substance offense with an allegation pursuant to Health and Safety Code §§ 11370.4 or 11379.8 after being admitted or found true (weight enhancement);
- Felony offense pursuant to Penal Code § 261.5(d) (sexual intercourse by a person over 21 upon a minor under the age of 16), or pursuant to § 262 (spousal rape);
- Felony offense requiring mandatory sex offender registration pursuant to Penal Code § 290(c), other than the following: § 266 (enticing a minor into prostitution); § 285

(incest); § 286(b)(1) (sodomy with a minor); § 286(e) (sodomy while confined in state prison); § 288a(b)(1) (oral copulation with a minor); 288a(e) (oral copulation while confined in state prison); § 314 (indecent exposure); or § 311.11 (possession of child pornography).

- Offense during which the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

If the defendant has two or more qualifying prior felony convictions, but none of the new charges offenses are enumerated in 12.05.01, a number of prior convictions will qualify a defendant for three strikes sentencing. These prior convictions include:

- A sexually violent offense, as defined in Welfare and Institutions Code § 6600(b);
- Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Penal Code § 288a; sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by § 286; or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by § 289;
- A lewd or lascivious act involving a child under 14 years of age, in violation of § 288;
- Homicide and attempted homicide offenses within the meaning of §§ 187 (murder) through 191.5 (vehicular manslaughter while intoxicated);
- Solicitation to commit murder as defined in § 653f;
- Possession of a weapon of mass destruction, as defined in Penal Code § 11418(a)(1);
- Assault upon a peace officer or firefighter with a machine gun as defined in § 245(d)(3);
- Any serious and/or violent felony offense punishable in California by life imprisonment or death.

If the current offense does not involve the use or possession of a firearm or deadly weapon, injury to a victim, or violence or the threat of violence, a Head Deputy may authorize seeking dismissal of a strike after consideration of all of the following:

- Remoteness of the strikes;
- Whether the strikes involved the use or possession of a weapon, injury to a victim, violence or the threat of violence;
- Whether the strikes arose from one incident or transaction; and
- Any other mitigating or aggravating factors enumerated in the California Rules of Court, Rules 4.421 and 4.423.

12.05.02 **SECOND STRIKE CASES**

Unless the above criteria in LPM §12.05.01 for charging a third strike case are met, a case against a defendant shall be filed as a second strike case.

In all instances in which a third strike case is pursued as a second strike case, Penal Code § 667.5(b) priors shall be plead and proved or admitted only when the priors are for sexually violent offenses as defined in Welfare and Institution Code § 6600(b).

12.05.03 DISPOSITION REPORT

If a Head Deputy authorizes dismissal of a strike in a third strike case, the Disposition Report shall discuss the applicability of the factors set forth in this case settlement policy.

12.05.04 SECOND STRIKE CASE DISPOSITIONS

When a case is charged as a second strike case, a Head Deputy may authorize the dismissal of strike(s) in the interests of justice and agree to an appropriate prison or probationary sentence only when all of the following factors exist:

- The strike offense occurred more than 10 years ago;
- The strike offense did not involve the use or possession of a firearm or deadly weapon, injury to a victim, violence or the threat of violence;
- There exist mitigating factors enumerated in the California Rules of Court, Rules 4.421 and 4.423.

Whenever a Head Deputy authorizes the dismissal of a strike an explanation shall be included in the Disposition Report.

12.05.05 CASE SETTLEMENT

The decision whether to seek dismissal of a strike shall be made at the earliest practical stage. Once that decision is made, it shall be promptly communicated to the court and defense counsel. This procedure shall be followed even if a defendant chooses to proceed to trial.

12.05.06 EARLY RELEASE OF SECOND STRIKE INMATES

The California Department of Corrections and Rehabilitation (CDCR) is required to lower inmate population by granting early parole to inmates convicted of non-violent offenses who have a prior strike conviction (i.e., second strike inmates). Specifically, CDCR evaluates second strike inmates convicted of non-violent offenses to determine if parole should be granted after the inmate has served 50% of the sentence. The CDCR created a protocol that was implemented by the Board of Parole Hearings (BPH). As part of that protocol, the BPH must request a written letter from the District Attorney's Office in each second strike case where the Office objects to early parole.

The Office must provide the written response within 30 calendar days of the date of the BPH's letter notifying the Office it is considering granting early parole. Upon receipt of any correspondence from the BPH or the CDCR on early parole of second strike inmates, the deputy receiving the notice shall immediately contact the Head Deputy of the Parole Division. The Parole Division shall contact the Bureau of Victim Services to ensure efforts are made to contact any victim(s) impacted by the potential early release of the inmate.

12.05.07 DISTRICT ATTORNEY STATEMENT OF VIEW

A District Attorney's Statement of View shall be filed in every case in which a defendant is sentenced to death or an indeterminate sentence, including life sentences imposed in third strike cases. Refer to Legal Policies Manual § [17.02.01](#) for a discussion of the documentation that shall be submitted in a Statement of View.

12.06 CONTROLLED SUBSTANCES

12.06.01 SALE AND POSSESSION FOR SALE CASES

In controlled substances cases, deputies may not reduce a sale or possession for sale charge to a lesser offense unless there is insufficient evidence to prove the charge.

12.06.02 STATE PRISON SENTENCES FOR STREET DRUG DEALERS

In cases involving sale or possession for sale of cocaine, heroin or PCP, deputies are to seek the maximum appropriate sentence.

In cases involving sale or possession for sale of cocaine, heroin, or PCP, if probation is legally permissible and the case is a first offense involving nominal quantities, deputies are to urge the sentencing judge to impose a felony sentence with a minimum 6 to 12 months in custody as a condition of probation. When a court grants probation, deputies shall urge the court to order the defendant to submit his or her person and property to search and seizure at any time of the day or night by any law enforcement officer with or without a warrant as a condition of probation.

In all subsequent cases involving the above-described offenses, deputies are to urge sentencing judges to impose state prison sentences for the appropriate term.

A court must not grant probation in any case in which restrictions pursuant to Penal Code §§ 1203.07 and/or 1203.073 are alleged.

12.06.03 NO WORK FURLOUGH OR WORK RELEASE FOR STREET DRUG DEALERS

In any narcotics case involving possession for sale or sale in which the court sentences the defendant to county jail, deputies shall urge the court to order that the defendant is ineligible for work furlough or work release programs.

12.06.04 NO BAIL FOR REPEAT STREET DRUG DEALERS

Whenever a defendant is on probation for the sale of or possession for sale of narcotics and the Office files a probation violation, it is Office policy that the defendant shall remain in custody without bail until the case is resolved.

12.06.05 RE-ARRESTED NARCOTICS DEALERS WHILE OUT ON BAIL

Narcotic dealers often post bail. While out on bail many dealers continue to sell narcotics. If a defendant is arrested on narcotics charges while on bail, the filing deputy shall:

- Recommend the court set bail at \$50,000 or higher on the new case;
- File a Penal Code § 1275.1 motion (Source of Bail) on the new case; and
- Make a motion to consolidate the cases pursuant to Penal Code § 954 because they involve the same class of crimes.

12.07 CRIMINAL STREET GANGS

Commentary

Criminal street gangs present an extreme threat to society; street gang members are often far more dangerous than the typical, individual criminal acting alone. Street gang members should be punished more severely than non-gang members for their crimes because of the danger they present to the community. Deputies shall aggressively seek harsher sentences for street gang members in every case whether or not the instant offense was gang related. The objective is to use every opportunity to remove gang members from the streets. For crimes for which the usual sentence is a county jail sentence, if the defendant is a gang member, deputies shall seek a state prison commitment.

12.07.01 CASE SETTLEMENT IN STREET GANG CASES

A street gang defendant must plead guilty to all charges in any case settlement. Deputies may reduce the charged offense or dismiss counts only when warranted in the interests of justice. Deputies may consider the following factors in making this determination:

- Insufficiency of the evidence;
- The testimony of a material witness cannot be obtained;
- A reduction or dismissal of counts would not result in a substantial change in the maximum sentence for all charged offenses and enhancements; or
- The information or testimony of a defendant is necessary for the conviction of other defendants.

12.07.02 SENTENCING IN STREET GANG CASES

Deputies shall aggressively seek the maximum appropriate sentence on all counts for which a street gang defendant is convicted. Street gang membership is an aggravating factor that outweighs virtually any mitigating factor. Before the sentencing hearing, deputies should submit a Memorandum of Points and Authorities detailing all factors in aggravation. Deputies shall advise the court the defendant is a gang member and argue that factor as a basis for substantially increasing the punishment imposed.

12.07.03 PROBATION CONDITIONS IN STREET GANG CASES

Deputies shall recommend that the court impose the following conditions on any defendant involved in a street gang who is placed on probation:

- The defendant must be subject to search upon the request of a law enforcement officer;
- The defendant must be subject to substance abuse testing whenever permitted by law;
- The defendant must not associate with other street gang members and shall stay away from specified locations frequented by street gang members; and
- The defendant must not wear or display any common identifying sign or symbol of the street gang.

12.07.04 POSSESSION OF CONCEALED OR LOADED FIREARMS BY GANG MEMBERS

A violation of Penal Code § 25400(a) (carrying firearm concealed within a vehicle or concealed upon a person) or § 25850(a) (carrying a loaded firearm) is punishable as a felony under certain circumstances, e.g.:

- The person has a prior felony conviction. (PC §§ 25400(c)1, 25850(c)(1).)
- The firearm was stolen and the person knew or had reasonable cause to know that it was stolen. (PC §§ 25400(c)(2), 25850(c)(2).)
- The person is an active participant in a criminal street gang as defined in Penal Code § 186.22(a). (PC §§ 25400(c)(3), 25850(c)(3).)
- The person is not in lawful possession of the firearm. (PC §§ 25400(c)(4), 25850(c)(4).) Lawful possession is defined as lawfully owning the firearm or having the consent or permission of the lawful owner to possess the firearm. A person who takes the firearm without permission does not have lawful possession.
- The person in possession of the firearm had the ammunition in his or her possession or the ammunition was readily accessible to that person and he or she is not the registered owner of the firearm or the person is not the registered owner of the loaded firearm.

Active Participant in a Criminal Street Gang

A person who is in possession of a concealed or loaded firearm and who is an active participant in a criminal street gang as defined in Penal Code § 186.22(a), is guilty of a felony. To prove a violation of Penal Code §§ 25400(c)(3), 25850(c)(3), the People must prove that the person who possessed a concealed or loaded firearm:

- actively participates in a criminal street gang;
- with knowledge that its members engage in or have engaged in a pattern of criminal gang activity; and,
- willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang. (See *People v. Robles* (2000) 23 Cal.4th 1106.)

In all appropriate cases where the elements of Penal Code § 186.22(a) can be proven, and the person is in possession of a concealed or loaded firearm, it shall be the policy of the Office to charge the offenses under Penal Code §§ 24500(c)(3) or Penal Code § 25850(c)(3) as a felony and to seek a state prison sentence.

Other Firearm Possession Charges by a Gang Member and Gang Enhancements

In addition to the felony firearm charge of possession when an active participant in a criminal street gang, there are additional felony charges listed in Penal Code §§ 24500 and 25850. In cases in which *all* the elements of Penal Code § 186.22(a) cannot be proven, but there is sufficient evidence for purposes of sentencing to demonstrate that the person in possession of a firearm actively participates in a criminal street gang, felony charges and a state prison sentence should be pursued under any of the other provable felony sections. For example, a firearm possessed by an active gang member may not be registered to that gang member pursuant to Penal Code §§ 24500(c)(4) and 25850(c)(4) or may be stolen pursuant to Penal Code §§ 24500(c)(2) and 25850(c)(2) .

Compliance with Office Policy

Deviation from this policy requires prior Head Deputy approval.

Commentary

Criminal Street gang members are responsible for many of the serious and violent felonies, including more than half of all murders, committed in Los Angeles County. Handguns are used to commit most of these crimes. In order to reduce the impact and magnitude of gang violence, it shall be the policy of the Office to vigorously prosecute all provable incidents of illegal possession of firearms by gang members. This policy shall apply to the prosecution of violations of Penal Code §§ 25400 and 25850

12.08 HATE CRIMES

Deputies may not settle felony hate crimes cases without consulting with a member of the Hate Crimes Unit. This procedure will ensure consistent case dispositions throughout the county and enable the Office to more effectively communicate the results to the community.

12.08.01 STATE PRISON FOR FELONY HATE CRIMES

Deputies shall seek a state prison sentence for a felony hate crime whenever the facts and/or the defendant's prior record indicate that state prison is appropriate. State prison may be an appropriate sentence for a felony hate crime even if the underlying conduct, without hate motivation, would be misdemeanor conduct. (PC § 422.7)

12.08.02 PROBATION CONDITIONS FOR HATE CRIMES

In all hate crimes cases in which the defendant is granted probation, deputies shall vigorously urge the sentencing court to impose a counseling program, victim restitution and other relevant

conditions pursuant to Penal Code § 422.95. For further discussion of probation conditions for hate crimes, refer to the *Probation and Sentence Hearings* chapter of this manual.

12.08.03 CASE SETTLEMENT NOTIFICATION TO HATE CRIMES UNIT

Deputies shall notify the Hate Crimes Unit of all hate crimes case settlements. Penal Code § 13023 requires local prosecutorial agencies to report all hate crimes statistics to the Attorney General's Office. The Hate Crimes Unit collects, compiles and submits these statistics.

Commentary

Hate crimes have far-reaching social implications. Hate crimes not only harm those who are victims, but also generate concern, fear and anger within vulnerable populations and the general public. Hate crimes are serious offenses; at sentencing deputies shall emphasize the long-term damage to the victim and the community that crimes committed out of hate cause. Deputies shall make every effort to obtain a sentence that is substantial yet appropriate in light of the charges and the facts.

12.09 ARMED OR VIOLENT OFFENDERS

Defendants charged with felonies involving violence and/or weapons listed in Penal Code § 1192.7 must plead guilty to every count and admit every enhancement and special allegation sufficient to expose them to the maximum sentence. The term “maximum sentence” is the maximum sentence that can lawfully be imposed considering the court rules, case law and statutes relating to sentencing. It is Office policy that all prior felony convictions shall be alleged in the pleadings at the earliest possible time.

In any case involving violence and/or weapons in which a judge gives the defendant an “indicated” sentence lower than the maximum sentence, the deputy shall state on the record the People's opposition to the indicated sentence and require the defendant to plead guilty to all charges and admit all enhancements and special allegations.

12.09.01 PRIOR APPROVAL REQUIRED FOR CASE DISPOSITION

A Head Deputy or Deputy-in-Charge must approve any departure from this policy prior to the case disposition and then only for the following reasons:

- There is insufficient evidence to prove the charge, enhancement or special allegation;
- A necessary material witness cannot be located; or
- In exceptional cases, a reduction or dismissal is in the interests of justice.

With the exception of approving a disposition in the interests of justice, a Head Deputy may delegate approval for dispositions outlined above to a Deputy District Attorney IV.

12.10 DOMESTIC VIOLENCE

12.10.01 FELONY SENTENCING

A deputy assigned to vertically prosecute a felony domestic violence case shall vigorously seek a state prison sentence or one year in the county jail if the court grants probation. A Head Deputy must approve a recommendation for less than one year in county jail. Deputies must seek a state prison sentence when the defendant:

- Personally used a firearm or dangerous or deadly weapon;
- Inflicted serious injuries by use of a dangerous or deadly weapon;
- Inflicted serious bodily injury;
- Has more than two convictions for Penal Code §§ 273.5 or 243(e)(1); or
- Has a lengthy or serious prior record that warrants a state prison commitment under the California Rules of Court guidelines.

If the court grants a defendant a probationary sentence, deputies should urge the court to suspend a state prison sentence.

12.10.02 TERMS AND CONDITIONS OF PROBATION

In addition to the mandatory terms and conditions of probation as set forth in Penal Code § 1203.097, deputies shall request the following conditions of probation for a defendant convicted of domestic violence when a court grants probation:

- The defendant may not own or possess a firearm or other dangerous or deadly weapon;
- The defendant must complete an approved one-year Batterer's Treatment program, with quarterly reports to the court. If children are present in the defendant's home, the program should include a parenting skills component;
- The defendant may not contact, harass or annoy the victim, if appropriate. (Deputies must prepare a written order to be included in the court file. The deputy must give the victim and defendant copies of the order.);
- The defendant must complete a substance or alcohol abuse program, if appropriate;
- The defendant must be admonished regarding witness intimidation (PC § 136);
- The defendant must support his or her dependents;
- The defendant must receive actual time in custody absent unusual circumstances;
- The defendant must comply with any Dependency Court orders;
- The defendant must pay a fee of \$500 to the Domestic Violence fund;
- The defendant must perform community service; and
- The probation term shall be five years in felony cases.

Work furlough should not be available in place of actual custody for the more serious offenders, and deputies shall strongly oppose electronic monitoring in all domestic violence cases. If the court approves work furlough, deputies shall request an order that the defendant stay away from the victim during the defendant's participation in the work furlough program.

12.11 SEXUALLY VIOLENT PREDATORS

Welfare and Institutions Code § 6250 permits the involuntary hospitalization of persons convicted of sexually violent offenses following the completion of their criminal sentence. Sexually violent offenses are defined in Welfare and Institutions Code § 6600.

Deputies shall advise defendants who plead guilty to a sexually violent offense that if the defendant is found to meet the criteria set forth in Welfare and Institutions Code §§ 6600-6602, the defendant may be involuntarily committed to state mental hospital for two years following the completion of his or her prison sentence. Moreover, the involuntary commitment may be renewed, in two year increments, for as long as the defendant continues to meet these criteria, and could result in a commitment for life.

12.12 ASSAULTS ON PEACE OFFICERS

A deputy assigned to prosecute a felony assault or battery upon a peace officer shall seek a state prison sentence when the defendant:

- Used a deadly or dangerous weapon to commit the assault or battery;
- Inflicted other than a minor injury regardless of the means used; or
- Has a history of assaultive conduct or other than a minor criminal history.

If probation is appropriate, deputies shall seek a suspended state prison sentence. A Head Deputy must approve any sentencing recommendation that includes less than one year in county jail.

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.

12.14 DISPOSITION REPORT

12.14.01 CONCLUSION OF THE CASE

A Disposition Report shall be prepared at the conclusion of every felony case. Within 10 business days after a case has concluded, the deputy handling the case shall prepare a Disposition Report, sign it, place it in the felony case file and submit the file to the Head Deputy, Head Deputy's designee or Deputy-in-Charge for review. The Head Deputy, Head Deputy's designee, or Deputy-in-Charge shall review the file to ensure it is in proper form for closing, sign the Disposition Report and forward the file to support staff for case closing.

Disposition reports are to be completed at the conclusion of every felony case with the following exceptions. Cases in which the defendant receives pretrial diversion, pursuant to Penal Code §

1000 et seq., or is sentenced pursuant to Proposition 36 are exempt from this requirement, except where one or more counts or one or more special allegations are dismissed in order to render a defendant eligible for those programs. Under those circumstances, a disposition report shall be completed. Disposition reports shall be reviewed and signed by the Head Deputy or the Head Deputy's designee.

Upon successful completion of pretrial diversion, and dismissal of the case, a disposition report need not be prepared.

12.14.02 SENTENCING RECOMMENDATION

A Disposition Report is used to make a sentencing recommendation concerning a case disposition. When preparing a Disposition Report, trial and calendar deputies shall include a concise statement of facts, the sentence recommendation and the reasons for the disposition and obtain approval, if required, before settling a case.

In a calendar court, it is the calendar deputy's responsibility to prepare a Disposition Report and secure Head Deputy approval before the recommended action is taken. However, Head Deputies may orally authorize the recommended action to be taken before a written recommendation has been prepared. In that event, a Disposition Report shall thereafter be prepared and processed.

In special units, it is the trial deputy's responsibility to prepare a Disposition Report and secure Head Deputy approval before the recommended action is taken. However, Head Deputies may orally authorize the recommended action to be taken before a written recommendation has been prepared. In that event, a Disposition Report shall thereafter be prepared and processed.

If a defendant pleads guilty to any count significantly different from the charges originally filed or if the sentence imposed fails to meet the minimum penalties of the Felony Case Settlement Policy, the deputy handling the case shall provide an explanation in the Disposition Report. The report should include the efforts made to obtain a sentence consistent with this policy and an assessment of the reason(s) why a less severe sentence was imposed.

12.14.03 VICTIM NOTIFICATION

In all cases where defendants are sentenced to the California Department of Corrections and Rehabilitation (CDCR), victims, next of kin, and threatened witnesses shall be sent a CDCR 1707 form so that they are kept apprised of the custody status of the defendant. See LPM § 24.02.05 for a full discussion of the victim notification obligations of District Attorney personnel for defendants sentenced to state prison.

The use of the CDCR 1707 form has become significantly more important in light of changes in the law that are currently resulting in early release of defendants sentenced to state prison. Many victims, next of kin, and threatened witnesses are unaware that defendants are subject to release at a much earlier date than they might have expected based upon the original sentence imposed. If victims, next of kin, and threatened witnesses do not register the CDCR 1707 form with the CDCR, the CDCR will not notify them of the release of the defendant, execution of the

defendant, the death of the defendant, or the escape of the defendant. The CDCR will also not collect restitution or impose requested parole conditions.

12.15 COMMUNICATING RESULTS

Members of the public have a strong interest in the outcome of criminal cases in which they are a victim or witness.

12.15.01 COMMUNICATION WITH CRIME VICTIMS

In the settlement of a serious case, a decision not to pursue one or more counts and/or allegations charged, particularly those involving physical or mental trauma or great financial loss, can have far-reaching negative effects on the victim. If not handled appropriately and carefully, a dismissal or case settlement can leave a victim with the belief that a criminal wrong has not been redressed. A victim may feel angry, resentful, vulnerable and abandoned. A traumatized victim of a serious crime may be shocked to discover, after the fact, that the Office has dismissed the count pertaining to that victim or settled it for a lesser charge. Deputies cannot expect victims to readily appreciate, without an explanation, the problems of the law of search and seizure, mental defenses and the limitations on consecutive sentencing.

Pursuant to Penal Code § 679.02(a), victims of violent felonies (as defined in Penal Code § 667.5(c)) have a right to be notified of a pretrial disposition. Victims of any felony may request to be notified of a pretrial disposition. Accordingly, within reason, a deputy settling a felony case shall attempt to notify the victim or next of kin before the plea is entered. A deputy may use any reasonable means available to make the notification. A victim services representative may make notification on behalf of the deputy. If it is not possible to notify the victim of the disposition before the plea is entered, the deputy shall ensure that notification is made later, either by the Office or by the Probation Department.

12.16 PENAL CODE § 290 POLICY

Failure to register as a sex offender is a serious offense. Penal Code § 290 provides law enforcement with a powerful tool to ensure public safety, protect law-abiding citizens, and monitor offenders to deter further criminal activity. This policy is promulgated to provide uniformity in the settlement of these cases.

12.16.01 CASE SETTLEMENT

Where the Penal Code provides for a felony, state prison is presumed. The nature of the current violation, the gravity and circumstances of the underlying registrable offense, and the defendant's record shall be considered in determining an appropriate disposition.

Strike Cases

A violation of Penal Code § 290 may qualify as a presumed second strike case. In a presumed second strike case, a state prison sentence is presumed. Head Deputy approval is required to

settle the case for less than the low-term doubled. Mitigating circumstances shall be clearly documented in the Disposition Report. In appropriate cases, Head Deputies should seek Director approval to proceed as a third strike case.

Probation

A person convicted of a felony Penal Code § 290 violation may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted, the court shall enter the circumstances indicating that the interests of justice would best be served by the disposition, into the minutes. (PC § 290.018(e).) For felony cases in which probation is granted, or if the imposition or execution of the sentence is suspended, the judge must, as a condition of probation or suspension, order the registrant to serve at least 90 days in county jail. (PC § 290.018(c).)

12.16.02 CASE SETTLEMENT GUIDELINES

Deputies should evaluate whether the circumstances of a Penal Code § 290 violation demonstrate that the offender intended to thwart the statutory scheme for tracking sex offenders or solely failed to comply with a technicality. Deputies should consider the following factors when recommending an appropriate sentence to the court:

Nature of Current Offense:

The following circumstances might mitigate the offense:

- Has the defendant been registering regularly prior to the current Penal Code § 290 violation;
- Is the failure to register less than 30 days late;
- Did the defendant register at the new residence but fail to register at the former residence.

Nature of Underlying Offense and Defendant's Record:

The following circumstances might aggravate the offense:

- Was the defendant sentenced to state prison on the underlying registrable offense;
- Does the defendant have multiple prior registrable offenses;
- Does the defendant have other prior strikes, felony convictions or state prison commitments;
- Does the defendant have a history of use of force, violence or weapons;
- Was the victim of the underlying registrable offense vulnerable.

A Head Deputy must approve any sentencing recommendation which deviates from this policy.

12.17 ANIMAL CRUELTY

It has been established that a correlation exists between intentional animal abuse and other forms of criminality. Other forms of animal cruelty, such as neglect and illegal animal fighting, are also associated with various negative behaviors and consequences. Neglecting an animal can lead to prolonged suffering or death, and is often indicative of other types of dysfunction within an environment. Illegal animal fighting not only impacts the animals involved, it also adversely affects the quality of life of citizens who reside in areas where illegal animal fighting occurs.

Consequences for mistreating animals should be consistent and uniform. It is essential that sentences for animal cruelty crimes impart the message that no form of animal cruelty is acceptable. Sentences should appropriately address the crime by including terms and conditions designed to prevent similar future conduct. Sentences should also be structured in such a way that they protect the victims of the abuse, as well as potential future victims.

In an effort to ensure that animal cruelty crimes are vigorously prosecuted, animal cruelty cases shall not be sent to EDP courts and, whenever possible, should be vertically prosecuted by designated Animal Cruelty Deputies.

Deviation from this policy requires prior Head Deputy or Deputy-in-Charge approval.

12.17.01 Animal Cruelty Case Dispositions

Sentences in animal cruelty cases should convey the message that animal cruelty is a serious crime. To ensure that dispositions are appropriate, specific disposition guidelines have been established for animal cruelty cases.

No one other than an animal cruelty designee or the Animal Cruelty Case Coordinator (ACCC) shall make offers in cases involving animal cruelty charges.

The animal cruelty case disposition guidelines include terms and conditions that are mandated by law, as well as conditions that are designed to provide adequate oversight of defendants. The guidelines shall be regularly requested by deputies as part of the disposition of all animal cruelty cases. Deviation from this policy requires prior approval from the ACCC and the Head Deputy or Deputy-in-Charge.

The [disposition guidelines](#) are available on LADAnet, under “Library” > ”Animal Cruelty” > “Filing, Litigating, and Sentencing Your Case.”

Dismissals and Reductions: Charges involving any form of animal abuse, including dog and cock fighting, should not be dismissed, reduced or “diverted” without prior approval from the ACCC and Head Deputy or Deputy-in-Charge.

This policy applies in all cases, regardless of whether the case only involves charges of animal cruelty, or if there are other charges filed, as well.

Diversion: Those who violate any of the animal cruelty statutes are eligible for misdemeanor military diversion under the provisions of Penal Code § 1001.80. When appropriate, deputies

should vigorously argue against diversion in animal cruelty cases, especially when the animal-related charges are “priorable” offenses. When the court is considering granting diversion, the deputy shall state the facts of the case, ask the court to review evidence, such as photos and/or video, and present the argument that the defendant may be eligible, but not suitable, for diversion.

Counseling: Depending upon the animal cruelty charge(s) of which the defendant is convicted, counseling may be mandated by law (PC § 589(h).) Judges should be informed of the counseling requirement in cases where counseling is mandated. In all cases that include animal cruelty charges, requiring animal cruelty classes as a term of probation is highly advisable, regardless of whether classes are mandated by law.

When sentencing a defendant to animal cruelty counseling, the designee shall complete a counseling form and email or fax the form to the address or number found at the bottom of the form. A defendant will not be permitted to enroll unless the program has received a copy of the form from the prosecutor.

Database: Upon disposition of a case involving animal cruelty charges, the form in the Animal Cruelty Database should be updated.

12.18 DRIVING UNDER THE INFLUENCE

12.18.01 IGNITION INTERLOCK DEVICES

This policy pertains to offenses committed on or after July 1, 2010.

Vehicle Code §§ 23700 and 13386 create a pilot program, effective July 1, 2010, that mandates the installation and use of an ignition interlock device (“IID”) for all persons convicted of violating Vehicle Code § 23152 or 23153.

It is the policy of the Office, pursuant to VC §§ 23700 and 13386, to request the following condition of probation for all defendants who are convicted of violating Vehicle Code § 23152 or 23153, or Penal Code § 191.5:

“The defendant is ordered to comply with any and all requirements imposed by the Department of Motor Vehicles regarding the installation and use of an ignition interlock device.”

Furthermore, it is also the policy of the Office, pursuant to Vehicle Code § 23575, that deputies shall request a court-ordered IID in any of the following circumstances:

- The defendant’s measured blood-alcohol level was .15 or higher;
- The defendant has two or more prior moving traffic violations;
- The defendant refused the implied consent blood-alcohol test;
- The defendant committed a violation of Vehicle Code § 23153.

In unusual cases, the Head Deputy or Deputy-in-Charge may approve a deviation from this policy.

If a defendant attempts to circumvent a court-ordered IID by filing a declaration that he or she does not own or operate a motor vehicle, the declaration should be signed under penalty of perjury and co-signed by an interpreter if one was used to assist the defendant at the time of sentencing.

12.19 **HARRIS REPORT** - CASE SETTLEMENT POLICY AND PROCEDURE

All authorizations necessary for case disposition shall be documented in written form using a disposition report prior to an offer being placed in the case file or conveyed to the defendant. In cases alleging strike priors, Head Deputy authorization to strike a strike shall be obtained and noted in the file in conjunction with the entry of the disposition offer.

12.20 **NARCOTICS ASSET FORFEITURE CASES**

A contested narcotics civil asset forfeiture case involving less than \$25,000 in cash or cash equivalents requires the conviction “of a defendant” for violating Health and Safety Code §§ 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, 11383, or a felony violation of 11366.8, or for a conspiracy to violate one of these sections. In any case in which property has been seized for forfeiture, the filing deputy will note “Agency seeking forfeiture filing” on the case summary to alert subsequent deputies of the potential forfeiture case.

If it appears from the criminal case file that a forfeiture action may be an issue, the deputy handling the criminal case should contact the Asset Forfeiture Section to determine the status of any forfeiture action. If a forfeiture action has been rejected, or if the potential claimants have failed to respond to the forfeiture notice, no further action need be taken by the court nor the deputy handling the criminal case.

If the forfeiture case is still pending, the deputy handling the criminal case shall be aware that any negotiation with respect to a settlement of the criminal case could impact the forfeiture case. The forfeiture case may be resolved by way of settlement instead of trial if all potential claimants have been served with Notice of Forfeiture and the time has passed for filing any further claims. Before settling a forfeiture case, the deputy handling the criminal case should contact the Asset Forfeiture Section.

Evaluation of the criminal matter shall not be dictated by the forfeiture case. If a case is worth reducing to a simple possession in the absence of a forfeiture action, it is worth the same disposition with a forfeiture action pending, even though such a disposition would mean the loss of the forfeiture. Nor should the amount of the potential forfeiture allow a criminal defendant to bargain away what he or she should receive by way of charge or sentence. The deputy handling the criminal case shall not negotiate a case settlement that includes the return of seized property without consulting with the Asset Forfeiture Section.

12.21 HIV/AIDS TESTING OF DEFENDANT FOR SPECIFIED SEX OFFENSES

Prosecutors have a mandatory obligation to advise victims of specified sexual assault offenses of the right to HIV/AIDS testing and disclosure of results. (PC §§ 1524.1, 1202.1; H&S §§ 121055.) The Los Angeles County Department of Health Services is statutorily required to perform both pre and post-conviction disclosure of results to crime victims.

12.21.01 PRE-CONVICTION AIDS TEST UNDER HEALTH & SAFETY CODE § 121055

This section allows named victims of specified charged sex crimes to request the district attorney's office to seek a petition and an order from the court to draw and test the blood of the defendant or minor against whom a petition has been filed. The petition can be filed as soon as the complaint or juvenile petition is filed and must include a written request from the victim. The court then must promptly hold a hearing. If the court determines there is probable cause to believe that blood, saliva, semen or other bodily fluid was possibly transferred between the defendant and the victim, the court shall order that the defendant provide two blood samples for testing. Copies of the test results are delivered to each requesting victim and the defendant.

12.21.02 PRE-CONVICTION HIV TEST UNDER PENAL CODE § 1524.1

Under Penal Code § 1524.1, once a complaint, information, indictment or juvenile petition has been filed, the court may issue a search warrant to test the blood or saliva of the defendant or minor for HIV. The search warrant may be ordered upon request of the victim and after the court finds that there is probable cause to believe that the defendant committed the charged offense and that there is probable cause to believe that a bodily fluid capable of carrying HIV was transferred from the defendant to the victim.

This section applies to any victim of any charged crime where the possibility exists that bodily fluid capable of transmitting HIV was transferred from the defendant to the victim. However, if the defendant is charged with a specified sex offense, the victim of an uncharged sex offense may also obtain a search warrant to have the defendant's blood drawn and tested.

The deputy is required to inform the victim of the right to request the warrant and shall refer the victim to a "local health officer" for pre-request counseling to assist the victim in determining whether to make the request. The results of the HIV test are to be disclosed by the local health officer to the victim requesting the test.

The test results shall not be used in any criminal proceeding as evidence of guilt or innocence.

12.21.03 POST-CONVICTION AIDS TEST UNDER PENAL CODE § 1202.1

Upon conviction or a juvenile petition sustained or admitted of one of the following offenses, the court shall order the defendant to submit to a blood or buccal swab test for evidence of AIDS:

- Rape in violation of PC §§ 261 or 264.1;

- Unlawful sexual intercourse with a person under 18 years of age in violation of PC §§ 261.5 or 266c;
- Rape of a spouse in violation of PC §§ 262 or 264.1;
- Sodomy in violation of PC §§ 266c or 286; and
- Oral copulation in violation of PC §§ 266c or 288a.

If the conviction or petition was sustained or admitted for one of the following offenses, the court shall order the defendant to submit to an AIDS test, only upon a finding that there was probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim:

- Sexual penetration in violation of PC §§ 264.1, 266c or 289;
- Aggravated sexual assault of a child in violation of PC § 269;
- Lewd or lascivious conduct with a child in violation of PC § 288;
- Continuous sexual abuse of a child in violation of PC § 288.5; and
- An attempt to commit any of these offenses.

This duty applies whether the defendant was sentenced to prison or placed on probation. The testing must be completed within 180 days. The deputy or Bureau of Victim Services advocate shall advise the victim of his or her right to obtain the results and refer the victim to a local health officer for counseling. The local health officer is responsible for disclosing the test results to the victim. If the test results are positive, the results cannot be disclosed without offering or providing counseling to the victim.

12.22 **GRAFFITI**

Whenever a defendant is granted probation in a graffiti case, a deputy shall request the court to impose specific terms and conditions of probation. Forms detailing the required terms and conditions of probation in adult and juvenile matters are available in LADAnet, as attachments to [SD 10-07](#). Head Deputies and Deputies-in-Charge are responsible for periodically auditing graffiti cases to determine if these terms and conditions are being imposed by courts. Deviation from this policy requires prior Head Deputy or Deputy-in-Charge approval.