

## **CHAPTER 3**

### **CRIME CHARGING - SPECIAL POLICIES**

#### **3.01 MAJOR CRIMES AND SIGNIFICANT CASES**

Major crimes and significant cases of public interest require special handling. This section defines these offenses and outlines the procedures to be followed in charging, declining to charge and prosecuting them. Cases meeting the criteria of a major crime/significant case may arise anywhere in the county. The procedures delineated in this section pertain to the handling of a major crime/significant case prosecuted anywhere within the Office.

##### **3.01.01 MAJOR CRIMES/SIGNIFICANT CASES DEFINED**

A major crime is a particularly aggravated felony offense. A significant case is any crime, felony or misdemeanor, of significant public interest. In most cases, it will be clear at the time of charging whether a case falls into one of these two categories. However, if during the pendency of a case, circumstances arise or change such that the case meets the criteria of a major crime, or begins to generate significant public interest, the case shall be treated as a major crime/significant case and the procedures set forth herein shall be followed. Major crimes and significant cases include the following:

- Crimes that are particularly serious, brutal or heinous, such as multiple murders, serial killings, kidnappings, and violent or bizarre crimes against the person;
- Crimes capable of arousing widespread public interest or concern;
- Crimes offending public sensibilities;
- Extraordinary white collar crimes;
- Negligent deaths or serious bodily injuries to workers;
- Environmental crimes that may have serious consequences to the public;
- Crimes involving any prominent person, including public officials and law enforcement officers;
- The killing or serious injury of a law enforcement officer or firefighter while on duty; and
- The maiming or killing of any animal or serious animal attacks on humans.

##### **3.01.02 PROCEDURES**

Most major crimes/significant cases understandably arouse widespread public concern. These procedures are designed to enable the Office to respond appropriately to that concern.

##### **3.01.03 PRIOR TO CHARGING OR DECLINING TO CHARGE**

Before charging or declining to charge a major crime/significant case, it is mandatory that the Bureau Director be notified. The deputy handling the case shall apprise his or her Head Deputy or Deputy-in-Charge who shall then notify the Bureau Director.

The Head Deputy or Deputy-in-Charge shall be responsible for making a recommendation to the Bureau Director whether the case should be processed by the Grand Jury. The Chief Deputy shall make the final decision regarding which cases should be presented to the Grand Jury.

#### **3.01.04 AFTER CHARGING OR DECLINING TO CHARGE**

When a major crime/significant case is filed or an indictment returned, the filing deputy/assigned deputy shall prepare a confidential memorandum to be forwarded through the chain of command to the Bureau Director. The memorandum shall contain:

- The names of all accused;
- The number of the case and the name of the filing office and prosecutor;
- The counts filed;
- A concise factual summary of the case including the reason why it is a major crime/significant case; and
- A description of any notable or unusual legal problems which might arise in the case.

A copy of the memo shall also be forwarded to the Media Relations Division.

In the event of a declination, a copy of the written declination shall be transmitted through the chain of command to the Bureau Director.

#### **3.01.05 NOTIFICATION TO THE CHIEF DEPUTY AND DISTRICT ATTORNEY**

It shall be the responsibility of the Bureau Director to bring major crimes/significant cases submitted for charging or declination to the immediate attention of the Chief Deputy and to forward, as soon as it is available, a copy of the confidential memorandum or declination to the Chief Deputy and Assistant District Attorney.

The District Attorney shall be kept informed by the Chief Deputy. The Chief Deputy shall assign such personnel as are deemed necessary to the processing of such cases. In appropriate cases, the Chief Deputy shall assign these cases to the Major Crimes Division for prosecution.

If a special circumstances case meets the definition of a major crime/significant case, the procedures in this section are applicable as well as the specific procedures for handling cases involving special circumstances covered in the [\*Special Circumstances Cases\*](#) chapter.

Any proposed disposition of a major crime/significant case shall conform to the provisions of the felony and misdemeanor case settlement policies set forth elsewhere in this manual. The proposed disposition shall be brought promptly to the attention of the Bureau Director. At the conclusion of a trial in a major crime/significant case, the result of the trial shall be brought promptly to the attention of the Bureau Director.

## 3.02 **THREE STRIKES**

The Three Strikes law, Penal Code §§ 1170.12(a)-(d), provides a powerful tool for obtaining life sentences in cases involving habitual criminal offenders. However, unless used judiciously, it also has the potential for injustice and abuse in the form of disproportionately harsh sentences for relatively minor crimes. The Three Strikes statutory scheme appropriately authorizes the use of prosecutorial discretion in its implementation. Deputies have a legal and ethical obligation to exercise this discretion in a manner that assures proportionality, evenhanded application, predictability and consistency. Moreover, the potential for coercive plea bargaining must be avoided.

### 3.02.01 **CHARGING POLICY**

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).

For Three Strikes case settlement rules, see the [Three Strikes section](#) of Chapter 12, Felony Case Settlement Policy.

## 3.03 **JUVENILE CRIME CHARGING**

The Juvenile Division prosecutes all crimes committed by minors countywide. The charging standards and guidelines used in juvenile cases are the same as for adult prosecutions. Deputies should refer to the most recent edition of the [Juvenile Delinquency Practice Manual](#) published by the Office for detailed descriptions of juvenile law and procedures. In any case where a person under the age of 18 is accused of a crime, and law enforcement is seeking charges, the case shall be presented to the appropriate Juvenile Division Office for filing consideration.

The provisions of Proposition 21 involving the discretionary direct filing of juveniles in adult court under certain circumstances were abrogated by Proposition 57. Pursuant to Proposition 57 (Prop 57), only juvenile offices may consider filing charges in cases in which a minor is accused of a crime.

In order to charge a minor in adult court, the prosecution shall make a “Motion to Transfer Minor from Juvenile Court to a Court of Criminal Jurisdiction” in the appropriate juvenile court. (WIC § 707(a).) The approval of the Head Deputy of the Juvenile Division is required to authorize a Motion to Transfer.

The Juvenile Division Head Deputy shall consider the following factors:

- Degree of criminal sophistication exhibited by the minor;
- Whether the minor can be rehabilitated prior to the expiration of the juvenile court’s jurisdiction;
- The minor’s previous delinquent history;
- Success of previous attempts by the juvenile court to rehabilitate the minor;

- The circumstances and gravity of the offense alleged in the petition to have been committed by the minor;
- Existence of a companion adult defendant; and,
- Any special consideration for victims and witnesses.

The first five factors listed above are based on the statutory criteria set forth in Welfare and Institutions Code § 707, subdivision (a)(2). The last two factors represent additional significant considerations that might warrant transfer of the minor from juvenile court to a court of criminal jurisdiction. If the Juvenile Division Head Deputy determines that a Motion to Transfer is appropriate, the Juvenile Division Head Deputy shall consult with the Head Deputy of the office responsible for prosecution in adult court.

### **3.03.01 CASES CERTIFIED TO ADULT COURT**

If, after a transfer hearing, the juvenile court certifies the minor to adult court, the adult court filing deputy shall file the case. The adult court filing deputy may not reject the case or deviate from the juvenile court charges without prior approval of the Head Deputy. Juvenile court filing deputies use the same charging standards as those used in adult cases. Therefore, unless the facts or the law have changed, the same charges should be filed in adult court. Prior filing errors or omissions may justify deviating from the original juvenile charges.

### **3.03.02 CASES CERTIFIED TO JUVENILE COURT**

Whenever a case is pending in adult court and it is suggested or appears to the judge that the defendant was under 18 years of age at the time of the offense, the adult court must immediately suspend proceedings and “examine into the age of the person.” (WIC § 604.)

A deputy confronted with a defendant who challenges the adult court’s jurisdiction should not necessarily concede the issue. Adult defendants sometimes lie about their age to get their cases transferred to the juvenile court in order to avoid what they perceive to be the harsher penalties of adult prosecution. If a claim of minority appears untruthful, the adult court deputy shall present any available evidence to counter the claim (such as the date of birth given by the defendant to police in this or other cases) and make appropriate arguments on the issue. The accused has the burden of proof to establish minority by a preponderance of evidence. (*People v. Nguyen* (1990) 222 Cal.App.3d 1612.)

If after hearing the evidence, the adult court finds the defendant was a minor at the time of commission of the offense, the adult court shall immediately certify the matter to the juvenile court. The adult prosecution should be suspended, but not dismissed. The juvenile court is the final arbiter regarding the accused’s age. If the juvenile court, after a hearing, finds that the accused has not proven minority by a preponderance of the evidence, it can certify the case back to the adult court. In addition, the juvenile court has the option, under appropriate circumstances, to hear a motion to transfer jurisdiction from the juvenile court and certify the case back to the adult court. In either event, the case would then resume at whatever stage was reached before the defendant’s certification to juvenile court.

### 3.04 DISCLOSURE OF INFORMANTS

If an informant was involved in a case investigation, a deputy should assume that a motion will be made seeking disclosure of the informant's identity. In bringing this motion, the defendant has the burden of showing a "reasonable possibility" that the informant can offer exonerating evidence or evidence that tends to benefit the defendant's case. The adequacy of such a showing depends largely on the theory of exoneration proffered by the defendant (e.g., "the informant will say it's not my heroin"). In many cases, oral argument and case law alone will be sufficient to successfully oppose the motion. The prosecution can argue, if appropriate, that the accused has not made a prima facie showing that the informant is "material." This argument is usually buttressed by citing case law that held against disclosure in similar factual situations.

If a judge rules that a prima facie showing has been made, then disclosure may be opposed by the use of the in camera hearing procedure set forth in Evidence Code §§ 1042 and 913 et seq. At this hearing, a judge must determine whether there is a reasonable possibility that nondisclosure of the informant's identity would deprive the defendant of a fair trial.

If, at the time of filing, it appears that a judge might, after an in camera hearing, grant a motion to disclose the informant's identity, then no charges shall be filed unless:

- The investigating agency agrees to disclose the informant's identity if the motion is granted; and
- The investigating agency agrees to make reasonable efforts to keep track of the informant's whereabouts.

If it appears that it will be necessary for the informant to testify at the in camera hearing, the filing deputy shall obtain the assurance of the investigating agency that the informant will be made available for that hearing.

The investigating agency must be told that charges will not be filed without this assurance unless the failure to disclose the informant will not require a dismissal. The police should not be required to agree to produce the informant at an in camera hearing if it appears reasonably possible that the motion can be successfully opposed without the hearing or if other witnesses available for an in camera hearing can clearly show that the informant cannot exonerate the accused or benefit the accused's case.

#### 3.04.01 HOBBS ATTACHMENTS

The use of confidential informants by law enforcement is an important investigative tool. In *People v. Hobbs* (1994) 7 Cal.4<sup>th</sup> 948, the California Supreme Court held that all or part of the information in a search warrant affidavit furnished by an informant may be sealed to protect the informant's identity where the informant's only relevance is supplying probable cause. Evidence Code §§ 1040 to 1042 provide additional authorization regarding the privilege. In *People v. Acevedo* (2012) 209 Cal. App.4<sup>th</sup> 1040, the ruling in *Hobbs* was extended to apply to wiretap affidavits. Inadvertent disclosure of information found in *Hobbs* attachments could endanger the lives of confidential informants and law enforcement personnel as well as jeopardize ongoing

investigations. The Office will make every effort to legally protect the identities of confidential informants and limit access to confidential information. In order to make informed filing decisions, meet discovery obligations, as well as fulfill the obligation to disclose potential impeachment or exculpatory information (see also LPM § [14.06.03](#)), Office policy requires that deputies review a copy of the sealed *Hobbs* attachments of search warrant affidavits when reviewing cases for filing consideration.

#### Responsibility of the Filing Deputy at Time of Filing

1. When a case presented for filing is dependent on evidence seized pursuant to a search warrant with a sealed *Hobbs* attachment, oral representations by the investigating agency of its contents without reviewing the sealed *Hobbs* attachment is unacceptable.
2. The sealed *Hobbs* attachment shall be reviewed and assessed for the following determinations:
  - a. The likelihood that a court would require disclosure of the informant;
  - b. Whether any portion of the sealed *Hobbs* attachment is discoverable under Penal Code §§ 1054.1 et. seq.;
  - c. Whether any portion of the sealed *Hobbs* attachment needs to be disclosed in order to comply with the obligation to disclose potential impeachment or exculpatory information.

#### Protocol When No Discoverable Information is Contained in the Sealed Hobbs Attachment

1. If after reviewing the entire affidavit, the filing deputy determines that no discoverable and/or potential impeachment or exculpatory information exists in the sealed *Hobbs* attachment, he or she shall, at the time of filing, return the sealed *Hobbs* attachment to the investigating agency.
2. The filing deputy's Statement of Facts, Attorney Notes and/or Filing Memorandum shall note the existence of any portion of a sealed *Hobbs* attachment that was reviewed and assessed and any conclusions reached. However, the filing deputy's documents shall not reveal the contents of any portion of a sealed *Hobbs* attachment.
3. No physical copies of any portion of a sealed *Hobbs* attachment will be retained by the Office. The filing deputy shall ensure that no copies of the sealed *Hobbs* attachment are placed in a case file or provided to defense, probation or other unauthorized individuals.

#### Protocol When Discoverable Information is Contained in the Sealed Hobbs Attachment

1. If the filing deputy believes that discoverable and/or potential impeachment or exculpatory information exists in the sealed *Hobbs* attachment, he or she shall consult with the Head Deputy or Deputy-in-Charge to determine whether any or all of the sealed *Hobbs* attachment requires disclosure to the defense. Using the likelihood standard of Legal Policies Manual § 3.05 stated above, if it appears that a judge might require disclosure of the informant's identity or if any portion of the *Hobbs* attachment is determined discoverable or to contain potential impeachment or exculpatory information, no charges shall be filed unless:

- a. The investigating agency agrees to disclose the informant's identity and/or information contained in the sealed *Hobbs* attachment; and
  - b. The investigating agency agrees to make reasonable efforts to keep track of the informant's whereabouts, if applicable; and
  - c. The investigating agency agrees to request the issuing judge to unseal that portion of the sealed *Hobbs* attachment that contains the discoverable and/or potential impeachment and/or potential exculpatory information in order to provide it to the defense.
2. If the investigating agency is not willing to agree to the above conditions, it will be given the option of withdrawing its case for filing consideration or receiving a case filing declination.
  3. The filing deputy's Statement of Facts, Attorney Notes and/or Filing Memorandum shall note the existence of any portion of a sealed *Hobbs* attachment that was reviewed and assessed and any conclusions reached. However, the filing deputy's documents shall not reveal the contents of any portion of the *Hobbs* attachment that remains sealed. Furthermore, the filing deputy shall note when any portion of a previously sealed *Hobbs* attachment is provided to the defense as discovery.
  4. No physical copies of any portion of a sealed *Hobbs* attachment will be retained by the Office. The filing deputy shall ensure that no copies of the sealed *Hobbs* attachment are placed in the case file or provided to the defense, probation or other unauthorized individuals.
  5. Unsealed portions of any *Hobbs* attachment shall be retained inside the case file.

#### Access to the Sealed Portion of the *Hobbs* Attachment by the Assigned Courtroom Deputy

1. If a physical copy of any portion of a sealed *Hobbs* attachment is needed for litigation of the search warrant (motions to quash or traverse), the affiant shall be directed to provide a copy to the assigned deputy for that purpose. Procedures for responding to motions to quash or traverse search warrants containing sealed *Hobbs* attachment or set forth in the Office's [Search Warrant Manual](#).
2. This policy does not preclude deputies handling testimonial hearings, other than motions challenging the search warrant, from reviewing *Hobbs* attachments in possession of law enforcement or being briefed on its contents when information contained within the attachment may be relevant to the hearing.

#### Protocol for Wiretaps with *Hobbs* Attachments

1. The Major Narcotics Division (MND) is responsible for coordinating the approval, preparation and execution of all wiretaps issued by the office.
2. Accordingly, the MND receives the entire affidavit, which includes any sealed *Hobbs* attachments.
3. Wiretaps are ordered sealed by the court and kept in the custody of the law enforcement agencies with copies maintained by the MND.
4. When another division or office files a case derived from any wiretap, the MND shall be immediately contacted for assistance with discovery obligations and wiretap-related litigation.

5. Disclosure of any portion of a wiretap to anyone outside of the Office requires approval from the Head Deputy or Assistant Head Deputy of the MND.

### Notifying Law Enforcement When Requesting Unsealing of *Hobbs* Attachment

Any deputy who seeks to have any portion of a *Hobbs* attachment in a search warrant or wiretap affidavit unsealed shall notify the affiant or a supervisor of the law enforcement agency that executed the warrant/wiretap prior to requesting authorization from a court to unseal the *Hobbs* attachment.

#### *Commentary*

*When it is clear at the time of filing that disclosure of the informant's identity will be required, the filing deputy shall not file charges if the investigating agency has stated that it will not permit such disclosure.*

### **3.05 CRIMINAL MISCONDUCT BY MEMBERS OF THE JUSTICE SYSTEM**

JSID is the clearinghouse for all felony criminal cases against persons who are integral to the justice system. All cases alleging criminal misconduct that could support a felony filing against a member of the criminal justice system must be initially presented to JSID. Thus, if law enforcement initially presents a case alleging potential felony activity against a person integral to the justice system to a unit other than JSID, the Head Deputy (HD), Assistant Head Deputy (AHD), or Deputy-in-Charge (DIC) of that unit shall contact JSID and provide copies of the report(s) to JSID for review. JSID will assign a tracking number and conduct an initial evaluation of all cases presented. If it is determined that the case need not remain in JSID, the HD or AHD of JSID will contact the appropriate HD, AHD or DIC of the division, office, or unit where the case will be transferred for filing evaluation and prosecution. JSID will either direct the investigating officer to compile a second set of investigative materials to present to the receiving unit or will forward the original materials to that unit.

When JSID determines that the case is better handled by another division, office, or unit within the Office, it will be the independent responsibility of the receiving unit to determine if sufficient evidence exists to file a criminal case, to prosecute the matter, and to make the appropriate notifications to the BPSO's DCU, whether or not a criminal case is filed. It is important to note that just because a case has been transferred out of JSID does not mean that the evidence is insufficient to support a criminal filing, only that it has been determined that the alleged criminal misconduct does not show such a close nexus to the subject's official duties so as to require evaluation and prosecution by JSID.

#### **3.05.01 PENDING CASES**

If during the pendency of a case, a deputy becomes aware of possible criminal misconduct by any member of the justice system, the deputy shall immediately notify his or her Head Deputy or Deputy-in-Charge. The deputy shall prepare a memorandum detailing the information and/or evidence suggesting possible criminal misconduct. The memorandum shall be forwarded through the deputy's Head Deputy or Deputy-in-Charge to the Head Deputy of JSID. The

deputy shall attach a copy of relevant reports, transcripts or other written material. All information in the possession of the deputy pertaining to the alleged misconduct shall be delivered to JSID as soon as possible. If the deputy is aware of additional facts that support or mitigate the allegation(s), that information shall be included in the required memorandum.

The Head Deputy or Deputy-in-Charge shall also prepare a separate memorandum setting forth an analysis of the alleged misconduct. The Head Deputy or Deputy-in-Charge shall forward copies of both memoranda to the Head Deputy of JSID and, through chain of command, to the Chief Deputy District Attorney.

The deputy shall re-evaluate the sufficiency of the evidence in the pending case. If the allegations affect the integrity of the prosecution, significantly weaken the case or are material to the guilt or innocence of the accused, the deputy shall immediately discuss the matter with his or her Head Deputy or Deputy-in-Charge who will then determine the appropriate course of action for the pending prosecution.

At the conclusion of the case, a separate closing memorandum shall be forwarded to JSID that shall include the final disposition. A copy of this memorandum shall also be forwarded through the chain of command to the Chief Deputy.

JSID shall conduct a review of the submitted memoranda and notify the involved person's employer. JSID may choose to conduct an independent investigation, request the agency initiate its own investigation or conduct a parallel or joint investigation with the involved person's agency.

### **3.05.02 CASES PRESENTED FOR FILING**

Whenever a law enforcement agency presents a felony or wobbler case for filing consideration against any member of the justice system, either on-duty or off-duty, to a division, office, or unit, the HD, AHD, or DIC of that office shall contact the HD of JSID and provide copies of the report(s) to JSID for review. JSID will assign a tracking number and conduct an initial evaluation of the felony or wobbler case presented. If it is determined that the case will not be handled by JSID, the HD or AHD of JSID will notify the appropriate HD, AHD, or DIC of the division, office, or unit where the case originated. If the felony or wobbler case is handled by the division, office, or unit, notification of a filing or declination shall be made to the BPSO's DCU by the handling deputy.

#### Felonies

Whenever a member of the justice system is accused of a felony, the deputy to whom the case is presented for filing shall immediately notify his or her Head Deputy or Deputy-in-Charge. The Head Deputy or Deputy-in-Charge shall then immediately notify the Head Deputy of JSID. The filing deputy shall send a copy of the reports to the Head Deputy of JSID. The filing deputy shall also send a copy of the reports, through chain of command, to the Chief Deputy. JSID will then assume responsibility for review and prosecution unless the matter is deemed more

appropriately handled by the office or division it was presented to or another office or division within the Office.

### Misdemeanors

Cases that cannot legally support a felony filing (straight misdemeanors) may be presented directly to the division, office, or unit that has geographical or subject matter jurisdiction. If the division evaluating the misdemeanor misconduct finds that the alleged criminal acts directly impact the criminal justice rights of an individual, the HD, AHD or DIC may contact JSID to discuss if the misdemeanor matter is more appropriately handled by JSID.

If the misdemeanor filing remains with the division, office, or unit, notification of the filing or declination shall be made to the BPSO's DCU by the handling deputy.

#### **3.05.03 CRIMINAL MISCONDUCT BY ATTORNEYS - NOTIFICATION TO STATE BAR**

Business and Professions Code § 6101(b) requires the District Attorney to notify the State Bar of the pendency of a criminal action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. All such notifications shall be made by the Chief Deputy. Section 6101(b) also requires the prosecuting agency to notify the clerk of the court in which the action is pending that the defendant is an attorney. This notification shall be made by the deputy who appears in court on the case.

Business and Professions Code § 6101(b) provides as follows:

The district attorney, city attorney, or other prosecuting agency shall notify the Office of the State Bar of California of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

#### **3.06 DNA DATA BANK MATCH CASES**

A deputy who is reviewing a case for filing involving a DNA data bank match shall determine whether there is sufficient admissible evidence to warrant the filing of charges and to convict the accused of the charges. A DNA profile match alone does not necessarily provide sufficient evidence to meet filing requirements. A DNA data bank match or "cold hit" which provides a suspect's name and other identifying information is considered an investigative lead and does not, in and of itself, constitute proof beyond a reasonable doubt. (See *People v. Johnson* (2006) 139 Cal.App.4th 1135.) The four charging criteria set forth in § [2.01.01](#) of the Legal Policies Manual must still be met, whether or not DNA evidence is involved.

### **3.06.01 NEW DNA REFERENCE SAMPLE SHALL BE OBTAINED**

When evidence of identity is established via a database match or “cold hit,” a new reference sample for DNA shall be obtained and analyzed in any case presented for filing. A reference sample may be legally obtained through consent, search warrant, court order or abandonment. It is not always possible to complete the DNA analysis on the new reference sample before filing. Therefore, the following guidelines should be considered when determining whether to file a case before the DNA analysis on the new reference sample has been completed.

### **3.06.02 IDENTITY OF PERPETRATOR DEPENDS UPON DNA**

When identity of the perpetrator depends upon DNA, a complaint may be filed, with Head Deputy or Deputy-in-Charge approval, if the following requirements are satisfied:

- A new reference sample is collected from the accused at or prior to the time of filing, and
- The law enforcement agency guarantees that the DNA reference sample will be transported to the crime laboratory for DNA analysis within 24 hours of the arrest of the accused, or on the next business day. The timely delivery of the reference sample to the laboratory will ensure that lab personnel have adequate time to complete the DNA analysis and generate a report within 10 court days. The timing may be critical in cases where it is necessary to present the DNA results at the preliminary hearing.

### **3.06.03 IDENTITY OF PERPETRATOR DEPENDS UPON DNA AND WHEREABOUTS UNKNOWN**

When it is not possible to obtain a reference sample because the suspect’s whereabouts are unknown, cases involving a violent felony (PC § 667.5(c)) may be filed for warrant based on a DNA database match. If a filing for warrant is necessary to ensure public safety and the filing deputy obtains Head Deputy or Deputy-in-Charge approval, a case involving at least one violent felony charge may be filed. The remaining charging criteria listed in Legal Policies Manual § [2.01.01](#) must be met.

### **3.06.04 IDENTITY OF PERPETRATOR DOES NOT DEPEND UPON DNA**

In these circumstances, a complaint may be filed, if there is legally sufficient, admissible evidence, other than DNA, to prove the charges beyond a reasonable doubt, as set forth in Legal Policies Manual § [2.01.01](#). As in any database match or “cold hit” case, a new reference sample must be obtained and tested. The fact that the identity of the perpetrator does not depend upon DNA does not relieve law enforcement of their obligation to obtain a new reference sample. However, the inability of law enforcement to guarantee that the new reference sample will be delivered to the lab within 24 hours of arrest or on the next business day and/or the fact that the

DNA analysis on the new reference sample has not yet been completed, shall not be a bar to filing.

### 3.06.05 LAW ENFORCEMENT REQUESTS FOR DNA FAMILIAL SEARCHES

In 2008, the California Department of Justice began using DNA Familial Searching. Familial Searching expands a traditional DNA bank search and provides law enforcement with a powerful tool to aid their investigation of cold cases. Any requests or inquiries for Familial Searching by law enforcement should be referred to the Office's Forensic Science Section.

### 3.07 POSSESSION OF CONCEALED/LOADED FIREARMS BY GANG MEMBERS

#### *Commentary*

*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 as felonies and to seek state prison sentences. This policy shall apply to the prosecution of Penal Code § 25400 and § 25850 violations. For the impact of this policy on Felony Case Settlement Policy, refer to Chapter 12, Felony Case Settlement Policy, subsection [12.07.04](#), Possession of Concealed or Loaded Firearms by Gang Members.*

A violation of Penal Code § 25400 (carrying firearm concealed within a vehicle or concealed upon a person) or § 25850 (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) and PC § 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) and 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) and 25850(c)(3).)
- The person is not in lawful possession of the firearm. (PC §§ 25400(c)(4) and 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. (PC §§ 16750(a) and 16750(b).)
- 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 (PC § 25400(c)(6)) or the person is not the registered owner of the loaded firearm. (PC § 25850(c)(6).)

#### 3.07.01 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) or 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 § 25400(c)(3) or Penal Code § 25850(c)(3) as a felony and to seek a state prison sentence.

### 3.07.02 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 §§ 25400(c) and 25850(c). 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 §§ 25400(c)(6) and 25850(c)(6) or may be stolen pursuant to Penal Code §§ 25400(c)(2) and 25850(c)(2).

If the conduct at issue can be charged under multiple sections, allege all applicable sections regardless of whether punishment ultimately may be pronounced under only one section pursuant to Penal Code § 654. Since Penal Code § 186.22(a) has been held to be a necessarily included offense of § 25850(c)(3), and, therefore, of § 25400(c)(3), a defendant cannot be *convicted* of both charges. (See *People v. Flores* (2005) 129 Cal.App.4th 174, 184 [A defendant “convicted of street terrorism in violation of section 186.22, subdivision (a) . . . and of carrying a firearm while he was an active participant in a criminal street gang, in violation of section 12031, subdivision (a)(2)(C)[*now Penal Code § 25850(c)(3)*] . . . could not have committed . . . [the 12031(a)(2)(C) [*now Penal Code § 25850(c)(3)*]] charge without necessarily committing [the 186.22(a) charge] at the same time. He cannot be convicted of both crimes.”] (*Italics added.*)

Deviation from this policy requires prior Head Deputy approval.

### 3.08 NARCOTICS ASSET FORFEITURE CASES

Under California’s Narcotics Asset Forfeiture law (H&S § 11470 et seq.), in contested civil forfeiture cases involving less than \$25,000 in cash or cash equivalents, a conviction of one of the drug trafficking charges enumerated in Health and Safety Code § 11470 in an underlying or related criminal case is mandated to support a judgment of forfeiture.

In any case in which it appears that a forfeiture action might be filed, the filing deputy should be aware that the success of the forfeiture action depends upon the charge being filed. A contested 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. It is the policy of the Office that the evaluation of the criminal matter must not be dictated by the forfeiture case.

### 3.09 JOHN DOE DNA ARREST WARRANTS

A John Doe DNA arrest warrant identifies the defendant by a unique DNA profile rather than by name, date of birth or other identifying information. In *People v. Robinson*, (2010) 47 Cal.4th 1104, the California Supreme Court held that the issuance of a John Doe DNA arrest warrant will commence a criminal prosecution thereby satisfying the statute of limitations.

It shall be the policy of the Office to use John Doe DNA arrest warrants to commence a prosecution and thereby satisfy the statute of limitations only in appropriate circumstances where there is reasonable certainty that the DNA isolated from the crime scene evidence belongs to the perpetrator of the crime. All other charging criteria included in this manual must also be met. A DNA profile match alone does not necessarily provide sufficient evidence to meet these requirements.

#### 3.09.01 STATUTE OF LIMITATIONS

Penal Code § 804(d) provides that prosecution for an offense is commenced when an arrest or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information or complaint. If the warrant is issued before the statute of limitations runs, the statute is satisfied. In *Robinson*, the California Supreme Court held that an unknown suspect’s unique DNA profile satisfies the particularity requirement for an arrest warrant. The statute of limitations is satisfied if the prosecution is commenced by the filing of a John Doe DNA arrest warrant within the limitations period.

Filing a John Doe arrest warrant necessarily involves unusual circumstances. The complaint will contain the perpetrator’s genetic profile rather than a name, date of birth, or other common identifying information. A sample complaint and warrant is available on LADAnet, as an attachment to [SD 10-01](#). Filing deputies shall record the John Doe Warrant case category code (DOE) on the Felony Filing worksheet. The decision to file criminal charges via a John Doe arrest warrant must be approved by the Head Deputy, after consultation with his or her Bureau Director.

Note that when a cold hit occurs and the defendant’s true name and other identifying information is discovered, the complaint and warrant **must be amended immediately** to reflect this information. Deputies shall follow up to ensure that John Doe warrants are promptly served once the suspect’s identity has been established.

### 3.09.02 FACTORS TO CONSIDER IN FILING A JOHN DOE DNA ARREST WARRANT

#### - Statute of Limitations

Determine the appropriate statute of limitations. If the statute of limitations is set to expire shortly, the filing of a John Doe arrest warrant may be the only means to pursue a prosecution. If the statute of limitations is not in danger of expiring, compelling circumstances may exist which justify the filing of charges.

#### - Nature of the Offense

Consider the seriousness of the charges, nature of loss or injury, and/or the impact the crime has had on the community. It may be appropriate to file a serious or violent felony, such as sexual assault or kidnapping, while it may not be appropriate to file an auto burglary. Consider the potential sentence as well.

#### - DNA Evidence

The profile must be of a single source, with the locus designations and alleles listed in the complaint and warrant. The random match probability rarity statistics of the profile must be listed in the complaint and warrant. Because the crime labs typically do not generate these statistics until after a suspect is identified via a reference sample, the filing deputy shall contact the DNA analyst to ensure that the statistics are available at the time of filing. The filing deputy must be confident that the DNA profile belongs to the perpetrator of the crime and not a victim, witness or some other innocent party.

#### - Need for a Reference Sample

As with any cold hit case, a new DNA reference sample is required once the suspect is located and identified by name. Be sure that buccal swabs or other DNA samples have been taken from victims and witnesses for elimination purposes, if necessary.

#### - Case Preparation

It is quite possible that a warrant could remain in the system for months or years before the suspect is identified and arrested. The case should be prepared at the time of filing in such a way that it can be picked up at a later time without the need for further investigation or preparation. Complete victim/witness identifying information should be obtained, including date of birth, driver's license number, Social Security number, current address and phone, employment information, and family contact information. Materials such as witness statements, crime scene photos, business records, medical records, etc., should be obtained, and steps taken to ensure that police reports and physical evidence will not be destroyed. Often, important investigative work cannot be completed until the suspect's identity is fully established. Filing a John Doe warrant may mean that the opportunity to conduct this type of further investigation will be lost, e.g., conducting a pretext phone call or eliminating an alibi.

- Preliminary Hearing Time Limits Penal Code § 859(b)

Once the suspect is identified, he or she may be arrested and brought to court quickly, triggering statutory time limits. Witnesses may have moved or died. Police officers may have transferred or retired. Consider the time that will be needed to locate the witnesses and prepare the case for preliminary hearing. Ensure that evidence can be located and is available for presentation in court.

- Speedy Trial Issues

It may be necessary to justify a post-filing delay in the arrest and prosecution of the suspect. If the suspect is arrested on another charge, he or she will not be linked to the John Doe warrant until the suspect gives a DNA sample, the sample is forwarded to the Department of Justice, a profile is developed, the profile is entered into CODIS, and a match is made. This process can take months. During this time, the suspect may resolve the case for which he or she was arrested and may be released from custody prior to the discovery of the John Doe warrant.

The John Doe Warrant Filing Guidelines set forth below were created to assist deputies and investigators in properly preparing and evaluating cases submitted for filing consideration based on a DNA profile. Deputies shall refer to these guidelines and the factors listed above when reviewing a John Doe case for filing.

### 3.09.03 **FILING GUIDELINES - JOHN DOE DNA WARRANTS**

John Doe warrants are used when a DNA profile of the perpetrator has been obtained from evidence but his or her identity is unknown. The defendant is identified in the complaint and the warrant by the DNA profile. Filing a John Doe warrant will toll the statute of limitations until the defendant is identified by a CODIS hit. Consider the following when reviewing a case for a John Doe warrant.

- Statute of Limitations
  - What is the length of the statute of limitations?
  - When does the statute of limitations expire?
- Nature of the Offense
  - What is the seriousness of the offense, the nature of the injury or loss, the impact on the community, and the possible sentence?
- DNA Evidence
  - Is the DNA from a single source?
  - Is the laboratory report that describes the DNA profile, including locus designations and corresponding alleles, available to list in the complaint?
  - Is the laboratory report with the random match probability rarity statistics available to list in the complaint? This report must be specifically requested from the crime lab.

- Are there buccal swabs, or other DNA samples, from the victims/witnesses? Samples must be submitted to the lab to eliminate them as contributors to the DNA evidence.

### *Commentary*

*A John Doe warrant case must be fully prepared at the time of filing; it must be ready to prosecute without delay once the suspect is identified by a CODIS hit. All investigation must be completed and evidence preservation ensured. The list below specifies necessary steps.*

- Case Preparation
  - Conduct Victim/Witness Follow-up
    - Obtain information for victims and witnesses for future contact: DOB, CDL, SSN, address, phone numbers, employment information, family member contact.
    - Request to be informed of any changed information.
    - Interview/Re-interview. Conduct recorded detailed interviews, documented in reports, with all victims/witnesses, including discussion of the following:
      - All details regarding the crime
      - Statements victims made to others, e.g., fresh complaint. Obtain statements from these witnesses also
      - Detailed report of stolen/damaged items and their value
      - Detailed information regarding biological evidence (initial location of item, movement of item, alteration of item, who had access to item, etc.)
    - Obtain Necessary Reports
      - Preliminary reports
      - Police and lab reports involving biological evidence
      - Property reports
      - All supplemental and other relevant reports
      - DNA analysis reports, including random match probability report.
    - Secure Evidence
      - Ensure that all evidence will be preserved (physical evidence, photographs, audio/video CDs/DVDs, etc.)
      - Ensure that all reports, notes, investigative documents, etc., are retained.
- Next Steps
  - Law Enforcement
    - Submit Case to District Attorney's Office.
    - Personally submit copies of all reports.
    - Walk warrant through court.
    - When notified of hit, notify District Attorney's Office immediately.
    - Provide District Attorney's Office with information on case that put defendant into the offender database.
    - Due Diligence.
    - Check CHOP quarterly for hit information.
    - Contact victims/witnesses annually to maintain current contact information.
    - Provide District Attorney's Office with any follow-up information in a written report.
    - Serve warrant immediately once defendant is identified by name.

- District Attorney
  - Consider preliminary hearing time limits.
  - Consider speedy trial issues.
  - Obtain Head Deputy and Bureau Director approval before filing.
  - Use the sample John Doe complaint and warrant templates on LADAnet and attached to Special Directive 10-01.
  - Apply the “John Doe Warrant” case category code (DOE) on complaint worksheet.
  - Amend the complaint and warrant to reflect defendant’s name immediately upon his or her identification.

### 3.10 **PROPOSITION 47**

Proposition 47 (Prop 47) applies to both adult and juvenile cases and mandates misdemeanor charging of nearly all cases of theft, receiving stolen property, forgery, or non-sufficient funds if the amount involved in the commission of any of these crimes is \$950 or less.

Theft of a firearm committed prior to November 9, 2016, and in which the firearm is valued at \$950 or less, must ordinarily be charged and prosecuted as a misdemeanor petty theft, unless the defendant has previously been convicted of a superseding prior. As added by Proposition 63 (Prop 63), a theft of a firearm committed on or after November 9, 2016, shall be charged and prosecuted as felony grand theft, regardless of the value of the firearm. A theft of a firearm committed on or after November 9, 2016, cannot be reduced to a misdemeanor by Prop 47.

Other than marijuana, all simple possession of controlled substance offenses in California are now misdemeanors. These misdemeanors are punishable by a maximum of 364 days in county jail.

#### 3.10.01 **SUPERSEDING PRIORS**

Defendants who have been previously convicted of specified felonies, cumulatively known as “superseding priors,” may still be charged with a felony upon the commission of any theft-related or drug offense affected by Prop 47. A superseding prior is a crime listed in Penal Code § 667(e)(2)(C)(iv), or any sex offense requiring registration under Penal Code § 290(c).

Deputies responsible for reviewing cases for filing consideration shall allege all appropriate superseding priors. Deputies shall be prepared to prove superseding priors at the preliminary hearing and at trial.

#### 3.10.02 **PROVING VALUE**

Prop 47 provides that the listed theft related crimes are misdemeanors when the value of the money or property involved is \$950 or less. This includes crimes such as grand theft property, grand theft auto, receiving stolen property, forgery, and non-sufficient funds checks which previously did not require proof of value. It also includes a “taking” theory of Vehicle Code §

10851 under Supreme Court precedent, even though not expressly listed or called “theft.” If the value of the money or property involved is over \$950, the crime can still be charged as a felony. It will be necessary to prove the value of a loss over \$950 at preliminary hearing and at trial.

In the case of forgery and non-sufficient funds checks, the dollar amount of the check(s) will usually determine whether the crime is a felony or misdemeanor. In the case of receiving stolen property and grand theft, deputies shall be prepared to prove at preliminary hearing and at trial that the value of the property involved is greater than \$950.

### 3.11 **PERKINS OPERATIONS – FILING PROCEDURES**

When reviewing a case for filing, the filing deputy shall inquire of the law enforcement officer if a Perkins Operation was conducted. If a Perkins Operation was conducted, the filing deputy shall make a notation in either the Statement of Facts or Attorney Notes.

Except in extraordinary circumstances, if insufficient evidence exists to file the case without the Perkins statement, the filing deputy shall listen to the Perkins recording before filing the case. If sufficient evidence exists to file the case without the Perkins statement, the filing deputy does not need to listen to the recording. The filing deputy does not need to listen to the entire recording; the filing deputy need only listen to the incriminating statement(s) of the suspect.

Further, a filing based only on a *Perkins* statement, without corroboration, requires Head Deputy approval.

Whenever a case involving a *Perkins* Operation is presented for filing, the filing deputy shall immediately complete a *Perkins* Filing Checklist (see [SD 17-04](#) for the *Perkins* Filing Checklist) and email a copy to the *Perkins* Coordinator ([PerkinsCoordinator@da.lacounty.gov](mailto:PerkinsCoordinator@da.lacounty.gov)). The *Perkins* Filing Checklist shall be completed and emailed to the *Perkins* Coordinator whether or not the case is filed. Similarly, law enforcement officers should notify the *Perkins* Coordinator whenever they conduct a *Perkins* Operation even when a case is not presented for filing.

Due to the security considerations inherent in any *Perkins* Operation, the filing officer need not disclose the identity of the *Perkins* Agent to the filing deputy. The filing deputy, however, shall instruct the filing officer to immediately contact the *Perkins* Coordinator to provide the identity of the *Perkins* Agent to the *Perkins* Coordinator. This will ensure compliance with the obligations set forth in Penal Code §§ 1054 et seq. and *Brady v. Maryland* (1963) 373 US 83.

If the *Perkins* Operation is not disclosed in the reports provided at the time of filing, the filing deputy shall instruct the investigating officer to prepare a supplemental report detailing, at a minimum, that a *Perkins* Operation was conducted, the date and general location of the operation, and a summary of the *Perkins* statement. This supplemental report and a copy of the recording of the *Perkins* statement shall be provided by the investigating officer to the handling deputy. The handling deputy is responsible for providing this supplemental report and recording to the defense in accordance with Penal Code §§ 1054 et seq. and *Brady v. Maryland*. Any statement of a defendant made during a *Perkins* Operation shall be provided to the defense.

If the *Perkins* Operation was conducted post-arraignment or post-indictment, it may violate *Massiah v. U.S.* (1964) 377 US 201. The statement, and any information obtained as a result of the statement, may therefore be inadmissible as to the crime on which the defendant has been arraigned or indicted. Any such operation shall be immediately reported to the *Perkins* Coordinator.

Due to safety considerations, any *Perkins* discovery provided to the filing deputy shall not be included in the original defense discovery packet. This discovery shall first be reviewed by the handling deputy for any safety or security issues and shall be provided to the defense by the handling deputy in accordance with Penal Code §§ 1054 et seq. and *Brady v. Maryland*. The specific procedures for handling cases involving *Perkins* Operations are covered in [Chapter 27](#).

### 3.12 COLD CASE UNIT

The Cold Case Unit (CCU) shall operate under the supervision of the Major Crimes Division (MCD) and shall review cases in consultation with designees from other units as needed. Any deviations from this protocol require approval from the Head Deputy of the MCD.

#### 3.12.01 MISSION STATEMENT/PURPOSE

The Office is dedicated to protecting our community through the fair and ethical pursuit of justice and the safeguarding of crime victims' right. The Office's dedication to the community and victims of crime is borne out through the prosecution of those responsible for committing these crimes. Violent crimes may not be solved immediately and sometimes prove difficult to resolve. The mission of the CCU is to unite skilled deputies with law enforcement investigators to work collaboratively to identify, investigate, solve, and successfully prosecute unsolved homicides in Los Angeles County. These skilled deputies have substantial homicide trial experience and specialized training in cold case legal and forensic issues. The ultimate goal of this collaborative effort is to hold perpetrators of cold case homicides accountable and to provide a measure of justice for families of those who have been slain. In order to optimize the use of limited resources, except in unusual situations, the CCU will only review and prosecute homicide cases.

#### 3.12.02 COLD CASE MURDERS

The following types of homicides are defined by the CCU as cold cases and shall be *presumptively* assigned to the CCU for investigative assistance and prosecution, or for potential referral to another unit:

1. Cases which were initially investigated by a law enforcement agency, were unsolved with all known leads exhausted, and in which one (or more) of the following has/have occurred:
  - New or different witness statements have been obtained;
  - Previously unknown leads have been uncovered;
  - New scientific, forensic, or physical evidence has been developed; or
  - Five or more years after the homicide, a suspect has made incriminating statements.

2. Cases in which the victim was missing for five or more years and the disappearance remained unsolved during that period.
3. Cases over five years old that were not previously submitted for prosecution.

The following cases may be assigned to the CCU for investigative assistance and prosecution at the discretion of the Head Deputy of the MCD:

1. Cases in which the investigating agency has requested the assistance of CCU deputies.
2. Cases in which the investigating agency has requested advice or assistance on a cold case from non-CCU deputies.
3. Cases which have been previously submitted to a non-CCU division, branch, or unit for review where the case has been rejected or returned to the agency for additional follow-up investigation. Prior to declining or returning a case that qualifies as a cold case, the non-CCU reviewing deputy shall consider consulting with a CCU deputy. If no such consultation is made at the time of the declination or return, the law enforcement agency may contact the CCU directly for additional review.
4. Cases in which the victim has been missing for fewer than five years.
5. Cases more than two years old but less than five years old that were not previously submitted for filing.
6. Case investigations that are initiated with the discovery of skeletal human remains.
7. Cases originally filed and dismissed where significant new evidence has been developed.

The following cases are presumptively not cold cases and will not be handled by the CCU absent unusual circumstances:

1. Cases pending review or filed cases in which there is an outstanding arrest warrant for the suspect.
2. Cases which have been tried and resulted in a mistrial (or a motion for a new trial was granted).
3. Cases which were filed and then dismissed where no significant new evidence has been developed.

The types of cases assigned to the CCU may deviate from those defined herein in unusual circumstances and at the discretion of the Head Deputy of the MCD.

### 3.12.03 COLD CASE FILINGS

Prior to the filing a cold case homicide, the CCU prosecutors shall discuss the case with the Head Deputy of the MCD, or in the absence of the Head Deputy, the Assistant Head Deputy of the MCD. The discussion shall include a review of the evidence, availability of witnesses, legal issues, sentencing issues, and other pertinent information before a filing decision is made. Cold cases that are not handled by the CCU shall be referred to the appropriate branch, division, or unit for review and assignment. All Office policies concerning the filing of murder charges, including special circumstance allegations, also apply to cold case prosecutions.

### **3.12.04 COLD CASE DEPUTY ASSIGNMENTS**

A decision shall be made at the time of filing as to whether a CCU deputy will continue to handle the case. Vertical prosecution of cold cases shall be the preferred method. However, depending on available resources, vertical prosecution may not always be possible. The first priority of the CCU shall be to retain and to prosecute cold cases that require the special expertise of CCU deputies in the areas of DNA, forensics, and complex legal issues inherent with cold cases.

### **3.12.05 ROLE OF THE FORENSIC SCIENCE SECTION**

It is anticipated that DNA will play a major role in solving and effectively prosecuting many of the cases presented to the CCU. Thus, the Deputy-in-Charge (DIC) of the Forensic Science Section (FSS) will play a significant role in these cases. The following protocol shall be followed:

1. When a case is presented for initial evaluation, the Head Deputy of the MCD, or in the absence of the Head Deputy, the Assistant Head Deputy of the MCD, shall determine whether DNA evidence will be a significant factor in solving and/or prosecuting the case.
2. If complex DNA technology will be a significant factor in the case, the reviewing deputy shall contact and advise the DIC of the FSS.
3. In any case assigned to the CCU, a deputy may consult with the DIC of the FSS to discuss the possibility of utilizing DNA analysis, Familial Searching, or Investigative Genetic Genealogy to generate further leads.
4. If the investigating agency requests Familial Searching or Investigative Genetic Genealogy testing, the DIC of the FSS shall be consulted. No case may be submitted for Familial Searching or Investigative Genetic Genealogy testing without the approval of the DIC of the FSS.
5. The investigating agency may contact the DIC of the FSS directly about any cold case. If the DIC of the FSS is contacted directly, she/he shall decide whether the case should be referred to the CCU for further investigation or assistance.

### **3.12.06 LIAISON WITH LAW ENFORCEMENT**

CCU deputies shall work with those agencies seeking a collaborative approach to case investigation. CCU deputies can lend insight into the development of case theories and evidence geared toward a grounded and successful courtroom presentation. District Attorney Investigators (DAIs) shall be assigned to the CCU to assist deputies when the original agency does not have sufficient resources to re-investigate the case. However, primary investigative responsibility shall remain with the original agency.

Requests by victims' next of kin made to CCU deputies to re-investigate a case or open a case as a cold case investigation should be communicated to the original investigating agency or to DAIs assigned to assist the CCU. Cold case deputies shall maintain the ability to work objectively with members of law enforcement in the investigation of these cases. However, CCU deputies

shall remain cognizant of the distinction between the role of marshalling evidence as an advocate versus acting in an investigative capacity.

### **3.12.07 GENERAL PROCEDURES**

Cases shall be presented to the Head Deputy of the MCD, or in the absence of the Head Deputy, the Assistant Head Deputy of the MCD, for initial evaluation to determine whether to file the case or whether there is the potential to solve the case. If the Head Deputy or Assistant Head Deputy of the MCD determines the case should be reviewed by another division, section, or unit, he/she shall consult with a designee from that division, section, or unit regarding whether or not the case should be referred. If the Head Deputy or Assistant Head Deputy of the MCD determines the case should be reviewed further by the CCU, he/she shall assign the case to a CCU deputy for a more detailed review. The assigned CCU deputy shall work collaboratively with detectives to make recommendations, develop investigative strategies, provide legal advice, and determine whether biological evidence suitable for testing exists.

Cases that meet the definition of a cold case in which the investigating agency is only requesting a filing determination, and is not requesting assistance or advice, need not be submitted to the CCU.

### **3.12.08 CCU ADMINISTRATIVE MATTERS**

The MCD shall supervise CCU support staff and maintain all CCU files.

### **3.12.09 CONCLUSION**

There is a critical need for the resolution of thousands of unsolved homicides in Los Angeles County. No killer should escape justice simply because of the passage of time. The victims and their surviving families, as well as the general public, deserve to have these cases investigated as thoroughly as possible and prosecuted when the evidence allows.