

5.03.07 **IMPROPER MOTIVES OF THE COMPLAINANT**

It would be improper to decline to charge simply because the motives of the complainant in seeking prosecution are self-serving, vindictive or competitive.

Commentary

This issue is relevant in evaluating witness credibility or determining if a witness's bias will affect the successful prosecution of the case. It is otherwise irrelevant because crimes are prosecuted on behalf of the People of the State of California, not individuals.

5.03.08 **COMMISSION OF PERJURY IN JUDICIAL PROCEEDING**

If a defendant or a witness commits perjury during a judicial proceeding, a deputy should not decline to charge perjury simply because the defendant or a codefendant was convicted on the original charge. In deciding whether to file a charge of perjury against a person who has been sentenced on another charge or a person who gave false evidence in a proceeding, the filing deputy should consider the following factors:

- To permit perjury to occur without consequence makes it appear that the criminal justice system condones liars and that lying is a normal part of the system.
- A charge of perjury may increase a defendant's punishment.

5.04 **DECLINATION PROCEDURES**

A Charge Evaluation Worksheet shall be completed in PIMS in every felony and misdemeanor case for which charges are being declined. All declinations require that the filing deputy (or support staff, at his or her direction) enter into PIMS the name of the victim, the charges, and the name of the investigating or filing officer, along with the reasons for the declination.

5.04.01 **FELONY DECLINATIONS**

All felony declinations shall be in writing and signed by a deputy using the electronic version of the Charge Evaluation Worksheet (CEW) which can be located in PIMS. All declinations shall include the California Department of Justice letter code indicating the primary reason for the declination. Only one code may be entered because the Department of Justice only accepts one code. If multiple codes are entered into PIMS, only the first code is captured and retained. Because only one code is recorded, the selected code should be the one that most accurately represents the primary reason for the rejection. The declination should also include a written statement in the "Comments" section explaining the reason(s) for the rejection.

The following discussion of California Department of Justice letter reason codes is intended to provide guidance for filing deputies when a decision has been made to decline filing a charge and two or more possible reject codes apply. Not every fact pattern will lend itself to these suggestions and deputies shall use their best judgment in all other situations.

Lack of Corpus (A) should only be selected when there is absolutely no evidence, independent of the accused's statement(s), which would establish the corpus delicti of a crime.

Lack of Sufficient Evidence (B) should be selected when there is insufficient evidence to prove the charge beyond a reasonable doubt. It is appropriate to select **B** in narcotics cases when there is an insufficient amount of contraband to test. In domestic violence cases, **B** should be used when the victim recants and there is no other independent evidence to establish the charge(s). Reason code **B** should not be used when another, more specific reason code applies.

Inadmissible Search/Seizure (C) should be selected when the filing deputy believes that the law enforcement agency acted outside permissible 4th Amendment restrictions. Deputies should be mindful of any *Brady* implications when evaluating the facts and should not be reluctant to select this reason code if it accurately reflects the reason for the filing decision to decline prosecution.

Victim Unavailable/Declines To Testify (D) should be selected when a victim refuses to testify or has fled the jurisdiction. In these situations, **D** most accurately reflects the reason to decline to file rather than **B**. Certain witnesses and victims have statutory privileges or constitutional rights not to testify (e.g., Code of Civil Procedure § 1219 and the 5th Amendment). In these situations, **D** should be selected as the reason code with an explanation in the Comments section as to the applicable privilege.

Witness Unavailable/Declines To Testify (E) should be selected when a witness refuses to testify or has fled the jurisdiction. In these situations, **E** more accurately reflects the reason to decline to file rather than **B**.

Combined with Other Counts/Cases (F) should rarely be used. This reason code should be used if the suspect has a pending case and filing an additional charge(s) would not significantly add to the sentence or further strengthen the prosecution's case.

Interest of Justice (G) should be selected in circumstances in which judicial economy merits declination. For example, if the suspect already has been sentenced to a lengthy prison sentence on another case.

Other (H) requires deputies to indicate their reasons in the Comments portion of the CEW. This reason code would be selected primarily when the statute of limitations has passed and/or the Office does not have jurisdiction to file the charge(s).

Referred to Non-California Jurisdiction (I) should be used if the charges presented are within the purview of federal jurisdiction, military jurisdiction or more appropriately filed in another state.

Deferred for Revocation of Parole (J) should no longer be selected in felony declinations. If the charge is provable, the charge should be filed. Since the State of California has instituted non-revocable parole status, the Office cannot rely on a defendant's parole being revoked in lieu of a criminal filing. Therefore, the charge should be pursued. If the charge is unprovable, select