

SPECIAL DIRECTIVE 20-07

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: MISDEMEANOR CASE MANAGEMENT

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of Misdemeanor Case Management in Chapter 9 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 9 of the Legal Policies Manual.

**INTRODUCTION**

The public's interaction with the criminal justice system is mainly through misdemeanor prosecutions, yet the power and influence of the misdemeanor system in Los Angeles County has gone largely unnoticed. The goal of this new policy is to reimagine public safety and best serve the interests of justice and community well-being. As such, the prosecution of low-level offenses will now be governed by this data-driven Misdemeanor Reform policy directive.

Los Angeles County courts should not be revolving doors for those in need of treatment and services. Currently, over 47% of those incarcerated pre-trial on misdemeanor cases suffer from mental illness. Likewise, nearly 60% of those released each day have a significant substance use disorder. Meanwhile, individuals experiencing homelessness account for almost 20% of arrests in Los Angeles despite comprising only 1.7% of the population. The status quo has exacerbated social ills and encouraged recidivism at great public expense.

Moreover, the consequences of a misdemeanor conviction are life-long and grave, even for those who avoid incarceration. Misdemeanor convictions create difficulties with employment, housing, education, government benefits, and immigration for non-citizens and citizens alike. Deportation, denial of citizenship, and inadmissibility affect not only individuals, but also children, families, and immigrant communities. And no matter one's immigration status, the resultant costs and fees of misdemeanor convictions force many to choose between necessities such as rent, transportation, and medical care versus financial obligations to the justice system.

Despite the immense social costs, studies show that prosecution of the offenses driving the bulk of misdemeanor cases have minimal, or even negative, long-term impacts on public safety. Agencies equipped with the social-service tools necessary to address the underlying causes of offenses such as unlicensed driving, sex work, drug possession, drinking in public, and trespassing

are best positioned to prevent recidivism and will thus be empowered to provide help to those in need.

The goal of the Los Angeles County District Attorney's Office is to protect public safety. To do so as effectively as possible, we will direct those in need of services to treatment providers, divert those undeserving of criminal records to appropriate fora, and reorient our focus towards combating violent and serious criminal offenses.

### I. DECLINATION POLICY DIRECTIVE

The misdemeanor charges specified below shall be declined or dismissed before arraignment and without conditions unless "exceptions" or "factors for consideration" exist.

*These charges do not constitute an exhaustive list. Each deputy district attorney is encouraged to exercise his or her discretion in identifying a charge falling within the spirit of this policy directive and proceed in accordance with its mandate.*

*In addition, each deputy district attorney retains discretion to seek a deviation from this policy when a person poses an identifiable, continuing threat to another individual or there exists another circumstance of similar gravity. In such a situation, the deputy district attorney must consult with their supervisor, place their justification for seeking a deviation in writing, and record their supervisor's determination in the case file. Such a deviation should be the exception, not the rule. In all circumstances, the person's ability to pay shall be considered.*

#### **Trespass – Penal Code § 602(a)-(y)**

- a. Exceptions or Factors For Consideration
  - i. Repeat trespass offenses on the same public or private property over the preceding 24 months
  - ii. Verifiable, imminent safety risk
  - iii. No indicia of substance use disorder and/or mental illness, or homelessness

#### **Disturbing The Peace – Penal Code § 415(1)-(3)**

- a. Exceptions or Factors For Consideration
  - i. Repeat offenses over the preceding 24 months involving substantially similar behavior to that charged
  - ii. No indicia of substance use disorder and/or mental illness

#### **Driving Without A Valid License – Vehicle Code § 12500(a)-(e)**

- a. Exceptions or Factors For Consideration
  - i. Repeat driving offenses over the preceding 24 months involving substantially similar behavior to that charged

**Driving On A Suspended License – Vehicle Code § 14601.1(a)**

- a. Exceptions or Factors For Consideration
  - i. Repeat driving offenses over the preceding 24 months involving substantially similar behavior to that charged

**Criminal Threats – Penal Code § 422**

- a. Exceptions or Factors For Consideration
  - i. Offense related to domestic violence or hate crime
  - ii. Repeat threat offenses over the preceding 24 months
  - iii. Documented history of threats towards victim
  - iv. Possession of a weapon capable of causing bodily injury or death during commission of offense
  - v. No indicia of substance use disorder and/or mental illness

**Drug & Paraphernalia Possession – Health & Safety Code §§ 11350, 11357, 11364, & 11377**

- a. Exceptions or Factors For Consideration
  - i. None identified

**Minor in Possession of Alcohol – Business & Professions § 25662(a)**

- b. Exceptions or Factors For Consideration
  - i. None identified

**Drinking in Public – Los Angeles County Municipal Code §13.18.010**

- c. Exceptions or Factors For Consideration
  - i. None identified

**Under the Influence of Controlled Substance – Health & Safety Code § 11550**

- a. Exceptions or Factors For Consideration
  - i. None identified

**Public Intoxication – Penal Code § 647(f)**

- a. Exceptions or Factors For Consideration
  - i. None identified

**Loitering – Penal Code § 647(b),(c), (d), (e)**

- a. Exceptions or Factors For Consideration
  - i. Repeat offenses over the preceding 24 months involving substantially similar behavior to that charged

**Loitering To Commit Prostitution – Penal Code § 653.22(a)(1)**

- a. Exceptions or Factors For Consideration
  - i. None identified

**Resisting Arrest – Penal Code § 148(a)**

- a. Exceptions or Factors For Consideration
  - i. Repeat offenses over the preceding 24 months involving substantially similar behavior to that charged
  - ii. The actual use of physical force against a peace officer
  - iii. The charge is filed in connection with another offense not enumerated above

**If the charge is not declined, follow these sequential steps until dismissal:**

- A. **Pre-Arrest Diversion via Administrative Hearing.** Upon compliance with condition(s) imposed in the administrative hearing, the charge shall be formally declined;
- B. **Post-Arrest, Pre-Plea Diversion.** Upon compliance with condition(s) imposed at arraignment or pretrial, the charge shall be dismissed without the entry of a plea of nolo contendere or guilty;
- C. **Post-Arrest, Post-Plea Diversion.** Upon compliance with condition(s) imposed at pre-trial, the charge shall be dismissed following the withdrawal of a plea of nolo contendere or guilty.

The conditions of such diversion shall be the same as those statutorily required upon conviction, absent monetary fines and fees and status registration. In no circumstance may the offer of diversion be conditioned upon (1) waiver of a person’s constitutional or statutory rights or (2) a temporal or procedural deadline other than commencement of trial.

**II. DIVERSION POLICY DIRECTIVE**

The purpose of the Diversion Policy Directive is to utilize remediation to protect public safety, promote individual rehabilitation, and encourage prosecutorial discretion. For all misdemeanor offenses not listed below under the Declination Policy Directive, pre-plea diversion shall be presumptively granted. This diversion policy shall not apply to (1) offenses excluded under Penal Code §1001.95 and (2) any driving under the influence offense.

The Diversion Policy Directive is also intended to complement statutory diversion schemes such as those codified under Penal Code §§ 1001.36, 1001.80, 1001.83, and 1001.95. The Deputy District Attorney shall utilize their discretion, in accordance with the spirit of this policy, when determining which diversionary scheme is best suited to serve the interests of justice.

The conditions of such diversion shall be the same as those statutorily required upon conviction, absent monetary fines and fees and status registration. In no circumstance may the offer of diversion be conditioned upon waiver of a person’s constitutional or statutory right, except for a waiver of time under Penal Code § 1382. The duration of such diversion shall presumptively be 6 months, but in no circumstance shall it exceed 18 months. Upon compliance with the

condition(s) imposed, the charge(s) shall be dismissed without the entry of a plea of nolo contendere or guilty.

The presumption of pre-plea diversion may be rebutted upon reasoned consideration of the following factors:

- Convictions for offenses of equal or greater severity than that charged over the preceding 24 months;
- Documented history of threats or violence towards a victim;
- Clear evidence of an identifiable, continuing threat to another individual or other circumstance of similar gravity.

In such a situation, the Deputy District Attorney must consult with their supervisor, place their justification for seeking a deviation in writing, and record their supervisor's determination in the case file.

### **III. NON-DIVERSIONARY PLEA OFFERS**

If a misdemeanor case is not subject to declination or resolved via the Diversion Policy Directive, the deputy district attorney shall adhere to the following guidelines when making plea offers:

- No offer shall require that a defendant complete combined jail time and community labor as a term of a sentence;
- No offer shall require that a defendant complete in excess of 15 days of community labor as a term of a sentence;
- No offer shall require status registration for a defendant unless mandated by statute;
- Once conveyed to the defendant, no offer shall be increased in response to the defendant exercising their right to pursue a jury trial or pretrial motion.

In seeking a deviation from any of the aforementioned guidelines, the deputy district attorney must consult with their supervisor, place their justification for seeking a deviation in writing, and record their supervisor's determination in the case file.

### **IV. FINES AND FEES**

Fines and fees place burdens on individuals in the criminal system and their families and pose significant and sometimes insurmountable obstacles to reentry. Deputy district attorneys shall:

- Presume that an individual is indigent and unable to pay fines and fees under the following circumstances: the individual is represented by the Public Defender, the Alternate Public Defender, Bar Panel, or a free legal services organization, the defendant is receiving any type of means-tested government benefits, the defendant is experiencing homelessness or the defendant can make a showing of indigence by clear and convincing evidence;
- Actively support and in no case object to requests to waive fines and fees for indigent individuals;
- Refrain from arguing that a failure to pay a fine, fee, or court ordered program represents a violation of summary probation if the defendant is indigent as defined above, or that

summary probation should be extended based upon an alleged failure to pay, or that an individual should be incarcerated or suffer an additional sanction due to failure to pay.

***The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.***

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