

SPECIAL DIRECTIVE 20-08.1

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: FURTHER CLARIFICATION OF SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 15, 2020

This Special Directive is intended to further supplement the language provided in SD 20-08, Section II concerning Pending Cases, issued on December 7, 2020. The introduction of that Special Directive states, "...sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters." The language is clear that this policy is intended to put an end to the practice of alleging strike priors and all other special allegations in accordance with the constitutional authority granted solely to prosecutors across the state of California.

If a pending matter has strike priors alleged or enhancements/allegations (pursuant to SD 20-08) deputies shall make the following record:

"The People move to dismiss and withdraw any strike prior (or other enhancement) in this case. We submit that punishment provided within the sentencing triad of the substantive charge(s) in this case are sufficient to protect public safety and serve justice. Penal Code section 1385 authorizes the People to seek dismissal of all strike prior(s) (or other enhancements) when in the interests of justice. Supreme Court authority directs this Court to determine those interests by balancing the rights of the defendant and those of society 'as represented by the People.' The California Constitution and State Supreme Court precedent further vest the District Attorney with sole authority to determine whom to charge, what charges to file and pursue, and what punishment to seek. That power cannot be stripped from the District Attorney by the Legislature, Judiciary, or voter initiative without amending the California Constitution. It is the position of this office that Penal Code section 1170.12(d)(2) and Penal Code 667(f)(1) are unconstitutional and infringe on this authority. Additional punishment provided by sentencing enhancements or special allegations provide no deterrent effect or public safety benefit of incapacitation--in fact, the opposite may be true, wasting critical financial state and local resources."

Legal authority: *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 530 ("[T]he language of [section 1385], 'furtherance of justice,' requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People*, in determining whether there should be a dismissal." (emphasis in original); *Dix v. Superior Court* (1991) 53 Cal. 3d at 451.

Furthermore, if a court refuses to dismiss the prior strike allegations or other enhancements/allegations based on the People's oral request, the DDA shall seek leave of the court to file an amended charging document pursuant to Penal Code section 1009.

If a court further refuses to accept an amended charging document pursuant to Penal Code section 1009, the DDA shall provide the following information to their head deputy: Case number, date of hearing, name of the bench officer and the court's justification for denying the motion (if any). The DDA shall stipulate to any stay of proceedings if requested by the defense.

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