

SPECIAL DIRECTIVE 21-01

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: REVISED POLICIES PURSUANT TO PRELIMINARY INJUNCTION
(UPDATED)

DATE: MARCH 19, 2021

On February 8, 2021, Judge James C. Chalfant issued a preliminary injunction in the case *The Association of Deputy District Attorneys for Los Angeles County v. George Gascón, et al.* (20STCP04250). While Judge Chalfant's ruling does not impact the vast majority of the directives instituted on December 8, 2020, the court did rule specifically on the Three Strikes policy, and other enhancements relating to *pending* cases. The Office will be filing a notice of appeal. However, until the appeal is decided, we will adjust the policies to be consistent with this ruling.

This Special Directive supersedes Special Directives 20-08, 20-08.1, 20-08.2, and 20-14 **to the extent they are inconsistent** with these revisions. In all other respects, those Directives are still in full force and effect.

It should be noted that, except for the mandatory provisions of the Three Strikes law mentioned below, the preliminary injunction does not affect office policy restricting the filing of sentence enhancements in new cases. Thus, deputies are still prohibited from filing any other sentence enhancements, except as provided in Special Directive 20-08.2.

The following revised policies are effective immediately:

Special Circumstance Allegations

1. Deputies are prohibited from filing special circumstance allegations.
2. Pursuant to the Superior Court's interpretation of Penal Code section 1385.1, if a special circumstance has already been found true or admitted, deputies are not required to move to dismiss the enhancement.
3. In pending cases with alleged special circumstance allegations, motions to dismiss or withdraw pursuant to Penal Code section 1385 will be based on individual case review, including but not limited to the extent of the defendant's participation in the murder, the defendant's prior violent record, and any other factor bearing on the defendant's mental state.

4. Deputies shall not move to reinstate special circumstance allegations that were previously dismissed by a court, even if the dismissal was pursuant to a deputy's motion.

Strike Priors

These policies apply to pending cases *and future cases*.

1. Pursuant to the Superior Court's interpretation of the Three Strikes Law, deputies shall plead and prove strike priors pursuant to Penal Code sections 667, subdivision (f)(1) and 1170.12, subdivision (d)(1) where there is sufficient evidence to prove the prior beyond a reasonable doubt.
2. Deputies shall not move to reinstate strike priors that were previously dismissed by a court, even if the dismissal was pursuant to a deputy's motion.
3. Pursuant to the preliminary injunction, Special Directive 20-08.1 is rescinded.
4. Motions to dismiss alleged strike priors pursuant to Penal Code section 1385 will be based on an individual case review evaluating the totality of circumstances and shall be pursued whenever a legal basis exists for such a motion based in whole or in part on the factors outlined by The Committee on Revision of the Penal Code, hereafter "The Committee," and any other relevant factors. Head Deputy approval is not required.

Other Conduct and Status Enhancements

Except as to strike priors and special circumstance allegations, these policies apply to pending and future cases for all other conduct and status enhancements.

1. Deputies are prohibited from filing conduct and status enhancements, unless approval is obtained pursuant to SD 20-08.2.
2. In any pending case, deputies shall not move to reinstate any allegations or conduct enhancements that were previously dismissed by a court, even if the dismissal was pursuant to a deputy's motion.
3. Pursuant to the preliminary injunction, motions to dismiss or withdraw pursuant to Penal Code section 1385 will be based on an individual case review evaluating the totality of circumstances and shall be pursued whenever a legal basis exists for such a motion based in whole or in part on the Committee Factors and any other relevant factors.

The Committee's Recommendations

With respect to motions to dismiss or withdraw allegations, deputies shall be guided by the best available research and science on the topic. Guidance can be found within The Committee's recommendations for evaluating requests to dismiss enhancements in the interest of justice (the "Committee Factors"). Because the District Attorney has determined as a matter of policy and

exercising his discretion, that typically in Los Angeles County the interests of justice justify dismissal or withdrawal when Committee Factors are present, the presumption will be in favor of dismissal or withdrawal when the Committee Factors apply.

The Committee's recommendations follow a year of studying California's criminal punishments. The Committee's recommendations were developed after testimony from 56 expert witnesses, staff research, and over 50 hours of public hearings and Committee deliberation. The recommendations represent broad consensus among a wide array of stakeholders, including law enforcement, crime victims, civil rights leaders, and people directly impacted by the legal system. The report contains extensive support for each recommendation, including empirical research, experiences from other jurisdictions, and available data on California's current approach to these issues. The Committee is comprised of judges, academics, and legislators. The work done by the Committee is the most comprehensive, timely evaluation available in the state, ensuring that our policies continue to be guided by the best available research and science.

The Committee's inaugural report¹ contains ten recommendations. Following the Committee's guidance, we hereby incorporate Recommendation 5, which establishes proposed guidelines for judges when evaluating a request to dismiss enhancements in the "interests of justice" pursuant to Penal Code section 1385.

Factors to consider when seeking dismissal or withdrawal are when:

- The current offense is nonviolent.
- The current offense is connected to mental health issues.
- The enhancement is based on a prior conviction that is over five years old.
- The current offense is connected to prior victimization or childhood trauma.
- The defendant was a juvenile when he/she committed the current offense or prior offenses.
- Multiple enhancements are alleged in a single case or the total sentence is over 20 years.
- A gun was used but it was inoperable or unloaded.
- Application of the enhancement would result in disparate racial impact (meaning that application of the enhancement would be reasonably likely to violate the California Racial Justice Act (Penal Code section 745), legal guarantees of equal protection, or other protections of law).

This list is not exhaustive as there may be factors beyond those listed above where it would be in the interest of justice to dismiss or withdraw an enhancement.

¹ The full report can be accessed at http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf.

Deputies shall consider the “interests of justice” broadly in determining whether an enhancement is appropriate in their case. In determining whether there is sufficient evidence of the existence of a factor to consider, deputies should rely on all available credible evidence. If the existence of a factor is in dispute, a deputy may consult with their Head Deputy and the Head Deputy will determine whether there is sufficient credible evidence to consider the factor.

The presumption can be overcome if there is clear and convincing evidence that dismissal of the enhancement would endanger public safety. If a deputy wishes to pursue an enhancement in a case where dismissal or withdrawal is presumed pursuant to The Committee’s recommendations, the deputy must seek permission from their Head Deputy in writing. If the Head Deputy agrees with the deputy’s request, the written request with the articulated basis for approval shall be sent to their respective Director who will make the final determination on whether it is appropriate to pursue the enhancement.

gg