OFFICE OF THE DISTRICT ATTORNEY COUNTY OF VENTURA

LEGAL POLICIES MANUAL

ERIK NASARENKO

District Attorney

Revised May 25, 2021

INTRODUCTION

This manual is the official *Legal Policies Manual* of the Office of the District Attorney of Ventura County. Policies set forth in this manual supersede all prior policy announcements.

Although the *Legal Policies Manual* is directed primarily to deputy district attorneys, its policies and procedures are to be followed by all District Attorney personnel where applicable.

The purpose of the manual is to ensure uniformity in the implementation of the District Attorney's law enforcement philosophy through the various enforcement programs and daily office operations.

The manual is intended to provide a sufficient, practical mix of policy and procedure so that it will answer most questions related to general office policies and the processing of cases.

A number of significant personnel-related rules, regulations, and polices that apply to all county employees are not reprinted in the *Legal Policies Manual*. They are contained in the following documents which are available for review online at http://vcweb/da/: *Administrative Manual, Personnel Rules and Regulations, SEIU Memorandum of Agreement* (MOA), *VCDSA Memorandum of Agreement, SPOAVC Memorandum of Agreement, CJAAVC Memorandum of Agreement,* and *Management and Confidential Clerical Employees Resolution*.

This manual will be updated electronically as needed.

Table of Contents

ARTICLE I. GENERAL OFFICE POLICIES

Section 1.01, Chapter 1, PERSONNEL-RELATED POLICIES

A. ABSENCES FROM WORK

Generally, the workday begins at 8:00 a.m. and ends at 5:00 p.m., Monday through Friday each week. Daily and weekly work hours for all employees are established by the Ventura County Personnel Rules and any associated M.O.U., M.O.A., or contract with the employee. Exceptions to the general workday are established by management and the needs of the office.

1. CHECK-IN/CHECK-OUT SHEET

Every employee shall use the check-in/check-out procedure established by the division head upon arrival for work and departure for the day, and upon leaving and returning to the office during the course of the day. When checking out on business during the workday, specific destinations and/or means of immediately locating employee shall be used. When checking out on personal business, the type of leave being taken shall be stated instead of the destination. Check-outs to the "field" or other unspecified locations are not acceptable.

Commentary

It is often important to locate an employee on short notice. The check-in/check-out procedure is the most effective way to track an employee's whereabouts. However, where written sign-outs are used, they are only a backup to direct notice to, and approval of, a supervisor. Supervisors must be informed of the whereabouts of and type of county business being performed by employees in their chain of command with reasonable specificity. Each supervisor has the authority to establish additional check-in/check-out requirements according to the needs of the unit and each individual's assignment.

2. SICKNESS AND OTHER EMERGENCIES; NOTIFICATION PROCEDURE

Any employee unable to timely report to work shall personally notify his/her supervisor by 8:15 a.m. (or within 15 minutes of the start time of his/her 9/80 schedule). Notification shall include the expected date of return and a phone number where the employee can be reached.

3. TARDINESS OF HOURLY EMPLOYEES

Hourly employees shall be at their desks and ready to work throughout their assigned shift, except during the lunch hour, breaks, or when elsewhere on approved office business.

Excusable tardiness involves situations that are unforeseen, unexpected, emergency in nature, and events that would not have been reasonably expected, or could not have been planned for in advance, such as road closures, traffic accidents, natural disasters, mechanical breakdowns, or failures of buses and vanpools, or a child getting sick at the last minute. Employees may choose to use vacation or sick time, whichever applies, for time lost due to such tardiness. A higher than average number of excusable events may be cause for review, for example: A last minute child-care emergency would be a valid excuse, but frequent child-care emergencies would indicate that an employee may need to arrange alternative care.

Inexcusable tardiness shall be considered in determining if an employee is performing satisfactorily during a probationary period and in performance evaluations and promotional appraisals. Inexcusable tardiness of more than five minutes may be recorded as leave without pay on the employee's time sheet/electronic form.

Repeated instances of inexcusable tardiness of more than five minutes shall result in the following actions:

a. For the first through the fourth tardiness in a 12-month period, the employee will be given a verbal warning. After the fourth tardiness, the supervisor will meet with the employee in an effort to resolve the tardiness problem.

b. For the fifth and sixth tardiness in a 12-month period, the employee will receive written reprimands. In an effort to resolve the problem the supervisor will recommend that the employee take advantage of help offered through the Employee Assistance Program, upon receipt of the first written reprimand.

c. For the seventh tardiness in a 12-month period, the employee will receive a 2.5% reduction in pay for six bi-weekly pay periods.

d. Any additional tardiness within 12 months of the first 2.5% reduction in pay will result in an extension of the 2.5% reduction in pay for another seven bi-weekly pay periods, for a total of 13 bi-weeks.

e. Any additional tardiness, within the 12-month period from the first 2.5% reduction will result in a 5% reduction in pay for 13 bi-weekly pay periods.

f. Any additional tardiness, within the 13-month period from the first 2.5% reduction in pay, will result in further disciplinary action, up to and including dismissal.

4. VACATION/ANNUAL LEAVE

At an appropriate time selected by each unit supervisor, employees may submit vacation requests for the following year to their supervisor. Each supervisor will then prepare a schedule of approved vacations. Conflicting requests shall be resolved by seniority. Vacations are confirmed in the sense that approval will not be withdrawn except as a result of extraordinary office needs.

The approved schedule is predicated on assignments at the time of approval; consequently, the effect of a reassignment on a schedule vacation shall be discussed and resolved before a reassignment is final. Unit supervisors have continuing authority to authorize modified or additional vacations or occasional days off which can be accommodated without assistance from other units. Attorneys assigned to vertical prosecution units have the responsibility of avoiding the scheduling of significant case events during schedule vacations.

Commentary

The issuance of this policy statement is a result of the size of the office and the interdependence of the units in each division. All employees are encouraged to take a minimum of two weeks vacation per year. Every effort will be made to accommodate vacation requests.

5. ADMINISTRATIVE LEAVE

Administrative leave may be granted to employees who maintain a satisfactory level of performance and are exempt from overtime compensation. Administrative leave may be granted at the discretion of the District Attorney in accordance with the County Administrative Manual and the applicable employee agreements and resolutions.

Commentary

Under normal circumstances, administrative leave shall be granted for no more than three consecutive days. However, if unusual circumstances exist, the District Attorney may grant administrative approval for longer than three days as long as prior approval is obtained. Employees should use the appropriate hour's code for reporting Administrative Leave on their time sheets.

6. LEAVE FOR PROMOTIONAL EXAMINATIONS

Regular employees are entitled to necessary time off with pay for County promotional examinations in their series or a similar series. For County positions outside their series, employees may, with supervisor approval, take a maximum of eight (8) hours off with pay.

Commentary

See Section 528, Ventura County Personnel Rules and Regulations.

7. EXEMPT EMPLOYEE EDUCATIONAL TIME – EXEMPT EMPLOYEES

The District Attorney's Office supports and encourages employees to continue their personal educational goals. All reasonable efforts will be made to assist employees with their educational goals within the limitations of existing County Personnel Rules.

Short Term Accommodations:

This applies to employees who are taking a semester course, where attendance is for one semester only. Employees may be permitted to make up the time they are away from work attending educational classes during their normal work schedule. An example of this is an employee has to leave work an hour early to arrive at class on time. The employee shall make arrangements with their supervisor to take a short lunch hour, or work late/early to make up the lost time.

Long Term Accommodations:

This applies to employees who are returning to school to complete a degree program or plan on attending classes beyond a single semester. Under this situation the employee shall choose one of the two following options:

- Change work schedule to maintain normal work hours. An example of this would be where an employee has requested to be off an hour early two times a week. For individuals on a 9/80 schedule the normal work schedule could be changed to arrive at 7:00 a.m., take a half-hour lunch and leave at 4:30 p.m. Additionally, management may request that the employee begin working an 8-hour schedule and allow them to work 7:30 a.m. to 4:30 p.m. (in this example). The particular schedule would have to be agreed to by management.

- Allow the exempt employee to use vacation/annual leave for the hours they are away from work to attend class.

The intent of this policy is to hold individual employees accountable for their scheduled work hours while attending school. The policy also allows for a complete understanding by the employee and management on how time will be administered while attending school.

8. ABSENCES WITHOUT AUTHORIZATION

Refer to Section H, of this manual, LEAVES OF ABSENCE, and the *County of Ventura Leave of Absence Handbook* for further information.

B. ON-THE-JOB INJURIES

Employees who suffer on-the-job injuries shall immediately notify their immediate supervisor. A written "First Report of Injury" form shall be obtained from the Administrative Services Division and filled out as soon as reasonably possible.

C. PHOTOCOPYING PERSONAL DOCUMENTS

The office copiers are intended for official business only. Nevertheless, occasional reasonable use of the copiers for the photocopying of personal documents is permitted provided that the employee pays the Fiscal/Admin Unit 10 cents per side.

D. BADGES/I.D. CARDS/OFFICE LETTERHEAD

1. BADGES/I.D. CARDS

The District Attorney issues badges and identification cards solely for identification and use in the performance of official business. Any other use is improper and may result in disciplinary action.

Upon termination of employment, each employee shall return his/her badge and/or identification card to the District Attorney's Office.

2. OFFICE LETTERHEAD

Use of office stationery for purposes other than routine official business requires the approval of the District Attorney.

Commentary

Examples of matters requiring approval are letters of reference on behalf of past or present District Attorney employees or student interns, solicited letters of recommendation for police officers or other officials, Bar Association business, and personal correspondence of all kinds. Unsolicited letters of commendation for work on a case by police officers or other officials do not require approval.

E. BULLETIN BOARDS

Employees shall not post any item on boards not marked for general use without the approval of the District Attorney, Chief Assistant District Attorney or Chief Deputy District Attorney. These boards are reserved for office related materials such as staff notices, etc.

Employees may post any tasteful item of general interest on boards marked “general use” without prior approval. Examples are items for sale, announcements of baby showers, garage sales, etc.

Items deemed offensive or inappropriate on any bulletin board may be removed with management approval.

F. DEPARTMENT TIME RECORDS

1. INTRODUCTION

The County relies on employee time records in the issuance of paychecks. The time record, in effect, constitutes the employees claim for wages based on hours worked.

2. POLICY

Every employee shall personally fill out, sign, and timely submit his/her time record.

The following procedures shall be followed:

a. The payroll clerk shall distribute time record sheets every Tuesday of the week of payday.

b. Hours worked shall be accurately recorded in accordance with time codes.

c. Overtimes hours must be approved by the employee’s supervisor.

d. Before claiming vacation, sick time, comp time or annual leave, the employee shall verify his/her balance from his/her last pay stub.

e. The completely filled out signed time record shall be submitted to the employee’s supervisor by 5:00 p.m. on the Friday following payday. The time record shall include the next projected work week.

f. A supervisor shall review, sign and submit time records to the payroll clerk by noon Tuesday the week after payday.

g. The payroll clerk shall promptly submit wage claims to the Auditor Controller’s Office so that employees who have submitted time records may be timely paid.

h. Necessary time record corrections shall be requested by completing a time record change form, available on the D.A. website.

If county holidays alter this time record schedule, the employee will be notified.

Questions should be addressed to the employee’s supervisor or to the Admin unit.

G. EXPENDITURES/REIMBURSEMENTS

1. EXPENDITURES

Before any office expense is incurred, an employee shall request an expenditure approval from the Chief Deputy or Chief Assistant District Attorney using an *Expenditure Request Form*. The Administrative Services Division will fill in the form's budgetary information and will forward the request to either the Chief Deputy District Attorney, or the Chief Assistant District Attorney.

2. TRAVEL CREDIT CARDS

Travel credit cards are available for employee travel and can be used for airfare, lodging, on-ground transportation, meals, conferences, and other incidental expenses. The credit cards can be issued in either department names for employees who travel infrequently, or employee names for frequent travelers. Details regarding use of these credit cards are provided in the Travel Credit Card, Cardholder instructions.

Travel Advances - Advances are no longer available.

3. REIMBURSEMENTS

Meal Allowance: District Attorney employees who are required to be out of county on official business may receive meal expense reimbursement according to the county guidelines. For complete details, refer to County of Ventura Administrative Policy Manual, Chapter VII(c).

Reimbursement Amounts: Reimbursement shall not exceed incurred expenses but may be allowed up to $60 per day without receipts. With receipts, the following maximums apply:

	Within California	Out-of-State
Breakfast:	$14	$16
Lunch:	$19.50	$22.50
Dinner:	$38	$43

Frequency of Reimbursement Claims: Meal reimbursement claims shall be submitted at the end of the month, unless such delay would constitute a hardship. If so, the Chief Assistant District Attorney may authorize more frequent reimbursement claims.

Commentary

The District Attorney's Office will not routinely reimburse employees for in-county lunches during normal working hours. The rationale is that an employee would incur this

expense in any event, and the mere circumstance that the employee is away from the office has no real impact on his or her ability to carry or buy his or her lunch.

However, claims for meals necessitated by extended hours or by absences, such as conferences, seminars, and case investigations, are not affected by this policy and will be evaluated as to their individual merit.

4. AIR TRAVEL

Air travel reservations must be made two (2) weeks (or more) in advance whenever possible, as the cost rises substantially for later reservations. There is no charge for cancellation if plans must be changed. Similarly, monetary savings may dictate that connecting flights be chosen over direct.

5. AUTOMOBILES

All employees shall comply with the provisions of the County of Ventura Administrative Manual concerning use of county and private vehicles on county business. Those provisions include obeying all traffic laws, a prohibition of use of county vehicles for personal business, and a complete ban on persons not conducting county business driving or riding in a county vehicle. Except during an undercover investigative operation or an emergency when driving after consumption of a small amount of alcohol has been approved by the Chief Investigator, no employee shall drive a county-owned vehicle with any measurable blood-alcohol level.

Reading, writing, or sending text messages or similar electronic messages while driving is prohibited, even if hands-free technology is available. Other forms of hands-free technology use (such as navigation functions) may only occur in compliance with hands-free technology use laws. This paragraph does not apply to sworn peace officers using electronic wireless communication devices while operating an authorized emergency vehicle in the course and scope of their duties.

County employees are encouraged to combine trips and share rides whenever possible. The use of privately-owned vehicles for County business is discouraged, as the mileage reimbursement rate for using privately-owned vehicles is more expensive than the costs related to using County motor pool vehicles.

When obtaining a County car for County business travel, every effort should be made to use vehicles assigned to the District Attorney's Office before utilizing the County's general motor pool. When an employee needs a vehicle, the employee should contact the HOJ on-site administrative assistant of the Fiscal/Administrative Unit. The administrative assistant will locate and reserve one of the assigned District Attorney vehicles for the requested day of travel. If a District Attorney vehicle is unavailable, the administrative assistant will make the reservation through the County's INVERS system and will consult with the employee about when, where and how to pick up the County general motor pool vehicle.

H. LEAVES OF ABSENCE

1. INTRODUCTION

The County of Ventura Personnel Rules and Regulations defines a LEAVE OF ABSENCE ("Leave") as "An authorized absence from duties with or without pay." The County's Leave of Absence Program applies to all employees. Employees should apply for a Leave for any absence over three work days, unless the absence is due to a pre-approved vacation. The Leave of Absence Program and administrative practices comply with federal and state laws and county documents, including:

- Fair Employment and Housing Act (FEHA)
- Family & Medical Leave Act (FMLA)
- California Family Rights Act (CFRA)
- California Labor Code
- Pregnancy Disability Leave (PDL)
- Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)
- County of Ventura Personnel Rules and Regulations
- Memorandum of Agreements (MOA) between the County and unions
- Management Resolution (MR)

If an employee is absent from work without authorization for three (3) days or two (2) consecutive 24-hour work shifts, the County may, without any notice, deem that the employee has voluntarily abandoned his/her job under Article 22, Section 2203, of the *County of Ventura's Personnel Rules and Regulations*.

When an employee will be, or has been, out of the office for more than three (3) days, it is the responsibility of the employee's supervisor to immediately notify the Fiscal Administrative Unit so that the appropriate forms and information can be given to the employee, and the employee is receiving any and all benefits available. This includes an employee who may be out intermittently for the same cause.

By authority of the applicable agreements and resolutions, the District Attorney may grant a leave of absence without pay to a member of his staff for as long as one year. (Mgmt. Res., Art. 14; SEIU MOA, Art. 17; VCDSA. MOA 17; CJAAVC Art. 14; SPOAVC Art. 13.)

Although the granting of most such leaves is solely within the discretion of the District Attorney, more detailed guidelines than those provided in the agreements and resolution are appropriate.

This section shall not limit military leave of absence rights as provided in the California Military and Veterans Codes or as provides in other statutes.

2. PROCEDURE

An employee may request a leave of absence with or without pay by submitting a leave of absence (LOA) request form to his/her immediate supervisor. The LOA request form shall state the reason for and length of the requested leave and may include any other information relevant to the request. The request should be submitted at least 30 days before the beginning of the requested leave period.

The immediate supervisor shall evaluate the request according to the Leaves of Absence Policy guidelines. Within five days of receiving a leave of absence request, the immediate supervisor shall submit to the District Attorney the employee LOA request form with the supervisor's recommendation.

The District Attorney, after consultation with appropriate members of the management group and the immediate supervisor, shall, in writing, notify the requesting employee of the District Attorney's decision.

3. POLICY GUIDELINES

Maternity Leaves

A maternity leave of absence without pay will be granted by the District Attorney in accordance with state/federal law. A typical maternity leave will be granted for up to four (4) months. The employee may also be entitled to additional leave under the California Family Rights Act (CFRA). Additional time up to a total of one year may be granted in the case of demonstrated medical necessity. Such a leave may consist, in part, of accrued sick, annual, or vacation time at the employee's option.

b. Other Leaves

Leaves for purposes other than maternity may be granted by the District Attorney for up to one year when such leave is in the best interest of the County. Among the factors the District Attorney will consider in deciding whether or not to grant a leave of absence without pay are the following:

- Whether the interests of the County and the District Attorney's Office would be served by granting the request.

- Whether any staffing inconvenience would result by granting the request.

- Whether other employee vacation conflicts would result from granting the request.
- The quality of the employee's service and the value of the employee to this department and the County.
- The need and purpose of the request.
- The extent of the requested leave.
- Whether the request is intended to merely augment vacation time.
- Whether the employee has had a leave of absence without pay and, if so, how recently.

When a leave is granted for medical reasons, the employee will normally be required to exhaust accrued sick and/or annual leave before leave without pay begins. When a non-medical leave is granted, exhaustion of accrued annual leave and/or vacation time will normally be required.

4. IDENTIFICATION AND KEYS

In the event of a leave longer than 90 days, employees will be required to surrender office keys, as well as identification, including badges.

I. FURNITURE/EQUIPMENT

No County furniture or equipment shall be added to or removed from any office, conference room or work area without authorization from the Chief Assistant District Attorney or the Administrative Officer.

J. OUTSIDE EMPLOYMENT AND MEMBERSHIPS

1. EMPLOYMENT

An employee shall comply with County Civil Service rules regarding outside employment by completing the County Outside Employment Approval Request Form and submitting it to the District Attorney for approval prior to the commencement of any such employment. Approved outside employment requests must be renewed annually in all cases. Outside employment approval must be obtained regarding any public, semipublic, or private positions with any potential for conflict of interest with any function of the District Attorney's Office.

A deputy district attorney shall not engage in the private practice of law. A district attorney investigator shall not engage in private investigation of any kind without the written authorization of both the Chief Investigator and the District Attorney.

2. JOB-RELATED MEMBERSHIPS

An employee shall obtain the approval of the District Attorney before joining any organization related to his or her job assignment or area of specialty in the office, where such membership would require the use of office time or appear to constitute representation of the office.

3. ENDORSEMENTS

An employee shall obtain the written approval of the District Attorney before endorsing any product or private enterprise, whether commercial or nonprofit, where such endorsement could appear to constitute representation of the office.

K. OUTSIDE SPEAKING ENGAGEMENTS

1. OFFICIAL CAPACITY

In an effort to more directly engage the communities we represent and to build greater awareness and understanding about the critical role prosecutors perform in our society, the office encourages deputy district attorneys to speak before outside organizations on matters related to our profession. For example, speaking before students, service clubs, civic organizations, elected officials, law enforcement, business associations, and non-profit groups will create greater trust and confidence in our profession as well as in the criminal justice system, and will provide meaningful education and information about who we are as professionals and what we are dedicated to achieving for our residents.

It is also a goal of the District Attorney's Office to create greater opportunities for diversity, equity, and inclusion in Ventura County and among our work force. Thus, outside speaking engagements to communities of color as well as to groups and organizations where English is not the primary language are highly encouraged, as is direct outreach to law school clubs and associations who promote diversity, equity and inclusion in their membership or through their mission.

Accordingly, deputy district attorneys interested in accepting an outside speaking engagement, shall send an email to their supervisor describing the details of the speaking engagement including the time, place, topic, and group to be addressed, at least one week before the speaking engagement to allow for the supervisor to balance upcoming staffing and workloads. Supervisors are entrusted with authority to approve or deny the request. If the group requests biographical information about the speaker, the deputy district attorney should submit to their supervisor a draft, no more than a page, for his or her review and approval, prior to sending it outside the office.

Supervisors may approve speaking requests by reply email to the requesting attorney, attaching any reviewed biographical information, "cc-ing" their Chief Deputy and the Chief Assistant District Attorney's management assistant, who shall maintain a log of all approved speaking requests.

In keeping with our ethical and legal obligations as prosecutors, an employee cannot accept compensation or gratuities for any presentation given on behalf of the office.

2. PRIVATE CAPACITY

An employee shall clearly state that his/her views are personal and not those of the office whenever speaking unofficially to a group that might otherwise assume that the views expressed are those of the Ventura County District Attorney's Office.

L. PERFORMANCE EVALUATION

Policy and procedures in this area are contained in the "Performance Evaluation Procedure Manual" which has been distributed separately.

M. POLITICAL ACTIVITIES

1. IN GENERAL

An employee shall not participate in political activities while on duty or on county premises, or in uniform. Nonetheless, some limited political activity, even while on the job, may be constitutionally guaranteed as long as the activity is reasonable and is substantially non-disruptive to the office routine. Otherwise, employees are free to engage in political activities as they see fit.

a. County officers and employees have the right to engage in the following activities:

- Campaign for ballot measures and candidates for public office during non-working hours.
- Attend political rallies or other political gatherings.
- Wear political badges or buttons, except in the courtroom. If questioned by a member of the public, the employee shall state that the insignia represents the employee's individual opinion, and not that of the District Attorney or County of Ventura.
- Express opinions as individuals privately and publicly on political subjects and candidates.
- Make voluntary campaign contributions.
- Display political stickers on their privately owned cars.
- During non-working hours, employees can solicit or receive funds related to ballot measures that will affect their working conditions. Gov't Code 3209.

b. County officers and employees cannot:

- Participate in any political activities while in uniform. Gov't Code 3206.
- Solicit campaign contributions for a candidate for elective office from other County officers and employees at any time. Gov't Code 3205.
- Use their services and/or departments for soliciting political contributions. Ventura County Ord. Code 1351-1(b).
- Permit others to use County governmental property and/or resources for solicitation of political contributions. Ventura County Ord. Code 1351-3.
- Use of County property, including bulletin boards, to post political assessment or contribution material. Ventura County Ord. Code 1351-3. The posting of material advocating a measure or candidate on bulletin boards or walls in corridors and other common areas is also forbidden.
- Use their authority or position to influence the result of an election of a candidate for public office. For example, a County employee cannot promise another employee a change in compensation or position on the condition that the latter employee vote for or against a particular candidate. Gov't Code 3204.
- Use public resources to promote a position with regard to a ballot measure or candidate. Unless statutory authority exists, County resources cannon be used to disseminate material to the public promoting the passage or defeat of a ballot measure. *Stanson v. Mott* (1976) 17 Cal.3d 206; *League of Women Voters v. Countywide Criminal Justice Coordinating Committee* (1988) 203 Cal.App.3d 529. If statutory authority exists for the dissemination of information, the information must be a fair presentation of all relevant facts. *Stanson, supra*. Likewise, public services and/or resources cannot be diverted to promote the election or defeat of a candidate. *People v. Battin* (1978) 77 Cal.App.3d; *People v. Sperl* (1976) 54 Cal.App.3d 640.
- A County officer or employee who is a candidate for office cannot engage in campaign-related activities during working hours. Moreover, a County employee who is a candidate for an elective County office must take a leave of absence commencing at least 30 days prior to the election date unless the Ventura County Civil Service Commission decides otherwise. Ventura county Personnel Rules and Regulations, Arts. 17 and 24.
- Also, County officers and employees whose principal employment is in connection with an activity financed in whole or in part by federal grants or loans, cannot be a candidate for an elective partisan office. 5 USC 1501 et seq.

Note: Only these persons are covered by 5 USC 1501 et seq., otherwise known as the "Hatch Act."

2. INCOMPATIBLE OFFICES

A deputy district attorney shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed (Gov't Code 1126, 1128;.) Therefore, a deputy district attorney shall obtain the written approval of the District Attorney indicating such other "office" is compatible with that of deputy district attorney.

N. SHERIFF'S ACADEMY

A deputy district attorney shall not accept compensation from any source, except the County of Ventura and District Attorney's Office, for providing instruction at the Ventura County Criminal Justice Training Center (Sheriff's Academy).

Commentary

It is the responsibility of the District Attorney's Office to provide legal training to law enforcement agencies. It is as much a part of the job as is the prosecution of criminal cases. Providing such legal instruction to classes at the Ventura County Police and Sheriff's Academy is the clearest example of the discharge of this responsibility.

O. TELEPHONE CALLS

1. PERSONAL CALLS

Occasional and limited use of personal cell phones is permitted during regular business hours. Personal calls should normally be handled during breaks or the lunch hour, but in all cases shall be limited to times that will not interfere with county business.

Occasionally, a cost-free personal call may be placed from county phones. Long distance personal calls shall be billed to the employee's home number or shall be placed from a public phone or personal cell phone.

2. MOBILE CELLULAR PHONES

County-owned mobile phones are to be used in connection with office business. Occasional personal calls are permitted, but the cost of such calls must be reimbursed to the county. This includes calls to the residence of the mobile phone user. Audits of calls made from mobile phones may randomly occur at any time in conjunction with a performance audit, or if a problem arises.

3. LIABILITY

Any employee who places a personal call or an improperly dialed call shall reimburse the department and the county for the cost of the call. Personal assigned cellular phones will receive periodic statements and records of calls made from their phone. Upon receipt, the employee shall review the statement and identify those calls, which are personal in nature, and provide reimbursement for the cost of such calls.

P. TEXTBOOK AND TUITION PROGRAM AND PROFESSIONAL DEVELOPMENT REIMBURSEMENT

All employees are eligible to participate in the Textbook and Tuition Reimbursement Program. This program reimburses employees for the costs of textbooks, tuition, registration and fees for occupationally related school courses, workshops and seminars satisfactorily completed on the employee's own time. Attendees are also eligible for Professional Development reimbursement.

Courses and books must have a reasonable potential for resulting in more effective county service; otherwise, a request for reimbursement will be denied.

The details and amounts of available reimbursement are as set by the Management Resolution and the respective MOAs. Advance approval is advisable.

Q. ATTORNEY SUPERVISOR AND SPECIAL ASSIGNMENT DIFFERENTIAL PAY

1. SUPERVISOR ASSIGNMENTS

The assignment to perform supervisory duties is not a promotion, but is a special assignment subject to change, as are all office assignments. Such assignments will be of a duration determined by the needs of the office in the discretion of the District Attorney. Supervisors shall receive salary increments up to a maximum of 5%, at the discretion of the District Attorney and within the limitations set by the Management Resolution and the respective MOAs.

2. SPECIAL ASSIGNMENT DIFFERENTIAL PAY

Periodically, Ventura County cases are transferred to another county for trial. No employee of this office shall receive special assignment differential pay because a case is assigned out of the county for trial. The duties of a deputy district attorney or investigator shall be performed without such pay no matter where the trial is held.

R. VISITORS

1. SIGN-IN AND BADGE PROCEDURE

All non-law enforcement visitors shall sign in and sign out with the main receptionist, and shall be issued a visitor identification badge. They shall be escorted while within the office. Receptionists have been instructed not to allow visitors into the office without an escort.

2. SUSPICIOUS OR POTENTIALLY VIOLENT VISITORS

Whenever a hostile or potentially violent visitor is to enter the interior offices of the District Attorney, the Duty Investigator or another investigator shall be notified. The responding investigator shall conduct a search for dangerous weapons using the walk-through and/or the hand-held magnetometers. The investigator shall remain present with the visitor and provide escort as long as potential for violence exists. The Chief Investigator or Chief Deputy of the Bureau of Investigation shall set and execute all Bureau of Investigation protocols and policies on such incidents and security issues.

S. CARRYING A CONCEALED WEAPON

1. NON-PEACE OFFICERS

A non-peace officer District Attorney employee shall not possess or carry a firearm while in county buildings (i.e., Hall of Justice, etc.), or at any other location while on District Attorney business, unless authorized by law.

The phrase “possess or carry,” as used herein, includes but is not limited to placement of the firearm in an attaché case or other container, office desk or other furniture, the passenger compartment of a motor vehicle, and placement on the person.

The word “firearm” includes guns of any description whether loaded or unloaded, except guns which are items of evidence in an investigation or prosecution.

The phrase “District Attorney business” includes any activity normally associated with the discharge of the duties of a District Attorney employee, such as visiting crime scenes, conducting interviews or investigations, accompanying or assisting police agencies.

Requests to possess or carry a concealed firearm shall be made in writing to the Ventura County Sheriff or a local law enforcement agency authorized to grant such permits. Non-peace officer District Attorney employees authorized by law to carry concealed weapons shall inform the District Attorney and Chief Investigator in writing annually of their concealed weapon approval status and provide a copy of approved concealed weapons permits.

Except in unusual circumstances involving a clear threat of harm, this office shall not provide to a local law enforcement agency a recommendation or request in favor of an application for a concealed weapons permit by a District Attorney employee. The office shall furnish the agency, upon request, with appropriate background information so that the agency can make an informed decision whether to grant the application.

2. PEACE OFFICERS

Pursuant to California Penal Code section 12027 (a)(1), any investigator honorably retired shall be issued retired peace officer identification. The term "honorably retired" does not include an investigator who has agreed to a service retirement in lieu of termination.

If an endorsement for carrying a concealed weapon (CCW) is desired, an application shall be completed and submitted to the District Attorney. No such endorsement or renewal shall be effective unless the backside of the identification card includes the following statement: "the bearer is an honorably retired peace officer approved to carry a concealed and loaded firearm for five (5) years from the date that the issue."

The retired investigator shall petition the District Attorney for the renewal of his/her privilege to carry a concealed firearm every five years. The District Attorney may, at any time for good cause, revoke a CCW endorsement pursuant to California Penal Code section 12027.1.

Retiree credentials remain the property of the Office of the District Attorney. The retiree will surrender such credentials upon demand of the District Attorney or authorized delegate.

No investigator retired after January 1, 1989, shall be issued an endorsement to carry a concealed firearm if that investigator is retired due to a psychological disability or otherwise prohibited by law from carrying a concealed firearm.

T. GIFTS / HONORARIUMS

1. GIFTS/COMPENSATION TO EMPLOYEE

a. No employee shall accept any fee, compensation, gift, payment of expense, or any other thing of monetary value, other than authorized salary and approved job-related reimbursements, presented and/or given in connection with an employee's service, duties, and employment with the District Attorney's Office, except as permitted below. This policy shall not prohibit the giving or exchange of gifts between members of the District Attorney's office.

b. Non-consumable mementos (e.g., pens, paper clip holders, pencils, cups, etc.) of a business event valued at $25 or less may be accepted. (County of Ventura, 2005 Administrative Policy Manual, Chapter VII(B)-11.)

c. At times, victims, witnesses or their families express their gratitude at the conclusion of a case by presenting a token of their appreciation to a member of the District Attorney's Office. It is critical that all District Attorney employees avoid even the appearance of impropriety in such instances. Gifts from victims, witnesses or their families only may be accepted as follows:

   i. Consumables valued at $50 or less, may be accepted and be placed in the Crime Victims' Assistance Unit for consumption by victims, witnesses or their families, may be placed in a common area to be consumed by District Attorney employees generally, or may be donated to a nonprofit organization.

   ii. Floral or plant arrangements valued at $50 or less may be accepted and displayed in common areas in the District Attorney's Office, or may be donated to a nonprofit organization.

   iii. Gifts valued at $25 or less that have been personalized with the employee's name, or otherwise cannot be used by another, may be accepted.

d. This policy shall not prohibit gifts to employees merely because the employee is associated with the other person as a result of their employment, or the free attendance of an employee at an event such as a charitable dinner, so long as the conditions in paragraphs f and g, below, are satisfied.

e. Any item not falling into the descriptions above must be returned, or, if the donor is unknown, such gift or gratuity shall be forwarded to the County Purchasing Agent for disposition, with a statement of circumstances. A copy of the statement shall be sent to the Auditor-Controller's Office.

f. Under no circumstance shall an employee solicit or accept any fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of resulting in, the use of public office for private gain; preferential treatment of any person, impeding governmental efficiency or economy; any loss of complete independence or impartiality; the making of a County decision outside official channels; of any adverse effect on the confidence of the public in the integrity of County government.

g. Those employees who are required to file a Statement of Economic Interests (Fair Political Practices Commission, Form 700), shall also comply with the office's Conflict of Interest Code, and with applicable FPPC rules and regulations regarding receipt of gifts. The District Attorney's Office will directly notify those employees who are required to file Form 700.

Commentary

See County of Ventura, 2005 Administrative Policy Manual, Chapters I-3 & VII(B)-11.

Article 25, Section 2503, of the County of Ventura's Personnel Rules and Regulations prohibit a

County employee from accepting any fee, compensation, gift, payment of expense, or anything of monetary value in circumstances in which acceptance may result in, or create the appearance of resulting in:

• The use of public office for private gain;

• The preferential treatment of any person;

• The impeding of governmental efficiency or economy;

• Any loss of complete independence or impartiality;

• The making of a county decision outside official channels;

• Any adverse effect on the confidence of the public in the integrity of County government.

2. GIFTS/DONATIONS TO THE OFFICE

The donation of money or property to the office is a donation to the county subject to control by the Board of Supervisors (Gov. Code §§ 25355, 25356.) Pursuant to County policy, acceptance of a gift requires advance approval from the County.

If an employee becomes aware that an individual or entity wishes to make a gift or donation to the office or to the county, before acceptance of the gift, the employee shall forward the request to the Chief Deputy District Attorney for preparation of a written request to the County Executive Office or Board of Supervisors, as provided in *County of Ventura, 2005 Administrative Policy Manual*, Chapter VII(B)-9.

U. SENIOR ATTORNEY POSITIONS

Senior attorney positions may constitute up to 50 percent of the attorney staff. They exist as recognition for the combination of excellence, length of service, and the need of the County for retention, with the emphasis on excellence. Appointments, reappointments, step increases, and removals are at the discretion of the District Attorney, who will proceed according to the following guidelines.

1. CRITERIA

a. Seven years of fulltime law practice, including the last three years in this office and two of those three years at the highest non-senior attorney classification;

b. Demonstrated ability and willingness to handle the most complex assignments;

c. Demonstrated reliability, self-motivation and willingness to accept difficult assignments on short notice;

d. Demonstrated dedication to excellence in the performance of duties;

e. Demonstrated interest in professional development of self and others (i.e., attendance at relevant seminars and workshops, familiarity with current case and statutory law, participation in the training of new deputies, etc.);

f. Exceptional research and writing skills; and

g. Knowledge of and adherence to office policies and procedures.

2. PROCEDURE

The District Attorney will announce the intention to fill a vacancy in the senior attorney classification.

a. Eligible attorneys who wish to be considered for a vacant senior attorney appointment shall submit to the District Attorney an updated resume of their experience and qualifications, including but not limited to trial record, a brief description of their most significant and/or difficult assignments, and examples of written work.

b. Senior attorney appointments and promotions shall be made at the discretion of the District Attorney, with the advice and recommendation of the reviewing committee. The District Attorney shall head the committee, which shall include the Chief Assistant District Attorney, Chief Deputy District Attorneys, the Chief Investigator, a supervising deputy district attorney and a Senior Attorney to be selected by the District Attorney.

c. Appointments are for a six-month period. Removal may occur at any time. Reappointment to the same step is automatic in the absence of contrary action by the District Attorney.

V. SUBPOENAS AND RECEIPT OF LEGAL PROCESS

Service of process shall take place at the public counter. Process servers will not be admitted beyond the public counter without a court order. Employees shall not take advantage of their access to private areas of the office to serve process on fellow employees.

1. SUBPOENAS ARISING FROM COUNTY BUSINESS

Unless otherwise instructed by County Counsel, employees shall go to the public counter to accept subpoenas naming them, and other legal process naming them, in matters arising from county business. The papers served shall immediately be forwarded to the Special Assistant District Attorney, accompanied by a brief District Attorney's Office memorandum detailing the date, time, and location of service. Upon receipt of the above, an administrative file will be opened. Where appropriate, the documents will be electronically transmitted or hand-carried to the County Counsel.

Pursuant to Penal Code section 1328(c), subpoenas for peace officer employees in criminal cases for matters perceived or investigated in the course of their duties may be served on the peace officer personally, on their immediate supervisor, or on an agent designated by their supervisor to receive service. The named employee, the employee's immediate supervisor, Commanders, Chief Deputy District Attorneys, and Management Assistants – Legal, are designated to receive service of these subpoenas.

If a non-peace officer employee is not available to accept a subpoena naming them arising from county business, the employee's immediate supervisor, the Chief Assistant District Attorney, Chief Deputy District Attorneys, and Management Assistants – Legal, are designated to receive service of these subpoenas.

2. SUBPOENAS FOR RECORDS

Service of a subpoena duces tecum or deposition subpoena (records only) that is directed generally to the District Attorney's Office or Custodian of Records, and that does not require personal appearance of a specific person, may be accepted by the Chief Assistant District Attorney, a Chief Deputy District Attorney, or a Management Assistant - Legal.

3. EMPLOYEE RECEIVING SUBPOENA

Whenever an employee is subpoenaed in a matter arising from county business, he/she shall do the following:

a. In a civil case, demand the appropriate one-day statutory fees (Gov. Code §§68097, 68093) at the time of service.

b. Notify his/her supervisor; and

c. Refer any request for District Attorney records to a Chief Deputy District Attorney or the Chief Assistant District Attorney. An employee shall not provide written materials, reports, or documents that are the property of the Ventura County District Attorney's Office, without being directed to do so by the Chief Assistant District Attorney or Chief Deputy District Attorney.

d. If an employee is subpoenaed as a witness in a civil action to give evidence about an event he/she perceived in the course of his/her duties, and the county is not a party to the action, the county is entitled to reimbursement for employee's salary and traveling expenses incurred in complying with the subpoena. (Gov. Code § 68096.1.) The county likewise is entitled to reimbursement for the salary and traveling expenses of district attorney investigators subpoenaed as witnesses in a

civil action or proceeding concerning events perceived or investigated in the course of official duties, regardless of whether the county is a party to the action. (Gov. Code § 68097.2.) Investigators shall demand the $150 statutory fee (one day) at the time of service.

4. MATTERS ARISING FROM EMPLOYEE'S PERSONAL BUSINESS

The willing receipt of lawful process, particularly when being served by the Sheriff, is encouraged. However, an employee has no obligation to accept process at the office in a private matter. The office will not assist a process server in completing service in a private matter without the consent of the involved employee. An employee who wishes to accept service at the office in a private matter shall do so at the public counter or outside the office, on personal time.

Commentary

Questions concerning subpoenas or other legal documents not covered by the above should also be referred to a management group member, who will consult the County Counsel's litigation supervisor, if necessary.

W. REFERENCE CHECKS

1. WRITTEN WAIVER REQUIRED

All requests for employment verification or performance information about present and former employees shall be referred to the Admin Unit Staff Services Manager, who will go no further than verifying employment unless the involved employee has waived confidentiality. When an employee informs a supervisor that the supervisor will be receiving a reference call, the supervisor should refer the employee to the Admin Unit Staff Services Manager for execution of an appropriate waiver.

Commentary

The above is consistent with County policy, which seeks to minimize the risk of civil liability.

2. LETTERS OF REFERENCE

The use of office letterhead for letters of reference on behalf of past or present District Attorney employees, student interns, police officers, or other similar purposes, requires the approval of the District Attorney. (See Chapter 1, D of this Manual.)

X. PERSONAL APPEARANCE

As public servants, District Attorney staff members are subject to public comment and scrutiny. The high-quality public service provided by the Ventura County

District Attorney's Office should always be accompanied by the professional appearance of all staff members. In all situations discussed below, attire should not reveal the midriff, back, or shoulders, skirts and dresses should be of modest length and staff should maintain a clean and tidy appearance. Absent a medical condition or other unusual circumstance requiring an exception, the office personal appearance policy is as follows:

1. COURTROOM APPEARANCES AND MEETING WITH THE PUBLIC

a. Attorneys, Investigators, Paralegals, and Law Clerks

When appearing at jury trials and other hearings where testimony is taken, or when testifying:

Conservative business suits must be worn whenever appearing in a courtroom or meeting with members of the public. Business suits include slacks, skirts, dresses with coordinating suit jackets. Dress shirts with ties, blouses, sweaters, or modest tank top/sleeveless blouses may be worn under the suit jacket. Dress shoes should always be worn and should be closed-toe. All clothing and shoes must be professional and suitable for court.

b. Victim Advocates, Clerical, and Others Not Seated at Counsel Table

Conservative business suits as stated above in addition to conservative business attire. Collared shirts/blouses/sweaters with slacks, skirts, or dresses are acceptable along with closed-toe dress shoes.

2. OFFICE AND OTHER NON-COURTROOM LOCATIONS

All staff should dress in conservative business attire.

Conservative business attire includes slacks, skirts, or dresses with collared shirts, blouses, or sweaters. Ties are optional. Modest tank tops are permitted under a shirt, sweater, or jacket. No jeans, shorts, or sports/athletic wear. Dress shoes should be worn at all times. All clothing and shoes should reflect a professional business appearance.

All attorneys must have courtroom appropriate attire readily available in their office and must continue to wear courtroom appropriate attire when appearing in court or meeting members of the public. Attorneys are expected to be ready to appear in court at any time during normal business hours.

3. SPECIAL ASSIGNMENT (e.g., search/arrest warrants, firearms range, moving, file maintenance)

Appropriate attire for safety and comfort, as approved by division head or supervisor.

4. COURT HOLIDAYS/COURT FURLOUGHS/CASUAL DAYS

On court holidays, court furloughs, and Fridays, casual clothing may be worn by all employees who do not have a court appearance and do not expect to meet the public. Additional "Casual Days" may be granted at the discretion of the District Attorney, Chief Assistant or Chief Deputy.

Attorneys are, at all times, required to have appropriate courtroom attire available in their office in the event that they are needed to fill in for another attorney or make an unscheduled court appearance.

During casual days, the dress code will be business casual and may also include nice jeans (no rips, holes or stains) or other casual slacks. Staff should still maintain a clean and tidy appearance. No shorts, athletic wear, or leisure wear including leggings, jeggings, or sweatpants are allowed. Shirts may be casual but must still cover the shoulders, back and midriff. No garments or masks should have large graphics, slogans, or advertising. VCDA logo (i.e. DA gear) is permissible. Shoes may be casual but no flip-flops, Birkenstock type of shoes, athletic slides, or similar type footwear. Shoes that pose a potential safety issue are not appropriate.

Casual dress is a benefit conferred on all employees under the terms and conditions setforth above. Employees shall dress in a manner that is consistent with the standards of professionalism for the District Attorney's office. Employees reporting to their duties and work wearing inappropriate attire may be required to return home without compensation and return in acceptable attire. Failure to comply with the standards set forth in this policy may result in the temporary or permanent loss of casual days on an individual or office-wide basis.

Y. USE OF COMPUTERS

1. EMPLOYEE RESPONSIBILITIES

a. Computer password(s) will be protected. Computer password(s) should not be shared.

b. Access to computer systems, data, and networks: Employees may access data or other information for which they have been authorized in the normal performance of their job duties. Privacy of clients and co-workers should be respected by not sharing information unless required for business purposes. The only authorized method for remote access to the County computing network is through the equipment and security software provided by the Information Systems Department.

c. Only County-owned computer software may be used. There is a significant financial liability to the County if computer software that has not been legally obtained is used on County-owned equipment.

d. Computer systems and other information processing technologies are to be used only for authorized Ventura County business. If an employee is unsure of what is appropriate in their department, the department head should be asked.

Under unusual or emergency circumstances, the use of County equipment for personal purposes may be authorized by the agency/department head or his/her designee, or through established departmental policies. Agencies/departments must have a written policy in effect for timely reimbursement to the County for any County expense incurred. The agency/department should consult, as appropriate, with the Auditor-Controller's Office to accurately estimate costs when exact costs are not known.

2. COUNTY-OWNED COMPUTERS

County-owned computers, software and printers are specifically assigned to employees to assist them in carrying out their duties. An employee issued a mobile computing device (e.g. laptop, notebook, iPad, mobile computer, tablet) and ancillary device (e.g. stylus, optical disc player, Blu-ray player, carrying case) is authorized to take the computer or ancillary device home or out of the office only when he/she expects to use the device for a business purpose. Non-business use of a mobile computer or any ancillary device is forbidden outside the office. A DAO employee may not allow a non-DAO employee to use a DAO mobile computing device or any ancillary device at any time.

- Each employee provided with a mobile computing device is responsible for the physical security of the device.
- Due to the ease with which portable devices may be stolen, employees must avoid leaving their mobile computer unattended and in plain sight.
- Computer damage or loss should be reported immediately.
- Passwords are not to be posted on or near the device.

All software and hardware purchases will be reviewed and approved by the office systems coordinator before purchase.

No software will be loaded on any County-owned computer without the review and approval of the office systems coordinator.

The office systems coordinator will determine that the software has been scanned for viruses, will be compatible with the hardware and other software resident on the computer, and will not present any problems to a network computer.

Only legally licensed software, “freeware” or “shareware,” or software otherwise designated as within the public domain may be used on any computer located in the department.

No personally or County-owned computers shall be connected to the Internet, or other similar help lines or bulletin boards, without the review of the office systems coordinator and the approval of management. Once approved by management, connection to the Internet will be coordinated through the Information Systems Department and the County’s Internet provider.

No computer games may be played or loaded on any computer located in the department.

All messages displayed on the screen savers or marquees shall be professional and business related.

3. PERSONAL USE OF COUNTY-OWNED COMPUTERS

Occasional use of County-owned computers, software, and printers for an employee’s personal or other non-County business is permitted, where such use does not conflict with any office-related business and the following conditions are met:

- While the computer is used within the office, limited personal use is permitted.
- When the computer is used outside the office, personal use is prohibited.
- Use may not involve work in connection with any for-profit enterprise.
- Personal data files may not be stored on the computer’s internal hard drive or on network attached storage media.
- Employees who print on County-owned printers shall reimburse the County at the rate of 3 cents per page for black print and 5 cents per page for color print.

4. EMPLOYEE-OWNED COMPUTERS

Employees may bring their own personal computers and printers into the office for use on office business. Personally-owned computer peripherals (e.g. monitors, keyboard, mouse, speakers, HDMI cables) must not be connected to county-owned computers while the county-owned computer is in the office without the prior approval of the DAO Information Technology Unit (ITU). The DAO does not assume any responsibility for personally owned devices and will not provide support services for them. Personally owned peripherals may be connected to County-owned computers when County-owned computers are used outside the office.

Responsibility for the transportation, installation, and maintenance of such equipment rests with the employee/owner.

Under no circumstances may employees connect privately-owned personal computers to any County network.

Employees may not load County-owned software on a personally owned computer without prior approval of the office systems coordinator.

Confidential County, office, or case-related information maintained on privately-owned personal computers shall be treated as property of the District Attorney's Office, and its use and dissemination is restricted to those with a right and need to know.

5. ELECTRONIC MAIL

The electronic mail (email) system permits employees to communicate with each other internally and with outside individuals and organizations. The email system is to be used for business-related purposes to transmit business information. Like other information contained in District Attorney automated systems, business-related emails should be sent or forwarded only for legitimate work-related business purposes. Highly sensitive or confidential messages should not be transmitted by email. Limited personal use of the email system must be in compliance with the County's Employee Technology Use Policy and Electronic Mail Policy.

No user of email should have an expectation of privacy in its use. The office reserves the right to review an employee's email at any time to ensure the proper use of office resources. The department system administrator has the capability to review, copy, and delete any messages sent, received, or stored on the email system. Review of an employee's email by the system administrator requires the consent of the employee or the approval of the Chief Assistant District Attorney.

All transmissions shall be courteous, professional, and businesslike.

Commentary

In forwarding emails, employees should be cautious to not include internal comments or other portions of the email string that are not appropriate to forward to the recipient. Caution should also be exercised when responding to emails that were sent to multiple recipients, or emails embedded as attachments to other emails, that the response is being sent to the intended recipient(s).

6. INTERNET ACCESS AND USE POLICY

Office policy in this area has been set by the County's Information Technology Committee (ITC) in the County of Ventura Administrative Manual and is available at

http://vcweb/policies/policystandard_pdf/1.pdf .

Z. PROFESSIONAL REFERRALS

Employees shall not refer business to or otherwise recommend private attorneys or law firms, where the referral is sought on a criminal matter. Where no personal gain will result, or appear to result, referrals may be made in civil matters by providing a list of at least three attorneys or firms. In no event shall an employee accept compensation of any kind for a referral.

Commentary

The use of the Ventura County Bar Association's attorney referral service is encouraged and is required whenever a direct referral cannot be made or, if made, would constitute a real or apparent conflict of interest.

AA. CONFIDENTIAL INFORMATION

1. GENERAL POLICY

As an employee of the Ventura County District Attorney's Office, you may have access to CONFIDENTIAL CRIMINAL RECORD AND/OR DEPARTMENT OF MOTOR VEHICLES RECORD INFORMATION which is controlled by state law. Misuse of such information may adversely affect the individual's civil rights and violates the law.

Employees shall not reveal confidential information of any kind to persons without a right and need to know. Employees shall not use their position in the office to obtain access to information which they have no right and need to know. All information and data contained in all District Attorney's automated systems is confidential and may only be used for legitimate work-related business purposes. Unauthorized access to or use of such information is prohibited and may be subject to criminal and disciplinary proceedings.

Commentary

As used in this section, "confidential information" includes virtually any information, whether case-related or administrative, which is not a matter of public record, or which an individual employee does not have the legal power or office authority to release. All information and data contained in all District Attorney's automated systems is confidential.

2. DISPOSAL OF CONFIDENTIAL DOCUMENTS AND OTHER ITEMS

The following documents shall be disposed of only by shredding, which may be accomplished by placing them in one of the "shred" containers located throughout District Attorney facilities:

- Preliminary hearing memos

- Pre/post indictment memos
- Pre-filing memos
- DMV printouts
- Police reports
- Subpoenas and master witness lists
- DA investigative reports
- Special interest reports
- Jury trial reports
- Rap sheets
- Attorney/investigator notes
- Any document marked "confidential"

Media items such as tapes, disks, CDs or photographs, need to be placed in the "shred" containers specifically marked for such items. Plastic cases should be thrown in the trash.

BB. THREATS BY DEFENDANTS AGAINST VICTIMS, WITNESSES OR DISTRICT ATTORNEY STAFF

In any case where a deputy district attorney, district attorney investigator, or other District Attorney employee learns that a defendant has made an apparently credible threat of future harm to a victim, witness or District Attorney personnel, the deputy, investigator or employee shall prepare a memorandum to the Chief Investigator detailing the substance of the threat and the circumstances under which it was made. The Chief Investigator shall thereafter assign the matter for further investigation, if necessary, in order to assess the seriousness of the threat. All threats of harm, apparent or otherwise, made to deputy district attorneys and/or their families shall be investigated as a top priority. The Chief Investigator shall report directly to the District Attorney upon the report of such threats. The Chief Investigator shall take all reasonable steps to ensure the safety of deputy district attorneys who receive any threat of harm related to their employment as a deputy district attorney. The Chief Investigator shall be the central point of contact on all such investigations and retain the final authority on all threat related investigative decisions.

If the Chief Investigator determines the threat presents a reasonable likelihood of danger to the threatened person(s), the Chief Investigator shall enter the threat into the office's Active Threat File which shall be monitored by the Bureau of Investigation, with the

assistance of the Victim Services Division, to ensure that information concerning release of defendants who have made apparently credible threats of future harm shall be communicated to the person(s) threatened in advance of the defendant's release from custody. In appropriate cases, the office shall request specific terms and conditions of parole or probation in order to minimize the possibility the threat will be carried out.

An "apparent credible threat of future harm" within the meaning of this policy is one which portends serious or significant harm or injury, has a specific factual basis, and causes the person(s) threatened to actually fear harm or injury.

CC. CRIMINAL JURY SERVICE BY DISTRICT ATTORNEY STAFF

A deputy district attorney shall not sit as a trial juror in a criminal case prosecuted by this office, or one prosecuted by the Attorney General as a result of a conflict of interest by the Ventura County District Attorney's Office. If called to serve as a juror in such a case, a deputy should inform the court of this policy and ask to be excused from service, citing Code of Civil Procedure section 229. That section makes a would-be juror challengeable for cause on the basis of implied bias where the juror has, within one year prior to the filing of the complaint, stood in the relation of attorney and client with a party to the action.

If the court refuses to excuse the juror-deputy, the trial deputy should seek a stipulation from the defense excusing the deputy district attorney. If the court refuses to accept the stipulation, the trial deputy should exercise a peremptory challenge removing the deputy district attorney from the panel.

Non-attorney District Attorney staff called to serve as jurors in a criminal case should be certain the parties and court are aware of their employment in the District Attorney's Office, and the nature of the work performed by the employee. It is not necessary that a trial deputy exercise a peremptory challenge against a District Attorney staff member who indicates, and whom the deputy believes, can be a fair and impartial juror.

If seated on a criminal trial jury, a District Attorney staff member should advise his/her supervisor of that fact, should have no contact with the trial deputy during the pendency of the trial, and (subject to supervisor approval) should remain physically out of the office until the trial has concluded in order to minimize the possibility of allegations of impropriety.

If the court should recess the trial prior to completion of the normal workday, the juror-staff member shall contact his/her supervisor to make other work arrangements.

Commentary

This policy is not meant to suggest that deputy district attorneys cannot be fair and impartial jurors in criminal cases. Rather, its purpose is simply to avoid any appearance of impropriety on the part of an individual deputy district attorney, or the office as a

whole; to maintain the public's confidence in the criminal justice system; and to avoid placing deputy district attorneys in a situation which presents an arguable conflict of interest.

Employees are reminded that any fee or compensation for jury service (apart from mileage) must be returned to the county for any days of absence for which the employee receives salary as for a day worked, except that if jury service occurred during the employee's vacation or other authorized leave of absence, the employee may retain such fee or compensation.

DD. FAX MACHINE USE

The District Attorney FAX machines are generally limited for use on matters of office business.

An employee who uses the machine must record information regarding subject matter of materials transmitted, destination, number of pages sent, etc., on the log sheets maintained next to the machine.

Occasional use of the FAX machine to transmit or receive materials unrelated to office business is permitted to deal with urgent matters if such use will benefit the county by allowing the employee to remain at work rather than travel off site. Employees shall reimburse the office at a rate of 10 cents per page (per side of double-sided pages) for all personal use.

EE. CODED ENTRY ACCESS

Office doors controlled by access cards are for the use of District Attorney employees only.

Unless accompanied by District Attorney staff, all non-employees shall enter the office through the main reception area in accordance with established procedures. (See Chapter 1, section R of this manual.) Law enforcement personnel may enter the office through other doors when accompanied by District Attorney staff. District Attorney personnel shall use the access card entry doors whenever possible and shall avoid using the reception area entry.

Employees using access card doors shall use care to ensure that non-District Attorney staff in their vicinity do not gain entry behind them.

FF. MANDATORY TRAINING FOR PROFESSIONALS

Employees are responsible for maintaining a valid state license or certification if required by their job classification, including the completion of continuing education requirements.

Employees shall notify the Chief Assistant Attorney through their chain of command in writing of any communications with the licensure or certification agencies that could result in discipline or adversely affect their license or certification, including but not limited to any self-report or complaint to the State Bar, any notice of failure to submit dues or other deficiency, and any investigations against them.

Employees shall immediately notify their supervisor of any suspension, expiration or revocation of their driver's license if relevant to the performance of their jobs. It is the responsibility of the supervisor to forward such notice to the Chief Assistant District Attorney through their chain of command.

In order to ensure that relevant communications from the State Bar are received, attorneys must ensure that their address in their State Bar profile is current, and shall include their office email address.

GG. SALE OF MERCHANDISE FOR PROFIT PROHIBITED

District Attorney employees shall not sell or offer to sell "for profit" merchandise in the office or on office time.

This policy does not apply to the sale of merchandise for nonprofit or charitable organizations (e.g., little league, school fund raiser, etc.), or use of the appropriate bulletin board to advertise the occasional sale of an employee's personal property (e.g., car, TV, furniture, etc.). Allowed items for sale should be kept in the kitchen areas.

Commentary

The above formalizes what has been longstanding office policy in this area. Items sold as part of fundraising for the District Attorney's Employees Activities Committee (EAC) are excluded from this policy.

HH. CONFIDENTIALITY OF HOME ADDRESS INFORMATION (DMV)

Vehicle Code section 1808.4 allows deputy district attorneys, district attorney investigators, their spouses and children to request that the Department of Motor Vehicles keep their home address confidential. Eligible employees may obtain forms for this purpose from the Administrative Services Unit.

II. COMMITTEE APPOINTMENTS

Employees shall obtain the written approval of the District Attorney before accepting appointment to any non-office committee where the employee's involvement would appear to constitute representation of the office or would require the use of office time. If appointment is authorized, attendance at committee meetings is subject to the work

demands of the office and must be scheduled and approved by the employee's supervisor as far in advance as possible.

JJ. LETTERS OF REFERENCE

Official letters of reference (i.e., those written on office stationery) other than those sent to prosecuting agencies or relating to judicial appointments require the approval of a Chief Deputy District Attorney. Official letters of reference to other prosecuting agencies or relating to judicial appointments require the approval of the District Attorney.

Personal letters of reference (i.e., those written on plain paper but which identify the writer as an employee of this office) should clearly indicate that the views expressed are the writer's own and not necessarily those of the District Attorney's Office.

KK. PROFESSIONAL RESPONSIBILITY COMMITTEE

The office has established an ad hoc Professional Responsibility Committee to review and respond to written complaints alleging inappropriate or unprofessional conduct (non-criminal) by professional staff. The Committee consists of the Chief Assistant District Attorney, a Chief Deputy District Attorney, and a third member chosen by them in connection with a specific complaint.

The Committee's purpose is to review allegations of inappropriate or unprofessional conduct, determine if an applicable rule of professional conduct or office policy has been violated, and decide what response, if any, the office should make to the complaint. The Committee shall additionally function as a mechanism to review office policy and procedures and make recommendations for change where appropriate.

It is not the function of the Professional Responsibility Committee to impose discipline. Discipline is a separate matter which, in appropriate cases, would be handled pursuant to normal procedures.

LL. VOICE MAIL POLICY

Voice mail has been made available to selected staff to ease the workload on the receptionists and other support staff. Voice mail shall be used in accordance with the following guidelines:

Voice mail announcements shall adhere to substantially the following format:

Hello, you've reached the voice mailbox for _____. I am unable to answer your call, but if you leave your name, number and a short message, I will return your call as soon as possible.

If you are a witness in a criminal case, you should call our Witness Coordination Unit at 654-3006 for assistance.

If this is an emergency and you need to speak to someone immediately, call 654-2550.

Voice mail is not to be used as a method of screening incoming calls. If an employee can take a call, he/she should do so. Voice mail may, however, be used to manage work schedules (i.e., to avoid interruptions during specific work periods).

Voice mail messages should be checked, and calls returned where appropriate at least twice a day, once in the morning and once in the afternoon. More frequent voice mail checks and call backs are encouraged.

If an employee is gone for an extended period (i.e., more than two days) the voice mail announcement should indicate the expected date of return and identify a phone number for the person to contact for immediate assistance.

Voice mail announcements shall be recorded in a manner that is professional, both as to tone and content.

MM. POLICY PROHIBITING USE OF ALCOHOL, DRUGS OR INTOXICANTS DURING WORK HOURS

Employees shall not consume or be under the influence of alcoholic beverages, drugs or other intoxicants (excluding lawfully prescribed medication) during working hours. "Under the influence" within the meaning of this policy means to exhibit any objective symptom of alcohol or drug use, including but not limited to, slurred speech, watery eyes, unsteady gait or an odor of alcohol. "Under the influence" within the meaning of this policy does not require mental or physical impairment of any kind.

Employees exhibiting an objective symptom of alcohol or other drug use may be required to submit to a test for the presence of alcohol or other drugs in their system. Any such test will be administered with due consideration given to the employee's right to privacy in both the administration of the test and in the results thereof.

Violations of this policy shall be grounds for discipline up to and including demotion, suspension and dismissal.

NN. POLICY AGAINST SEXUAL HARASSMENT

The office policy against sexual harassment is the same as the County policy in this area. It is reprinted here for convenience.

Policy:

1. It is illegal and against the policies of the County of Ventura for an employee to sexually harass another person.

2. All County employees will preserve a workplace free of sexual harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other offensive verbal or physical conduct of a sexual nature when:

a. Submission to sexual advances is a condition of employment;

b. Submission or rejection is the basis of an employment decision (tangible job benefits, promotion, retention, performance appraisal, etc.); or

c. When the conduct unreasonably interferes with the affected person's work performance or creates an intimidating, hostile or offensive work environment.

Procedures:

1. Department managers and supervisors will take all reasonable steps necessary to prevent such harassment from occurring and develop methods to sensitize employees on this issue.

2. Any employee who believes he or she has been the subject of sexual harassment should report the alleged act immediately to his/her department personnel officer, department head, County departmental assigned analyst or the Human Resources Director. An investigation of all complaints will be undertaken immediately. (The District Attorney's Office has specially trained teams to conduct such investigations.)

3. Any supervisor, agent, or employee who has been found by the County, after appropriate investigation, to have violated this policy will be subject to appropriate disciplinary action up to and including dismissal.

OO. REPORTING OF JUDICIAL OR ATTORNEY MISCONDUCT

Complaints against attorneys to the State Bar or against judicial officers to the presiding judge or Commission on Judicial Performance should ordinarily be signed by the District Attorney or Chief Assistant District Attorney. Employees wishing to complain to the State Bar about an attorney's conduct should discuss the matter with their supervisor and prepare a memorandum through their chain of command to the Chief Assistant District Attorney for review. If the complaint is against an attorney employed by the Public Defender's Office, the Chief Assistant District Attorney will generally discuss the matter with the Assistant Public Defender before making a final decision as to whether a State Bar complaint is appropriate.

ARTICLE II. GENERAL OFFICE POLICIES

Section 1.02, Chapter 2, CASE-RELATED POLICIES

A. ASSISTANCE TO LAW ENFORCEMENT AGENCIES

1. SEARCH WARRANTS/RAMEY WARRANTS

The District Attorney's Office is available at all times to assist law enforcement agencies to obtain search warrants or Ramey warrants. The latter shall be issued only with approval of the appropriate unit supervisor. To ensure accurate search warrant execution and satisfy legal sufficiency, the location to be searched must be described in the warrant with particularity and, unless prohibited by exigency, must contain photographs of the outside of any residence to be searched.

Any search warrant involving the use of a special master or that requests nighttime execution of a warrant on an unsecured residence must have the approval of the division Chief Deputy or Chief Assistant District Attorney. "No-knock" warrants are not allowed.

a. During Office Hours: The supervisor of the unit responsible for the type case involved shall assign an available Deputy District Attorney to handle an agency's request for assistance during office hours.

b. After Office Hours: The deputy district attorney assigned to after-hours on-call search warrant/*Ramey* warrant duty shall handle an agency's request for assistance after office hours.

c. Non-Ventura County Agencies: When an agency from outside Ventura County requests assistance in reviewing a warrant to be served in Ventura County, the reviewing deputy shall immediately notify his/her supervisor, who shall in turn notify the Division or on-call Chief Deputy, and the local agency in the jurisdiction where the warrant is to be served.

Commentary

A magistrate in California cannot preemptively excuse an officer from complying with Penal Code section 1531, which requires the officer give notice of authority and purpose, and be refused admittance, before forcing entry. (See *Parsley v. Superior Court* (1973) 9 Cal.3d 934, 939.) In *Parsley*, the California Supreme Court held that the magistrate reviewing the search warrant was without power to authorize noncompliance with the announcement requirement because the facts that give rise to the exigency justifying noncompliance must exist at the time of the entry, hence a magistrate cannot excuse compliance in advance.

2. CRIME SCENES

The District Attorney's Office is available at all times to comply with a law enforcement agency's request for assistance at the scene of a homicide or other major crime.

a. During Office Hours: The division Chief Deputy shall assign a deputy district attorney to assist the requesting agency during office hours.

b. After Office Hours: The deputy district attorney assigned by the division Chief Deputy to after-hours on-call crime scene duty shall handle an agency's request for assistance after office hours.

The function of the deputy district attorney at a crime scene is to assist the agency in its investigation by providing legal advice and assistance as these bear on search warrants, arrest warrants, searches and seizures, and the gathering of evidence. The deputy district attorney serves as a consultant only.

The deputy district attorney shall inform the Division Chief Deputy of any crime scene assistance rendered to a law enforcement agency.

3. OFFICER-INVOLVED SHOOTINGS/HOMICIDES/SERIOUS CIVILIAN INJURY

a. Introduction

Because public confidence in the integrity of law enforcement is essential to the criminal justice system, the District Attorney's Office, in cooperation with local law enforcement agencies, has developed this written officer-involved shooting policy.

b. Scope of Policy

Although this policy is called Officer-Involved Shooting Policy—because most such incidents involve shootings by officers—the scope of the policy is more comprehensive than its title.

It includes all fatal shootings and intentionally inflicted death by a law enforcement officer whether on or off duty. It does not include incidents involving unintentionally caused deaths, such as in a vehicular accident.

These guidelines will not answer all law enforcement questions. When it is unclear whether or not an officer's actions come within the scope of the policy, we recommend that the law enforcement agency notify the District Attorney's Office and allow us to work together to resolve the questions.

c. Policy

The District Attorney will conduct or assist in conducting an officer-involved shooting investigation when:

- The investigating law enforcement agency specifically requests it;
- The District Attorney's Office is promptly notified; and
- The investigating law enforcement agency agrees to actively involve the District Attorney review team in the investigation; and
- The employing agency agrees to separate its administrative investigation from the criminal investigation, and to delay any administrative interview of the involved officer(s) until the completion of attempts by the criminal investigators to conduct interviews.

The District Attorney's investigative team's responsibilities are:

- To provide legal advice to the investigating law enforcement agency;
- To suggest actions or procedures which may be helpful to a later legal analysis of the facts; and
- Upon request, to assist with the investigation.

"Active involvement": within the meaning of the policy means that the investigating law enforcement agency agrees to involve and cooperate with the reasonable requests of the assigned District Attorney team, and provide them with the opportunity to attend briefings, timely access to witnesses, crime scenes and evidence involved in the investigation. The investigating agency, in the normal case, retains ultimate responsibility for and control of the investigation. In assisting that agency, the District Attorney team shall coordinate its involvement with the investigating agency's on-scene major crimes or other supervisor.

The District Attorney, with or without notification or request, may conduct an independent officer-involved shooting investigation when there is substantial reason to believe an officer may have acted unlawfully, or there is substantial reason to believe the law enforcement agency is not conducting a complete, thorough, and impartial investigation. Before doing so, the District Attorney will communicate the decision to the head of the law enforcement agency in whose jurisdiction the officer-involved shooting took place.

The purpose for the District Attorney's involvement in officer-involved shooting incidents is to expedite completion of the investigation and review process so that a reasonably prompt determination can be made as to the lawfulness of the use of deadly force. Additionally, the District Attorney's involvement provides the public, the investigating agency, the involved officer and his/her department, and all other individuals involved in

the incident the benefit of an independent review in order to maintain public trust and confidence in the fair administration of justice.

d. Procedure

Notification -- The law enforcement agency should contact the District Attorney's Major Crimes Chief Deputy, Chief Investigator, or the Senior Investigator who is the designated backup for these purposes. If none of these individuals are available, the Chief Assistant District Attorney should be contacted.

If attorney assistance is needed, the Chief Deputy or Chief Assistant District Attorney shall assign a Deputy District Attorney to respond. The Chief Investigator or his designee shall assign an investigator.

Responding to the Scene -- The assigned personnel shall go to the scene together to begin work on the case. Any other course of action should be approved by the Chief Investigator in consultation with the Chief Deputy or Chief Assistant District Attorney.

Advising the District Attorney -- In unusual cases, the investigative team shall immediately notify the District Attorney and the Chief Assistant District Attorney that there has been an officer-involved shooting.

Responsibility for Investigation -- The Chief Investigator shall supervise and be responsible for officer-involved shooting investigations.

Completion of the Investigation -- When the investigation has been completed, the District Attorney, Chief Assistant District Attorney, Chief Deputy District Attorney and Chief Investigator shall determine whether or not the shooting is lawful, and, if not, whether criminal charges should be filed.

Public Report -- If criminal charges are not brought against any of the parties involved, the District Attorney's Office will issue a public report. If such charges are filed, no public report shall be issued since to do so could be prejudicial or unfair to the defendant.

DA Investigator Involved in Shooting -- In such instances, and for the reasons set forth herein, the policy of the District Attorney's Office shall be to request the Attorney General and the Ventura County Sheriff to participate in the investigation and review the incident.

4. LINEUPS

The District Attorney's Office is available at all times to comply with a law enforcement agency request that a deputy district attorney attend a lineup to observe and assist the agency as a legal advisor.

a. During Office Hours: The supervisor of the unit responsible for the type of case involved shall assign a deputy district attorney in the unit to comply with the agency's request during office hours.

b. After Office Hours: The deputy district attorney assigned to after-hours on-call search warrant/*Ramey* warrant duty shall handle an agency's request for a deputy district attorney at a lineup after office hours.

5. REQUESTS FOR DISTRICT ATTORNEY LEGAL OPINIONS

A deputy district attorney shall not give legal advice to a law enforcement agency or officer except on issues directly related to a pending criminal investigation or case.

The County Counsel or the agency's city attorney is usually the appropriate attorney to provide legal advice to law enforcement agencies. Occasionally, however, a legal issue is so involved with District Attorney policies or practices that an agency may want the legal opinion of the District Attorney. In that case, the agency shall direct a written request from the Sheriff or police chief to the District Attorney setting forth the facts and legal questions. The District Attorney's Office will provide the agency with a written legal opinion.

This requirement that requests for legal opinions be in writing from the agency head is prompted by considerations of reliability, consistency and resources. The reliability of a legal opinion depends heavily on an understanding of the factual context. Even a slight change of facts will cause the legal "answer" to change. Therefore, a written request, setting forth the facts and question presented, ensures that the answer will be ruled on in context. A written request and written reply provide a guideline for consistent future police procedures.

Additionally, the requests and opinions are indexed and filed, providing a source of answers for similar inquiries from other agencies. This avoids the need to perform multiple research on the same issues, thereby conserving resources.

B. INVESTIGATIONS AND EVIDENCE

1. REQUESTS FOR INVESTIGATION

A deputy district attorney desiring the assistance of the Bureau of Investigation, in a case to which an investigator is not already assigned, shall submit a filled-out, supervisor-approved *Request for Investigation Form* to the appropriate investigation unit supervisor. Deputy district attorneys shall not initiate any criminal investigation into any matter without the prior written approval of the District Attorney.

2. EVIDENCE ROOM

Deputy district attorneys and investigators shall use the District Attorney evidence room to store items of evidence in pending investigations or cases, subject to the following guidelines or procedures:

- Only evidentiary items may be stored in the evidence room;

- Body fluids, drugs, explosives, highly combustible materials, and all other items that are routinely tested or analyzed by the Ventura County Sheriff's Crime Lab shall be maintained at that location.

Exceptions to the above guidelines require the approval of the Chief Investigator.

3. PROCEDURE

Preparation of Evidence:

a. Bulky evidence shall not be accepted for storage unless it is properly boxed, wrapped and labeled by the investigator or prosecuting attorney.

b. Documentary evidence shall be placed in sealed envelopes which bear the description and history of the contents.

c. Currency taken as evidence shall be placed in an envelope after being counted in the presence of an investigator and the evidence custodian. It shall then be sealed in the evidence custodian's presence and completely identified.

d. The evidence packages and envelopes shall show the following information:

- Court number and D.A. file number;
- Suspect's name;
- Date taken;
- Agency;
- Name and address of person from whom taken;
- Prosecutor's or investigator's name;
- Description of property.

Evidence Room Booking Procedure:

a. The evidence custodian shall log in all evidence (only the evidence custodian, or alternate, retains an evidence room key).

b. The evidence custodian shall assign a storage bin number for the evidence.

Evidence Removal and Return:

Evidence shall not be removed until it is signed for.

b. Evidence shall also be logged out and -- if returned -- logged in by the evidence custodian.

Evidence Room Maintenance:

a. The evidence custodian shall check the evidence room at six-month intervals to remove and arrange for removal of items which need not be stored any longer.

b. Relevant log sheets, retained in the evidence room, may be photocopied for court as necessary.

Evidence Room Locations:

a. County Square Drive facility in the Bureau of Investigation: The Chief Investigator's management assistant serves as evidence custodian at the County Square Drive location. The Deputy Chief Investigators serve as alternate custodians.

b. District Attorney's main office administration area: The District Attorney management assistants serve as evidence custodians at the main office.

4. EVIDENCE DISPOSAL GUIDELINES

Deputy district attorneys and district attorney investigators shall request that law enforcement agencies retain evidence according to the following guidelines. It is recognized that to run an organized, efficient and secure property room with limited resources, each agency must reserve the right to dispose of evidence in a reasonable manner allowed by law.

Any evidence seized pursuant to a search warrant may only be released/destroyed upon a court order. (Penal Code § 1536.)

a. BIOLOGICAL EVIDENCE - BLOOD, HAIR AND URINE SAMPLES

All Cases

1. No sample should be destroyed without compliance with Penal Code section 1417.9.

2. Blood and urine samples for any Vehicle Code violations must be retained for at least one year after date of collection. (Cal. Code Reg., title 17, sections 1215.1(b), 1219.1(g), 1219.2(c).)

Misdemeanors

1. Samples for cases that have been rejected for filing may be destroyed one year after the date of collection.

2. Samples for filed cases with only misdemeanor charges listed may be destroyed after one year from date of collection, if the court case has been completed and you are in compliance with PC 1417.9. Cases are not completed if they are pending trial, are on appeal, the 30-day period after sentencing to file a misdemeanor appeal has not yet run, or a warrant is outstanding because the defendant has failed to appear before sentencing.

3. Samples for misdemeanor warrant cases over two (2) years old may be destroyed with the following exceptions:

a) 17(b) cases

b) Violations of Penal Code sections 417(a)(1), 417(a)(2), 25850, 25400, 26100, 192(c), 314, 273.6, 273.65, 647.6, and any crimes involving domestic violence, sexual abuse or child abuse. Testable samples in categories 3(a) and 3(b) should be kept at least five (5) years.

Felonies

1. Samples for cases that have been rejected for filing may be destroyed one year after the date of collection, except in homicide and sexual assault cases.

a) Samples in rejected or unfiled homicide cases should only be destroyed upon approval of the unit supervisor.

b) Samples in rejected or unfiled sexual assault (Penal Code sections 220 and 261 through 290) cases should only be destroyed upon expiration of the statute of limitations (PC sections 799 – 805).

2. Samples for filed felony cases, or charges that may be alternatively charged as a felony or misdemeanor, may be destroyed when 60 days has expired from the time of sentencing without a notice of appeal being filed and in compliance with Penal Code section 1417.9. However, if it is a Vehicle Code violation, it must be retained at least one year from the time of collection.

3. Samples in felony warrant cases in non-homicide and non-sexual assault cases may be destroyed after ten (10) years.

4. Samples in homicide and felony sexual assault warrant cases should not be destroyed without approval of the unit supervisor.

Juvenile Cases

1. Evidence for a filed case may be destroyed if the case has been completed in juvenile court and 60 days has expired from the time of disposition without a notice of appeal being filed. However, if it is a Vehicle Code violation, it must be retained at least one year from the time of collection.

2. Evidence for **rejected** and **unfiled** cases may be destroyed after the statute of limitations has expired.

3. Samples in **felony warrant** cases (excluding homicide and sexual assault) may be destroyed after the minor has attained the age of 21. Samples in homicide and sexual assault warrant cases should not be destroyed without approval of the unit supervisor.

4. Samples in **misdemeanor warrant** cases (excluding sexual assault) may be destroyed after the minor has attained the age of 19, with the following exceptions: 17(b) cases violations of Penal Code sections 417(a)(1), 417(a)(2), 25850, 25400, 26100, 192(c), 314, 273.6, 273.65, 647.6 and any crimes involving domestic violence, sexual abuse or child abuse. Testable samples in the above noted cases should be kept at least five (5) years.

b. NON-BIOLOGICAL EVIDENCE

All Cases

Money may be released only by court order or upon expiration of the appeal period. Evidence that is of monetary or sentimental value (family photographs, etc.) should be returned to the owner.

Felony Cases

1. Evidence in felony warrant cases over three (3) years old may be destroyed or released after being photographed, except in homicide, sexual assault and child abuse cases.

a) Evidence in **homicide warrant** cases should never be released or destroyed without approval of the unit supervisor.

b) Evidence in **sexual assault and child abuse warrant** cases may be destroyed or released after six (6) years after being photographed.

2. In filed and unfiled felony domestic violence, sexual assault or elder abuse cases, all audio or audiovisual recordings should be retained for ten (10) years from date of sentencing or date of offense, if case not filed. Dispatch recordings should be retained for one (1) year unless an impound directive is received for a particular incident.

a) Evidence in other filed felony cases should be released when the appeal period is over, absent exceptional circumstances.

b) Evidence in other unfiled or rejected felony cases should be released if the statute of limitations for filing has expired (see Penal Code sections 799-805). However, the evidence should first be photographed in cases involving sexual assault, child abuse and domestic violence.

c) Evidence in unfiled homicide cases should not be released without approval of the unit supervisor.

d) Evidence in death penalty cases should be released/destroyed only upon death of the defendant, approval of the Chief Assistant District Attorney, or court order.

Misdemeanor Cases

1. Evidence in misdemeanor **warrant** cases (excluding 17(b) cases and cases involving violations of Penal Code sections 417(a)(1), 417(a)(2), 25850, 25400, 26100, 192(c), 314, 273.6, 273.65, 647.6, and any crimes involving domestic violence, sexual abuse or child abuse) over two (2) years old may be destroyed or released after being photographed. However, interview, video and dispatch recordings should be kept at least five (5) years. Evidence in the above-noted excluded cases should be kept at least five (5) years.

2. Evidence in **filed** misdemeanor cases should be released pursuant to the Evidence Disposal Memorandum (EDM). Barring exceptional circumstances, the EDM will authorize disposal if the court case has been completed. Cases are not completed if they are pending trial, are on appeal, or the 30-day period after sentencing to file a misdemeanor appeal has not yet run.

3. Evidence in **unfiled and rejected** misdemeanor cases should be released if the statute of limitations for filing has expired (see Penal Code sections 799-805). However, in cases involving sexual assault, child abuse and domestic violence, the evidence should first be photographed and interview, video and dispatch tapes should be kept at least five (5) years.

Juvenile Cases

1. Evidence in filed cases may be released if the case has been completed in juvenile court and 60 days has expired from the time of disposition without a notice of appeal being filed or per EDM.

2. Evidence in juvenile warrant cases (except sexual assault or homicide) over 12 months old may be released after being photographed. Evidence in sexual assault and homicide cases should not be released/destroyed without approval of the unit supervisor.

3. Evidence in unfiled and rejected misdemeanor and felony juvenile cases (except sexual assault, child abuse and domestic violence) may be released after the statute of limitations for filing has expired. The same time deadlines for filing apply to juveniles and adults. In cases involving sexual assault, child abuse and domestic violence, the evidence should first be photographed and the photographs, interview, video and dispatch recordings should be kept at least five (5) years.

4. Evidence in felony sexual assault and homicide cases should not be released without approval of the unit supervisor.

5. ROLE OF THE ATTORNEY IN INVESTIGATIONS

a. Pending Cases

Deputy district attorneys must use all reasonable means to avoid becoming witnesses in cases which are being prosecuted by the office. This is normally accomplished by securing the assistance of a police officer or District Attorney Investigator in conducting interviews and follow-up investigations. When circumstances make such assistance impossible, new information and the deputy district attorney's role in securing it must be promptly documented and discovery requirements satisfied.

b. Original Investigations

Unless specifically assigned, no deputy district attorney has the authority to begin, conduct, or comment publicly on an original investigation of any kind. Where a deputy district attorney believes such an investigation may be warranted, the matter must be brought to the immediate attention of the Chief Assistant District Attorney, the Division Chief Deputy, or the Chief Investigator, who have the authority to authorize the opening of a special investigation and the assignment of District Attorney Investigator personnel.

6. CRIMINAL INTELLIGENCE FILES

Criminal intelligence files will be maintained according to the Attorney General's "Criminal Intelligence File Guidelines," which are hereby incorporated by reference. The release authority for intelligence files is as follows:

- Sensitive: District Attorney
- Confidential: Chief Investigator
- Restricted: Intelligence Unit Senior Investigator
- Unclassified: Intelligence Unit Personnel

7. SURREPTITIOUS TAPE RECORDING

a. General Policy: All deputy district attorneys and investigators shall be familiar with Title 15, Chapter 1.5 (630 et seq.) of the Penal Code, and shall conform to the law at all times. Except in the course of an authorized investigation, no District Attorney employee may surreptitiously record or otherwise intercept a confidential communication involving any other person. Deputy district attorneys shall request investigative assistance whenever the need for a surreptitious recording is anticipated.

b. Attorney Suspects: Except in an emergency, no attorney may be the subject of a surreptitious recording without the prior written authorization of the District Attorney. When an unauthorized recording of an attorney is made in an emergency, it shall be immediately reported, in writing, to the District Attorney and Chief Investigator.

Commentary

Deputy district attorneys and investigators are empowered by Penal Code section 633 to make surreptitious recordings in the course of criminal investigations. However, office policy further limits the authority of deputy district attorneys in this area because of considerations of personal and county liability.

8. USE OF CRIMINAL/DRIVING RECORD INFORMATION

Access to Criminal and Driving Record Information is prohibited except for case-related purposes. Any such information received for case-related purposes is confidential and shall not be disclosed except as allowed by law. Violations of this policy could result in disciplinary action and criminal liability.

Commentary

California Penal Code sections 11105 and 11330 identify who has access to Criminal Record Information and under what circumstances it may be released. Penal Code sections 11140 through 11144 and 13301 through 13305 prescribe criminal penalties for misuse of such information. Although some DMV information may be a public record, it shall be considered confidential as a matter of office policy when it is obtained through official channels.

C. CRIME LAB

1. REQUESTS FOR ANALYSIS BY THE PROSECUTION

A deputy district attorney or investigator desiring a lab analysis shall complete the *Request for Analysis* form and submit it along with the exhibit to be tested or analyzed.

2. REQUESTS FOR ANALYSIS BY THE DEFENSE

Occasionally, the defense requests the testing or retesting of exhibits. Our office will generally not oppose requests by the defense to examine or test exhibits by defense experts, using premises and equipment other than the Ventura County Crime Lab, under conditions which preserve the chain of evidence and avoid contamination of the exhibit.

On the other hand, a deputy shall oppose requests by the defense to use state or county crime lab premises and/or equipment. The reason is that the lab does not have the time or equipment to spare for defense testing.

D. EXPENDITURES AND REIMBURSEMENTS

1. GENERAL POLICY

No employee shall incur an office expense without prior written authorization. To obtain such authorization, an employee shall complete an *Expenditure Request Form* and submit it either to the Chief Deputy (all criminal case-related expenditure requests) or the

Chief Assistant District Attorney (all non-criminal case-related expenditure requests as well as major fraud, child stealing and consumer fraud).

2. EXPERT WITNESSES HIRED BY THE DISTRICT ATTORNEY'S OFFICE.

Before submitting an expenditure request to hire an expert, an employee shall:

a. Contact the expert and obtain the expert's qualifications, scope of the services to be provided, an estimate of how long it will take to provide the services and a fee schedule broken down by cost per hour for review/preparation, analysis, testing, travel and testimony, and
b. Discuss the need for expert services, the qualifications of the proposed expert, the scope of work and fees and expected total cost of the services with supervisor and obtain approval.

If approved by the supervisor, the employee shall prepare an *Expenditure Request Form* (ERF) and include the expert's curriculum vitae, a description of the scope of work, fee schedule and the maximum expenditure. NO ERF MAY BE APPROVED WITHOUT THE ACCOMPANYING DOCUMENTATION AND NO WORK MAY BE PERFORMED UNTIL THE DEPUTY RECEIVES NOTICE THAT THE ERF HAS BEEN APPROVED.

After approval of the ERF, Fiscal/Admin will work with the employee to:

a. Obtain any necessary documentation such as W-9 tax forms, proof of liability insurance and a signed agreement for professional services.
b. Notify the employee and the expert about the process for billing the office and the limitations on billing/spending.
c. If necessary, coordinate with GSA to ensure a purchase order is opened for the expert.

Fiscal/Admin will track all payments to the expert to ensure compliance with county purchasing rules and spending limitations and will notify the employee, supervisor and chief when twenty percent of the ERF's spending limit remains.

NOTE:

a. No employee may authorize the expert to exceed the ERF's spending limit. A new ERF and formal approval is required to increase the limit.

b. Spending for an expert cannot exceed $100,000 in a twelve-month period without prior approval by the board of supervisors.

c. Outside attorneys cannot be retained without prior approval by County Counsel.

Commentary

Every effort should be made to limit the expert's billable time. For example, appointments for consultation should be set up well in advance so that the expert does not have to cancel other appointments. The appointment should be at the expert's office in order to avoid paying travel time. If the expert is needed to testify, he should have a specific time in which to appear, and the court should be advised of this and that the witness may have to be taken out of order. The courts are presented with similar budget problems when court-appointed experts are required to appear, and if you discuss the matter with the court beforehand, it should be sympathetic to your request.

3. COURT-APPOINTED EXPERTS

a. A deputy district attorney shall not request the court appointment of an expert without first obtaining approval from either the Chief Deputy District Attorney or the Chief Assistant District Attorney.

Commentary

The County policy is to charge the party requesting the court appointment with all of the expenses entailed thereby, notwithstanding that it is the court that orders the appointment.

b. A deputy district attorney shall not call a court-appointed expert as a witness without first obtaining approval from either the Chief Deputy District Attorney or the Chief Assistant District Attorney.

4. HOMICIDE SCENE INVESTIGATION

When a deputy district attorney responds to a homicide or other major crime scene and concludes that it is necessary to promptly retain an expert or otherwise commit District Attorney funds, he may do so without obtaining prior approval. The attorney shall, however, later fill out an *Expenditure Request Form*.

5. INTERPRETERS

a. Pre-complaint

In order to retain the services of an interpreter during the investigation of a case prior to the filing of a complaint, an employee shall first obtain written authorization through the process of an *Expenditure Request Form* directed to either the Chief Deputy or the Chief Assistant District Attorney.

b. Post-Complaint

A deputy district attorney who needs an interpreter for a witness in the Superior Court shall make arrangements directly with any one of the interpreters set forth on a list of

interpreters maintained by the Superior Court. That interpreter will invoice the court for all services rendered.

6. TRANSCRIPTS

An employee shall not request a transcript of proceedings without first obtaining approval from the supervising deputy district attorney by using an *Expenditure Request Form*.

E. VICTIMS AND WITNESSES

1. WITNESS FEE PAYMENT POLICY

a. In-County Witness

Neither witness fees nor mileage will be paid to Ventura County residents.

b. Out-of-County/State Witness

You may request assistance from the Fiscal/Admin Unit to obtain the attendance of a witness from out of the county or state. Air travel reservations must be made two (2) weeks (or more) in advance whenever possible, as the cost rises substantially for later reservations. There is no charge for cancellation if plans must be changed. Similarly, monetary savings may dictate that connecting flights be chosen over direct. To obtain witness assistance:

1) Prepare an Out-of-County/State Witness Request Form for each witness.

2) Complete parts A and B of the *Witness Request Form*. (This can be done by a deputy district attorney or district attorney investigator.)

3) Submit the completed forms(s) (including supervisor's approval for out-of-county and out-of-state witness) to the administrative assistant/ Fiscal Unit.

4) The administrative assistant will make all necessary arrangements.

5) A copy of the *Witness Request Form* listing what arrangements have been made will be sent to you.

6) The appearance of cooperative witnesses will be obtained informally. If the witness is hostile or uncooperative, you must proceed through the Interstate Compact. The deputy district attorney is responsible for preparing the necessary documents.

7) Travel - Travel arrangements over 150 miles will be made by the administrative assistant.

8) Per Diem - Out-of-county witnesses are entitled to a total per diem payment of $12 (Penal Code § 1329); out-of-state witnesses are entitled to a total per diem payment of $20 (Penal Code § 1334.3).

9) Lodging - All lodging arrangements will be made by the administrative assistant.

10) Mileage - Mileage will be paid per mile roundtrip at the rate of reimbursement presently set by the Board of Supervisors.

11) Non-reimbursable expenses - There is no reimbursement for telephone calls or alcoholic beverages. Other incidental expenses may, in exceptional circumstances, be approved by a Chief Deputy.

12) After the witness has testified, the deputy or investigator shall complete the *Witness Fee Authorization Form*, give it to the witness and escort or direct the witness to the administrative assistant for payment.

13) In hardship cases where the witness requires an advance of funds for meals, contact the administrative assistant or note this on the Out-of-County/State Witness Request Form. The administrative assistant will arrange for an advance.

2. SUBPOENAS -- MEDICAL RECORDS

When preparing or directing the preparation of a subpoena for medical records, the deputy district attorney shall include the following information:

- The patient's name and date of birth;
- The treatment dates;
- The treating physician's name.

3. SUBPOENA -- PHYSICIANS

When preparing or directing the preparation of a subpoena for a physician, the deputy district attorney shall include the following information:

- The name of the person treated;
- The date of birth or age of the person treated;
- The date of treatment;
- Whether or not treatment occurred in the emergency room.

This information should be placed next to the physician's name and address on the subpoena.

4. EMERGENCY WITNESS TRANSPORTATION

Before requesting witness transportation from the Witness Coordination Unit, the deputy district attorney shall determine whether or not:

- Commercial transportation is available;
- Friends or relatives could provide the transportation;
- The witness requires our assistance because of injury or physical handicap.

Procedure: When emergency transportation is required:

a. Inform the witness he/she will be contacted by the Witness Coordination Unit;

b. Notify the Witness Coordination Unit and inform them of:

- Witness name;
- Address and phone number;
- Place, date, and time needed; and
- The contact person (attorney or investigator).

c. The unit will let the deputy district attorney know what arrangements have been made.

5. DEPUTIES SHALL ENSURE THE RIGHTS OF CRIME VICTIMS

Deputies shall comply with the rights of crime victims, including section 28 of article 1 of the California Constitution (Proposition 9, Victims' Bill of Rights Act of 2008, Marsy's Law) and Penal Code section 679.02. (See also the analogous federal Crime Victims' Rights Act, 18 USC 3771.) As discussed below, victim advocates will handle many of the communications with crime victims. In a case in which no victim advocate has been assigned, if a victim asserts his or her rights under Marsy's Law, a victim advocate shall be assigned at that time.

A "victim" is defined under the California Constitution as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated." (Cal. Const., art. 1, section 28(e).) The rights of crime victims include the following subdivisions of article 1, section 28 of the California Constitution. Deputy district attorneys shall uphold and seek appropriate court orders to implement these rights:

(b) (1) "To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process."

Commentary

While a case may be routine for a prosecutor, it is often a significant and traumatic event in the life of the victim. The District Attorney's Office is committed to minimizing the re-traumatization of the victim that can occur through the criminal justice process. Victims have statutory and constitutional rights in California, and we must be as diligent in enforcing their rights as we are in enforcing the rights of criminal defendants.

(b) (2) "To be reasonably protected from the defendant and persons acting on behalf of the defendant."

The deputy district attorney shall seek appropriate criminal protective orders, bail/own recognizance orders, and probation conditions to prohibit harassment of victims.

(b) (3) "To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant."

Commentary

"In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations." (Cal. Const., art. I, § 28 (f)(3).)

The victim is entitled to notice and a reasonable opportunity to be heard before a person arrested for a serious felony may be released on bail. (Cal. Const., art. I, § 28 (f)(3); see Penal Code § 1192.7(c), for list of serious felonies.) If a serious felony case is set for bail review, the victim advocate shall advise the victim of their right to appear and to be heard. If the court is unexpectedly considering the setting or review of bail, the deputy district attorney shall request the matter be continued so the victim may receive the constitutionally-mandated notice and opportunity to be heard.

(b) (4) "To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law."

Commentary

Procedures shall be followed to limit disclosure of the address or telephone number of victims or witnesses. (Penal Code, §§ 841.5, 1054.2.) The victim's rights to prevent the

disclosure of confidential information may at times conflict with the defendant's rights to discovery and due process. When such conflicts occur, deputy district attorneys should seek court orders that balance these rights, taking into account the relevance of the information, the degree of intrusion, and alternatives to disclosure such as making the victim available for defense interview.

If documents are sought from a victim or third party via subpoena duces tecum, they are to be delivered to the court, not to the requesting party. (Penal Code § 1326(c).) If the party objects to disclosure of the information, the party seeking the information must make a plausible justification or a good cause showing of the need therefor. (*Kling v. Superior Court* (2010) 50 Cal.4th 1068, 1074-1075.)

(b) (5) "To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents."

Commentary

Victims and witness have the right to refuse to be interviewed. (*Walker v. Superior Court* (1957) 155 Cal. App. 2d 134, 140; *People v. Pitts* (1990) 223 Cal.App.3d 606, 872-873; *Reid v. Superior Court* (1997) 55 Cal.App.4th 1326, 1332.) Depositions are not available in criminal cases. (*Clark v. Superior Court* (1961) 190 Cal.App.2d 739.) Criminal discovery is provided by the prosecution, not directly from the victim. (Penal Code, § 1054.1.)

Prosecutors must exercise caution to not advise victims or witnesses to refuse to be interviewed by the defense. Such advice from the police or prosecution may violate the defendant's Sixth Amendment right to prepare for trial. (*Walker v. Superior Court, supra; People v. Hannon* (1977) 19 Cal.3d 588, 601.)

(b) (6) "To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case."

Commentary

If a victim advocate has been assigned, the advocate will give the victim the required notifications. If a victim asserts his or her Marsy's rights, the file or packet shall be marked "Victim" and a notation shall be made in VCIJIS. A victim advocate will then be assigned (if that has not already occurred) and the advocate will make the required notifications. The assigned deputy district attorney shall keep the victim advocate apprised of any disposition offer so that this can be conveyed to the victim.

If a case in which a victim has requested notification is settled in chambers on the day the disposition is to be made, the prosecutor should request that the hearing be continued so the constitutional mandate to notify the victim can be made.

The victim advocate will handle many of the communications with the victim. However, the victim may request to speak directly with the prosecutor regarding the case, the disposition, or why charges were rejected. The prosecutor shall speak directly to the victim upon their request, unless there are compelling circumstances to the contrary, which shall be documented in the file. If it is likely that the victim will discuss the facts of a pending case, an investigator should be present. If the assigned investigator is not immediately available, the duty investigator may be used. Examples of compelling reasons to not talk to the victim may include the risk of inconsistent statements in a recanting or uncooperative witness.

(b) (7) "To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings."

Commentary

If a victim advocate has been assigned, the advocate will give the victim the required notifications. If a victim asserts his or her Marsy's rights, the file or packet shall be marked "Victim" and a notation shall be made in VCIJIS. A victim advocate will then be assigned (if that has not already occurred) and the advocate will make the required notifications.

There is a general right for any person to attend court proceedings (Code Civ. Proc., § 124), and for victims to attend juvenile hearings (Welf. & Inst. Code, §§ 676, 676.5). The court may exclude a victim at trial only if there is a substantial risk, not just speculation, that it could affect their testimony. (*People v. Tully* (2012) 54 Cal.4th 952, 1004-1006.)

(b) (8) "To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue."

Commentary

The victim's rights to be notified of sentencing proceedings and to be present and be heard at sentencing are also codified in Penal Code sections 670.02 (a)(3) and 1191.1. If the victim has asserted his or her Marsy's rights or has requested to make a victim impact statement or to be present at sentencing, and the case unexpectedly proceeds to sentencing, the deputy district attorney shall request that the court continue sentencing so the victim may be present and be heard. Absent unusual circumstances, if the victim has not asserted their Marsy's rights and has not requested to be present or to make a statement at sentencing, the sentencing may proceed without the presence of the victim.

Penal Code sections 1191 (felonies) and 1449 (misdemeanors) provide specific time limits to sentencing, including a required delay of six hours for misdemeanor cases unless waived. However, failure to comply with the time limits do not constitute reversible error unless the defendant is actually prejudiced. (*People v. Novel* (1953) 118 Cal.App.2d 534, 538.) The victim's constitutional right to be heard should prevail over the statutory time limits.

If a victim's right to be present or to be heard at sentencing has been violated, and the victim so desires, the deputy district attorney shall make a motion for resentencing ("do over") to provide these opportunities. Unlawful sentences may be corrected at any time. (See *People v. Bufford* (2007) 146 Cal.App.4th 966 [proceedings after appeal to impose restitution]; *People v. Woods* (2010) 191 Cal.App.4th 269 [remand to impose a required restitution fine].) There is authority that resentencing is appropriate where the victim's right to be present or to be heard at sentencing have been violated. (*Kenna v. United States District Court* (9th Cir. 2006) 435 F.3d 1011; *State v. Barrett* (2011) 350 Or. 390, 255 P.3d 472. See *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1299, in which the court ordered a rehearing on a habeas ruling and resentencing because neither the prosecution nor the victim had notice or an opportunity to be heard.)

(b) (9) "To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings."

Commentary

Prosecutors may cite this provision to oppose unwarranted requests for continuance. (See Cal. Const., art. I, § 29, which provides the People with a right to a speedy trial. See also Penal Code, § 679.02 (a)(10), which gives victims the right to "an expeditious disposition of the criminal action.")

(b) (10) "To provide information to a probation department official conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant."

(b) (11) "To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law."

Commentary

The probation report is available to the defendant and the District Attorney at least two days before sentencing, or five days on request, and the sentence recommendation of a probation report is available to the victim of crime through the District Attorney's Office. (Penal Code, § 1203d.) Probation reports are available for inspection or copying "[b]y the subject of the report at any time." (Penal Code, § 1203.05 (f).) Accordingly, probation reports are now available to the victim at any time. When a request is made for the

probation report, the assigned prosecutor should provide the victim with a copy of the report, either directly or through the assigned victim advocate.

(b) (12) “To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.”

Commentary

See Commentary under section (b)(7), above, regarding notification to the victim of court proceedings. Notification of release from jail is made through the Sheriff’s Victim Notification Program. Victims may also register for notification through the VINE system. Notification of release, death or escape from prison is made by the Department of Corrections and Rehabilitation if the victim submits a 1707 form.

(b) (13) “To restitution.

“(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

“(B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

“(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.”

Commentary

To facilitate the making of restitution and for other purposes, the attorney filing the case shall enter the victim’s name and address in VCIJIS, or tab the victim’s contact information in the file so a clerical employee can do so.

The deputy district attorney handling the case shall request an order for restitution at the time of sentencing where the victim has sustained a pecuniary loss, whether or not the defendant is placed on probation. If a dollar figure has been obtained, it shall be included in the case disposition offer and requested at sentencing.

Restitution orders at the time of sentencing are more effective than orders that restitution is “to be determined” at a later date. In felony and juvenile cases, the probation officer will attempt to contact the victim to obtain restitution information for sentencing. In misdemeanor cases, deputies working cases up for trial, or the victim advocate if one has been assigned, should contact the victim to seek information and documentation regarding restitution so it can be requested at the time of sentencing. Unless we have

obtained specific restitution information from the victim, no disposition offer shall contain a stipulated agreement concerning restitution.

If the victim provides restitution information after sentencing, whether or not a "to be determined" order was made, the assigned deputy district attorney (or attorney supervisor, if no deputy is assigned) shall have the case placed on calendar so a restitution order can be made.

(b) (14) "To the prompt return of property when no longer needed as evidence."

Commentary

Return of property is accomplished when the case is completed through Evidence Disposal Memoranda. These memoranda are generated automatically in felony cases and upon request to the clerical unit in misdemeanor cases.

(b) (17) "To be informed of the rights enumerated in paragraphs (1) through (16)."

Commentary

"Every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act shall, as provided herein, at the time of initial contact with a crime victim, during follow-up investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys, provide or make available to each victim of the criminal act without charge or cost a "Marsy Rights" card . . ." (Penal Code § 679.026(c)(1).)

The Ventura County District Attorney's Office has designed a Marsy Rights card, which has been approved by the Department of Justice, and which includes local resource information. Cards in a number of other languages are available on the Attorney General of California web site. When a victim advocate has been assigned, the advocate shall provide the victim with a Marsy Rights card upon their first contact.

(c) (1) "A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights" in Marsy's Law.

Commentary

A deputy district attorney shall comply with reasonable requests of a victim to enforce the victim's rights, unless doing so would be contrary to the interests of the People of the State of California. So, for example, if a victim objects to the disclosure of particular documents, objects to continuance of a case, or requests to be present at sentencing to make a victim impact statement, the deputy district attorney shall communicate, and where appropriate, advocate these requests to the court.

6. NOTICE TO WITNESSES OF CONTINUANCE MOTIONS

Pursuant to the requirements of Penal Code section 1050(b), all deputy district attorneys shall take the following steps:

- Upon notification that the court will be considering a defense continuance motion, or when this office has decided to make such a motion, in a felony or misdemeanor (not including juvenile) case, the assigned deputy will immediately notify Witness Coordination of that fact, as well as the likely date to which the case may be continued and the date on which the continuance hearing will occur.

- Witness coordination will promptly notify all witnesses for whom we have a telephone number of the continuance possibility. The witness coordinator will advise the assigned deputy of known witness unavailability dates. The deputy will take into account the schedules of the witnesses in formulating our position on the continuance motion.

Commentary

Section 1050(b) requires the prosecution to notify its witnesses of a motion to continue a criminal case which has been brought by either side. Witnesses have the right to appear and be heard at the time the motion is to be heard. Witness convenience must be considered both in deciding continuance motions and in setting new dates.

7. CRIME VICTIMS' ASSISTANCE UNIT

a. The District Attorney's Crime Victims' Assistance Unit has been designated by the Board of Supervisors as the major provider of comprehensive services to victims and witnesses in Ventura County. (Penal Code section 13835.2.) The Crime Victims' Assistance Unit reduces the trauma to victims of crime from the criminal justice process and provides services described in Penal Code section 13835.2, in Marsy's Law (California Constitution, article I, section 28), and as described in grants funding specific positions or programs. These services may include crisis intervention, emergency assistance, resource and referral assistance, assistance with Victims of Crime compensation claims, property return, orientation to the criminal justice system, court escort, providing victims with case status and case disposition information, notification of the victim's family and/or friends of the occurrence of a crime and the victim's condition, employer notification and intervention, assistance in requesting a restitution order, creditor intervention, and assistance with obtaining a temporary restraining order or protective order. The type of assistance provided in each case, and the manner in which the assistance is provided (in person, by telephone, or in writing), shall be based upon the available resources of the Unit, the type of crime, and the request of the victim for particular services.

b. The mission of the Crime Victims' Assistance Unit is to assist victims. This goal is generally consistent with, and complementary to, the prosecution of defendants who have perpetrated crimes against the victims. Those infrequent circumstances in which the objectives of the victim advocate and the prosecutor diverge must be handled with mutual respect for the duties each is charged to perform.

c. Victim advocates shall not interview victims as to the facts of cases being prosecuted. If a victim offers factual information as to a case, the advocate shall refer the matter to the assigned deputy district attorney, or to an investigator to interview and document the information. Bilingual advocates shall not serve as interpreters for interviews or court proceedings. Victim advocates shall not transport victims and are not expected to provide child care.

d. The Crime Victims' Assistance Unit assists victims of domestic violence or elder abuse in obtaining restraining orders, whether or not the victims have reported the crime to law enforcement. The Unit shall not provide restraining order assistance to victims who are represented by counsel in any family court action involving the person to be restrained. If a victim is currently under investigation for any family violence offense, or has been arrested, charged, or convicted of any type of family violence offense, or any felony offense, advocates shall not assist the victim in obtaining a restraining order unless approved by the director of the Crime Victims' Assistance Unit.

8. EMERGENCY AWARDS

a. The Crime Victims' Assistance Unit maintains an Emergency Fund. A crime victim may request an Emergency Award where there is an immediate need for payment in response to a victim's basic needs such as temporary emergency shelter, food, transportation, clothing, and medical care.

b. Eligibility: In general, the Emergency Fund helps victims of crimes that occurred in Ventura County. Emergency Awards are limited to no more than $500 per individual. Victims are not eligible to draw on the Emergency Fund for more than two crime incidents per year.

c. Authority to Make an Emergency Award: The authority to make an Emergency Award rests with the District Attorney. The District Attorney has delegated to the Special Assistant District Attorney or the Supervising Victim Advocate such authority. The grant and amount of awards are limited by the balance of the fund.

9. FOOD AND BEVERAGES FOR VICTIMS

a. A supply of snack food and beverages is kept at both Safe Harbor facilities. Because the investigation can take several hours, sometimes in the middle of the night, having snacks and beverages available avoids the necessity of delaying or interrupting the investigation to obtain food. They are donated by local law

enforcement and should be used judiciously. They are primarily intended for the needs and comfort of victims and their families. Under no circumstances should they be removed from the premises.

b. Food and beverages and cafeteria vouchers are kept in the Crime Victims' Assistance Unit at the Hall of Justice. These are to be provided only to victims, not to their family members or other persons accompanying them. They are not to be consumed by District Attorney personnel.

10. U VISAS

The victim of certain qualifying crimes may be eligible for a "U Visa," U Non-Immigrant Status. (8 USC 1101(a)(15)(U); 8 CFR 214.14; Penal Code § 679.10.) In summary, the requirements are:

• The alien suffered substantial physical or mental abuse as the result of being the victim of qualifying criminal activity.

•The alien possesses information about the criminal activity of which he or she was a victim.

•The alien has been, is being, or likely to be of assistance to a law enforcement official or prosecutor in the investigation or prosecution of the criminal activity, and, since the initiation of cooperation, has not refused or failed to provide information or assistance reasonably requested.

The victim submits the application to the Department of Homeland Security, which makes the decision to grant or deny the application. The application cannot be granted, however, unless there is a certification from a judge, the head of a law enforcement agency, or the head of a prosecuting agency. (Form I-918, Supplement B.) The head of a law enforcement agency or prosecuting agency may designate a person in a supervisory role to sign the certifications. The Ventura County District Attorney has designated the Special Assistant District Attorney, and may designate additional persons, to sign the certifications. Requests for U Visa certifications should be forwarded to the Special Assistant District Attorney or other person who has been designated by the District Attorney.

Although there is federal law that gives discretion whether to sign a U Visa certification (*Ordonez Orosco v. Napolitano* (5th Cir.2010) 598 F.3d 222, 226-227), we comply with the California requirement that a certifying agency *shall* certify when a victim of a

qualifying offense has complied with the helpfulness requirement. (Penal Code § 679.10, subd. (e).) The certification shall be provided within 90 days of request, unless we have been advised the noncitizen is in removal proceedings, in which case it shall be provided within 14 days. (Penal Code § 679.10, subd. (h).)

If the victim requests U Visa assistance from the District Attorney while the criminal case is still pending, this fact will be disclosed to the defense, whether or not certification is provided at that time. (See *United States v. Blanco* (9th Cir. 2004) 392 F.3d 382, 392.)

If the criminal case is still pending, the employee reviewing the U Visa request shall consult with the deputy district attorney assigned to the criminal case to determine the helpfulness of the victim and the timing for acting on the request for certification.

Certification will generally not be signed for cases that have been rejected for prosecution if we cannot certify that a crime was committed, or that the applicant was a victim of a crime. In such cases, the victim may wish to seek certification from the investigating law enforcement agency. There is a rebuttable presumption that the victim has been helpful, if the victim has not unreasonably refused to assist in the investigation or prosecution. A victim's request that the charges be dismissed does not necessarily preclude certification unless the victim has claimed that the crime did not occur, has recanted their statement, or has failed to cooperate in the investigation or prosecution. If we decline to certify a case, the alien or person requesting certification on their behalf shall be notified as to the reasons for denial.

If the designated person determines that a certification shall be signed, he or she will sign the certification in blue ink, and may provide supporting documentation including police reports, photographs, and court documents. Probation reports may be provided to the victim under Marsy's Law (Cal. Const., art. I, sec. 28 (b)(11)), although confidential information regarding the defendant not needed by the victim should be redacted.

If we believe USCIS should know something particular about a victim's criminal history, that information can be cited on the certification. If, after the certificate is signed, the victim unreasonably refuses to cooperate in the investigation or prosecution of the crime, the assigned deputy district attorney shall notify the employee who signed the certification, who shall notify USCIS.

The District Attorney's office will not assist in the preparation of the main part of the application or Supplement A, and will not provide the victim with legal advice regarding

the immigration process. The victim may wish to obtain the assistance of an attorney or community organization in completing and submitting the application.

F. NEWS MEDIA

1. GENERAL POLICY

The public has a right to information about its criminal justice system. See Govt. Code section 6250. We have a responsibility to provide that information. Since the news media is the principal conveyor of information to the public, we have an obligation to be cooperative, frank, accurate, and prompt in our relations with the news media. This obligation, however, shall be discharged without compromising the integrity of an investigation or our duty as officers of the court to obey state laws and court orders, and to avoid media statements that we know or reasonably should know will have a substantial likelihood of materially prejudicing a court proceeding.

District Attorney staff shall follow these procedures and guidelines:

2. SPOKESPERSONS FOR THE DISTRICT ATTORNEY'S OFFICE

The District Attorney, Chief Assistant District Attorney, Chief Deputy District Attorney, and Chief Investigator are the spokespersons for the District Attorney's Office. No other member of the staff shall, without prior authorization from a spokesperson, directly or indirectly publicly represent himself to be a spokesperson for the District Attorney's Office.

3. LIAISON TO THE NEWS MEDIA

The Chief Assistant District Attorney, the Chief Deputy District Attorney, and the Chief Investigator are the office liaisons to the news media for their respective areas of responsibility. Inquiries from the news media shall generally be referred to them. They should be promptly informed of information about a case, the office, or any other matter that may be of significant interest to the news media.

4. NEWS RELEASES

News releases shall be in writing and issued only by the following managers: the District Attorney, Chief Assistant District Attorney, Special Assistant District Attorney, Chief Deputy District Attorney, or Chief Investigator.

News releases are generally drafted by the attorney assigned to the case for review and approval by the supervising attorney and Chief Deputy or Special Assistant District Attorney within the attorney's chain of command. News releases shall also be approved by the Chief Assistant District Attorney when he or she is available to do so. Where the news release pertains to a bureau investigation or government fraud matter, the news releases may be drafted by a deputy chief investigator. A news release announcing a

specific event such as Victims' Rights' Week, may be drafted by the Manager with oversight of the event. All news releases shall be drafted on the news release form available on the Word Processing directory.

The deadline for submission of every effort shall be made to submit the News Release to the Chief Assistant District Attorney Legal Management Assistant is by 3:30 p.m. on the day of publication. All News Releases must contain contact information for a representative of the office who will be available to answer media questions about the subject matter of the release. (Use caution when providing a cell phone number as that information will remain in the public domain thereafter).

Where appropriate, the investigating officer or agency shall be identified and recognized for their contribution to the investigation and prosecution of the case.

Except for extraordinary circumstances, news releases shall be uniformly available to the media.

Circumstances generally appropriate for a news release include:

a. When the District Attorney's Office wishes to publicize a program or event that may be of interest to the public.

b. To seek the assistance of the public in an investigation.

c. To highlight the activities of a specialized unit or a special project, or to increase public awareness of a particular area of law.

d. To announce the filing and/or resolution of a consumer protection or environmental protection case.

e. To announce the filing or rejection of charges, resolution of the case, sentencing or other significant development in a murder or other high-profile cases.

f. To announce an appellate court ruling in a significant Ventura County case.

g. To announce the conclusions of an investigation regarding an officer-involved shooting, in custody death, use of force or other official misconduct.

h. To announce the issuance of a public report.

i. To announce the arrest, filing, resolution, and, if appropriate, rejection of a case against a peace office or public official for felony conduct, moral turpitude offense, or offense related to the performance of official duties.

j. To announce the arrest, filing, resolution, and, if appropriate, rejection of a case against a person entrusted with public funds

k. To alert the public to ongoing criminal activity, or a course of criminal conduct in which additional victims may exist, where appropriate.

l. Where information regarding the filing or resolution of a significant case may serve a deterrent effect to the public.

m. Where the identity of the participants and/or nature of the information s such that the case already has been covered by the news media, or inquiries by news media are likely.

5. PROTECTIVE ("GAG") ORDERS

A deputy district attorney shall not, without prior approval from the Chief Deputy District Attorney or Chief Assistant District Attorney, consent to the issuance of a protective order. A deputy shall request the court to postpone issuance of the order until the deputy is able to confer with the Chief Deputy District Attorney or the chief Assistant District Attorney.

6. FURNISHING INFORMATION TO THE NEWS MEDIA

A deputy district attorney shall comply with Rule 5-120 of the Rules of Professional Conduct of the State Bar of California as to trial publicity. A deputy district attorney shall also comply with the following guidelines when furnishing information to the news media concerning an assigned case. The following information may be provided:

a. Before Arrest

When the District Attorney's Office is the primary investigating agency, pre-arrest release of the following information requires the authorization of the District Attorney, Chief Assistant District Attorney, Chief Deputy District Attorney, Chief Investigator, or Deputy Chief Investigator. In a case investigated by another agency, it requires notice to and the concurrence of that agency. Release of pre-arrest information shall be limited to:

i. Any matter of public record.

ii. The fact that the investigation is in progress.

iii. The general scope of the investigation, including a description of the offense and the identity of the victim (if not otherwise precluded by law or this policy).

iv. The identity of investigating officers or agencies and the length of the investigation.

v. A request for assistance in gathering evidence and any information helpful to that request.

b. After Arrest and After a Complaint Has Been Filed

i. Any matter of public record, including information which a member of the public could have learned in open court, may be released to the media. However, the defendant's criminal history shall not be disclosed.

ii. Defendant's name, age, date of birth, resident city, and occupation.

iii. Identity of the victim (if not otherwise precluded by law or this policy).

iv. The facts concerning the arrest, including time, place, residence, pursuit and the use of weapons.

v. Identity of the arresting officer and agency, and the length of the investigation.

vi. Nature and text of the charges.

vii. Explanation of the judicial process.

viii. Future court appearances.

ix. That the accused has denied the charges.

c. After Trial or Disposition

i. The items that may be disclosed above (After Arrest and After a Complaint Has Been Filed) may also be disclosed after trial or disposition.

ii. Probation reports may only be disclosed as provided in Penal Code section 1203.05(a). Probation reports also may be disclosed to the victim of a crime at any time it would be available to the defendant, as provided in Marsy's Law. (California Constitution, article I, section 28(b)(11).)

7. THE FOLLOWING INFORMATION SHALL NOT BE PROVIDED TO THE NEWS MEDIA

a. The existence of a search warrant or arrest warrant before its execution.

b. The fact of an indictment before the defendant is arrested, except as permitted by Penal Code section 168.

c. The character, reputation or prior criminal record (including prior arrest, indictments or other charges of crime) of the accused.

d. The possibility of a plea of guilty to the offense charged or to a lesser offense.

e. The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

f. The performance or results of any examinations or tests administered to the accused, or the refusal or failure of the accused to submit to examinations or tests.

g. The identity or nature of any physical evidence seized or expected to be presented, unless already a matter of public record.

h. The identity, testimony or credibility of any prospective witness.

i. Any opinion as to the weight of the evidence, or the strength of the case. Caution should be exercised in expressing opinions as to the guilt or innocence of the accused.

j. Any inflammatory statement or representation which might prejudice a defendant's right to a fair trial.

k. Any information prohibited by a protective order.

l. The name, address and other identifying information of a victim of sexual assault or child abuse, including child victims of homicide.

m. The name or address of a juvenile defendant or his parents or guardian.

n. Any information regarding a juvenile defendant's prior criminality.

o. Requests by the news media for recordings, photographs, police reports, or other materials shall be handled under the California Public Records Act, discussed below in Article II, section J, paragraphs 3 and 4.

8. RELEASE OF JUVENILE CASE INFORMATION TO THE MEDIA

a. All Cases

The juvenile court has discretion to allow release of information on juvenile records and proceedings. (Welfare and Institutions Code sections 346, 676, 825-828; Cal. Rules of Court, rule 5.552; Judicial Council form JV-570 et seq.) The Ventura County Juvenile Court has authorized the District Attorney's Office to release certain information once the press has begun following a case. (Ventura County Superior Court rule 12.00) District Attorney employees may:

i. At the time a petition is filed, advise the media of the basic facts of the offense, the identity of the arresting agency, the charges filed, and the first court appearance date, and

ii. Thereafter, relate the procedural aspects of what occurred in court, including the final disposition.

b. Serious Offenses (W&I 676(a))

All hearings involving minors charged with crimes listed in section 676(a) of the Welfare and Institutions Code are open to the public just as any adult case would be. Section 676(a) enumerates certain serious and violent offenses, many of which also result in a presumption of unfitness pursuant to section 707(b). Since section 676 is often revised, the current statute should be reviewed to be sure an offense is listed before revealing otherwise confidential information to the media.

After a hearing open to the public pursuant to section 676(a) has taken place, information which a member of the public could have learned in open court may be released to the media. However, pursuant to section 676(c), the name and address of a minor accused of a 676(a) offense shall not be released to the media unless and until the adjudication has been completed and the petition sustained.

9. RELEASE OF MEDIA INFORMATION BY CLERICAL EMPLOYEES

Clerical employees shall not release to the news media any case-related information except a scheduled court date and the name of the assigned deputy district attorney. If no deputy is assigned or an assigned deputy is unavailable, a media contact should be referred to the appropriate attorney supervisor. If the supervisor is not immediately available and the mater cannot wait, it should be referred to the Chief Assistant District Attorney or the Chief Deputy. When a media representative asks for the name of a clerical employee, only the first name and position in the office should be supplied.

10. CAMERAS IN COURT (EXTENDED MEDIA COVERAGE)

a. Introduction

California Rules of Court, rule 1.150, permits television, radio, or photographic coverage of criminal cases, upon written order of the court. This rule involves interests important to the media, to the public, to witnesses, and to victims.

b. Policy

When a deputy district attorney has been informed of a media extended coverage request, he/she shall promptly notify the Chief Deputy District Attorney. Ordinarily our office will not object to extended media coverage. However, in rape, child molest, sexual assault and other unusually sensitive victim/witness cases, we will consider the wishes of victims and witnesses in evaluating whether we should object to the extended media request.

11. JURY ADMONISHMENT

A deputy district attorney prosecuting a jury trial shall request that the court admonish the jury to avoid both media reports about the case and any other media coverage which is likely to prejudice a juror.

G. CONFLICTS OF INTEREST/RECUSAL

1. RECUSAL MOTIONS

A deputy district attorney shall not appear on a motion to recuse the District Attorney's Office without first discussing the motion with the Chief Deputy District Attorney, or in his/her absence, the Chief Assistant District Attorney.

A deputy district attorney shall forward any motion to recuse to the Chief Deputy District Attorney, together with a cover memorandum. The cover memorandum shall include a brief description of the case and alleged conflict. It shall also include the deputy's opinion regarding the merits of the motion. The cover memorandum and a copy of the motion shall be forwarded as soon as possible following receipt of the motion.

2. IDENTIFYING CONFLICTS OF INTEREST

The Chief Deputy or, in his/her absence, the Chief Assistant District Attorney must be immediately notified of the arrest, subpoena, or other involvement in a pending case of a District Attorney employee or volunteer, or a relative or close associate of an employee or volunteer. This notification will enable the Chief Deputy or the Chief Assistant District Attorney to determine whether the circumstances create a conflict of interest requiring the District Attorney's Office to disqualify itself from reviewing and/or prosecuting the matter. In such situations, employees must scrupulously adhere to confidentiality policies, i.e., refrain from attempting to obtain information about the case from any District Attorney employee or from any documents in the District Attorney's Office. The supervisor of the involved employee shall take all necessary steps to secure the involved file from access by the employee to avoid even the appearance of impropriety.

Where a complaint is received alleging potential criminal conduct by a District Attorney employee, one of the following will occur, in addition to this office's internal investigation:

- The office will conduct a preliminary investigation to determine whether the allegation is frivolous. If so, the matter may be concluded on that basis, with notice to the complaining party, or it may be referred to the Attorney General, who will be informed of the result of our inquiry. If there is any reasonable potential that the allegation is not frivolous, it will in all cases be referred to the Attorney General.

- The matter will immediately be referred to either the District Attorney's Bureau of Investigation or another appropriate agency for investigation. Immediately upon

completion of that investigation, the matter will then be referred to the Attorney General.

- The matter will immediately be referred to the Attorney General.

The following list identifies common possible conflict of interest situations and the propriety of recusal:

- A member of the Management Group is the defendant or the complaining witness-- recusal is always required.
- A District Attorney employee is the defendant -- recusal is usually required.
- A relative or close friend of a District Attorney employee is the defendant or complaining witness or a District Attorney employee is the complaining witness -- recusal may be required but the decision should be made on a case-by-case basis.
- The complaining witness is the defendant in another recusal case -- recusal is not usually required.
- The District Attorney or deputy represented the defendant before joining the District Attorney's Office -- recusal is rarely required. The decision should be made on a case-by-cases basis.
- The defendant or complaining witness is an employee of another agency which has significant contact with the District Attorney's Office, e.g., bailiff or county sheriff -- recusal is not required unless ordered by the court or other special circumstances are present.

Commentary

Penal Code section 1424 establishes procedures for recusal of a district attorney. It requires 10 days notice to the District Attorney and Attorney General. A recusal motion may be granted only upon evidence "that a conflict of interest exists such as would render it unlikely that the defendant would receive a fair trial." The District Attorney or Attorney General may appeal a recusal order, and such order would be stayed pending appeal.

3. DISCLOSURE OF PAST RELATIONSHIPS AFFECTING CASES

Unless disclosed to the defense and a waiver obtained on the record from the defendant, a deputy district attorney shall not prosecute a case which involves a participant with whom the deputy, within one (1) year prior to the filing of the case, or within one (1) year of the occurrence of the alleged crime, has had a significant relationship.

A "participant" within the meaning of this policy means a witness, defendant, opposing counsel, judicial officer or courtroom staff.

A "significant relationship" within the meaning of this policy means involvement with another person in a dating, cohabiting, sexual or economic relationship.

Comment:

A prosecutor's primary responsibility is to achieve justice. The perception that justice is being done can be distorted, when a deputy prosecutes a case involving a participant with whom he or she has had a recent significant relationship. In some instances, the appearance of unfairness may even give rise to an attack on any resulting conviction. This policy is intended to avoid any appearance of impropriety or unfairness; it is not intended to infringe on the privacy rights of deputy district attorneys.

H. FACESHEET ENTRIES

When making case file or court calendar entries, a deputy district attorney shall inscribe at least his/her initials.

I. JURY TRIAL REPORTS

Whenever a deputy district attorney has concluded a jury trial, he/she shall complete a jury trial report form in VCIJIS within one week of the verdict. In preparing this form the deputy district attorney shall include the following information:

1. The full name, residence and occupation of each juror.

2. A list of those "significant excused jurors" whom the deputy would like to know about if he/she were the next deputy to have that juror on a case.

3. A brief explanation under "Comments About Jurors" of what is significant about the juror. These comments should be factual and specific, not abusive and hyperbolic.

4. A brief factual summary that lists those facts which will enable other deputies to assess the significance of a jury's verdict.

5. Comments from the jury foreperson regarding issues or evidence of concern to the panel, and what might be done in future cases to enhance prosecution efforts.

Commentary

These jury trial reports, as well as any compilations, are not discoverable. (See *People v. Braley,* (1969)1 Cal.3d 277, 293-94; *People v. Quicke*, (1969) 71 Cal.2d 502; *People v. Airheart*, (1968) 262 Cal.App.2d 673; *People v. Darmiento*, (1966) 243 Cal.App.2d 358.)

J. CREATION OF LIFER FILES

To preserve important information for a future parole hearing, follow the protocols below for all cases that result in an indeterminate sentence or a determinate sentence of 25 or more years. All deputy district attorneys are responsible for the creation of a “Lifer File” in these cases.

1. BACKGROUND

At the conclusion of any murder conviction, serious sex offense, or other significant case resulting in an indeterminate or very long determinate sentence, there exists the strong possibility the defendant will be paroled or released from prison early. Most inmates receive early parole hearings if they were younger than age 23 at the time of the commitment offense, turned age 60 and served at least 25 years of their sentence, or qualify for medical parole.

A DDA handling a lifer hearing must thoroughly know the facts of the commitment offense, as well as the inmate’s propensity to commit crimes. Title 15 CCR 2402 sets forth parole suitability guidelines. The panel determines whether an inmate presents an unreasonable risk of present dangerousness or violence if released. Materials from the initial prosecution often rebut the inmate’s minimization of their participation in the life crime, and demonstrates their history of violence and absence of insight into the causative factors of their commitment offense(s). Thus, the extra effort the trial attorney makes organizing and collecting the important information and documents in preparation for a future parole hearing to be held decades later, is extremely beneficial in our continued effort to protect the public from dangerous individuals.

2. CREATING A LIFER FILE

a. After sentencing, the assigned attorney shall gather the below-described materials and provide to his/her unit secretary.

1. Victim and next of kin identifying and contact information (full name, DOB, CDL.)

2. Relevant pleadings including,

a) Trial Brief

b) Statement of View (At the conclusion of any homicide, serious sex offense, or other significant case where there is a possibility of parole in the future, and the probation report does not adequately reflect the seriousness of the offense or offender, the prosecutor shall consider filing a "Statement of View" pursuant to Penal Code Section 1203.01. The 1203.01 statement of view is prepared with a view toward a future parole consideration hearing, and essential and additional information should be submitted with the

1203.01 statement at the conclusion of the case. See Chapter 8 of the 2016 CDAA Lifer Hearings Manual.)

c) 1101(b) or 1109 motion(s) regarding other crimes of violence

d) P & S Report.

3. Important memos or other district attorney work product pertaining to the nature of the crime or defendant's background.

4. Autopsy and Coroner's Report.

5. Crime photographs.

6. .Copies of declarations in support of restraining orders in crimes involving domestic violence.

7. Reports of mental health experts and psychological evaluations.

8. Video or audio taped victim impact statements, if available. Consider obtaining and preserving written victim impact statements and even preparing videotaped impact statements from the victim or next of kin for future parole hearings. The statement does not have to be lengthy. Even a brief statement with the obvious grief and pain evident on the face of the victim or next of kin can be powerful evidence at a subsequent parole consideration hearing. If such a statement is prepared a transcript needs to be prepared of the statement as well. If statements are prepared for sentencing purposes, make sure there are copies of the letters or statements available to send to the board of parole hearing years later.

9. In certain cases, it is helpful to include:

a) A copy of the sentencing transcript where the judge makes strong comments about the heinous nature of the crime, lack of remorse of the defendant or other remarks that would be pertinent to the parole hearing decades later.

b) Preliminary hearing transcripts if the case does not go to trial.

c) Transcripts of key witness statements or statements of the defendant.

b. The unit secretary shall scan the documents into a single "lifer" digital file which shall be uploaded to the corresponding case in VCIJIS as a "lifer packet."

K. CLOSED CASE/INVESTIGATION PURGING GUIDELINES

This protocol must be adhered to before case or investigation materials may be sent to storage. District Attorney investigators and attorneys must coordinate in every case to ensure duplicate materials are not sent to storage. Attorneys will be responsible for sending all materials to be saved to storage. It will be assumed that the attorney has all materials that were discovered. An investigator should only send to the attorney items the attorney does not already have that the investigator deems should be stored in the closed file.

(1) Non-essential materials (e.g. secretarial requests, cover sheets, duplicate reports, and other non-substantive documents) must be removed from files by the assigned attorney when they are closed. Staff time spent preparing files for scanning and storage space is wasted when non-essential materials are left in closed files. Assume everything you put in the closed file to send to storage will be stored electronically, and that everything you send, including documents, discs and photographs, will be destroyed. In rare circumstances, staff responsible for saving closed files may save some closed file material physically rather than electronically. When this occurs a note will be entered into VCIJIS indicating closed file material has been saved both electronically and physically.

(2) Do not send discs containing Evidence.com video to storage. Evidence.com video will continue to be stored in the Evidence.com cloud, to which we have access. It is too costly and unnecessary to store Evidence.com materials in our own server as well. Exception: Evidence.com video that has been altered (e.g. in preparation to be used as a court exhibit) and is not stored in Evidence.com, should remain in the closed file on a disc. A notation in the file should clearly indicate whether Evidence.com evidence for the case is stored on Evidence.com.

(3) Three-ring binders will not be stored. Materials in 3-ring binders that should be saved will be put in pressboard binders by clerical staff if the file is to be saved in hard copy rather than saved electronically.

(4) Upon closure of a case or investigation, a court order should be sought to facilitate return or destruction of original materials in the possession of the District Attorney's Office that were seized pursuant to a search warrant. When return or destruction of the evidence is not appropriate upon closure of the case or investigation, seized materials should be separately packaged, marked clearly with the case name, case number, explanation of when the materials can be released or destroyed, along with a copy of the search warrant, for storing in our evidence room at the Bureau of Investigation. This will facilitate later filing of the statutorily required motion with the court to return or destroy the seized materials. **No original evidence shall be saved with the case file.** Evidence should be returned to the investigating agency. When the DAO's office is the original investigating agency, evidence should be sent to the DAO's evidence room with a purge date. No file or evidence should ever be sent to storage without a purge date, except for cases in which the sentence was death, in which case the purge date should be indicated as "upon death."

(5) Prior to routing for storage, the assigned attorney/investigator must clearly mark

in the center of the outside front of the file/box the date the file/box should be purged along with the attorney's/investigator's dated signature.

(6) Assume that unless a supervisor authorizes retention of hard copy material, hard copy material (including discs) will be saved electronically and the hard copy will be destroyed.

(7) Purge dates should be selected based on the policies outlined below from the date the file is closed, unless the attorney deems shorter or longer is prudent. Purging shall occur immediately upon the death of the defendant in all cases.

INVESTIGATIONS NOT RESULTING IN A FILING

a. Investigations initiated by another agency.

Reports and other materials should be returned to the investigative agency with an advisement from the assigned attorney that the materials should be kept at least until the statute of limitations on the possible charges has run and that corresponding date, except as follows:

1. Materials reviewed for the filing of domestic violence charges shall be retained by this office for 10 years from the date of the offense.

2. Materials reviewed for Evidence Code section 1108(d)(1) related charges shall be retained by this office for 30 years from the date of the offense.

b. Investigations initiated by the District Attorney's Office.

Materials should be marked with a purge date matching the date the statute of limitations expires, unless the reviewing attorney and investigator agree the materials may be destroyed sooner.

FELONY CASES

Except as enumerated below, all felony cases shall be purged after 10 years.

(1) Sentence is death = retain until defendant's death.

(2) PC 187 and 192 = retain 60 years.

(3) Special interest, child abuse and domestic violence cases, including those that were not re-filed after a dismissal = retain 20 years.

(4) Sexual assault cases involving any offense listed in PC 290 = 75 years.

(5) PC 470, 476, 484f, 496, 499, 666, VC 2800.2, 10851, and 23175; H&S 11350, 11358(d) and 11370.1 cases = 5 years.

(6) Warrant cases:

a. Murder = 60 years.

b. All other felonies = 30 years.

MISDEMEANOR CASES

Except as enumerated below, closed files will be marked for immediate destruction.

(1) Cases that went to jury or court trial that result in imposition of probation = latest scheduled end of probation.

(2) Special interest = 5 years.

(3) Diversion cases = scheduled end of diversion period, plus 3 months.

(4) Sex cases involving any offense listed in PC 290 = 75 years.

(5) Domestic violence = 20 years.

(6) Driving under the influence cases = 10 years.

(7) Warrant cases.

a. Vehicular manslaughter = 60 years.
c. All other misdemeanor cases = 15 years.

JUVENILE CASES

Except as enumerated below, closed files will be marked for immediate destruction.

(1) Homicide = 60 years or date of death of defendant, whichever occurs first.

(2) Sustained petition for any serious or violent felony: 15 years.

(3) Sexual assault, domestic violence, child abuse, and DJJ commitment = 25 years.

(4) Files involving at least one felony charge: date of the minor's 18th birthday.

(5) Files containing only misdemeanor charges or cases handled pursuant to W&I 601: date of the minor's 18th birthday.

(6) Warrant cases:

a. Murder = 60 years

b. Misdemeanor = minor's 18th birthday

c. Felony = minor's 26th birthday

d. W&I 707(b) offenses = 25 years

e. Sexual assault, domestic violence, child abuse = 25 years.

CASES WITH LITIGATION PENDING

Cases should not be destroyed if appellate proceedings or a civil lawsuit is pending regarding the subject matter of the case. Cases in which an appeal or another issue is pending should not be purged.

LAW ENFORCEMENT AGENCY RETENTION POLICIES

The following information is provided for reference purposes:

VSO

All reports scanned and retained indefinitely.

SVPD

All reports scanned and retained indefinitely.

VPD

Misdemeanor crimes: reports kept for five (5) years.

Felony crimes: reports kept for seventy-five (75) years.

PHPD

Misdemeanor crimes: from 2014 and forward all reports retained indefinitely.

Felony crimes: reports retained indefinitely.

OXPD

Misdemeanor crimes: reports retained for five (5) years.

Domestic Violence and Sexual Assault: permanent retention.

Felony crimes: reports retained for ten (10) years.

Misdemeanor crimes: reports retained for five (5) years.

Homicides: permanent retention.

SPPD

Misdemeanor crimes: reports retained for five (5) years.

Felony crimes: reports retained for five (5) years.

Sex crimes: reports retained for ten (10) years.

Domestic Violence: reports retained for ten (10) years.

Homicides: reports retained indefinitely.

CHP

Non-traffic related misdemeanor/felony arrest reports retained three (3) years.

Misdemeanor traffic related collision reports: retained two (2) years.

Felony non-fatal traffic collision reports: retained seven (7) years.

Fatal collision reports: retained seven (7) years.

Fatal felony hit and run collisions involving a fatality reports: retained until case is solved plus four (4) years.

L. INSPECTION OF RECORDS

1. BASIS FOR RELEASE OF INFORMATION

Only the Special Assistant District Attorney, Chief Deputy District Attorneys and the Chief Assistant District Attorney are authorized to approve requests for Public Records Act inspection or copying of district attorney records or to accept service of a subpoena duces tecum or deposition subpoena directed to the District Attorney's Office. All such requests shall be referred to the Chief Assistant District Attorney, the Special Assistant District Attorney, or a Chief Deputy District Attorney.

The only bases to provide records to victims, attorneys, members of the public, or others, are:

- To public agencies, as discussed below
    - Pursuant to a subpoena duces tecum or administrative subpoena
    - Pursuant to a deposition subpoena, or other provision of the Civil Discovery Act (Code Civ. Proc., § 2016.010 et seq.)
    - In support of an application for U Visa or T Visa
    - To the defense pursuant to criminal discovery (e.g., Penal Code § 1054 et seq.)
    - To a victim or witness as necessary to investigate or prosecute a case
    - Pursuant to the California Public Records Act
    - To counsel representing the County or the District Attorney's Office
    - Pursuant to court order or other legal authority

2. PUBLIC AGENCY REQUESTS FOR INFORMATION

Deputy district attorneys and district attorney investigators, and their supervisors, may release information on cases to which they are assigned to public agencies after verification of the identity and need to know of the requesting party. These include requests of law enforcement agencies, grand jury, probation, licensure agencies, school districts employing a criminal suspect or defendant, and the military for purposes of disciplinary or discharge proceedings. Such disclosures are made within the official information privilege. (Evid. Code § 1040.) Disclosure may be postponed if necessary to protect the integrity of the investigation or prosecution. The District Attorney's Office will generally provide only court documents and documents created by the District Attorney's Office (generally excluding writings protected by the work product or deliberative process privilege), and will refer the requesting party to the law enforcement agency that created other documents. Generally, only publicly available information may be released to non-law enforcement agencies or entities who request information in their capacity as employer of the defendant. (See Labor Code § 432.7.)

Where the request and/or the response are not in writing, the release of information shall be documented in the case file. It shall be the responsibility of the attorney or investigator to whose attention a request for file information is brought to verify the identity of the requestor, and to assess the requestor's right/need to know the requested information. Verification of identity would normally involve obtaining a call-back number to the requestor's agency, or insisting on a written request or a personal meeting. The right/need to know requirement should be applied strictly: case information shall not be revealed to the merely curious.

Clerical staff may release only information generally available to the public, such as an appearance date. A properly credentialed probation officer may borrow a case file, or may review it in the office, to obtain necessary information for a bail review, diversion screening, sentence recommendation, or similar purpose.

3. INSPECTION OF DISTRICT ATTORNEY RECORDS PURSUANT TO CALIFORNIA PUBLIC RECORDS ACT (GOV. CODE § 6250 ET SEQ.)

Requests to inspect or copy records not authorized by one of the other bases listed in paragraph 1, above (subpoena, discovery, etc.) shall be handled pursuant to the California Public Records Act (CPRA), whether or not the requesting party cites the CPRA in the request. It is a good practice to ask that the request be made in writing to specifically describe the records being requested. (Gov. Code § 6253(b).) The response shall be documented in writing.

Applicable exemptions to disclosure shall be asserted, except where the Chief Deputy District Attorney determines that the public interest would be served by waiving particular exemptions. However, any records disclosed to one person pursuant to the CPRA are deemed public as to other persons who request it. (Gov. Code § 6254.5.) One exception is that victims of crime, or their authorized representatives, are entitled to more

information regarding law enforcement investigations than other persons. (Gov. Code § 6254(f).)

Commentary

This statute applies to all District Attorney files relating to felonies, misdemeanors and civil matters. Juvenile files are outside the scope of the Act, and controlled by a standing "T.N.G." order of the Juvenile Court. (T.N.G. v. Superior Court (1971) 4 Cal.3d 767.)

The California Public Records Act declares that the records of all government agencies are subject to inspection and copying by members of the public during business hours. The statute contains certain sections which exempt documents from the disclosure requirement.

4. AUTHORITY TO INVOKE OR WAIVE PRIVILEGES

a. The District Attorney's authority to invoke or waive both state and federal privileges concerning requested information is additionally delegated to the Chief Assistant DistrictAttorney and Chief Deputy District Attorneys. These individuals are specifically entitled to invoke and litigate any privileges pertaining to the Office of the District Attorney. Invocation and litigation of such privileges may require the preparation of a privilege log and declaration setting forth a sufficient factual basis supporting each privilege claimed.

b. No information from or relating to an "open" file shall be provided where its disclosure would prejudice a pending prosecution, except pursuant to court order. If a subpoena demands we provide such information, a motion to quash or other legal objection shall be made. (Code Civ. Proc. § 1987.1; Evid. Code § 1040.)

c. An employee shall not provide any information that is protected under either a federal or state privilege absent a court order or waiver by the holder of the privilege. This includes but is not limited to the informant privilege, the executive or deliberative process privilege, the law enforcement investigative privilege, attorney/client, and work product privilege.

d. An exemption shall not be waived to provide the news media or a member of the public with 911 calls, body worn camera recordings, other recordings, photographs, physical evidence, or reports, that were provided by a law enforcement agency, without obtaining written approval from the law enforcement agency that provided it. If a recording, photograph, or other evidence from a law enforcement agency was admitted into evidence in court, it shall be considered a court record, and the requesting party shall be referred to the court to examine or copy it.

5. SUBPOENAED PERSONNEL

Receipt of subpoenas for the appearance of District Attorney personnel is discussed in Article I, section V, above.

An employee shall not provide written materials, reports, or documents that are the property of the Ventura County District Attorney's Office, without being directed to do so by the Chief Assistant District Attorney or Chief Deputy District Attorney . In the event that an employee is served with a subpoena duces tecum or deposition subpoena calling for such material it should be referred to the Chief Assistant District Attorney who shall be considered the custodian of records for the office.

M. PROSECUTION ETHICS

The publication *Professionalism: A Sourcebook of Ethics and Civil Liability Principles for Prosecutors* (2016), California District Attorneys Association, shall serve as the ethics guideline for the District Attorney's Office.

If a deputy believes that he or she is ethically prohibited from proceeding with a case, or has other ethical concerns about the performance of his or her duties, the deputy shall discuss the issue with his or her supervisor. In some cases, the matter may be appropriately resolved by reassigning the matter to another deputy. If the deputy is unable to resolve the matter with the supervisor, the deputy may go to the next highest person in the supervisory chain. (See Rules of Professional Conduct of the State Bar, rules 3-600,5-110.)

Commentary

Although the *Sourcebook* does not attempt to set forth definitive ethical standards, it does compile ethics materials addressing most of the ethical problems a deputy district attorney is likely to encounter in criminal trials, juvenile proceedings, consumer fraud, etc. It shall, therefore, serve as the ethics guidelines for the Ventura County District Attorney's Office.

N. SPECIAL INTEREST CASES

1. GENERAL PROCEDURE

The District Attorney and Chief Assistant District Attorney must be promptly informed through the appropriate chain of command about the investigation, rejection, filing, significant event, or conclusion of certain high visibility cases, whether felony, misdemeanor or civil. This may arise for many reasons, e.g. media interest, type of crime, public visibility of the defendant or victim. Special interest reports keep management informed about cases which are likely to result in inquires by news media, the public, and

other government officials, and ensure mandated reporting of cases to licensing authorities.

When a deputy district attorney filing or handling a case believes it may meet the criteria for special interest designation, the deputy shall discuss the matter with his or her supervisor. A case shall be designated special interest at the direction of the District Attorney, Chief Assistant, Chief Deputy, or supervising attorney. A deputy district attorney handling a special interest case shall designate it as special interest in VCIJIS and complete a Special Interest Case Status Report in VCIJIS at the initial review of the case. The Special Interest Case Status Report shall be emailed to the supervisor, who will in turn forward to management. A Special Interest Case Status Report must be timely updated after any significant event affecting the case. (See page 91, 3. SPECIAL INTEREST CASE REPORTS) The supervisor shall monitor Special Interest Cases throughout their pendency to ensure that they are being handled appropriately.

2. CATEGORIES OF CASES TO BE DESIGNATED AS SPECIAL INTEREST

The following types of cases shall be designated as special interest:

a. Homicides: all cases involving death are deemed SPECIAL INTEREST and shall bear the designation Special Interest Case, including vehicular manslaughter cases.

b. Corruption, obstruction of justice, and civil rights violations (See Ch. 4 section G and Ch.11 section D of this manual).

c. Cases involving the media or a public agency as victim or in any other unusual way (including city agencies such as city council, planning commission, etc.).

d. Law enforcement officer defendants. Such reports help ensure that the cases will be analyzed for disclosure under Brady v. Maryland in other cases in which the officer is a witness.

e. Cases in which the defendant is a professional requiring notification to the licensing authority, i.e., accountants (Bus. & Prof. Code, § 5063.1), architects (Bus. & Prof. Code, § 5590), attorneys (Bus. & Prof. Code, § 6101), doctors and other medical professionals (acupuncturists, audiologists, behavioral scientists, chiropractors, dentists, hearing aid dispensers, occupational therapists, optometrists, osteopathic physicians, pharmacists, psychiatric technicians, physical therapists, physicians, physician assistants, podiatrists, psychologists, registered nurses, respiratory care providers, speech-language pathologists, veterinarians, vocational nurses; Bus. & Prof. Code, § 803.5), engineers and land surveyors (Bus. & Prof. Code, § 6770.1), landscape architects (Bus. & Prof. Code, § 5680.05).

f. Cases in which a high-ranking law enforcement or public official, or a prominent public figure, is a defendant, victim, or participant, or cases involving unusual or high-profile facts, such that it is likely that office management may receive an inquiry from the news media, the individual, or other government officials.

g. Cases involving unusual constitutional rights issues or defenses, such as obscenity, First Amendment, etc.

3. SPECIAL INTEREST CASE REPORTS

A deputy district attorney handling a Special Interest Case shall inform their immediate supervisor and executive management of the progress of the pending investigation or filed case by timely submission (within 24 hours of the event) of a Special Interest Case Status Report to their Supervisor. Once reviewed and approved by the Supervisor, it should be sent electronically to the District Attorney, Chief Assistant District Attorney, Chief Investigator, all Chief Deputy District Attorneys, and all Management Assistants.

The Special Interest Case Status report shall include the following information (when applicable):

1. Defendant's name
2. Case number
3. Special Interest Type (e.g., homicide, public official, professional licensee)
4. Assigned Deputy District Attorney and DA Investigator
5. Charges (filed or under review)
6. Defense Attorney
7. Bail Status
8. Judicial Officer
9. Court Proceedings or Other Event(s)
10. Victim(s)
11. Brief Factual Summary
12. Recommendations/Comments/Other Information

4. DOCUMENTING THE SPECIAL INTEREST STATUS

a. In VCIJIS, the special interest qualifier should be tabbed upon filing or as soon as possible thereafter. Any notes relating to the status of the case as special interest should be maintained in the "case notes" section.

b. A special interest case shall be marked prominently on the front cover with a special interest stamp upon file opening.

c. A copy of the most recent Special Interest Case Status Report shall be kept inside the file and marked so that it may be readily seen.

5. COURT APPEARANCES

To the extent that it is reasonably practical, all special interest cases shall be handled vertically. If a scheduling conflict prevents the assigned prosecutor from appearing at a major stage, detailed notes should be left in the file so that the deputy district attorney handling the proceeding will be aware of the specific issues involved in the case, including the approved disposition. No disposition other than that approved by the unit supervisor is authorized in a special interest case.

O. POLYGRAPHS

No District Attorney employee without written consent of a Chief Deputy District Attorney shall: (1) offer or administer a polygraph examination to a suspect or witness; (2) enter into an agreement, orally or in writing, that a polygraph examination shall be given to a suspect or witness; (3) agree that polygraph results shall be admissible in any court; or (4) agree that any decision on a case or investigation will be affected in any way by the results of a polygraph examination.

P. DISCOVERY

1. GENERAL POLICY

Every item that the defense is entitled to inspect under the rules of discovery shall be made available completely and promptly whether or not a formal order exists. Where the circumstances of a case make it advisable to proceed by formal motion and order, defense counsel should be so advised. All information favorable to the defense shall be disclosed to the defense or shall be submitted by the prosecution to a court for an in camera review, unless clear authority permits nondisclosure.

2. FEES

Copies of discovery shall be provided to the Public Defender and Conflict Defense Attorneys at 3 cents per page. All other defense attorneys shall be charged 15 cents per page. Defense counsel who do not wish to purchase a copy may make arrangements to view a copy at the District Attorney's Office at no charge, to bring their own photocopy or scanning equipment to the District Attorney's Office, or to have a licensed photocopy service make copies.

Discovery requests for cassette tapes shall be charged $1.65 per tape, and 40 cents per CD or DVD, whenever office resources are expended for duplicating.

The fees for copies of discovery shall be waived for indigent defendants who are representing themselves. A determination of whether the defendant is indigent shall be made by a court (see Penal Code section 987.8(g)), or by a clerical supervisor or deputy district attorney. The defendant may be asked to complete a Personal Data form (same green form used to apply for Public Defender services) or Judicial Council form FW-001 (Request to Waive Court Fees).

Initial discovery packets in misdemeanor cases shall be provided at no charge, but copies of subsequent discovery materials shall be charged at the rates indicated above.

3. ENFORCEMENT PERSONNEL RECORDS (PITCHESS MOTIONS)

Whenever a motion is made by opposing counsel for the discovery of confidential police records, the deputy district attorney shall request the court to allow the affected agency an opportunity to appear with counsel to litigate the merits of the motion in conformance with the procedure delineated in Evidence Code section 1043.

4. ADDRESS AND TELEPHONE NUMBERS OF VICTIMS AND WITNESSES

Pursuant to Penal Code section 1054.2, standard discovery orders include an order that defense counsel not disclose to the defendant the address or telephone number of a victim or witness. The same order shall be sought whenever a discovery motion is based on a nonstandard order.

To further comply with the letter and spirit of section 1054.2, discovery shall not be supplied to a felony defendant acting as a courier for defense counsel or to a represented misdemeanant in a case appropriately flagged by the filing deputy. Further, the Discovery Unit shall not furnish reports directly to a defendant acting *in propria persona* without the approval of the deputy district attorney assigned to the case or a unit supervisor. Before giving such approval, an attorney shall consider whether to decline discovery and seek court-ordered restrictions pursuant to section 1054.2(b) or 1054.7.

5. BRADY POLICY

It is the responsibility of each individual deputy district attorney to provide discovery as required by law, including Penal Code section 1054.1, *Brady v. Maryland* (1963) 373 U.S. 83, and its progeny. Specific *Brady* policies are contained in Brady Discovery of Law Enforcement Employee Misconduct (Internal Policy), and Pitchess/Brady Procedure for Disclosure of Material from Law Enforcement Personnel Records (External Policy). Both policies are located on the DAWEB under Policies, Manuals, and MOAs.

Q. USE OF JAILHOUSE INFORMANTS AS WITNESSES IN A CRIMINAL PROCEEDING

INTRODUCTION

A jailhouse informant is a person other than a co-defendant, percipient witness, accomplice or co-conspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant are held within a correctional institute. (Penal Code section 1127a(a))

This section shall apply only where the informant has disclosed to law enforcement statements alleged to have been made by the defendant about the facts and circumstances of the defendant's charged offenses which were made to the informant acting in his own capacity and unsolicited by law enforcement. See Section R when law enforcement seeks

to have the informant participate in conversations with the defendant, whether recorded or unrecorded.

Commentary

There is a critical need for consistency in the handling of jailhouse informants. The integrity of this office and the integrity of our system of justice depends upon it.

It is the policy of this office to carefully evaluate and strictly control the use of jailhouse informants as witnesses. Before a jailhouse informant may be used as a witness, strong corroborative evidence is required. This corroborating evidence must consist of more than the fact that the informant appears to know details about the crime thought to be known only to law enforcement.

Deputies in this office properly view with caution the proposed testimony of any jailhouse informant. A deputy district attorney is by virtue of training and experience conscious of the self-interest of the jailhouse informant and actively mindful of the source, his background and his character. Further, since we are unalterably committed to the ascertainment of the truth, the informant's information is viewed through the prism of our ethical mandate.

Jailhouse informants may have incentive to gain incriminating evidence from a suspect. A deputy district attorney must always evaluate whether statements of a criminal suspect were made voluntarily. Thus, the dynamics of the setting in which the alleged statements were made should always be carefully evaluated.

1. COMPLIANCE WITH IN-CUSTODY INFORMANT STATUTES

All deputy district attorneys and investigators shall be familiar with statutory and case law concerning in-custody informants, and shall comply with all such provisions, including:

a. No law enforcement official shall give, offer, or promise to give any monetary payment in excess of fifty dollars ($50.00) in return for an in-custody informant's testimony in any criminal proceeding. Penal Code 4001.1(a).

b. Except where the right to counsel has not attached, no law enforcement agency and no in-custody informant may take any action deliberately designed to elicit incriminating remarks beyond merely listening to the statements of defendant. Penal Code 4001.1(b); *People v. Clair* (1992) 2 Cal.4th 629, 657. The court in *Clair* explained that the Sixth Amendment right to counsel is offense specific; thus, a target in custody on a charge for which the right to counsel has attached may still be actively questioned by the informant relative to an offense on which the right to counsel has not attached. See also *U.S. v. Percy* (9th Cir. 2001) 250 F.3d 720, 726. Statements deliberately elicited by a cellmate informant or a police officer posing as a cellmate are admissible even though no Miranda warnings are given, because

there is no reason to presume the suspect will feel compelled to answer questions or make statements. Illinois *v*. *Perkins* (1990) 496 U.S. 292, 294. However, keep in mind that other circumstances could exist that may suggest statements were elicited in a coercive manner, thereby making the statements untrustworthy and inadmissible.

c. The prosecutor shall make a good faith effort to notify any victim of a crime which was committed by or alleged to have been committed by the in-custody informant within a reasonable time before the in-custody informant is called to testify. Penal Code 1191.25.

d. The prosecutor shall file with the court a written statement setting out any consideration promised or given to the in-custody informant. Penal Code 1127a(c).

e. Upon request of a party, the court shall give a cautionary instruction to the jury concerning informant testimony. Penal Code 1127a (b).

2. NOTICE TO CHIEF ASSISTANT DISTRICT ATTORNEY

A deputy wishing to use a jailhouse informant (who was acting in his own capacity as described in the Introduction of this section) as a prosecution witness must obtain the prior written approval of the chief assistant district attorney. All requests to use such jailhouse informants must be submitted, in writing, to the chief assistant district attorney through the chain of command. The handling deputy district attorney shall notify his/her supervisor immediately when a potential jailhouse informant comes forward.

The written request to use a jailhouse informant must include:

a. A description of how contact was initiated between the potential jailhouse informant and law enforcement.

b. The name of the proposed informant and a description of his/her criminal history, including any gang affiliations.

c. A detailed description of the crime for which the informant is offering testimony.

d. A detailed description of the evidence offered by the informant.

e. A description of the evidence corroborating the informant's proposed testimony and whether or not that information was available to the informant other than through the statements of the defendant. For example, newspaper articles, documents found in the defendant's or informant's cell, etc.

f. An analysis of the strengths and weaknesses of the case with and without the testimony of the informant.

g. Any benefit promised to the informant by any member of law enforcement or any employee of the District Attorney's Office for the information offered on the pending case.

h. A description of any prior offers to provide information from the jailhouse informant, whether he/she testified, the quality of the testimony and any and all promises made to or benefits provided, whether monetary or otherwise.

Note: In order to comply with this section, the trial deputy must ask his/her supervisor to check the *Central Informant Files Log* (See paragraph 10, *infra*) to determine whether the proposed informant has offered to be an informant in the past. If we have dealt with the informant previously, the deputy should review the informant's file in the Central Informant Files (See paragraph 8, *infra*). The information shall be included in the deputy's written request to use the informant. It is of paramount importance that the deputy district attorney stress to the officer seeking to use the informant that the District Attorney's Office must be presented all information relative to the credibility of the proposed informant and all consideration promised or given to the proposed informant by law enforcement.

3. MEETING TO DISCUSS REQUEST FOR USE OF JAILHOUSE INFORMANT

The unit supervisor will forward the written request with his/her recommendation to the appropriate chief deputy. If the chief deputy agrees with a recommendation to use a jailhouse informant as a witness, the chief deputy will forward the request to the chief assistant district attorney for consideration. The chief assistant district attorney will convene a meeting to include the chief assistant district attorney, the chief deputy district attorneys, the special assistant district attorney, the chief of the bureau of investigation, the assigned district attorney investigator, the handling deputy district attorney and his/her supervisor. The information described in paragraph two, above, shall be considered in the decision to approve or disapprove the use of a jailhouse informant's testimony.

The chief assistant district attorney shall notify the requesting attorney of the decision in writing. The decision is final and no jailhouse informant as defined in this section may be called to the stand unless approved by the chief assistant district attorney in writing.

4. TRIAL DEPUTY RESPONSIBILITIES IF APPROVAL IS GRANTED

If the chief assistant district attorney approves the use of a jailhouse informant, the trial deputy must comply with the requirements of Penal Code section 1127a, 1191.25, and 4001.1, as outlined in paragraph one of this section.

If the jailhouse informant testifies, the trial deputy must submit a memorandum memorializing the event through the chain of command to the chief assistant district

attorney for inclusion in the Central Informant Files Log and the informant's file in the Central Informant Files. The memorandum shall include:

a. Name of jailhouse informant.

b. Name and case number of the case in which the informant testified.

c. Date of testimony.

d. Synopsis of testimony and evaluation of credibility.

e. Description of any consideration provided to the jailhouse informant in exchange for the testimony.

Although Penal Code section 4001.1, if strictly applied, pertains only to "in custody informants" held within a "correctional institution," it is office policy that its provisions apply to any custodial setting (i.e., jail, prison or youth correctional facility) and shall apply to any jailhouse informant testimony regardless of the informant's current custody status.

5. FABRICATION OF EVIDENCE BY JAILHOUSE INFORMANTS

Should a deputy acquire any information that a jailhouse informant is attempting to fabricate or has fabricated evidence during testimony, the deputy shall immediately notify the court and defense counsel and forward a memorandum setting forth all pertinent details through the chain of command to the chief assistant district attorney. Email transmission is acceptable. This information shall be included in the informant's file in the Central Informant Files and noted in the Central Informant Files Log. It is the continuing responsibility of all deputy district attorneys to ensure that any attempt to falsify evidence at any stage of the proceeding is readily known to all deputies considering the use of that jailhouse informant.

6. DOCUMENTATION AND AUTHORIZING AUTHORITY

"Confidential Informant Reports" should be generated by the handling deputy district attorney whenever significant events occur relative to the informant. A "Confidential Informant Report" is a memorandum memorializing significant events. Such events include, but are not limited to when a potential informant comes forward, performs significant work in a case, testifies and is sentenced. Each "Confidential Informant Report" shall be routed through the chain of command to the authorizing authority.

The "authorizing authority" is the person in the chain of command who has authority to determine whether an informant may be used. In cases involving a jailhouse informant the authorizing authority is the chief assistant district attorney. If a decision is made down the chain of command from the authorizing authority that a potential informant may not be used, the matter need not proceed up the chain of command and the individual denying the use of the informant shall be responsible for directing the

management assistant to document the decision not to use the informant and the reasons therefore in the Central Informant Files Log. For example, if the authorizing authority is a chief deputy (because the case involves a non-jailhouse informant) but a supervisor decides the potential informant may not be utilized, the supervisor need not forward the matter to the chief deputy. The supervisor shall be responsible for ensuring appropriate entries are made in the Central Informant Files Log.

An electronic copy of each "Confidential Informant Report" shall be sent by the creator of the document to the designated management assistant responsible for creating and maintaining informant files. The management assistant will ensure an electronic copy of the document is included in the informant's file maintained in the Central Informant Files. The management assistant will seek direction from the authorizing or denying authority regarding what language should be entered onto the Central Informant Files Log relative to the receipt of each "Confidential Informant Report."

All communication with a potential informant shall be fully documented by the handling deputy district attorney, district attorney investigator or police officer. It is the responsibility of the handling deputy district attorney to ensure required documentation is completed by the appropriate person. A deputy district attorney who is contacted directly by an informant shall document that contact and immediately notify the assigned investigator or police officer.

If a request to use a jailhouse informant is made by a member of law enforcement, the requesting officer shall complete the "District Attorney Informant Use Form." The handling deputy district attorney shall forward a copy of this completed form to the designated management assistant responsible for creating and maintaining informant files. The management assistant will ensure an electronic copy of the document is included in the informant's file and the Central Informant File log is updated to document the request.

7. JAILHOUSE INFORMANTS WHO HAVE COUNSEL

If a potential jailhouse informant with a pending criminal case makes contact with a law enforcement representative and offers to provide testimony, extreme care must be taken to insure compliance with constitutional guarantees, rules of law and attorney ethics. To the extent allowed by those rules, a deputy district attorney may direct a district attorney investigator or police officer to interview a potential jailhouse informant in response to a contact initiated by the jailhouse informant, where the jailhouse informant's pending case is unrelated to the case on which the jailhouse informant is a potential witness. A district attorney investigator may make such a responsive contact in his or her own discretion in an emergency situation. Absent an emergency, an investigator should consult the deputy district attorney assigned to the prosecution of the jailhouse informant as well as the deputy district attorney prosecuting the case for which testimony is being offered before conducting an interview. Under no circumstances shall such an interview include a discussion of the jailhouse informant's pending case unless the informant's attorney is present.

A deputy district attorney shall not contact or be present at an interview of a potential jailhouse informant who has counsel on a pending case without the permission of counsel.

8. CENTRAL INFORMANT FILES

An informant file shall be created and maintained for:

a. Jailhouse informants as described in Section Q.

b. Informants as described in Section R.

Upon receipt of a "Confidential Informant Report," the chief assistant district attorney, chief deputy district attorney or unit supervisor will authorize the creation of an electronic informant file if none exists. The designated management assistant shall be responsible for creating and maintaining individual informant files including jailhouse informant files.

It is the responsibility of the assigned deputy district attorney to insure that all documents and memoranda regarding the informant be placed in the informant file for future reference. Any deputy district attorney or district attorney investigator with a case-related need to know may request written authorization from his/her supervisor to review an informant's file or jailhouse informant's file. The authorization may be by email and should be delivered to the designated management assistant who will provide the file.

Documentation saved relative to informants prior to the effective date of this policy will be maintained in hard copy files in locked cabinets. Only designated management assistants will have a key to access these files. Documentation from the Central Informant Files may be copied as necessary for discovery and investigation purposes but no material may be removed.

The management assistant providing the file for review shall document in the "Central Informant Files Log" the date the file is provided, the name of the attorney or investigator who is taking possession of the file, the case or investigation for which the file is being reviewed and the date the file is returned.

When access to an electronic file has been provided and the review is completed, the attorney/investigator to whom the electronic file was provided shall send an email to the management assistant confirming that he/she has deleted their copy of the electronic file. It is the policy of the office that no copy of an informant's file shall be maintained outside of the Central Informant Files.

No hard file from the Central Informant Files may be removed from the Office of the District Attorney and no electronic file shall be transmitted electronically except from the designated management assistant to the requesting attorney's/investigator's office email address. During the period in which an attorney or investigator has checked out a hard

file from the Central Informant Files, that file must be kept locked in the attorney's/investigator's office when the attorney/investigator is not in his/her office.

9. CONFIDENTIALITY AND DISCOVERY OBLIGATIONS

Copies made from an informant file must be carefully redacted prior to discovery. The utmost attention must be given to the confidentiality inherent in the relationship between the informant and law enforcement. Any questions about what information must be discovered should be resolved only after careful consideration of the discovery laws.

The prosecution has a duty, even in the absence of a request, to disclose all substantial material evidence favorable to an accused, whether such evidence relates directly to the question of guilt, to matters relevant to punishment, or to the credibility of a material witness. People v. Ruthford (1975) 14 Cal.3d 399, 406. Prosecutors have a duty to disclose exculpatory evidence possessed by, and known to, the law enforcement agencies participating in the case. Kyles v. Whitley (1995) 514 U.S. 419. Prosecutors are under a duty to make reasonable efforts to search within the law enforcement team for exculpatory information. In Re Brown (1988) 17 Cal.4th 873. The duty of discovery may exist regardless of whether or not the prosecutor intends to use information from the informant in court.

It is important to correctly identify which documents/electronic evidence from the file of an informant should be discovered. The decision as to which documents/electronic evidence will be discovered shall be made at a meeting of the deputy district attorney assigned to prosecute the case, his/her supervisor, and the special assistant district attorney. They shall consider obtaining a protective order to limit disclosure of the materials to that case. A copy of the packet of documents/electronic evidence discovered shall be marked with the date of discovery, the name of the assigned case prosecutor, and the name and case number of the case in which the documents are discovered. Information memorializing the discovery of the selected documents/electronic evidence shall also be entered into the Central Informant Files Log. When a question of discovery cannot be resolved by the handling attorney, his/her supervisor, and the special assistant district attorney, the handling attorney should seek an ex parte hearing and request an order from the court relative to the issue.

The name of a confidential informant shall not be discovered without prior written supervisorial approval, which may be communicated by email. Upon approval, the designated management assistant shall place a copy of the written approval in the informant's file and make an entry in the Central Informant Files Log, indicating the date the approval was granted, the name of the deputy district attorney to whom approval was granted, the name of the supervisor who approved the request, and the name and case number for which disclosure was permitted.

Once approval is granted, the deputy district attorney must contact the informant's handler with instructions that the informant be advised that his/her name and relevant activity is to be disclosed to the defense attorney. Discovery of the identity of an informant may only be made after the attorney has received confirmation that the informant has been advised of the pending notification. The deputy district attorney handling the case in which the informant's identity is disclosed shall obtain appropriate limiting orders from the court prior to discovery to limit the dissemination of the informant's name and conduct.

10. CENTRAL INFORMANT FILES LOG

The designated management assistant shall be responsible for the creation and maintenance of the Central Informant Files Log which shall contain an alphabetized list of all informants included in the Central Informant Files, as described above in paragraph 8. He/she shall also create a hyperlink entry for all documents submitted for inclusion in the informant's file.

Only the chief assistant district attorney, chief deputy of the Criminal Prosecutions Division, chief deputy of the Special Prosecutions Division, chief deputy of Administrative Services, special assistant district attorney, chief investigator, designated management assistants and attorney and investigator supervisors shall have rights to view the Central Informant Files Log.

VCIJIS shall be programmed to alert the assigned deputy district attorney when the name of a witness that is entered into VCIJIS for subpoena purposes matches the name of an informant listed in the Central Informant Files Log. VCIJIS will also be programmed to alert the assigned deputy district attorney when a defendant is listed in the Central Informant Files Log. This will alert the assigned deputy district attorney to contact his/her supervisor for authorization to review the documents hyperlinked to the informant's name in the log and determine our discovery obligations.

A separate entry shall be made to the Central Informant Files Log by the designated management assistant upon the direction of the authorizing authority for each date a significant event occurs. Examples of significant events include, but are not limited to:

a. The date an informant gives a proffer interview.

b. The date an informant signs a contract.

c. The date an informant gains significant evidence.

d. The date an informant gives testimony.

e. The date discovery of the informant is made to the defense in any case or the informant's cooperation with law enforcement is otherwise exposed, either purposely or by accident.

f. The date an informant is sentenced or provided any benefit, including but not limited to money or accommodations.

g. The date law enforcement determines the informant is no longer reliable and/or should not be used in the future.

h. The date discovery relative to the informant is provided to defense counsel in any case, including a full description of the documents/electronic evidence discovered.

Such events shall be documented in a Confidential Informant Report memorandum which shall be forwarded through the chain of command to the authorizing authority, who will then give the memorandum to the designated management assistant along with directions as to what information should be entered into the Central Informant Files Log. The management assistant will also incorporate the memorandum into the hyperlink attached to the informant's name in the Central Informant Files Log. Entries to the log shall be made without regard to whether the deputy district attorney intends to request authorization to use the testimony or actually utilizes the information, and must contain, if applicable, at least the following information:

a. The informant's name, all "aka's," and date of birth.

b. Informant's court case number if applicable.

c. Name of the attorney representing the informant if applicable.

d. A short narrative description of the event memorialized and the date of the event.

e. Court case file number of any case on which testimony is offered.

f. A description of the informant's criminal record including a description of the charges for which the informant is currently incarcerated.

g. Date discovery was provided in that case.

h. A notation of any requests to review the file including the name of requestor, date of the request and reason for the review. If a hard copy file is removed for such review, the notation must include the date the file was removed and the date the file was returned. If an electronic file is provided to the requestor, the date of provision shall be recorded and the requestor shall notify the management assistant of the date the requestor deleted their copy of the electronic file so that date may be entered on the log.

i. Any other significant information about the informant deemed relevant by the handling attorney, supervisor, chief deputy or chief assistant district attorney.

The confidentiality of any informant, including jailhouse informants must be protected at all times. No disclosure of information contained in the log or files is authorized except in order to comply with our legal and ethical requirements to fulfill discovery obligations and preserve the integrity of our justice system.

R. USE OF IN-CUSTODY OR OUT-OF-CUSTODY INFORMANTS WHO AGREE TO ENGAGE IN RECORDED CONVERSATIONS WITH IN-CUSTODY OR OUT-OF-CUSTODY SUSPECTS

INTRODUCTION

This chapter covers potential informants who are non-percipient witnesses who law enforcement seeks to have participate in secretly recorded in-custody or out-of-custody conversations with a suspect. An informant in a "*Perkins* Operation" (*Illinois v. Perkins* (1990) 496 U.S. 292, 294) is covered by this chapter.

It covers such potential informants, whether law enforcement or the potential informant-initiated contact, and whether or not they seek leniency or some other official favor in return for their testimony. The policy pertaining to leniency in return for testimony by a codefendant is covered in Article V of this manual.

The use of witnesses who seek leniency in return for testimony carries with it special risks which may have an impact beyond the involved case. The following policies and procedures apply, unless an exception has been approved by a chief deputy. The primary goal is to achieve justice by representing all truthful evidence in proving criminal charges, while avoiding unduly lenient treatment of informant witnesses.

1. COMPLIANCE WITH IN-CUSTODY INFORMANT STATUTES

Policy applicable to situations in which the informant, acting on his/her own while in custody, has obtained information from an in-custody suspect and has disclosed that information to law enforcement, is set forth in Section Q.

2. NOTICE TO UNIT SUPERVISOR AND CHIEF DEPUTY

A deputy wishing to use an informant as described in this section as a prosecution witness must obtain the prior written approval of the chief deputy of his/her division when the proposed informant faces a life sentence. These requests should be routed through the supervisor.

All other requests to use an informant as described in this section must be approved in writing by the deputy district attorney's supervisor.

3. REQUEST TO USE AN INFORMANT

A written request to use an informant must include:

a. A description of how contact was initiated between the potential informant and law enforcement.

b. The name of the proposed informant and a detailed description the crimes, if any, for which the informant is currently incarcerated and the informant's criminal history.

c. A description of the crime for which the informant is offering testimony.

d. A detailed description of the evidence offered by the informant and whether or not that information was available to the informant other than through the statements of the defendant. For example, newspaper articles, documents found in the defendant's cell, etc.

e. An analysis of the strengths and weaknesses of the case with and without the testimony of the informant.

f. Any benefit promised to the informant by any member of law enforcement or any employee of the District Attorney's Office for the information offered on the pending case.

g. A description of any prior offers to *provide* information from the jailhouse informant, whether he/she testified, the quality of the testimony and any and all promises made to or benefits provided, whether monetary or otherwise.

Note: In order to comply with this section, the trial deputy must ask his/her supervisor to check the *Central Informant Files Log* (See section Q, paragraph 10) to determine whether the proposed informant has offered to be an informant in the past. If we have dealt with the informant previously, the deputy should review the informant's file in the Central Informant Files see Section Q, paragraph 8). The information shall be included in the deputy's written request to use the informant. It is of paramount importance that the deputy district attorney stress to the officer seeking to use the informant that the District Attorney's Office must be presented all information relative to the credibility of the proposed informant and all consideration promised or given to the proposed informant by law enforcement.

4. INFORMANTS WHO HAVE COUNSEL

If a potential informant with a pending criminal case makes contact with a law enforcement representative and offers to provide testimony, extreme care must be taken to insure compliance with constitutional guarantees, rules of law and attorney ethics. The requesting officer shall be required to complete the "District Attorney Informant Use Form."

To the extent allowed by those rules, a deputy district attorney may direct a district attorney investigator or police officer to interview a potential informant in response to a

contact initiated by the informant, where the informant's pending case is unrelated to the case on which the informant is a potential witness. A district attorney investigator may make such a responsive contact in his or her own discretion in an emergency situation. Absent an emergency, an investigator should consult the deputy district attorney assigned to the prosecution of the informant as well as the district attorney prosecuting the case where testimony is being offered before conducting an interview. Under no circumstances shall such an interview include a discussion of the informant's pending case unless the informant's attorney is present.

A deputy district attorney shall not contact or be present at an interview of a potential informant who has counsel on a pending case without the permission of counsel.

5. NEGOTIATIONS AND INVESTIGATION WHERE INFORMANT INTERVIEW HAS OCCURRED

When the initial contact with the informant has resulted in a tape-recorded interview by a police officer or DA investigator, the assigned deputy district attorney and investigator may, with supervisorial approval, proceed with an investigation. The credibility of the potential informant and the evidence shall be investigated as fully as possible. All such contact shall be documented in a "Confidential Informant Report" which shall be placed in the *Central Informant Files* and noted in the *Central Informant File Log*.

6. NEGOTIATIONS AND INVESTIGATION WHERE INFORMANT INTERVIEW HAS NOT OCCURRED

When the initial contact with the potential informant or counsel is in the form of an offer/request to supply/obtain information, the assigned deputy district attorney and investigator, with the handling deputy's supervisor's approval, may make arrangements with the potential unrepresented informant or counsel for a represented informant for a tape-recorded statement. Those arrangements shall be memorialized in a letter, which must be approved by the supervisor of the handling attorney. The letter shall be suitable for admission into evidence, and, at a minimum, include the following:

a. The requirement for a complete and truthful statement concerning the matter for which the informant has offered testimony in a tape-recorded interview.

b. If applicable, a DA commitment concerning use immunity for the statements offered.

c. An indication that the District Attorney's Office has, as yet, made no commitment of any kind as to consideration for the possible cooperation.

d. A statement that the District Attorney's Office reserves the right to void any future agreement if it concludes at any time that the potential witness has provided false information.

e. A statement that any untruth by the potential witness may be the basis for criminal charges if it appears that an innocent person has been falsely implicated in a crime or that any criminal statute has been violated (in a death penalty case, the fact that a perjurer may himself be subject to the death penalty under Penal Code 128 should be specifically mentioned).

f. Acknowledgement and signature line for the informant which acknowledges reading the letter and discussing it with counsel (if any), and expressly accepting the preliminary agreement and conditions as stated. The acknowledgment shall also include a promise to tell the complete truth about the matter at issue and a statement that he/she is acting freely and voluntarily.

g. Acknowledgment and signature line for counsel which shall acknowledge reading the letter and discussing it with his/her client, and a statement that the letter accurately reflects the preliminary agreement.

A copy of the letter shall be included in the Central Informant File and a notation regarding such contact shall be noted in the Central Informant Log.

If the informant may have further contact with the accused after the tape-recorded interview, he or she must be admonished not to elicit information unless specifically authorized.

Following the interview, the assigned deputy district attorney and investigator may, with the handling deputy's supervisor's approval, proceed with an investigation of the credibility of the informant and the evidence.

7. AUTHORIZATION TO USE INFORMANT

After the potential witness has supplied the information and any necessary investigation has taken place, the chief deputy will evaluate its truthfulness and the appropriateness of any consideration on all life cases and the unit supervisor will evaluate the truthfulness and the appropriateness of any consideration on non-life cases.

Approval for the use of an informant witness and, if applicable, the granting of leniency or any other official favor may be sought by written request. In considering the request, the following shall be offered by the requesting deputy and considered:

a. The preliminary letter referred to in the preceding section.

b. The Confidential Preliminary Examination Memorandum or other summary of the case.

c. A confidential summary of the expected testimony and the requested leniency or favors.

d. A confidential summary of the background, criminal record, and credibility of the informant, including all known past occasions when the informant offered testimony.

e. A confidential analysis and recommendation.

The unit supervisor or chief deputy will review the request and decide the matter and document the decision. All documentation referred to in this section shall be maintained by the authorizing authority for inclusion in the informant's file in the Central Informant Files and the decision shall be noted in the *Central Informant Files Log*. This documentation will normally be considered confidential office work product, so long as it contains no original discoverable information.

8. LETTER OF AGREEMENT

Upon approval of use of the informant witness and, if applicable, any leniency or other official action, the agreement shall be memorialized in a letter prepared by the deputy district attorney (signed by the authorizing authority) to the informant and his or her counsel. The letter shall be suitable for admission into evidence and, at a minimum, include:

a. Items (d) and (e) from the preliminary letter (See paragraph 7, above).

b. A clear summary of the agreement (including specifying all potential proceedings at which the informant will be expected to testify).

c. Signature lines with appropriate acknowledgments by the potential witness and counsel.

The proffered leniency or other favors shall be conditioned upon the informant's complete and truthful testimony with a written provision that the agreement will be voided by a refusal to testify. The agreement shall also provide that the District Attorney's Office will resolve any questions about the informant's truthfulness on the witness stand.

A copy of this letter shall be forwarded to the authorizing authority through the chain of command and a copy shall be included in the Informant's Central File. Additionally, the informant's signed letter of agreement shall be noted in the *Central Informant Files Log* and included in the Central Informant Files.

Where appropriate and necessary, and if approved by the appropriate supervisor, formal immunity pursuant to Penal Code 1324 may be agreed upon, and the necessary documents prepared, copied and logged in the appropriate file.

Such letter shall be copied, sent and logged even where approval for testimony is granted in a case involving no consideration.

9. AFTER AN INFORMANT TESTIFIES

After an informant testifies, the deputy district attorney shall forward through the chain of command to the authorizing authority a "Confidential Informant Report" indicating the name of the informant, the name of the case in which the informant testified, the date of the testimony, a summary of the outcome, the deputy's impressions about the testimony, and comment on the informant's credibility. This report shall be maintained in the informant's file in the Central Informant Files.

The authorizing authority shall be responsible for identifying for the assigned data entry employee the information from the Confidential Informant Reports that should be entered into the Central Informant Files Log.

10. FABRICATION OF EVIDENCE BY AN INFORMANT

See LPM Section Q, 5.

11. DOCUMENTATION AND AUTHORIZING AUTHORITY

See LPM Section Q, 6.

12. CENTRAL INFORMANT FILES

See LPM Section Q, 8.

13. CENTRAL INFORMANT FILES LOG

See LPM Section Q, 10.

14. CONFIDENTIALITY AND DISCOVERY OBLIGATIONS

See LPM Section Q, 9.

S. CLAIMS OF FACTUAL INNOCENCE

The twofold aim of the prosecutor "is that guilt shall not escape nor innocence suffer." (*Berger v. United States* (1935) 295 U.S. 78, 88.) Cases in which DNA evidence has exonerated convicted defendants, sometimes after they have served years in prison for crimes they did not commit, serve as important reminders that we must remain vigilant to avoid the conviction of an innocent person.

1. Before and during trial, claims of factual innocence shall be carefully evaluated by the assigned deputy district attorney in light of all of the evidence in the case. Where dismissal is appropriate, it shall be approved by the supervisor in accordance with office policy. A prosecutor shall obtain supervisor approval before agreeing to a finding of factual innocence pursuant to Penal Code section 851.8 after a rejection of prosecution, a dismissal, or acquittal.

2. After conviction, claims of factual innocence shall be referred to the Conviction Integrity Deputy.

3. Even "after a conviction the prosecutor . . . is bound by the ethics of his office to inform the appropriate authority of . . . information that casts doubt upon the correctness of the conviction." (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25; *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.) After conviction, when a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that the defendant did not commit an offense of which the defendant was convicted, the matter shall be referred to the Conviction Integrity Deputy, who shall do both of the following (Rules of Professional Conduct, rule 5-110 (F)):

   (a) Promptly disclose that evidence to the court and, unless the court authorizes delay, to the defendant. Disclosure to a represented defendant must be made through the defendant's counsel. If the defendant is not represented, disclosure ordinarily would be accompanied by a request to the court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

   (b) Undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether a defendant was convicted of an offense the defendant did not commit.

4. Claims of factual innocence after conviction may be made in writing by the defendant, defense counsel, or a third person. The requesting party shall have the initial burden to produce evidence of innocence. The request must raise a meaningful claim of factual innocence and not be merely a request for resentencing, a reweighing of conflicting evidence, or for relief from immigration consequences.

5. An initial inquiry shall be made to determine whether further review and/or investigation are appropriate. Factors to be considered include, but are not limited to:

   - The evidence of guilt.
   - The plausibility of the claims.
   - Whether the claims were known or reasonably should have been known to defendant prior to conviction.
   - Whether the issues were previously investigated or litigated.
   - Whether the defendant has consistently asserted his or her innocence.
   - Whether additional testing or investigation would be helpful in resolving the issues.

6. The fact that the claims have been previously rejected by a trial court or appellate court, or could have been raised by the defense earlier, shall be considered, but does not necessarily preclude further inquiry. (See Penal Code section 1405, providing that a convicted incarcerated defendant may make a motion for DNA testing.)

7. The attorney who prosecuted the case should not conduct the conviction integrity review, but it generally will be appropriate to ask questions of and consider the opinion of the attorney who prosecuted the case.

8. Victims have a right to notice of post-conviction court proceedings that may result in the defendant's release. (Cal. Const., article I, section 28(b)(7).) If and when to advise victims during the conviction integrity review process shall be determined based on factors including, but not limited to, the likelihood of release or exoneration, the potential trauma from notification, and whether victims are likely to learn an investigation is in progress. Assistance of a victim advocate should generally be obtained in notifying the victim.

9. The standard for conviction integrity relief may be alternatively described as follows:

   (a) Whether new information has undermined our confidence that the defendant is guilty beyond a reasonable doubt.

   (b) Whether, based on what we know now as to defendant's guilt, we would not have filed the charges.

   (c) "When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction." (Rules of Professional Conduct, rule 5-110(G).) Comment 8 to the rule provides, "Depending upon the circumstances, steps to remedy the conviction could include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted." Our policy would go beyond these steps, and would include affirmatively seeking to vacate the conviction.

   (d) See Penal Code section 1473 (b)(3), providing that new evidence is a ground for habeas corpus relief if it "is credible, material…and of such decisive force and value that it would have more likely than not changed the outcome at trial."

10. Procedural issues, including those regarding constitutional rights, are appropriately addressed in the appellate court process, and do not form a basis for conviction integrity relief unless they undermine confidence in the guilt of the defendant.

11. Dismissal or vacating a misdemeanor case after conviction based upon factual innocence shall be approved by the division Chief Deputy District Attorney. Dismissal or vacating a felony case after conviction based upon factual innocence shall be approved by the Chief Assistant, or at a meeting of District Attorney Chief Deputies and Chief Investigator.

12. The above procedures shall also apply to requests to vacate a conviction by a person no longer in custody or restraint based on newly discovered evidence of actual innocence under Penal Code section 1473.7.

13. If a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that the defendant convicted in another jurisdiction did not commit an offense of which the defendant was convicted, the prosecutor shall promptly disclose the evidence to the appropriate court or other authority, such as the chief prosecutor in the jurisdiction in which the conviction occurred. (Rules of Professional Conduct, rule 5-110 (F).)

T. ALLEGATIONS OF MISCONDUCT

1. When a prosecutor is accused of prosecutorial misconduct, it places the prosecutor in the dual position of defending his or her own actions while continuing to prosecute the case. The defense, the court, and the public deserve prosecutors who are held to the highest ethical standards. At the same time, every prosecutor deserves a fair evaluation of the claim and a robust defense of their ethical conduct. Accordingly, the general policy is that prosecutors should not be left defending themselves over charges of prosecutorial misconduct. In those rare cases in which prosecutorial misconduct has occurred, office management must be made aware of the problem so appropriate training or other remedial action can occur.

2. In most cases, the making of a claim of prosecutorial misconduct will not require disqualification of the assigned prosecutor. Assignment of another prosecutor to handle claims of misconduct brings additional expertise and objectivity and allows the attorney assigned to the underlying case to focus on the prosecution.

3. Occasionally, the dynamics of courtroom litigation may make bringing in other prosecutors to handle the prosecutorial misconduct charge both impractical and unnecessary. Therefore, if a prosecutor is verbally charged with prosecutorial misconduct in court, and the charges are vague, trivial or frivolous, the trial deputy may handle the matter himself or herself and ask for an immediate ruling from the judge.

4. However, when faced with a verbal accusation of prosecutorial misconduct, in general, the better practice is for the trial prosecutor to:

    - Ask the court to order the defense attorney to reduce the allegation to writing;

- If the court is unwilling to order the defense to reduce the allegations to writing, the prosecutor should ask the court to order the defense to specifically lay out the claim of prosecutorial misconduct, the factual basis for such a claim, and the remedy sought;

- Ask for time to adequately prepare and investigate the allegation;

5. At the first practical opportunity, all written or verbal allegations of prosecutorial misconduct shall be discussed with the prosecutor's supervisor.

6. The supervisor shall advise his or her Chief Deputy of the issue. The Chief Deputy shall advise the Special Assistant District Attorney, who shall maintain a log of allegations of prosecutorial misconduct and the resolution of the allegations. The purposes of the log include (a) assuring that claims are appropriately resolved, including possible appellate action, (b) identifying circumstances in which further training or other remedial action is needed for the involved prosecutor and/or the office as a whole, (c) maintaining an accurate record in case the court or a defense attorney refers back to the incident in the future, and (d) monitoring defense attorneys who repeatedly make unfounded claims of misconduct.

7. Unless the supervisor deems it inappropriate, a manager, supervisor, or other prosecutor will be assigned to respond to the claim of misconduct.

8. While time may be limited, a thorough review of the file and all relevant facts is essential to evaluate and defend against the claim. Relevant transcripts or audio recordings of court proceedings should be obtained and reviewed wherever possible. The review should always include a discussion with the accused prosecutor in order to understand his or her side of the story.

9. In some cases, it is possible to resolve the issue between the prosecutor and defense attorney without an adversarial hearing. For example, many allegations of misconduct arise out of discovery disputes. It is frequently possible to resolve these disputes without a court hearing.

10. In all cases, false allegations of prosecutorial misconduct shall be denied on the record and/or in a written court pleading. In cases that cannot be resolved except through an adversarial hearing, and after an evaluation reveals that the allegations of prosecutorial misconduct are false, a written response clearly refuting the allegations must be filed with court. Under no circumstances may allegations of prosecutorial misconduct go unanswered. The accused deputy should not write or sign the response unless specifically authorized by his or her supervisor.

11. If the prosecutor has made a good faith error, the attorney handling the matter may ask the court to characterize the prosecutor's conduct as "prosecution error" rather than "misconduct."

12. If the defense motion alleging prosecutorial misconduct has been denied by the court, the prosecutor arguing the motion should ask the court to make a finding on the record that the prosecutor's conduct was proper. A transcript of the court's finding shall be procured so that we have a clear record of the prosecutor's exoneration.

13. In those rare cases in which the allegation of prosecutorial misconduct or error is well-founded, the supervisor shall consider how and if the case can proceed. The supervisor shall determine what training and/or other action is appropriate to address the misconduct. The prosecutor shall cooperate with such remedial measures.

14. In the event of imposition of judicial sanctions against the prosecutor, except for sanctions for failure to make discovery or monetary sanctions of less than ($1,000), or if the judgment in a case is reversed in whole or part based upon prosecutorial misconduct, the prosecutor must self-report to the State Bar within thirty days of learning of the grounds for the reversal. (Bus. & Prof. Code, § 6068(o)(3) & (7).) The prosecutor shall provide a copy of the letter to the Chief Deputy. The Chief Deputy may write a letter to the State Bar on behalf of the prosecutor outlining the remedial steps that have been taken for preventing the error from happening again.

15. A useful reference is CDAA, Professionalism: A Sourcebook of Ethics and Civil Liability Principles for Prosecutors (2016) Chpt. 10, Defending and Making Accusations of Misconduct. See separate sections of this Manual regarding Wheeler/Baston motions.

ARTICLE III. CRIME-CHARGING

Section 2.01, EVIDENTIARY SUFFICIENCY

A. INTRODUCTION

The primary responsibility of a deputy district attorney in charging is to determine whether or not there is sufficient evidence to convict the accused of the particular crime in question and to authorize the filing of appropriate charges.

1. BASIC CRITERIA FOR CHARGING

The deputy district attorney shall charge only if the following four basic requirements are satisfied:

a. The deputy district attorney, based on a complete investigation and a thorough consideration of all pertinent data readily available, is satisfied that the evidence shows the accused is guilty of the crime to be charged.

b. There is legally sufficient, admissible evidence of a corpus delicti.

c. There is legally sufficient, admissible evidence of the identity of the accused as the perpetrator of the crime charged.

d. The deputy district attorney has considered the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the deputy district attorney at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the deputy district attorney.

Commentary

The deputy district attorney should go through this four-step process in evaluating a case even though these steps are integrally related and the issues often overlap. This four-step process will help prevent the filing of inadequate cases because the failure to consider one or more of these issues separately could cause a deputy district attorney to overlook an issue or problem in the case.

2. IMPROPER BASES FOR CHARGING

The following factors constitute improper bases for charging:

a. The race, religion, nationality, sex, occupation, economic class, or political association or position of the victim, witnesses or the accused;

b. The mere fact of a request to charge by a police agency, private citizen, or public official;

c. Public or journalistic pressure to charge;

d. The facilitation of an investigation.

B. CASE INVESTIGATION AND EVALUATION

The deputy district attorney, based on a complete investigation and on a thorough evaluation of all pertinent data readily available, should be satisfied that the evidence shows the accused is guilty of the crime to be charged.

1. SCOPE OF INVESTIGATION

The deputy district attorney, before deciding whether to charge, should insist on as complete an investigation as is reasonably feasible.

2. INITIAL INVESTIGATION

The following matters should be covered by an initial precharging investigation:

a. All material witnesses should be interviewed where possible, preferably in person by police investigators. Signed statements or taped statements should be obtained from any witness who might change or forget his testimony. These statements should be clear in detail so they can be used later in court for refreshment of memory or impeachment purposes.

b. Scientific examinations should be completed as expeditiously as possible, especially where there is some doubt as to the outcome of the examination. Attempts should be made to lift fingerprints and make comparison tests whenever conceivably relevant, even though it is unlikely that the attempt will prove fruitful.

c. An attempt should be made in accordance with constitutional guidelines to obtain a statement from the accused. Such statements should be signed or taped whenever feasible. Arrest warrants should not, therefore, be authorized by the deputy district attorney unless:

1) A statement has already been made to the police or the accused has recently indicated he would refuse to make one;

2) A statement could not foreseeably be expected to change the deputy district attorney's evaluation of the case;

3) The arrest warrant is essential to facilitating the location of the accused;

4) The investigating agency agrees to interview the defendant upon his arrest and notes on the arrest warrant a request to be notified upon the defendant's arrest;

5) The accused is not in the county where prosecution is sought and it would be difficult to arrest the accused without an arrest warrant.

d. When the accused makes a statement that, if true in whole or in part, negates criminal liability, the statement should be investigated, if possible, no matter how implausible it may seem. Statements of potential defense witnesses should be obtained, preferably signed or taped.

3. SUBSEQUENT INVESTIGATION

If the initial investigation appears significantly incomplete for any reason, the deputy district attorney should insist on subsequent investigation by the law enforcement agency to correct any major deficiencies.

a. This standard should be observed even if it means that the accused must be released from custody and rearrested later on a warrant.

If the investigating officer knows of specific, articulable facts to support a firm belief that the accused will not be readily available for later arrest, then this

guideline may be disregarded if there is at least a reasonable likelihood of conviction based on the evidence already available to the deputy district attorney.

b. Where the investigation of a case is complete enough for the filing of a case, but additional investigation is still required, the request for such an investigation shall be noted on a "Complaint Request Evaluation" form. If the result of the investigation is such that the deputy district attorney believes the evidence now creates a reasonable doubt of the guilt of the accused, he/she should promptly seek office approval for dismissal. The deputy district attorney shall set a reasonable deadline for the completion of the investigation. It should be completed, if possible, before the preliminary hearing.

c. The responsibility for carrying out this subsequent investigation lies with the investigating law enforcement agency, not the district attorney investigators (unless this office initiated the original investigation). However, if the agency in question has inadequate resources to carry out such an investigation, the deputy district attorney should lend whatever assistance possible in the investigation.

Commentary

Pre-complaint requests for investigation should only be initiated when the complaint deputy believes there is a reasonable likelihood a complaint will be filed upon successful completion of the request. A deputy should never request follow-up as an expedient to avoid evaluating the merits of the request for filing.

Police frequently fail to attempt to lift fingerprints on the assumption that they will not get readable prints. Unfortunately, they may prove liftable in a few cases and juries have been conditioned to place great weight on them. Unless there is no reasonable possibility of lifting the prints, defense attorneys are free to comment on the prosecution's failure to try. Such arguments are difficult to rebut.

Reliance on post filing investigations to correct deficiencies is discouraged because there is less incentive to get them done expeditiously and because it may lead to needless filing of criminal cases.

4. SCOPE OF PROSECUTORIAL REVIEW

The deputy district attorney, before deciding to charge, shall make a thorough evaluation of all data pertinent to the issue of the accused's guilt of the crime to be charged, whether such data is admissible in court as evidence or not.

5. ADMISSIBLE EVIDENCE

The deputy district attorney shall do the following before deciding whether to charge:

a. Review all available police reports. A deputy shall not issue a case upon oral presentation alone except under extraordinary circumstances and with supervisor approval.

b. Require written reports on all relevant scientific examinations unless the result reported orally is deemed reliable or the result would not affect the decision to charge.

c. Carefully review all defense statements and consider, in as impartial a manner as possible, whether there is a reasonable possibility the statement is true.

d. Consider, when practical, personally interviewing witnesses whose later cooperation in prosecution is doubtful or where their demeanor and credibility significantly controls the outcome of the case. The following are typical examples of situations where witnesses should be interviewed:

1) Victims of crimes of a sexual nature;

2) Accomplices who are key witnesses in a prosecution case;

3) Victims where the issue is identity unless the accused's identity is separately established by other evidence;

4) Victims of crimes committed in a familial setting involving domestic violence or victims under the age of 18.

e. Listen to any taped statements by the suspect(s) and determine admissibility in light of voluntariness and *Miranda*.

6. INADMISSIBLE EVIDENCE

In deciding whether to charge, the deputy district attorney may also consider the following potentially inadmissible evidence:

a. The existence of seized evidence which may be suppressed;

b. The existence of inadmissible statements by an accused. (These statements may be admissible for impeachment, so they should be investigated. Their presence, when coupled with a reasonably conceivable defense, might remove or create a reasonable doubt concerning an accused's guilt.)

c. The accused's background, including his prior record. (The fact that his alleged conduct is consistent or inconsistent with prior proven conduct may remove or create a reasonable doubt. Such evidence could become admissible at trial even if only in rebuttal.)

Commentary

Evidence which may be ruled inadmissible should be considered for the primary purpose of seeing whether it might exonerate the accused. Such evidence might become admissible later for special purposes as well.

7. DIRECT EVIDENCE

In evaluating cases where the resolution of key issues rests primarily on direct evidence, the deputy district attorney should consider problems like:

a. A witness' mistake (especially mistaken identity);

b. A witness' motive to fabricate;

c. A witness' inability to recall or relate properly.

8. CIRCUMSTANTIAL EVIDENCE

In evaluating cases where the resolution of key issues rests primarily on circumstantial evidence, the deputy district attorney should consider the possibility that there is another rational explanation for the uncontested facts.

a. The deputy district attorney should consider every reasonable defense, whether offered or not.

b. The deputy district attorney should then consider whether, under the uncontested facts, the defense might be true.

b. The deputy district attorney should then consider whether, under the uncontested facts, the defense might be true.

C. LEGALLY SUFFICIENT, ADMISSIBLE EVIDENCE OF A CORPUS DELICTI

There should be legally sufficient, admissible evidence of a corpus delicti.

1. EXISTENCE OF A CRIME

The deputy district attorney has a responsibility to be reasonably certain that a crime has been committed before charging.

In cases posing novel or unclear questions of law, the deputy district attorney may charge if the following requirements are satisfied:

a. There is a reasonable possibility that a court will later rule that a crime has been committed;

b. The violation, if it is in fact a violation, is a substantial one affecting significant personal or property rights of others;

c. A deputy district attorney can reasonably argue that a crime has in fact been committed.

Commentary

The exception set forth will rarely be applicable in practice. In the case of possible, significant violations, the deputy district attorney does himself/herself, the victim, and the accused a service by obtaining a final judicial resolution of the issue. Unlike cases where the issues involved are issues of fact, the resolution of legal issues affects more than the outcome of the present case. Their resolution bears on future conduct and charging decisions.

2. EXISTENCE OF EVIDENCE SUFFICIENT TO PROVE ELEMENTS OF CRIME

In determining that there is legally sufficient evidence to prove each element of the crime in question, the following shall apply:

a. The deputy district attorney is responsible for knowing the relevant case law interpretations of each criminal statute so he/she can make a correct and informed decision.

b. In cases posing novel or unclear questions of law relating to the presence of sufficient evidence to prove any element of a crime, the deputy district attorney may charge if the requirements set forth above are satisfied.

c. In cases where an admissible confession clearly shows a crime has been committed, but it appears difficult to prove the existence of a corpus delicti in conformance with the requirements of case law, the deputy district attorney should charge if the following requirements are satisfied:

1) The deputy district attorney believes there is a reasonable possibility the court will rule that a corpus delicti has been independently established;

2) There is enough independent evidence with which the deputy district attorney can reasonably argue that the corpus delicti has been independently established.

3. ADMISSIBILITY OF EVIDENCE OF A CORPUS DELICTI

The deputy district attorney should believe that there is a reasonable possibility a court of law would rule that the evidence necessary to satisfy this standard is admissible under current statutory, case, or constitutional law.

a. The standard of reasonable possibility should be based on an informed judgment of what the highest court entitled to rule on the issue in question would rule if confronted with it. If a local court frequently rules contrary to current appellate interpretations, such a possibility should not be weighed in considering whether to charge.

b. The standard of reasonable possibility applies to both issues of law and fact relating to admissibility of evidence.

Commentary

As with other legal issues, the deputy district attorney owes a duty to society, the accused, the police, and himself/herself to get a prompt resolution of unclear constitutional issues so there will be greater certainty of action by all in the future. Still, if it is reasonably clear that there is not enough admissible evidence to warrant prosecution, the deputy district attorney should not file a case. The deputy district attorney must not use the charging process to punish an individual, however guilty. Further, the deputy district attorney has a responsibility to carry out constitutional principles as defined by appellate courts regardless of the deputy's individual opinion of the correctness of the appellate definition.

D. LEGALLY SUFFICIENT, ADMISSIBLE EVIDENCE OF IDENTITY

There should be legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged.

1. DIRECT EVIDENCE CASES

In cases resting primarily upon direct evidence of identity, the deputy district attorney should be reasonably certain that the evidence he/she possesses, standing alone, would result in a finding of guilty. Due to the nature of direct evidence, it will generally be clear whether this requirement has been satisfied. The deputy district attorney, in evaluating the case, should be certain that the establishment of one or more elements of the offense does not rest on circumstantial evidence. In that case, he should consult section D.2, below.

Commentary

One common example of a case which always depends in part on circumstantial evidence is one where the deputy district attorney has to prove specific intent or knowledge.

2. CIRCUMSTANTIAL EVIDENCE CASES

In cases resting primarily upon circumstantial evidence of identity, the deputy district attorney should not simply consider the evidence at hand in determining whether there is legally sufficient evidence to convict, but whether in view of all reasonably foreseeable

defenses relating to identity, the evidence is of such a quality that an appellate court would sustain a guilty verdict upon appeal regardless of the defense raised at trial.

Commentary

A distinction is drawn between mere probable cause to arrest and legally sufficient evidence to convict. This distinction is most meaningful in circumstantial evidence cases where the evidence might warrant a strong suspicion of guilt but not a verdict of guilty beyond a reasonable doubt. The probable cause standard for arrest is proper because it enables police to make a proper investigation and, frequently, to alleviate a dangerous situation. While a deputy district attorney is legally justified in charging on mere probable cause, he/she serves no useful, legitimate purpose in so doing.

3. ADMISSIBILITY OF EVIDENCE OF IDENTITY

The deputy district attorney should believe that there is a reasonable possibility a court of law would rule that the evidence necessary to satisfy this standard is admissible under current statutory, case, or constitutional law.

a. The standard of reasonable possibility should be based on an informed judgment of what the highest court entitled to rule on the issue in question would rule if confronted with it. If a local court frequently rules contrary to current appellate interpretations, such a possibility should not be weighed in considering whether to charge.

b. The standard of reasonable possibility applies to both issues of law and fact relating to admissibility of evidence.

Commentary

If there is a reasonable possibility that the evidence is admissible under current constitutional, case, or statutory law, the deputy district attorney should assume, for charging purposes, that it will be ruled admissible.

The deputy district attorney should carefully note the distinction between corpus delicti and identity evidence since, in limited situations, the distinction may be relevant to the proper determination of the legality of a particular search for, and seizure of, evidence. Of course, many items of physical evidence are relevant for proving both corpus delicti and identity.

E. PROBABILITY OF CONVICTION

The deputy district attorney should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the deputy district

attorney at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the deputy district attorney.

1. JURY PANELS

In determining what constitutes an objective fact-finder, the deputy district attorney should not necessarily reject a case because local juries, due to political or social attitudes, unreasonably refuse to convict where a reasonable jury in another locality would be likely to convict under the facts of that particular case. The District Attorney's responsibility to enforce the law is a responsibility owed to the State of California and all its citizens. The standard of reasonableness must inevitably be a statewide one under which the ideal jury is drawn from a representative cross-section of citizens who freely obey their oath as jurors to follow the court's instructions and not be affected by any conscious or unconscious biases which, if revealed, would subject them to challenge for cause.

Unreasonable jury panels pose a continuing problem for deputy district attorneys. The deputy district attorney must not permit the likelihood of unreasonable actions by jurors to deter him/her from carrying out his/her assigned duty to prosecute violations of the law.

Commentary

Application of this policy to obscenity cases should not be misconstrued. Application of community standards to the determination of what is obscene is proper, as authorized by case law. There is a distinction between a local jury's interpretation of community standards and a local jury's unwillingness to convict because of its members' views of the propriety of obscenity laws in general or because of other improper non-evidentiary considerations. In the latter situation, this policy applies.

2. SPECIAL PROOF PROBLEMS

Prosecutors, in deciding whether to charge, should give careful consideration to special problems in the following cases:

Identity

Where identity is an issue, and the proof of identity rests solely on the testimony of an independent witness or witnesses without further corroboration, the deputy district attorney should generally charge where one of the following situations is present:

The witnesses already knew the accused, so there is no reasonable possibility of mistake.

The opportunity to observe was substantial, so there is no reasonable possibility of mistake.

Investigative standards relating to identity evidence have been satisfied and the witness can furnish an adequate description of the accused.

The perpetrator of the crime possessed unusual physical characteristics similar to those possessed by the accused.

The perpetrator has been identified in a live lineup.

When identity is an issue, a charge shall normally not be filed based solely on an uncorroborated, single witness photographic identification of the accused.

Commentary

The purpose of conducting a lineup is threefold: (1) to assess the ability of an eyewitness to make an in-court, in-person identification; (2) to enhance the convincing force of a subsequent in-court identification, and (3) to reduce the possibility of a mistaken identification. Obviously, if the eyewitness is acquainted with the accused or if there is independent corroborative evidence of the identification, no valid purpose is served by requiring a lineup. On the other hand, the inconvenience to law enforcement personnel, or the present unavailability of the accused for a lineup, are factors which may be considered along with the total circumstances of a particular case in determining whether there are rare and unusual circumstances justifying a deviation from the policy.

Crimes of a Sexual Nature

The lack of direct corroboration of the crime shall not be a bar to prosecution if the case meets the basic criteria for charging. In making such a determination, the following factors shall be considered:

a. The existence or non-existence of a motive to fabricate;

The existence or nonexistence of physical injuries consistent with the victim's statements;

The condition of the victim's clothing;

The use or absence of alcohol or drugs by either the victim or the suspect;

The circumstances surrounding the report of the crime, including but not limited to, the promptness of the report and the reasons for any delay, and the nature of the report;

The nature of the relationship (if any) between the victim and the suspect;

The existence of any prior offenses committed by the suspect;

The existence of potential witnesses to substantiate any portion of the victim's or suspect's statements; or

When the victim is a child, the victim's competence to testify as a witness.

All contacts between the District Attorney's Office and the victim should be coordinated through the victim advocate who is assigned to the case. Rape victims should be interviewed prior to filing a complaint only where there exists a definite necessity. In determining whether such necessity exists, the following factors should be considered:

a. Whether the facts surrounding the crime are sufficiently clear to negate the necessity for further interview;

The extent of the admissible statement of the victim;

The existence or nonexistence of officer(s) and/or citizen witnesses;

The extent and completeness of the original officer's report;

The extent and completeness of the investigating officer's interview of the victim and his report thereof;

Whether the victim's physical and mental condition are such that another interview would cause additional trauma; and

The existence and availability of other evidence. Where the decision is made to interview the victim, after considering the above factors, the deputy district attorney should make arrangements to accommodate the victim. This may require the deputy district attorney to go to the victim's location, such as:

- Where the victim is incapacitated (hospital, nursing home, ill at home, etc.);
- Where the victim is unavailable during working hours, etc.;
- Where the victim's business or family responsibilities are such that an interview in the District Attorney's Office would work an unreasonable hardship.

It is to be noted that the victim will have to spend many hours in the courthouse during court proceedings, which may result in the loss of employment, wages, or the creation of other economic problems. All District Attorney personnel will make every effort to minimize the impact of court proceedings on victims.

In this connection, no case should be rejected merely because the victim cannot come to the District Attorney's Office for an interview. It should also be noted that deputy district attorneys must not expect law enforcement personnel to act as chauffeurs for victims, witnesses, or deputy district attorneys.

Every effort should be made to complete the filing process within the statutory time if the suspect is in custody.

Driving Under the Influence and .08 Per Se Cases

All cases involving a blood-alcohol level of .08 or higher shall be filed under both subsections (a) and (b) of the Vehicle Code sections 23152 or 23153.

a. All cases involving a blood-alcohol level below .08 shall be filed under subsection (a) of Vehicle code sections 23152 or 23153 when there is substantial evidence of erratic driving and sufficient symptoms of intoxication.

All cases involving refusals of a chemical test shall be filed under subsection (a) of Vehicle Code sections 23152 or 23153 if there are symptoms of being under the influence.

All cases where a blood or urine test was taken but the results are unavailable, if there are sufficient facts of being under the influence, may be filed under both subsections (a) and (b) of Vehicle Code sections 23152 or 23153.

All allegeable priors shall be filed, including reckless driving (Vehicle Code 23103.5) priors, even if there are other priors.

Welfare Fraud

Before a violation of Welfare and Institutions Code section 11483 is filed, the filing deputy shall determine whether there has been compliance with the last paragraph of that section by either of the following two procedures:

a. A demand letter has been mailed and received, or

A demand letter has been sent to the recipient's last known address and the last address listed with HSA if it is different.

A prospective case should not be rejected because the recipient is unavailable for an effective demand for restitution.

The filing deputy shall apply the same legal standards to welfare fraud cases as those applied to all other theft cases submitted for possible filing.

Theft or Misappropriation of Leased Property

Sufficiency of Evidence in General

a. Intent Requirement

The evidence must affirmatively establish an intent to steal, either at the time the property was acquired, or in retaining the property beyond the contractual term. If a reasonable interpretation of the evidence is that there was no fraudulent intent, then the retention of the property is a civil problem and not a theft. For example, a theft cannot be proved if the evidence is consistent with the theory that the renter believed the property

was lawfully rented but was unable to keep up the payments, forgot to return the property or believed that the term of the rental had been or could be extended. Rental companies sometimes threaten criminal prosecution and request police enforcement in order to secure compliance with the rental contract. It is often clear that payment or return of the property will prevent prosecution. This underscores the fact that neither the renter nor the law enforcement agency believes that a crime has already occurred since return of stolen merchandise is irrelevant to criminal prosecution. Prosecution is not a substitute for the merchant's securing of adequate identification and security, or for contractual enforcement in small claims court.

Rental Agreement

The terms should be clearly stated. An open-ended rental term generally will not support a theft charge, even if payments are not current. Verbal extensions of the term may negate the intent element by creating a reasonable expectation that additional extensions would be given. The police reports should contain a copy of the rental agreement signed by the suspect and any other paperwork associated with the transaction.

Rental Transaction and Identity

The name and statement of the employee who rented the property should be included, including whether the employee can identify the suspect, the type of identification and collateral presented and any conversation at the time of the transaction.

Demand

The rental company should first attempt to contact the suspect to enforce the contract. The rental company's efforts, including any statements by the suspect, should be detailed in the police reports.

Suspect Interview

If the suspect can be located, law enforcement should attempt to interview him/her before submission of the case.

Statutory Presumption

Penal Code section 484(b)(d) and (e) provide that intent to commit theft by fraud is presumed if one who has leased or rented personal property of another fails to return the property within 20 days after the owner has made written demand by certified or registered mail following expiration of the lease or rental agreement. Intent is also presumed under section 484(c) and (d) if the lessee presents false identification and fails to return the property at the expiration of rental period. The presumption only affects the burden of producing evidence. *People v Hedrick*, (1980) 105 Cal.App.3d 166. Under *People v. Roder, (1983)* 33 Cal.3d 491, this presumption should be treated only as a permissible inference. Prosecution will be instituted based on these presumptions only if

the evidence establishes that the failure to return the automobile was intentional and the lessee intended to permanently deprive the owner of the property.

Vehicle Code section 10855 provides that whenever any person who has leased or rented a vehicle willfully and intentionally fails to return the vehicle to its owner within five days after the lease or rental agreement has expired, that person shall be presumed to have embezzled the vehicle. The preceding discussion regarding presumptions is applicable here. If the theory is fraudulent retention, the date of the crime shall be charged as on or about five (5) days after the date the lease or rental agreement expired.

Theft by Trick or Device

Where it can be proven that the suspect had the fraudulent intent when he first received possession of the property, the offense may be prosecuted under Penal Code section 487 or 484 as a theft by trick or device. It must be proven the person obtained possession with the specific intent to permanently deprive the owner of his property by making a false promise which he had no intention of performing or by means of other fraud, artifice, trick or device. Proof of an intent to steal when the property was first acquired may be evidenced by the use of a stolen credit card, other fraudulent collateral, or false identification. If the theory of the theft is that the accused intended to permanently deprive the owner of the property at the time he initially acquired possession, then that date should be alleged as the date of offense.

Embezzlement

Fraudulent retention of property may be prosecuted as an embezzlement. Embezzlement is defined in Penal Code sections 503 and 507, but should be charged as theft under Penal code section 487 or 484. See Penal Code 490a. The elements of embezzlement are: (1) that a relation of trust and confidence existed between two persons; (2) that pursuant to such relationship one of those persons accepted the property entrusted to him by the other person; and (3) that with the specific intent to deprive the other person of his property, the person fraudulently appropriated or converted it to his own use or purpose. CALJIC 14.07. Proof of intent to steal in retaining the property may be evidenced by concealing, abandoning, or altering the property, or by ignoring demands for return of the property.

Review and Filing Criteria

Except in extraordinary circumstances, the following requirements must be met before an alleged theft of leased property will be reviewed and charged.

a. The lessee failed to return the property within twenty (20) days (five (5) days in the case of vehicles) after the lease or rental agreement expired.

Written demand for return of the property was made by registered or certified mail (with a return receipt) upon the lessee by addressing and mailing a demand to the lessee at the address given at the time of the lease or rental agreement.

The evidence of the rental agreement, the rental transaction, and the identities of the suspect and the employee of the lessor conform to Section 1, above.

A law enforcement interview of the suspect has been attempted.

Issuance of a complaint will require that the filing deputy is satisfied from all the available evidence that the accused has taken or retained the property with the intent to permanently deprive the lessor.

Disclosure of Informants

If an informant was involved in the investigation of a case, the deputy district attorney should assume that a motion will be made seeking disclosure of the identity of the informant and that the most plausible, reasonably foreseeable grounds for disclosure suggested by the available evidence will be urged in support of the motion. The deputy district attorney shall determine whether there is a reasonable possibility that such a motion can be successfully opposed, either by citation of applicable law and argument alone, or by the use of the in camera hearing procedure (Evidence Code section 1042).

If it appears that there is no reasonable possibility such a motion can be successfully opposed, then no charges shall be filed unless:

a. The investigating agency agrees it will disclose the informant if the motion is granted, and this fact is noted by the issuing deputy district attorney on the complaint issuance memorandum.

The investigating agency agrees it will keep track of the whereabouts of the informant, and this fact is noted by the issuing deputy district attorney on the complaint issuance memorandum.

If it appears that it will be necessary for the informant to personally testify at the in camera hearing, then the deputy district attorney shall obtain the assurance of the investigating agency that the informant will be available for that hearing or else charges shall not be filed unless the failure to disclose the informant will not require a dismissal of the case.

Commentary

No purpose would be served by filing charges in which the informant is clearly material and his or her materiality cannot be refuted at an in camera hearing unless the police are willing to disclose the informant's identity and keep track of his or her whereabouts. However, a deputy district attorney should not decline to file charges merely because a disclosure is possible. If there is a reasonable possibility that the motion can be

successfully opposed, either by argument and citing applicable law or by an in camera hearing, then charges should be filed.

The deputy district attorney should assume that the accused will make an informant disclosure motion in all cases in which an informant was used by the police during the investigation of a case. For such a motion to be granted, the accused must show a "reasonable possibility" that the informant can offer exonerating evidence or evidence that tends to benefit the accused's case, i.e., is a "material" witness for the accused. To a large extent the adequacy of such a showing depends upon the theory of exoneration propounded by the accused, e.g., "the informant will say it's not my heroin."

In considering the likelihood of a disclosure motion being granted, the deputy district attorney should assume that the accused will propose the most plausible, reasonably foreseeable theory of exoneration under the evidence then known to the deputy district attorney.

Informant motions can be opposed in two ways. Fist, 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 which held against disclosure in similar factual situations. In the event that this prima facie showing can clearly be made, or if a judge rules that it has been made, then disclosure may be opposed by the use of the in camera hearing procedure set forth in Evidence Code section 1042. At that hearing the prosecution must produce evidence showing that the informant cannot, in fact, exonerate the accused or benefit his case. It seems likely that the informant himself will be required to testify at this hearing although there are doubtlessly many situations in which other witnesses can be used to establish that the informant cannot, in fact, benefit the accused.

It is not contemplated that in camera hearings will be necessary to oppose all informant disclosure motions. In many cases, argument and citation of case law alone will be sufficient to successfully oppose the motion. Also, 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 an in camera hearing or if other witnesses are available for an in camera hearing who can clearly show that the informant cannot exonerate the accused or benefit his case.

Crimes Committed In a Familial Setting

Crimes of violence which occur in a marital or co-habitational relationship are no less criminal than those involving strangers. It has been consistently demonstrated that such violence reoccurs frequently between the parties, escalating in intensity many times to the point of life-endangering behavior, disfigurement and even homicide. It is the policy of the District Attorney's Office to file and prosecute all provable cases involving domestic violence.

Domestic violence diversion (Penal Code 1000.6 et seq.) is available in 242 Penal Code prosecutions, but not in a 273.5 Penal Code prosecution. In light of the office's policy disfavoring diversion, a deputy district attorney shall file 273.5 Penal Code and not 242 Penal Code. Whenever the acts, injury and relationship of the parties constitute the offense, 242 Penal Code would be filed only when no injury at all could be proved.

3. AFFIRMATIVE DEFENSES

The deputy district attorney should not decline to charge because of an alleged affirmative defense unless:

a. The affirmative defense is of a nature that, if established, would result in a complete exoneration of the accused from liability within the criminal justice system, and

b. The affirmative defense is not subject to refutation by substantial evidence available to the prosecution.

If these two requirements have been satisfied, the deputy district attorney should decline to charge. Otherwise, it is the responsibility of the deputy district attorney to see that the issue is litigated in court.

Commentary

For purposes of this section, an affirmative defense is one which in effect admits the truth of the principal allegations contained within the complaint, indictment, or information, but which asserts other matters which, if true, exonerate the accused from criminal liability in whole or in part. They are matters which the accused has the burden of raising.

Affirmative defenses are treated differently because the data necessary to establish them is usually unavailable at the charging stage and because the accused has the burden of raising them in trial. Common examples are insanity, entrapment, and double jeopardy. Self-defense and defense of third parties, while technically affirmative defenses, should be carefully evaluated at the charging stage as corpus issues. Alibi and the statute of limitations are not affirmative defenses and should be treated as identity or corpus issues, respectively.

ARTICLE IV. CRIME-CHARGING

Section 2.02, CHARGE SELECTION

A. CHARGE LEVEL

The deputy district attorney has the responsibility to select a charge or charges which accurately describes the committed offense or offenses and which provides for an adequate sentence.

1. MISUSE OF CHARGE SELECTION PROCESS

The deputy district attorney shall not use the charging process to obtain leverage to induce a guilty plea to a lesser charge prior to trial. There should be a reasonable expectation of conviction on the designated charge.

2. OVERLAPPING STATUTES -- DIFFERENT PENALTIES

When identical criminal conduct is legally punishable under two or more similar statutes providing significantly different penalties, the deputy district attorney should select the more appropriate charge after considering, among others, the following factors:

a. Which charge most accurately and fully describes the conduct of the accused.

b. Which charge provides the most appropriate penalty for the accused in view of the nature of the offense and his prior criminal record.

c. Whether there is a specific evidentiary or prosecutorial function to be served by utilizing one charge as opposed to the other.

d. Whether there is an indication that the Legislature intended that one charge be used as opposed to another.

3. OVERLAPPING STATUTES -- SIMILAR PENALTIES

Although alternative charges providing similar penalties should not be filed, when there is a specific evidentiary or prosecutorial function to be served by such alternative charges, they may be filed.

4. PROSPECTIVE EFFECT OF AFFIRMATIVE DEFENSES

Nothing in this section should be interpreted as precluding the filing of a greater offense when the final determination of the correct charging level or degree depends in significant part on the application of a possible affirmative defense or defenses.

Commentary

The most common example is the filing of murder charges where it appears that the accused ultimately will be convicted of manslaughter. Of course, if the evidence clearly shows that the accused only committed manslaughter, the lesser charge should be filed.

B. MULTIPLE CHARGING

1. INTRODUCTION

The District Attorney's Office has the authority to charge all crimes committed. However, reasonable limitations, as defined below, may be placed on this responsibility in order to facilitate more efficient prosecution of the case in question and in order to promote the better utilization of resources within the criminal justice system.

2. JOINDER OF MISDEMEANORS WITH FELONIES

Misdemeanors generally should not be joined with felonies except as provided below:

a. The evidence relating to the misdemeanor count directly or indirectly strengthens the evidence relating to the felony count.

b. The commission of the conduct proscribed by the misdemeanor statute demonstrates the aggravated nature of the conduct proscribed by the felony statute.

c. Conviction on the misdemeanor charge carries significant punitive consequences for the accused in addition to the likely consequences of a felony conviction. These consequences may be prospective only.

d. The misdemeanor charge involves conduct constituting a significant invasion of the rights of others and, due to legal standards set forth in the case of *Kellett v. Superior Court* (1966) 63 Cal.2d, cannot be independently prosecuted.

e. There is a reasonable possibility that a jury might not convict on the felony count even though the policies on evidentiary sufficiency have been satisfied in deciding whether to charge.

Commentary

Unless one of the exceptions is applicable, no useful purpose is served by adding charges of lesser dignity to those of greater dignity. The expense of prosecution is needlessly compounded. Many of the exceptions, though, implicitly recognize that some misdemeanors carry greater actual penalties or stigma than some felonies. For example, a conviction for a violation of Vehicle Code section 23153(a) will affect an accused's driving record. Should he be convicted again for the same offense, license suspension would be mandatory.

This policy should not be interpreted as discouraging the filing of misdemeanor charges separately where permitted by the *Kellett* case.

3. MULTIPLE COUNTS

Unrelated Crimes

Unless the prospective number of counts is patently excessive, the deputy district attorney should not limit the number of counts filed in a particular case.

1) Of course, the counts utilized must be properly joined.

2) Exceptions can be made for certain crimes against property, like forgery and issuance of insufficient fund checks, where, frequently, multiple counts stem from a single initial violation of law (e.g., from a burglary). The deputy district attorney may restrict the number of counts filed in order to save the use of an excessive number of witnesses provided the counts alleged adequately portray the relative aggravation of the accused's conduct.

b. Related Crimes

The deputy district attorney should file all applicable additional charges relating to a single course of conduct, regardless of the provisions of Penal Code section 654, providing:

1) The policies on evidentiary sufficiency have been satisfied as to each count;

2) The policies relating to the appropriate charge level have been satisfied; and

3) The additional charge is not merely a technical one but accurately portrays significant independent conduct committed by the accused at the time of the event in question.

Commentary

Since at least one charge will be filed in any event, mere multiplicity does not prejudice the rights of an accused. The general disuse of consecutive sentences for charges relating to a single event means that there is little danger of wrongfully inducing a guilty plea from an innocent person. On the other hand, the prosecutor's case could be prejudiced by needlessly limiting his options in the beginning. Penal Code section 654 provides adequate protection to the accused and should be applied at the intended stage, which is at the time of plea or sentence.

4. PENDING PROSECUTION

The fact that the accused is being prosecuted in the present or in another jurisdiction for a crime should have no effect on the deputy district attorney's decision to file additional charges in a particular case.

C. SPECIAL ALLEGATIONS

The deputy district attorney shall utilize all applicable special allegations which will enhance the penalty or which will result in the mandatory denial of probation. For example, prior convictions, possession or use of weapons, and use of force shall be charged whenever the policies on evidentiary sufficiency have been satisfied.

1. UNRESOLVED LEGAL ISSUES

If the possible application of a special allegation presents a novel or unclear question of law, the deputy district attorney should utilize the special allegation in filing the complaint or information where there is a reasonable possibility that a court will later rule that the allegation is applicable and where the evidence in support of the allegation is such that the deputy district attorney can reasonably argue that the allegation is applicable.

Commentary

Care in charging is needed in order to prevent the introduction of legally innocent people into the criminal justice system and in order to promote an effective allocation of resources so that convictions will serve their intended purposes. Once the decision to charge has been made, though, neither purpose is served by limiting the use of special allegations. Special allegations exist to provide the legal basis for the subsequent imposition of additional penalties for unlawful conduct. Once the fact of such conduct has been determined, the choice of the appropriate penalty, among a range of possible penalties, should be deferred to the sentencing stage. The accused is not prejudiced by this policy. A contrary policy would remove the legal basis for a subsequent determination of appropriate penalties and would thus prejudice the deputy district attorney's case.

Unsettled legal issues should be resolved by the judiciary in order to provide for more certain resolution of these issues in the future by the deputy district attorney, and because no useful purpose is served by premature resolution by the deputy district attorney in the present case.

2. EVIDENTIARY CRITERIA

The deputy district attorney should charge the allegation and not delay the filing of a complaint or information if there is sufficient evidence to establish in court probable cause to believe that the particular allegation is applicable. If the investigation on the

allegation's applicability is incomplete for any reason, the charging deputy shall fill out a "Complaint Request Evaluation" form as he would in any other situation where a supplemental investigation was deemed appropriate. The deadline for completion should be prior to the preliminary examination.

3. GREAT BODILY INJURY ALLEGATIONS

Due to the significant penalties attached to the application of great bodily injury allegations for certain felonies, the use of such allegations generally should be limited to situations where:

a. The accused has inflicted a permanent bodily injury (other than a minor scar); or

b. The accused has inflicted serious temporary bodily injury causing hospitalization or substantial incapacitation for a significant period of time.

Commentary

Present law defines "great bodily injury" as a significant or substantial physical injury, language which is somewhat nebulous. The policy enunciated above is intended to avoid the misuse of the allegation by way of overcharging.

4. TIME FOR CHARGING SPECIAL ALLEGATIONS

Special allegations shall be charged at the time a felony or misdemeanor complaint is filed.

D. FELONY - MISDEMEANOR ALTERNATIVES

(Penal Code 17(b)(4))

An alternative felony-misdemeanor charge should be prosecuted as a felony unless the deputy district attorney believes that a misdemeanor sentence is warranted under all the circumstances of the case. If he believes a misdemeanor sentence is warranted, he should prosecute the case as a misdemeanor pursuant to Penal Code section 17(b)(4).

1. PRIMARY FACTORS RELEVANT

The following factors should be considered, in addition to special circumstances which may exist in a particular case, in determining whether a felony charge is warranted:

a. Prior Record

A misdemeanor prosecution normally should not be considered if:

a. There has been a conviction on a felony charge or a Penal Code section 17(b)(4) prosecution for the same type of crime within the previous five years;

There has been a conviction resulting in a state prison commitment for the same type of crime within the previous 10 years;

There has been a juvenile record consisting in part of a commitment to the California Youth Authority or camp or the sustaining of several felony-level petitions within the previous 5 years;

4) There has been a record of several convictions for any crime, felony or misdemeanor, within the previous 10 years.

b. Severity of the Crime

A felony prosecution normally should be considered if:

a. The accused has attempted to injure another with the use of a deadly weapon, whether successfully or not;

The accused has, regardless of the means used, caused permanent injuries, temporary injuries requiring hospitalization, or temporary injuries substantially incapacitating another for a significant period of time, in the commission of the crime in question; except that in mutual combat fights or injuries arising out of domestic or quarrels between acquaintances, other factors should be considered in addition to the mere existence of injuries;

The accused was in possession of a loaded firearm at the time of the commission of the crime, and the crime in question is such that a loaded firearm could be used to facilitate its commission;

The accused has committed a battery on a police officer inflicting other than minor injuries;

The accused has committed a crime against the property of another of a value in excess of $5,000. If the value of the property is less than $2,000, a misdemeanor prosecution is preferable unless clearly barred by other provisions of these policies or unless the particular type of crime in question has an unusual and special impact on the community. If the value of the property falls between $2,000 and $5,000, factors other than the amount of the loss or threatened loss should be determinative;

The accused has possessed a quantity of controlled substances in violation of Health and Safety Code sections 11357 and 11377 larger than that normally used for personal consumption or has possessed any quantity of hallucinogenic or methamphetamine drugs proscribed by those sections;

The accused has committed the crime of auto theft and, in so doing, has stripped the car, changed the license plates or VIN number, deliberately damaged it, transported it a substantial distance, or retained it for a substantial period of time;

The accused has stolen or embezzled public funds or property in the course and scope of his/her employment as a public employee. With the approval of the Chief Deputy or Chief Assistant District Attorney, an exception may be made to a felony filing if the value of the property involved is minimal (e.g., under $400) and/or extenuating circumstances are present.

c. Probability of Continued Criminal Conduct

A misdemeanor prosecution normally should not be considered if:

a. The accused has demonstrated he is a professional criminal by his modus operandi, the tools used in the commission of the crime in question, his criminal associations, his addiction to narcotics or drugs, or other similar circumstances; or

The accused has committed a crime related to gang activities or organized crime.

d. Eligibility for Probation

In any event, a misdemeanor prosecution should not normally be considered if the accused is ineligible for probation under the provisions of Penal Code section 1203 or Health and Safety Code section 11370.

Commentary

The existence of Penal Code section 17(b)(4) gives a district attorney's office a unique tool to affect judicial sentencing policies. By prescribing guidelines for what constitute legitimate misdemeanor sentence cases, the district attorney in effect says that all remaining cases merit felony sentences. A more uniform approach by district attorneys to the sentencing problem should eventually lead to a more uniform approach by the judiciary to the same problem. It is understandably difficult for independent judges across the state to develop more uniform sentencing policies. The district attorneys are in the best position to suggest a proper approach and to set an example through the wise use of their charging discretion.

Of course, while greater uniformity is an ideal objective, any policies developed in this area must enable individual deputy district attorneys to take into account the many relevant variables that exist in particular cases. These policies provide a framework for considering the application of Penal Code section 17(b)(4). This framework can be systematic without being rigid. Most cases do fall, properly and clearly, into a felony or misdemeanor category. However, the use of the words "normally be considered" in the opening of each subsection leaves the individual deputy district attorney with the discretion necessary for reaching a proper decision in those cases that cannot be easily categorized.

The factors set forth are legitimate factors to consider in determining whether a particular accused appears to merit a felony or misdemeanor sentence. Excluded are less significant factors whose excessive use by some judge or deputy district attorney leads to unjustified, unequal sentencing policies. Some major exclusions are: (1) the attitude of the victim or witnesses per se toward the decision (although their arguments should be considered insofar as they make reference to the legitimate factors for consideration); and (2) the accused's family or professional status.

The dollar guidelines set forth apply only when the accused's prior record and modus operandi are such that a misdemeanor sentence is otherwise warranted. It is not suggested that the current $400 dividing line between grand and petty theft be changed. For example, if an accused stole $1,000 worth of merchandise and he had a prior felony theft conviction that was four years old, the case should be filed as a felony.

The deputy district attorney should consider the threatened or potential loss as well as the actual loss. For example, if an accused is arrested at the scene of a commercial burglary, before he has had an opportunity to steal, the deputy district attorney should consider what the loss might have been had the accused not been arrested. He/she should consider the nature of the premises, the time, the modus operandi, and the nature of the objects available for theft.

In applying this subsection the deputy district attorney should consider the value of all actual or potential losses caused to all victims by the accused, not just the ones to be charged.

2. SPECIAL SITUATIONS GENERALLY WARRANTING MISDEMEANOR PROSECUTION

A misdemeanor prosecution pursuant to Penal Code section 17(b)(4) normally should be considered in the following cases:

a. Cases which become felonies solely because of the provisions of Penal Code sections 666 or 667, unless the accused is a persistent violator;

b. Violations of Penal Code section 261.5, unless there is a substantial age difference between the accused and victim, in which case other relevant factors should be considered;

c. Violations of Penal Code section 12020, unless the weapon in question is a sawed-off shotgun, was used in the commission of another felony, or was possessed under circumstances which pose an apparent threat of injuries to other persons;

d. Cases in which very small amounts of property or contraband are involved;

e. Violations of Penal Code section 476a unless the accused is a persistent violator of this section or unless the crime in question is part of a major fraudulent scheme. If the value of the checks issued with insufficient funds is less than $1,000, a misdemeanor prosecution is generally preferable;

f. Violations of Vehicle Code section 20001 and 23153, unless severe injuries were sustained by the victim or the accused has a bad driving record;

g. The existence of substantial provocation and/or justification for defendant's conduct, even though it does not constitute a legal excuse;

h. The defendant's role appears to have been substantially less culpable than the other participants in the crime and there is no reason or necessity to keep the cases together;

i. A nonviolent crime involving family members as victims (i.e., theft from parents, stealing parents' checks and forging them).

Commentary

The crimes listed in this section are ones which normally receive misdemeanor sentences in the absence of the exceptions indicated. The exceptions are difficult to define legislatively and they are frequently applicable. It is not suggested that any of these crimes be reduced by the Legislature from felonies to simple misdemeanors for that reason.

Standard 2.d is not applicable where the gist of the crime is something other than the actual taking of property or possession of contraband, e.g., burglary where the gist of the crime may be invasion of privacy or intent to cause greater loss.

3. SECONDARY FACTORS RELEVANT TO APPROPRIATENESS OF FELONY SENTENCE

In close decisions regarding the utilization of Penal Code section 17(b)(4), the deputy district attorney may consider the following additional factors:

a. The relative difficulties in successful prosecution of the case as a felony as opposed to a misdemeanor, including the nature of the witnesses involved;

b. Cooperation of the accused as demonstrated by his voluntary confession, his assistance in the recovery of property, his information regarding other criminal activity by himself or others, voluntary restitution, or other like factors;

c. The age of the accused as it relates to whether the prospective maximum sentence would be a commitment to the California Youth Authority or state prison.

4. MULTIPLE DEFENDANTS

If the deputy district attorney is confronted with a situation in which two individuals are chargeable in a single accusatory pleading with a felony offense, and one of the two appears to merit a felony sentence for the crime in question, both should be charged initially with a felony regardless of the eligibility of the other for a misdemeanor sentence.

Commentary

The use of separate felony and misdemeanor prosecutions for codefendants would be contrary to the legislative intent implied in Penal Code section 954 that codefendants be prosecuted in a single proceeding. Duplicative trials and unnecessary inconvenience of

witnesses should be avoided. Dispositions at the misdemeanor level are still possible for the eligible codefendant under Penal Code section 17(b)(5).

5. DRUNK DRIVING OFFENSES WITH INJURY

When a drunk driving case involving injury is submitted for filing and the elements can be proven, the reviewing deputy district attorney shall ordinarily file felony drunk driving charges (Vehicle Code 23153).

Misdemeanor 23153 charges shall be filed only in such cases where both of the following criteria exist: (1) the defendant has no prior convictions for Vehicle Code sections 23152 (or the prior section 23102) or 23153; and (2) the injuries are not serious or significant.

Broken legs or arms, injuries requiring plastic surgery, internal damage, significant hospitalization, loss of work time, injuries which appear reasonably likely to persist and involve permanent or semi-permanent pain, treatment, etc., all mandate the filing of felony 23153 charges.

Where no prior conviction exists, there is some degree of flexibility from the above where the only person(s) injured are drinking companions of the defendant.

Injuries not sufficient to justify felony 23153 charges will justify the filing of misdemeanor 23153 charges unless the injuries appear to be extremely minor and trivial, in which event misdemeanor 23152 is the appropriate charge.

23153, rather than 23152, charges should be filed where it is clear that medical treatment was required and necessary and medically verifiable injuries exist; and/or pain is experienced (other than very minor, temporary and brief), particularly if any still remains after 24 hours.

Furthermore, where the above factors are unclear at the time the case is submitted or the reports are scanty and vague, it is the responsibility of the filing deputy to request that further information and clarification be obtained.

6. INDECENT EXPOSURE WITH A PRIOR (PENAL CODE 314.1)

Penal Code section 314 makes indecent exposure a wobbler if it occurs following the entry of a residence without consent. The crime becomes a straight felony when the defendant has a prior 314 or felony child molest (Penal Code 288) conviction. The question of whether to file a 314 as a felony should be resolved according to the following guidelines.

Except in extraordinary circumstances, a new violation of section 314.1 of the Penal Code should be charged as a felony where it occurs at a residence which the defendant has entered without consent or where the defendant's prior record includes:

- A prior conviction under Penal Code section 288; or

- A prior felony conviction under section 314; or
- Being on probation for a prior misdemeanor 314 conviction at the time of the new offense; or
- Two or more prior misdemeanor convictions under section 314 or section 647(a); or
- An arrest or conviction for any felony sex offense; or
- An arrest or conviction for misdemeanor child molestation (Penal Code 647(a)).

In the absence of the above, the decision as to whether to file a felony 314.1 with a prior should take into account all relevant circumstances pertaining to the defendant, the victim, and the crime in question.

E. MISDEMEANOR/INFRACTION ALTERNATIVES

Penal Code section 19(e) applies to the following code sections:

- 330 and 415 of the Penal Code
- 25658(b) and 25661 of the Business and Professions Code
- 27150.1, 40508 and 42005 of the Vehicle Code

A deputy district attorney shall file a misdemeanor/infraction as an infraction unless it is combined with another violation or the defendant has a prior criminal history.

F. DEATH PENALTY/LIFE WITHOUT PAROLE CASES

1. INTRODUCTION

A special circumstance case, in which the accused may be punished by either death or life without the possibility of parole, pursuant to one or more special circumstances enumerated in Penal Code section 190.2, shall not be filed without the prior approval of the Chief Deputy of Criminal Prosecutions or the Chief Assistant District Attorney.

2. PROCEDURE FOR DETERMINATION OF APPROPRIATENESS OF THE DEATH PENALTY

The death penalty may not be an appropriate punishment in some special circumstance murder cases. The District Attorney will decide whether a special circumstance case is one in which it is appropriate to seek the death penalty after a thorough review of the facts and circumstances surrounding the crime and the accused.

Every special circumstance murder case will be subject to preliminary review as soon as reasonably possible after the complaint is filed. A panel, including the District Attorney, Chief Assistant District Attorney, Chief Deputy of the Criminal Prosecutions Division, Bureau of Investigations Chief, the assigned prosecutor and investigator, will review the case to determine if the death penalty is warranted. The review will include the guidelines for determination as described below (See section 3 subdivisions a, b, and c).

If, after the meeting, the District Attorney determines that the death penalty may be appropriate under the circumstances or that more information is needed to make a penalty recommendation, the assigned investigator will immediately begin a thorough background investigation of the defendant and prepare a confidential background report. Further review of the case and penalty determination will be made whenever reasonably possible, prior to the filing of the information.

If, after the preliminary review meeting, the District Attorney concludes the case does not warrant the death penalty, the conclusion will be documented and no further background investigation will be conducted for the purposes of penalty determination. Public release of the penalty decision will be made once authorized by the District Attorney.

In any case in which a confidential background investigation has been conducted, further review of the case and penalty determination will be made after the preliminary hearing or grand jury hearing and the completion of the confidential background report. The penalty decision will be reviewed at a meeting chaired by the District Attorney and attended by as many of the following as are reasonably available: the Chief Assistant District Attorney, the Chief Deputies, the Chief Investigator, and the prosecutor(s) and investigator(s) assigned to the case. Other persons with special expertise or familiarity with the case, including other prosecutors in the Major Crimes Unit, may also be invited to attend such a meeting.

The meeting will consist of a review of the case based on the Confidential Preliminary Hearing or Post Indictment Hearing Memorandum, the Confidential Background Investigation Report, any other relevant documentation or evidence, and a discussion according to the office's guidelines for determination of appropriateness of the death penalty.

In advance of the meeting, the Chief Assistant District Attorney will issue a written invitation to defense counsel to submit written materials regarding any mitigating circumstances which may exist in the case. Any such materials will be considered at the meeting. The failure to submit such materials will not be viewed as a lack of diligence on the part of defense counsel or as a tacit admission that mitigation is lacking. In addition, defense counsel will be invited to appear at the meeting and orally present any additional information to be considered in the penalty determination.

Example letter:

Dear _____:

In the near future, a committee chaired by District Attorney Gregory D. Totten will meet to consider whether the death penalty should be sought in the above-named matter. The District Attorney's decision in this regard is normally made at or shortly after the meeting.

As defense counsel, you are hereby invited to submit written materials regarding any mitigating circumstances, which may exist in the case. This is not an adversary proceeding, but merely an opportunity for additional information to be provided.

We understand that you may, for tactical or other reasons, decline to submit documentation, and we will respect your decision in that regard. A decision not to submit materials will in no case be viewed as an indication of lack of diligence on your part or as a tacit admission that mitigating circumstances are lacking. You can, of course, provide the assigned prosecutor with information in any form at any time.

Please direct your response to the undersigned by _____. Further, you will be notified of the date of the meeting and are invited to orally present any information you would like to have considered in the penalty determination. Because of the inherent difficulties in scheduling, we normally will not postpone the meeting to accommodate your schedule. However, any documentation or other information submitted to the assigned prosecutor before trial will be carefully evaluated, and may prompt a reconsideration of the District Attorney's decision.

Very truly yours,

Chief Assistant District Attorney

3. GUIDELINES FOR DETERMINATION OF APPROPRIATENESS OF THE DEATH PENALTY

A determination that the death penalty is appropriate in a special circumstance case shall not be made unless the District Attorney concludes that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that death is warranted instead of life without parole. This determination shall be made after careful deliberation, taking into account any matter relevant to aggravation or mitigation, including, but not limited to:

a. The circumstances of the charged crime and special circumstance. In assessing the gravity of the circumstances, the following matters, along with any others that may be relevant, shall be considered:

- Whether the actions of the accused disclosed a high degree of cruelty, sadism, viciousness, callousness, or remorselessness;

- The conduct and statements of the accused after the completion of the crime (i.e., whether the defendant admitted responsibility and seemed remorseful after the crime or, conversely, related a false story or a series of false stores to avoid responsibility);

- Whether the victim was particularly vulnerable;

- Whether the accused took advantage of a position of trust or confidence to commit the offense;

- Whether or not the victim was a participant in the accused's homicidal conduct or any related illegal acts or consented to the homicidal act;

- The extent to which the accused deliberated and premeditated the murder or the special circumstance;

- The extent to which the accused directly and actively participated in the commission of the offense;

- Whether there are multiple special circumstances as enumerated in Penal Code section 190.2;

- Whether or not the offense was committed while the accused was under the influence of extreme mental or emotional disturbance;

- Whether or not the offense was committed under circumstances which the accused reasonably believed to be moral justification or extenuation for his or her conduct;

- Whether or not the accused acted under extreme duress or under the substantial domination of another person;

- Whether or not, at the time of the offense, the capacity of the accused to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental disease or the effects of intoxication.

b. All available information about the accused's character, background, entire criminal history, and mental and physical condition, including, but not limited to:

- The presence or absence of past criminal activity by the accused which involved the use or attempted use of force or violence or the express or implied threat to use force or violence, or the infliction of significant suffering on a victim;

- The presence or absence of any prior felony conviction;

- The extent to which the defendant poses a threat of physical dangerousness to others, both in a custodial setting and in the community should he or she ever be released;

- The age of the accused at the time of the crime;

- Whether the accused has had prior opportunities for rehabilitation and, if so, how he or she responded;

- Whether life without parole is adequate punishment in light of the defendant's age, health, interest, and previous incarcerations.

c. Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

d. The four basic purposes of a criminal prosecution:

- The protection of society from individuals who pose a danger to others;

- The deterrence of other individuals from posing a similar danger in the future;

- The punishment of individuals for violating laws on which the preservation of an orderly and free society rests;

- The rehabilitation of individuals.

4. ADDITIONAL FACTORS BEARING ON WHETHER THE DEATH PENALTY WILL BE SOUGHT

In cases in which the District Attorney has concluded that the death penalty is warranted pursuant to the guidelines enumerated above, the following will then, and only then, be considered:

a. Whether it is reasonably probable that the jury will vote unanimously to impose the death penalty.

b. The views of the surviving family members of the victim.

5. DOCUMENTATION OF PENALTY DECISION

It shall be the responsibility of the Chief Assistant to maintain an accurate record of decisions made in special circumstance murder cases. If the decision that LWOP is the appropriate penalty is made prior to the preliminary hearing, the record shall include a copy of a factual/legal memorandum prepared by the assigned prosecutor and/or investigator, a memorandum from the Chief Assistant documenting the penalty discussion and recommendation, and documentation of the District Attorney's approval of the LWOP recommendation.

If a background investigation is conducted and a formal Death Penalty Committee meeting held, the record shall include a copy of the preliminary hearing or post indictment memorandum, the confidential background report, copies of material provided by the defense if any, and a memorandum by the Chief Assistant documenting the penalty discussion and decision of the District Attorney.

6. POST-VERDICT DEBRIEFING

Following the completion of each penalty phase tried to a jury, the prosecutor and investigator will conduct interviews with all available jurors according to the office's written protocol. The results of those interviews will be attached to a memorandum summarizing the penalty phase evidence and the jurors' reaction to it, and the recommendations of the prosecutor and investigator concerning the appropriate handling of future similar cases by the office. The memorandum will be written by the attorney and addressed to the Chief Assistant District Attorney. The Chief Assistant District Attorney will review the memorandum, then schedule a meeting involving the individuals mentioned in Item 2, above, at which the case will be debriefed for the edification of all concerned.

G. CIVIL RIGHTS VIOLATIONS

Whenever a violation of Part 1, Title 11.6 of the Penal Code (422.6 et. seq) is chargeable, it shall be filed, and shall not be dismissed without the written approval of the Chief Assistant or the Chief Deputy District Attorney.

ARTICLE V. CRIME-CHARGING

Section 2.03, PROSECUTORIAL ALTERNATIVES

A. DISCRETION NOT TO CHARGE

A deputy district attorney has the responsibility to prosecute individuals who commit crimes in accordance with the policies on evidentiary sufficiency and charge selection. He/she also has the responsibility as a member of the executive branch of government to decline to prosecute in situations where criminal prosecution would defeat the underlying purpose of the statute in question or his/her duty to foster and maintain a just and lawful society even though policies on evidentiary sufficiency have been satisfied. This responsibility to decline to prosecute for reasons other than evidentiary insufficiency should be used only when society would clearly be served by such action. For example, it should be used when declining to prosecute may result in increased respect for the law.

Commentary

The court in *Taliaferro v. Locke* (1960) 182 Cal.App.2d 752, 755-56, indicated that economic limitations justified non-action by a prosecutor. In that case the prosecutor refused to abate a nuisance or prosecute for perjury. The victim and accused were ex-spouses. The unfettered authority to decline was upheld. This case implicitly recognizes the right of the prosecutor to decline to charge for other than evidentiary reasons. The court said:

As concerns the enforcement of the criminal law the office of district attorney is charged with the grave responsibilities to the public. These responsibilities demand integrity, and conscientious effort in the administration of justice under the criminal law. However, both as to investigation and prosecution that effort is subject to the budgetary control of boards of supervisors or other legislative bodies controlling the number of deputies, investigators, and other employees. Nothing could be more demoralizing to that effort or to efficient administration of the criminal law in our system of justice than requiring a district attorney's office to dissipate its effort on personal grievance, fanciful charges, and idle prosecution.

The case of *State ex rel. McKittrick v. Wallach*, 353 Mo. 312, 182 S.W.2d 313 (1944), specifically recognized the right to use prosecutorial discretion to determine what action would best result in general law observance and good law enforcement. The case was the subject of an annotation in Annot., 155 A.L.R. 10 (1944).

The following sections give some examples of proper and improper use for the exercise of discretion not to charge. The list is not exclusive.

1. PROPER BASES FOR EXERCISING DISCRETION NOT TO CHARGE

There are reasons for exercising this inherent power to decline to charge other than insufficient evidence.

a. Contrary to Legislative Intent

It would be proper to decline to charge because the application of criminal sanctions to the accused's conduct is contrary to the intent of the Legislature in enacting the particular statute.

Commentary

Penal Code section 4 states that the provisions of the Code "are to be construed according to the fair import of their terms, with a view to effect (their) objects and to promote justice."

b. Antiquated Statute

It would be proper to decline to charge because the statute in question is antiquated in that:

1) It has not been enforced for many years;

2) Most members of society generally act as if it were no longer in existence; and

3) It no longer serves a deterrent or protective purpose in modern society.

Commentary

One reason for this exception is that prolonged non-enforcement lulls society into an impression that certain conduct is not unlawful. Another is that no legitimate prosecutorial purpose would be served. This exception is not to be construed as a basis for rejecting cases because the law in question is unpopular or because appellate decisions have made it difficult to enforce.

c. Victim Requests No Prosecution

It would be proper to decline to charge because the victim does not wish the prosecutor to file criminal charges and the case involves the following crimes or situations: in crimes against property, not involving violence, where no major loss was suffered and where the accused's conduct is not likely to be repeated. The fact of restitution may be considered in applying this policy.

Commentary

Crimes are prosecuted on behalf of all citizens of the state, not on behalf of particular individuals. The victim is not a party to a criminal prosecution. He is not the prosecutor's client. See *People v. Municipal Court* (1972) 27 Cal.App.3d, 193, 207. Crimes are committed primarily against society and only secondarily against individual members of society. There are rare situations, set forth here, in which the secondary interest of the individual outweighs the primary interest of society. This primary interest is outweighed because none of the four purposes of a criminal sentence are particularly applicable while non-prosecution would serve interests like harmony, good employment relations, the promotion of individual friendships, and the personal privacy of the victim.

d. Immunity and Other Forms of Leniency

Article 1, Chapter 2, Section Q, of the manual governs leniency issues as to "jailhouse" informants and other non-percipient witnesses seeking leniency in return for testimony. This subsection governs other situations, most notably those raising charging issues as between multiple perpetrators of a single offense.

1) It would be proper to grant leniency to a prospective witness in order to prosecute another only if:

a) Gravity and Culpability

(1) The gravity of the case is such as to justify granting leniency;

(2) The prospective witness' testimony is essential to a successful prosecution; and

(3) The prospective witness, considering the factors set forth below, is less culpable than the other person(s):

(a) His involvement in the present case;

(b) His overall involvement in criminal activity; or

(c) His cooperation in the present case, coupled with the continued viability of other alternatives like probation revocation, civil commitment, and prosecution on other charges.

b) The interests of justice demand a successful prosecution even if the culpability of the prospective witness is not clearly and substantially less than the other person(s);

c) The testimony is necessary to expose matters of great public interest, which outweighs the interests of justice in prosecuting the persons to whom leniency is to be offered; or

d) The testimony is necessary to exculpate another who may be unjustly suffering a penalty.

2) General Procedures Under Penal Code Sections 1324 and 1099

a) Authorization for a leniency grant shall be in writing.

Persons authorized to offer leniency in exchange for testimony to one who may be prosecuted for a crime:

(1) The Chief Assistant or Chief Deputy District Attorney in cases involving:

(a) Special circumstances

(b) Major crimes

(c) Special interest designation

(d) More than one unit of the District Attorney's Office

(e) Inter-County situations

(f) Consumer and Environmental Protection cases

(g) "Jailhouse" and similar informants as defined in Article 1, Chapter 2, Section Q of this Manual

(2) The appropriate supervising deputy district attorney in all other cases.

b) A statement recorded in some manner shall be obtained from the prospective witness before seeking authorization.

(1) The statement shall reflect the anticipated testimony of the prospective witness at all criminal proceedings at which the prospective witness will testify, and that the witness shall be required to testify at all criminal proceedings.

(2) The purposes of the statement are to aid the supervisor in evaluating the proposed granting of leniency.

(a) The witness shall be informed that the statement will not be used against the witness in any prosecution, whether or not leniency is granted, unless the statement or any subsequent testimony is perjurious.

(b) The statement of the witness shall include his complete knowledge of the case and his anticipated testimony taken in sufficient detail to ensure its admissibility in court for such purposes as evidence in the prosecution of any person.

c) Information to be forwarded in writing to persons authorized to offer leniency:

(1) Statement of the case, including the following:

(a) Description of the events resulting in commission of the offense(s);

(b) Number of accused;

(c) Charge(s) filed against each accused;

(d) A summary of the evidence which is available to prove the charge(s) without the testimony of the prospective witness.

(2) The charge(s) for which the prospective witness is being given leniency and any other consideration which is being sought for the person to whom leniency is to be offered.

(3) The reasons justifying the request.

(4) A summary of the statement obtained from the prospective witness.

(5) The present stage of criminal proceedings at which the prospective witness will testify.

(6) Whether any conflict exists with other jurisdictions who may prosecute the crime.

(7) The criminal record of the accused and the prospective witness.

d) After approval has been obtained, the following shall be prepared for submission to the Superior Court.

(1) "Petition and Request for Order Requiring Witness to Answer Questions and Produce Evidence Under Section 1324 of the Penal Code of California."

(2) "Waiver of Issuance of Order to Show Cause and Hearing Under Section 1324 of the Penal Code of California."

(3) "Order Requiring Witness to Answer Questions Under Section 1324 Penal Code of California."

e) In lieu of forwarding the above Petition, Waiver and Order forms pursuant to Penal Code section 1324 as indicated above, the prosecutor processing the case may submit to the prospective witness a letter of leniency or non-prosecution signed by the person authorized to offer leniency. A copy of all leniency agreements shall be placed in a file created for the person receiving leniency and lodged in the Central Informant Files, described in Section O.8 of this policy manual. The authorizing authority shall direct the attorney seeking the leniency agreement to ensure this is done.

3) Before a prosecutor seeks to have the court discharge a co-accused pursuant to Penal Code section 1099, the prosecutor processing the case must obtain authorization from the appropriate supervisor as outlined in Section (2), (a), above.

4) Inter-County/out-of-state leniency requests shall be in writing and signed by the District Attorney, City Attorney, Sheriff, Police Chief or other high-ranking official of the out-of-county/state law enforcement agency which is seeking leniency. The written request should contain the information listed in Section (2), (c), above.

Commentary

The policy of this office is not to offer leniency in any form solely for the purpose of obtaining testimony from anyone who may be prosecuted for a crime.

Exceptions to this policy shall not be made without careful evaluation of the interests sought to be secured balanced against the grave consequences of offering such leniency and must be employed with considerable caution and discretion. Only in rare and unusual circumstances are such consequences, which flow from the offer of leniency to one in exchange for his testimony, outweighed by more substantial interests of justice which are referred to above.

However, as part of the balancing process of prosecutorial discretion, it may be necessary to be lenient with one individual so another individual can be prosecuted. The decision is a tactical one. It is one of the most well recognized examples of prosecutorial discretion and is explicitly approved by statute. See Penal Code section 1324. See also, e.g., *Attorney General v. Tufts* (1921) 239 Mass. 488, 132 N.E. 322.

It should be emphasized that the procedures set forth above involve the granting of formal immunity pursuant to Penal Code section 1324. Case law, however, recognizes the existence and validity of informal grants of immunity. See, e.g., *People v. Brunner*, 32 Cal.App.3d 908, and *People v. Superior Court (Crook)*, 83 Cal.App.3d 335.

e. De Minimis Violation

It would be proper to decline to charge because the violation is de minimis. This reason should be carefully used and the following factors should be considered:

1) The availability of appropriate alternative charges;

2) Whether the accused, if convicted, would merit any confinement or significant fine;

3) Whether a deterrent purpose would be served by prosecuting the offense.

f. Present Confinement on Other Charges

It would be proper to decline to charge because revocation of the probation or parole of the accused is imminent or the accused has been sentenced on another charge to a lengthy period of confinement and:

1) Conviction on the new offense would not merit any additional direct or collateral punishment;

2) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

3) Conviction on the new offense would not serve any significant deterrent purpose.

The quality of the evidence of the new offense is an appropriate factor to consider in close decisions regarding whether to prosecute.

g. Pending Prosecution on Other Charges

It would be proper to decline to charge because the accused is facing a pending prosecution in the present or another jurisdiction and:

1) Conviction on the new offense would not merit any additional direct or collateral punishment;

2) Conviction on the pending prosecution is imminent. The prosecutor should be reasonably certain that the pending case will be successfully prosecuted;

3) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

4) Conviction on the new offense would not serve any significant deterrent purpose.

The quality of the evidence of the new offense is an appropriate factor to consider in close decisions regarding whether to prosecute under this policy.

Commentary

Prosecutors should consult with other prosecutors in determining whether conviction in a pending case is imminent. In some cases it may be appropriate to delay the initiation of prosecution under the principles set forth here. The prosecutor should consider, though, whether any delay could jeopardize an accused's right to due process and a speedy trial.

h. Highly Disproportionate Cost of Prosecution

It would be proper to decline to charge because the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question.

Commentary

Since extradition may be declined because extradition costs are too high, so also may prosecution be declined because of disproportionately high costs in producing witnesses or of burdens on those witnesses when compared to the importance of prosecuting the offense in question. This policy is to be applied in extreme situations only. The mere fact that a witness is inconvenienced does not justify declining to prosecute.

2. INADEQUATE OR IMPROPER BASES FOR DECLINING TO CHARGE

There are certain factors which do not justify declining to charge unless other mitigating factors are present as well.

a. Restitution

It would be improper to decline to charge simply because the accused made or tendered restitution to the victim.

Commentary

The mere fact of restitution should not justify declining to charge. If it did, the accused would in effect be buying his way out of prosecution at no addition cost. He would have no incentive for not committing a crime. On the other hand, the fact of restitution in

conjunction with legitimate factors like the victim's request not to prosecute or the existence of a de minimis situation might justify a decision not to prosecute.

b. Extradition Not Warranted

It would be improper to decline to charge simply because extradition is necessary to obtain jurisdiction over the accused's person.

Commentary

There is always the possibility that the accused will return to the jurisdiction and delay in charging could cause due process, speedy trial, or statute of limitations problems.

c. Relation of Accused and Victim

It would be improper to decline to charge simply because the victim and accused are related.

d. Unpopular Statute

It would be improper to decline to charge simply because the statute is an unpopular one with a segment of the local population, the local judiciary, or even the prosecutor himself.

Commentary

As the court stated in *State ex rel. Johnson v. Foster*, (1884) 32 Kan. 14, 43, 3 P. 534, 538:

If a law enacted by the legislature has not the support of public sentiment, this may be under some circumstances, a reason for its amendment or repeal, but it is not a good defense for a county attorney, upon whose lips is fresh the oath of office, for refusing to attempt its enforcement.

e. Victim's Future Cooperation Problematical

It would be improper to decline to charge simply because the victim's future cooperation is problematical. The deputy district attorney should take steps to see that this cooperation is ensured in doubtful cases by explaining to the victim his legal obligation as a witness and the fact that the case is being prosecuted by the state, not the victim.

Nothing in this policy, however, should be viewed as preventing the deputy district attorney from considering the victim's present lack of cooperation as a factor in determining whether the case can be successfully prosecuted.

f. Severe Impact on Accused or Family

It would be improper to decline to charge simply because prosecution will have a severe impact on the accused or his family.

Commentary

Prosecutions often have a severe impact on the accused and his family. The first is usually justifiable, the second is unavoidable. If justice were to be administered on the basis of an accused's family status, there would be greater inequality in law enforcement than exists now.

g. Improper Motives of the Complainant

It would be improper to decline to charge simply because the motives of the complainant in seeking prosecution are different from those properly associated with a criminal prosecution.

Commentary

The issue is relevant in determining if a witness' bias will affect the successful prosecution of the case. It is otherwise irrelevant because crimes are committed against society, not individuals.

h. Imminent Deportation of Aliens

It would be improper to decline to charge simply because the accused is illegal and faces deportation.

Commentary

Foregoing prosecution merely because the suspect faces deportation would provide aliens a license to steal and correspondingly decrease respect for law and order.

B. DIVERSION

It is the policy of the Ventura County District Attorney's Office to authorize an individual charged with an eligible misdemeanor offense the opportunity to participate in our pre-filing diversion program, in lieu of facing formal prosecution. The Ventura County Superior Court has established a similar court-initiated diversion program under Penal Code section 1001.95. When appropriate and suitable based upon the individual facts and circumstances of the case, deputy district attorneys performing complaint review may approve pre-filing diversion where it serves the interest of justice and promotes rehabilitation of the defendant, communicating this opportunity to the individual in both English and Spanish. Our internal Misdemeanor Diversion Program Guidelines serve to ensure consistent application of these principles and define eligible offenses. Similarly, deputy district attorneys are encouraged to seek grants of court-initiated misdemeanor diversion under the same guidelines after consultation with the misdemeanor unit supervisor.

C. INDICTMENT

1. GENERAL POLICY

It is the general policy of the Ventura County District Attorney to initiate felony charges by filing a complaint and proceeding through a preliminary hearing.

2. CASES WHICH MAY BE CONSIDERED FOR INDICTMENT

Depending on the relative availability of resources and the factual situations presented, any extraordinary case, including but not limited to the following, will be considered for presentation to the Grand Jury:

a. Cases involving official misconduct or corruption;

b. Cases in which there is a need to temporarily protect the identity of witnesses;

c. Child abuse, child molest, or adult victim sexual assault cases where it is in the best interest of the victim not to proceed to preliminary hearing;

d. A series of cases involving a controlled substance or stolen property buy program, or other law enforcement "sting operation;"

e. Any case where premature disclosure to the public of the evidence could cause community disruption or a change of venue;

f. Any case where, due to complexity or length, proceeding through the Grand Jury would save the public substantial time and money;

g. Cases posing substantial security problems;

h. Cases with multiple defendants and attorneys where separate preliminary examinations are set;

i. Investigations which require the subpoena power of the Grand Jury to be completed.

j. Homicide cases.

3. INDICTMENT PROCEDURES

See the "Grand Jury Hearing Guide" for further information. The Grand Jury Hearing Guide is located on the D.A. Web, under Policies, Manuals & Guides.

ARTICLE VI. CRIME-CHARGING

Section 2.04, SPECIAL POLICIES RELATING TO CRIME-CHARGING

A. COMPLAINT PROCESSING

1. GENERAL MATTERS

a. All complaint rejections shall be in writing, utilizing the case review function of VCIJIS Crimes II.

In issuing such rejections, the reviewing deputy shall identify the applicable reasons for rejection.

Explain fully the legal and factual basis for the rejection. This explanation serves to keep officers current with the law as well as to assist them in improving future investigation. Set forth a written summary of the materials considered and the sources consulted.

b. If an investigating officer disagrees with a filing deputy's charging decision, the officer may appeal the decision to the reviewing deputy's unit supervisor. If the matter remains unresolved, the officer's supervisor may request review by the Chief Deputy or Special Assistant in charge of that unit.

In the rare case where the matter cannot be resolved at the Chief Deputy or Special Assistant level, appropriate command staff may appeal the decision to the Chief Assistant District Attorney. If no resolution is agreed upon, the Chief of Police or Sheriff may appeal the matter directly to the District Attorney.

c. When an officer seeks a felony complaint for a felony/misdemeanor offense, the reviewing deputy shall screen the case for referral to the misdemeanor complaint deputy.

1) The deputy district attorney should ask at the outset if the officer <u>in fact</u> seeks a felony filing. <u>Often</u> an officer only wants a 17b filing but comes to a felony deputy because the charge has the legal potential to be filed as a felony. If the officer has correctly recognized that the case is a misdemeanor, he should be referred immediately to the misdemeanor review deputy.

2) If the officer states he is seeking a felony filing, then the deputy should obtain a brief oral summary of the case and review of the suspect's criminal record. If this preliminary screening reveals that the case probably meets filing criteria but is of misdemeanor seriousness, the deputy then should file the appropriate misdemeanors.

d. Original items of evidence, such as tape recordings, fingerprint cards, or physical evidence, should not be kept in District Attorney files. These items shall be maintained by the police agency until introduced into evidence at the preliminary hearing.

e. Photographs

At the time of complaint issuance, the deputy district attorney shall order a proof sheet of all photographs taken by the investigating agency.

f. Informants

At the time of complaint issuance, the deputy district attorney shall note on the complaint issuance memorandum the investigating agency's position on disclosure of any confidential informant in the case and the agency's commitment to keep track of the informant during the prosecution.

A deputy district attorney shall not file a felony case without supervisorial approval in any instance where the investigating agency will neither disclose the informant's identity nor promise to keep track of him during the prosecution.

2. SPECIAL AREAS

All requests for a complaint or action falling within the jurisdiction of the following units shall be referred to the appropriate unit for handling.

a. Child Abduction and Recovery Unit

Under Family Code section 3130, the District Attorney's Office may be appointed to assist the court in enforcing custody orders by locating and recovering children who have been wrongfully abducted by a parent or family member. The unit also serves county residents by assisting in the enforcement of child custody and visitation orders. In performing these functions, the unit acts on behalf of and works closely with the Ventura County Superior Court and the Family Law Facilitator's Office.

The unit locates and returns children who have been abducted from Ventura to other counties, states and countries. In interstate cases, the unit works closely with the state attorney or the county attorney offices, as well as the state or local law enforcement agency of the other state. Similarly, in international cases, the unit works closely with the United States Central Authority and the central authority of other countries.

There is no other agency in the county performing the functions of the Child Abduction and Recovery Unit. Therefore, all cases handled by the unit are investigated by District Attorney Bureau investigative staff. The unit is under the supervision of the Special Prosecutions Division Chief Deputy District Attorney.

b. Government Fraud Unit

The Government Fraud Unit investigates and prosecutes violations involving the fraudulent application for or receipt of benefits from various government assistance programs. These programs include CALWORKS, food stamp and other sources of government assistance. These cases are typically filed under Welfare and Institutions Code section 11980.Case referrals are made to the investigative unit by the Human Services Agency which manages these programs. These cases typically involve the reporting of false information by an applicant/recipient or the failure to disclose required information.

Citizens suspecting violations of Welfare Fraud are encouraged to contact the investigators assigned to this unit or call the fraud Hotline at 805-477-1605. Calls can be made anonymously.

c. Major Fraud Unit

The Major Fraud Unit, is under the supervision of the Chief Deputy of the Special Prosecutions Division and the Chief Investigator.

This unit investigates and prosecutes complex fraud cases. Generally, cases characterized by the following criteria will cause a suspect to be prosecuted by the unit:

1) Lengthy pre-complaint investigation.

2) Complex fraudulent schemes characterized by some or all of the following:

   (a) Multiple principals

   (b) Multiple victims

   (c) Multiple witnesses

   (d) Complicated documentary evidence

   (e) Complicated factual setting

   (f) Multiple jurisdictions.

3) Significant dollar loss (in excess of $250,000).

4) Aggravated felony (i.e., D.A. sentencing position is to urge state prison).

Due to extensive attorney involvement at the investigative stage, major fraud cases are either prepared for the grand jury or for preliminary hearing before a felony complaint is filed. The key evidence in these cases is usually in the form of physical evidence, such as documents and records.

Physical evidence collected during the criminal investigation will be made available to the victim for his/her potential civil action.

The following units are under the direct supervision of the Major Fraud Supervising Deputy District Attorney:

Public Integrity Unit

This unit investigates and prosecutes crimes involving public corruption and misconduct by public officials and public employees. These crimes include, but are not limited to: criminal misconduct by an elected official or government employee related to his or her office or employment, bribery, theft or misappropriation from a government entity, falsification of public records, documents, evidence or testimony, offenses involving the Political Reform Act, campaign finance violations, conflicts of interest, and election fraud.

Agriculture Crimes Unit

The Agriculture Crimes Unit prosecutes property crimes in which a member of the agriculture community is the victim. This would include farmers, ranchers, growers, and packers, and involve crimes including, but not limited to: vandalism, theft of produce, nursery plants, farm animals, equipment, irrigation pipes, pesticides and other chemicals. Animal abuse cases are also handled by this unit.

Computer Crimes Unit

The Computer Crimes Unit prosecutes cases in which a computer is a significant instrumentality of the crime. Examples of crimes prosecuted in this unit are internet crimes against children, pornography utilizing the internet, cyber stalking, hacking cases, computer/network intrusion cases, Internet fraud, identity theft, white collar and high technology task force statute cases. This unit is available to assist in the drafting and obtaining search warrants for evidence residing in computers.

Workers' Compensation Insurance Fraud Unit

This unit investigates and prosecutes all forms of workers' compensation insurance fraud. Examples of cases prosecuted are false claims by employees requesting benefits, false representations by employers seeking to lower their insurance premiums, false information from medical services providers, and cases in which employers fail to obtain workers' compensation insurance. Cases are usually referred to the District Attorney's Office by employers who suspect fraudulent claims by their employees, and from insurance companies who suspect fraud and report it to the Department of Insurance for investigation. Other cases are initiated from undercover investigations into workers' compensation fraud mills involving attorneys and medical providers that provide services for injured employees.

Auto Insurance Fraud Unit

This unit investigates and prosecutes all forms of fraud related to auto insurance. The cases include all forms of claimant fraud such as false claims of physical injuries, false reports of auto accidents, false reports of vehicle theft or burglary, and arson. The cases might also include false billings to insurers by medical providers, auto body shops, auto repair shops, and economic auto theft cases. These fraud cases also include chop shop rings, staged accident rings, and medical/legal provider fraud rings.

Real Estate Fraud Unit

This unit investigates and prosecutes any type of fraud or theft connected with a recorded real estate instrument or real property transaction involving real estate sales, title transfers, easements, loans, appraisals, escrow transactions, title insurance and predatory lending practices. The crimes charged could be theft by false pretenses, theft by embezzlement, false financial statements, identity theft, filing false or forged instruments, forgery, or perjury. Some of the cases might involve multiple title flips schemes, straw buyer schemes, home equity sales contract fraud, mortgage foreclosure consultant fraud, and rent skimming.

d. Consumer and Environmental Protection Unit

The Consumer and Environmental Protection Unit is under the supervision of a Supervising Attorney who reports to the Chief Deputy District Attorney responsible for the Special Prosecutions Division.

1) The Consumer and Environmental Protection Unit files and prosecutes consumer protection and environmental cases by civil or criminal prosecutions. Environmental violations may be prosecuted as civil or criminal cases depending upon the statutory authority and legal analysis of the circumstances in each case.

Consumer Protection Prosecutions

Consumer protection cases are frequently prosecuted by civil prosecutions for unlawful, unfair, or fraudulent business practice violations pursuant to section 17200 of the Business and Professions Code and misleading advertising violations pursuant to section 17500 of the Business and Professions Code. Some consumer protections cases are prosecuted by misdemeanor or felony prosecutions. Typical consumer prosecutions can involve a wide variety of deceptive schemes and practices. In some cases, the consumer is the victim of unfair business practices or misleading advertising. In other cases, a competitor may be disadvantaged by another business that fails to comply with legal requirements. Unlawful business practices include “anything that can properly be called a business practice and that at the same time is forbidden by law.” Unlawful business practices can be premised upon violations of administrative regulations, federal law or state law.

Environmental Protection Prosecutions

Environmental protection cases may be based upon a variety of environmental statutes that provide a basis for either civil, misdemeanor or felony prosecutions by district attorneys. California has enacted statutory authority for prosecutions of violations involving hazardous materials, hazardous waste, water pollution and air pollution. Depending upon the statute, violations may be established for conduct ranging from a strict liability standard, to negligent, willful, knowing, or intentional actions.

Commentary

Any inquiries from the public should be initially directed to the Consumer Mediation Section for screening. The Consumer Mediation Section will provide information on consumer issues to the public, but will refer questions of illegal conduct to an attorney in the unit attorneys. Inquiries from law enforcement personnel should be directed to an attorney in the Consumer and Environmental Protection Unit.

2) Consumer Mediation Section and Small Claims Court Advisor Program

Consumer Mediators and Small Claims Court Advisors work together as a team to provide consumer mediation and Small Claims Court Advisor services to the public. The supervisor of the Consumer Mediation Section and Small Claims Advisor Program reports to the Consumer and Environmental Protection Unit Supervising Attorney.

Consumer Mediators are trained to assist the public in the following areas:

- Providing information to the public regarding consumer rights and consumer protection laws, including landlord/tenant rights and obligations;
- Mediating disputes between consumers and businesses if either the consumer or the business is located in Ventura County;
- Mediating disputes between tenants and landlords located in Ventura County if the dispute involves security deposits or habitability issues; and
- Making appropriate referrals to other government agencies.

Small Claims Court Advisors provide the following types of assistance to both plaintiff and defendant litigants in Small Claims Court cases:

- Procedural information;
- Case evaluation;
- Complaint preparation;
- Defense of claims and counter-suits;
- Evidentiary requirements;

- Appellate rights; and
- Procedures for enforcement of judgments and collections.

The Consumer and Environmental Protection Unit Supervising Attorney is also responsible for the supervision of the following prosecutors who are assigned specialized areas of prosecution:

3) Code Enforcement Prosecutor

The Code Enforcement Prosecutor prosecutes violations of county ordinances which are typically referred for prosecution by the Ventura County Resource Management Agency. The subjects of the misdemeanor prosecutions include building and safety violations, food safety and restaurant violations, general permit violations, weights and measures violations, zoning, and land use violations.

4) Fish and Game Code Prosecutor

The Fish and Game Code Prosecutor is responsible for civil, misdemeanor and felony prosecutions of violations of the Fish and Game Code. Criminal prosecutions can include illegal taking of wildlife, commercial fishing violations, and individual violations of Fish and Game regulations enforced by Game Wardens. Civil prosecutions are usually filed for illegal streambed alterations and water pollution caused by oilfield or other business operations.

5) Asset Forfeiture Prosecutor

The Asset Forfeiture Prosecutor prosecutes civil asset forfeiture cases arising out of narcotics violations, Vehicle Code violations, and selected criminal forfeitures under the Aggravated White Collar Crime Law. Civil narcotics asset forfeiture prosecutions typically involve the forfeiture of currency, narcotics proceeds seized from financial institutions, and vehicles which were used to facilitate narcotics transportation or sales or were proceeds from narcotics sales. The civil narcotics asset forfeiture cases are filed pursuant to sections 11470 et seq. of the Health and Safety Code. Vehicle forfeitures are filed pursuant to section 14607.6 of the Vehicle Code. Criminal forfeitures under the Aggravated White Collar Crime Law are filed pursuant to section 186.11 of the Penal Code.

e. Juvenile Unit

The Juvenile Unit handles cases involving offenders under the age of 18 at the time of their offense. This includes crimes that normally would be handled in the other specialized units.

Cases involving offenders ages 14 or older may be directly filed and prosecuted in adult court for offenses outlined in Welfare and Institutions Code sections 602(b) and 707(d).

Crimes falling under Welfare and Institutions Code 602(b) will be directly filed into adult court. These cases will be reviewed by the assigned adult criminal court prosecutor. Welfare and Institutions Code section 602(b) crimes include:

1) Murder (PC 187) when there is an aggravating circumstance as defined by PC 190.2(a)

2) Sex offenses listed below when there is an aggravating circumstance as defined by PC 667.61

    a) Rape - PC 261(a)(2)

    b) Spousal Rape - PC 262(a)(1)

    c) Forcible sex offenses in concert - PC 264.1

    d) Forcible child molest - PC 288(b)

    e) Forcible sexual penetration with a foreign object - PC 289(a)

    f) Forcible sodomy - PC 286

    g) Forcible oral copulation - PC 288a

    h) Child molest - PC 288(a), unless probation eligible under PC 1203.066(c)

Any exception to the above must be made by the District Attorney or Chief Assistant District Attorney.

Crimes falling under Welfare and Institutions Code 707(d) may be considered for direct-filing in adult court. The decision to refer a case out of the Juvenile Unit for review is made by the Juvenile Unit supervisor. Such case will then be referred to appropriate adult prosecution unit supervisor. If the case is not accepted by the adult prosecution unit, it will be returned to the Juvenile Unit for review. The decision to direct-file a juvenile case is made on a case by case basis, weighing the following factors:

1) The seriousness of the case and the gravity of the conduct involved;

2) The use of a deadly weapon in the commission of the crime;

3) Whether the case involved violent conduct by members of a criminal street gang;

4) The extent and seriousness of the offender’s prior criminal history;

5) Past efforts at rehabilitation;

6) The offender’s degree of sophistication.

Once a case has been filed in adult court, it will remain in adult court unless further review is warranted based on new or additional information. Such review will be done by the Chief Deputy District Attorney, in consultation with the unit supervisor of the adult prosecution unit. In making the decision to transfer a case back to juvenile court, the principal consideration shall be whether or not the public interest is best served by a juvenile disposition.

f. Sexual Assault/Family Protection Unit (SAFP)

The following crimes shall normally be prosecuted by the Sexual Assault Unit:

1) All sexual assault offenses

   (a) Rape and attempted rape (Penal Code §§ 261, 262, 264.1)

   (b) Unlawful sexual intercourse (Penal Code § 261.5)

   (c) Offenses listed in Penal Code section 266

   (d) Abduction of a person under 18 (Penal Code § 267)

   (e) Aggravated assault of a child (Penal Code § 269)

   (f) Sodomy (Penal Code § 286)

   (g) Lewd acts (Penal Code § 288)

   (h) Oral copulation (Penal Code § 288(a))

   (i) Continuous sexual abuse (Penal Code § 288.5)

   (j) Sexual penetration (Penal Code § 289)

2) Failure to register as a sex offender (Penal Code § 290)

3) All child abuse offenses

   (a) Penal Code section 273a

   (b) Penal Code section 273d

4) Domestic violence offenses

   (a) Penal Code section 273.5

   (b) Penal Code section 243(e)(1)

(c) Any crime in which the victim comes within the following categories as set forth in Family Code section 6211:

i. A spouse or former spouse.

ii. A cohabitant or former cohabitant, as defined in Section 6209.

iii. A person with whom the respondent is having or has had a dating or engagement relationship.

iv. A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 [commencing with Section 7600] of Division 12).

v. A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

vi. Any other person related by consanguinity or affinity within the second degree.

(d) Stalking

5) Elder abuse offenses

3. VIOLATIONS OF CITY ORDINANCE

The District Attorney's Office does not prosecute violations of city ordinances unless the violation is joined in a complaint alleging a violation of some state code. Violations of city ordinances standing alone should be referred to the appropriate city attorney.

4. JURISDICTIONAL ASPECTS OF CHARGING

a. Procedure for Making Selection Decisions

Whenever a case is brought to a deputy district attorney's attention in which jurisdiction and venue are proper in other counties as well as Ventura, he shall immediately review the facts and consider the factors listed below.

If a decision is made to proceed immediately to file the case in Ventura County, the investigating officer shall be instructed to notify the other law enforcement agencies involved.

b. Relevant Factors: Relative Priority

In selecting the appropriate county or counties in which to prosecute a particular case, the following factors should be considered. These factors are listed in descending order of importance:

1) The ability to prove that a particular crime to be charged was committed in whole or in part within a particular county. If multiple crimes are involved, the relative ability to prove particular charges within particular counties should be weighed against the relative seriousness of those particular charges;

2) The ability to consolidate and successfully prosecute the greatest number of significant appropriate charges with a particular county;

3) The ability to consolidate and prosecute cases against multiple accused within a particular county;

4) The location of the place where the most serious crime was committed:

   - In cases involving thefts where stolen property is moved from one county to another, the county where the property is recovered will be the appropriate county, unless it can be proven that the accused committed the actual theft and can be successfully prosecuted in the county where this theft took place.

   - In cases involving escapes from penal institutions, the county where the escape actually occurred will generally be the appropriate county, other factors being relatively equal.

5) The Convenience of prosecution witnesses.

Commentary

Because of the many variables involved in the prosecution of particular cases, it is impossible to formulate exact rules. Certain preferences are set forth. For example, if it can be proved that a particular accused committed the crime of auto theft in County A, the accused should generally be charged in that county even if he was caught driving the car in County B. However, it will usually be difficult to prove that the accused committed the theft without direct evidence, so the accused would probably be charged with a violation of Vehicle Code section 10851 or Penal Code section 496 in County B.

Cases involving multiple murders or other crimes against the person are even more difficult to classify. Each of the factors set forth should be carefully considered in such cases.

5. RAMEY WARRANTS

a. Definition

A *Ramey* warrant is an arrest warrant not supported by a criminal complaint and is statutorily authorized by Penal Code section 817. Such a warrant enables an arrest to occur inside a suspect's residence.

b. Issuance

Any deputy district attorney authorized to issue felony complaints may approve a *Ramey* warrant.

6. OBSCENITY

a. We will review and prosecute provable cases in the following categories:

- Cases in which minors are involved in the production, distribution, or viewing of explicit material.
- Cases in which individuals or sexual acts are depicted in an extremely degrading fashion, including but not limited to sexual activity with animals.
- Cases involving matter depicting the subjecting of individuals to gratuitous violence in association with sexual activity.
- Cases concerning the production of sexually explicit photographs or movies wherein individuals are paid to perform sex acts, which can be prosecuted as pandering.

b. The assignment of such cases will be determined by the nature of the media used and there are identified child or sexual assault victims associated with the material. If there are victims who will testify, the cases will be prosecuted by the SAFP unit. Cases involving electronic and digital media alone (without victims) will be prosecuted by the Computer Crimes unit.

c. Matter not covered by the above categories, such as nudity and non-obscene explicit sexual activity, enjoys the limited protection of the First Amendment and is consequently best handled by means other than criminal prosecution. Such remedies include zoning laws and public nuisance abatement actions which can be brought by counsel for the local government entity where the problem is located.

Commentary

So long as the community is willing to bear the substantial expense of the lengthy investigations and prosecutions in obscenity cases, the District Attorney is prepared to prosecute them, allowing the community to set its own standards through its 12 members

that will sit as jurors. Policy in this area is further detailed in a six-page document on obscenity cases issued in December 1986.

Variation from this policy requires supervisorial approval.

For a description of diversion, see section 1000 of the Penal Code.

ARTICLE VII. MISDEMEANORS

Section 3.01, CASE DISPOSITION POLICIES

A. GENERAL POLICIES

1. CASE DISPOSITION OFFER

A case disposition offer is an offer to a defense attorney or a pro per defendant setting forth the District Attorney's case settlement position. It consists of two parts: the charge or charges and the sentencing range. Both will be discussed below in some detail. Generally, the complaint review deputy makes the initial offer on a misdemeanor case. This is called the arraignment offer. Unless a deputy has been granted disposition authority, a deputy may not reduce or modify the offer without supervisory approval. If the offer is accepted, the case, of course, is concluded. If it is not, the case is set for trial. An offer may be accepted by the defendant at any time prior to trial unless a deputy has placed a specific time limit on our offer.

Communicated offers bind the office until the date specified for acceptance or until the case is assigned to a trial court. This is one reason why it is imperative to write in the file that you have verbally communicated an offer to the defense and when it expires. You should also note the date, the location, the person receiving the offer, and his response. Arraignment offers are an exception. A rejected arraignment offer is no longer binding on the office. Pleading not guilty and setting the case for trial is equivalent to a rejection of the arraignment offer.

A post-arraignment offer may be made by any deputy but it will most likely be made by the workup deputy. The offer must be the same or higher (increased jail time) than the arraignment offer unless approved by misdemeanor supervisor. Again, if the offer is communicated, that fact must be noted in the file. Deputies with disposition authority subsequently reviewing the file, i.e., Courtroom 14 deputy, have the authority to change non-communicated offers and they should not hesitate to do so where new information (rap sheet) is available that the workup deputy may not have seen. As noted below, a deputy may not reduce an offer below the guidelines set forth below unless authorized by the misdemeanor supervisor.

2. THE CHARGE

A defendant shall plead to the most serious offense and no less than (1/3) of all offenses, or go to trial. Examples:

a. A defendant charged with a Vehicle Code section 23152(a) or (b) offense shall be required to plead to one of those charges.

b. A defendant charged with Vehicle Code section 23152 and 14601 offenses (arising from the same incident) shall be required to plead to the 23152 offense.

c. A defendant charged with a violation of Penal Code section 242 must plead to the 242 (not 415 or some other offense).

d. A defendant charged with violation of Penal Code sections 459 and 602 must plead to 459.

3. SPECIFIC CRIMES

Listed below are approved sentencing offers for those violations of the Penal Code, Vehicle Code, and Health and Safety Code which we file on a regular basis. The criteria used in arriving at the offers included a number of factors, including:

a. The statutory maximum sentence.

b. The seriousness of the charge.

c. The seriousness of the defendant's conduct and the specific circumstances surrounding the conduct.

d. Whether there are violations of probation, and whether they are for a similar offense; also, how recent is the violation of probation.

e. The defendant's past record, especially for crimes of violence and similar offenses.

The offers set forth below represent a minimum offer. A lesser offer may not be made unless first approved by the misdemeanor supervisor. Certain factors may, however, be present that demand that more jail time be recommended. These factors include, but are not limited to: aggravated conduct, serious injury, high value of property stolen or damaged, recent probation violation(s), and a record of similar conduct. A deputy should not hesitate to increase the offer where the facts warrant it. You should also be familiar with all other policies concerning sentencing.

PENAL CODE

§148 Resisting or delaying an officer performing his duties

a. First-time offense: flight only – summary probation and fine; resistance – minimum of 48 hours in jail; 5 to 10 days if conduct is egregious.

b. With violation of probation: if similar or related offense: 30 to 90 days in jail.

§192(c)(2) Vehicular manslaughter without gross negligence

a. All violations: no sentence commitment – cases are submitted to the Probation Department which generates a report with a recommended sentence. The District Attorney's Office is not bound by this recommendation and may at sentencing argue for a different disposition.

§242 Battery

a. First-time offense: probation and a stay away order; 48 hours jail or 5 days work release; 10 days jail if conduct is egregious. With any battery the amount of jail time recommended increases with the level of injury to the victim and the aggravated nature of the defendant's conduct.

b. With a related prior offense or violation of probation: a minimum 10 days in jail.

§243(d) Battery causing serious bodily injury

a. First-time offense: a minimum 30 days in jail; as with any battery, the amount of jail time recommended increases with the level of injury to the victim and the aggravated conduct of the defendant.

b. With violation of probation: minimum 60 days in jail.

§243(e) Battery against former spouse/fiancé/dating relationship

a. First time offense: 36 months formal probation with terms pursuant to PC § 1203.097 and 10 to 30 days in jail; as with any battery the amount of jail time recommended increases with the level of injury to the victim and the aggravated nature of the defendant's conduct; restitution for reasonable costs of victim's counseling; term of no contact with the victim if warranted by the facts; fine or restitution to battered women's shelter.

b. With violation of probation: minimum of 30 days in jail.

c. Second violation: formal probation with the same terms as a first-time offense and 45 to 60 days in jail.

§245(a) Assault with a deadly weapon or force likely to produce great bodily injury

a. All violations: no sentence commitments; as with 192(c)(2), cases are submitted to the Probation Office for a report and recommendation; the District Attorney's Office is not bound by this recommendation and may at sentencing argue for a different disposition.

§273a(b) Misdemeanor child abuse

a. First Offense: 48 months formal probation; recommendation for jail term contingent on seriousness of the offense; protective order protecting child from further violence or threats and stay away terms, is appropriate; one year of child abuse counseling; drug and alcohol terms, if appropriate.

§273.5 Battery on spouse, cohabitant or parent of child

a. First time offense: formal probation with terms pursuant to PC § 1203.097 and a minimum of 20 days in jail; the amount of jail time recommended increases with the level of injury to the victim and the aggravated conduct of the defendant; fine or restitution to a battered women's shelter; no force, violence, annoyance, harassment, or threatening of the victim; restitution for reasonable costs of victim's counseling; weapons terms if appropriate.

b. Second offense within seven years of prior offense: formal probation with first time terms and 45-60 days in jail.

c. Third offense within seven years of last conviction: formal probation with first time terms and 90-180 days in jail.

§273.6 Violation of a domestic violence protective order

a. First time offense: formal probation and 48 hours in jail or 5 days work release; domestic violence counseling; term of no contact with the victim; fine or payment to battered women's shelter, and restitution for costs of victim's counseling.

b. Second offense: formal probation with first terms and 10-20 days in jail. First offense with injury to the victim: mandatory minimum of 30 days in jail.

c. First offense with injury to the victim: mandatory minimum of 30 days in jail.

d. 273.6 is charged as a felony in the following situations:

1) Prior conviction within seven years with an act of violence or a credible threat of violence.

2) Prior conviction within one year with physical injury to the victim.

§314.1 Indecent Exposure

a. First time offense: Three years formal probation; 30 days jail; term of no contact with victim; sex offender registration pursuant to Penal Code section 290; sex offense counseling.

b. Second offense or offense with a prior 288 conviction: charged as a felony.

§415 Disturbing the peace by fighting, loud noise or offensive words

(if charged as the only count, this should normally be filed as an infraction unless gang related or aggravated)

a. First time misdemeanor offense: probation and fine; if aggravated minimum 48 hours jail or 5 days work release.

b. If gang related or with a recent or prior violation of probation: minimum 30 days of jail.

§417(a)(1) Brandishing a weapon

a. First time offense: 36 months probation with weapons terms and 30 days jail.

b. With related prior offense or violation of probation: probation and 90 days jail.

§417(a)(2) Brandishing a firearm

a. First-time offense: 36 months probation with weapons terms and 90 days jail.

b. With related prior offense or violation of probation: a minimum of 120-180 days jail.

§459 Burglary

a. First-time offense: minimum 10 days jail.

b. With theft-related prior or violation of probation: 90 days to 1 year in jail.

§470 Forgery

a. First-time offense: probation and 0-30 days jail; the recommendation depends on the number of checks and the amount forged.

b. With past criminal record or violation of probation: a minimum 30 days jail.

c. If prior similar offenses, should normally be filed as a felony.

§476(a) Knowingly writing a check with insufficient funds

a. First time offense: summary probation, fine and 120 hours direct work. May dismiss if defendant pays full restitution.

b. With related prior offense or violation of probation: a minimum 30 days jail.

§484 Petty Theft

a. If less than $50.00 with no evidence of acting in concert with another or planning: Infraction and fine.

b. If more than $50.00 or with evidence of planning or acting in concert: summary probation, search terms and 24 hours jail.

c. With prior 484 offense for which defendant did not serve jail time: probation and 5 days jail.

d. All other second time thefts should be filed as PC 666 with minimum 10 days jail.

§487 Grand Theft

a. First-time offense: 36 months summary probation and a minimum of 20 days jail.

b. With a prior theft offense or violation of probation: a minimum of 60 days jail.

§496 Receiving, possessing or selling stolen property

a. First-time offense: 36 months summary probation and a minimum 48 hours jail.

b. With a prior theft offense or violation of probation: a minimum 30 days jail.

§594(b) Malicious mischief – vandalism under $400

Probation, fine, restitution

§594(b) Malicious mischief – vandalism more than $400

a. First-time offense: summary probation, restitution fine; if graffiti related – 48 hours jail or 5 days work release.

b. With a related prior offense or violation of probation: a minimum 10 days jail.

§602 et seq Trespassing

a. First time offense: probation with stay away order.

b. With a related prior offense or violation of probation: a minimum 48 hours jail or 5 days work release.

c. Past criminal record or theft-related offenses: a minimum 10 days jail.

§646.9 Stalking

a. First-time offense: formal probation and 180-365 days in jail; domestic violence counseling; restraining order forbidding contact with the victim for up to 10 years; counseling as designated by the court; possible certification to state mental hospital.

b. 646.9 is charged as a felony if there is a restraining order in effect, or for subsequent felony violations of this section.

§647.6 Annoying or molesting child under 18

a. First-time offense: no commitments regarding jail time. Cases are submitted to the Probation Department for a report. The District Attorney's Office is not bound by this recommendation and may argue for a different disposition at sentencing. Mandatory terms of formal probation include sex offender counseling; term of no contact with the child victim, if appropriate; and sex offender registration pursuant to Penal Code section 290.

b. Felony for second offense of this section or new violation of this section with prior convictions of 288 or 311.4.

§12020 Possession of a deadly weapon (includes billy clubs, brass knuckles, nunchaku, dirk, daggers, disguised weapons and certain firearms)

a. First-time offense: If billy or brass knuckles, summary probation, fine; all others –minimum 24 hours jail.

b. With related prior offense or violation of probation: 15 to 30 days jail.

§12025 Possession of a concealed firearm

§12031 Possession of a loaded firearm[1]

a. First-time offense: summary probation, weapons terms, 30 days jail.

b. With a related prior offense or violation of probation: 90 days jail.

HEALTH AND SAFETY CODE

§11364 Possession of narcotic paraphernalia

a. First-time offense: CTS.

b. Second offense: probation and search terms.

§11550 Being under the influence of a controlled substance

a. First time offense: 90 days jail or diversion.

b. With similar violation of probation: 120 days jail.

c. Multiple prior violations of 11550 H&S: add 30 days jail for each prior violation; after fourth prior violation, add 60 days jail.

VEHICLE CODE

§31 Giving false information to a police officer

a. First-time offense: fine.

b. Second offense or related violation of probation: a minimum 48 hours jail.

§10851 Unlawfully taking or driving the motor vehicle of another

a. First-time offense: probation and 10 days jail.

[1] Because Penal Code section 1028 does not provide for destruction of weapons following a conviction for 12031, when both 12031 and a section requiring destruction (12020, 653k, 12025) are charged, we require a plea to the charge mandating destruction.

b. With a theft-related prior offense or violation of probation: minimum 30 days jail.

§12500 Driving without a license

a. Normally direct filed as infraction

b. If multiple repeat offenses, may file as misdemeanor: probation, CTS.

§14601(a) Driving on a license suspended for being a negligent operator or reckless driver

a. First-time offense: probation and 5 days jail. Reduce to 12500 if defendant shows valid license.

b. With prior conviction for 14601 offense within 5 years: a minimum 10 days jail.

§14601.1 Driving on a license suspended for reasons other than those for 14601(a), 14601.2, or 14601.5

a. Normally direct filed as infraction

b. If multiple repeat offenses, may file as misdemeanor: probation, CTS.

§14601.2 Driving on a license suspended for driving under the influence of alcohol or driving with blood alcohol level over .08 conviction

a. First-time offense: 36 months summary probation, 10 days jail.

b. With violation of probation: minimum 15 days jail.

c. With prior 14601 conviction within 5 years: a minimum 30 days jail.

d. With multiple related violations of probation and/or prior convictions: an additional 15 days jail for each prior, which can increase depending on the number of violations.

§14601.5 Driving on a license suspended for refusing to take a chemical test or for driving with excessive blood alcohol

a. First-time offense: summary probation, 5 days jail.

b. With prior 14601 conviction within 5 years: a minimum 10 days jail.

c. With related violation of probation: a minimum 15 days in jail.

d. With multiple related violations of probations or prior convictions: an additional 15 days jail for each prior, which may increase depending on the number of violations.

§20001(a) Hit and run accident involving injury

a. First-time offense: minimum 48 hours jail.

b. With violation of probation: a minimum 10 days jail.

§20002(a) Hit and run accident causing property damage

a. First-time offense: probation, fine, restitution.

b. With violation of probation: a minimum 48 hours jail.

§23103 Reckless driving

a. First-time offense: fine only.

b. First-time offense (aggravated): minimum 24 hours jail or 2 days work release.

c. With related violation of probation: minimum 10 days jail.

§23109(c) Exhibition of speed

Directly filed as infractions

§23152(a)(b) Driving under the influence of with a blood/breath alcohol level .08 or greater

a. Arraignment disposition minimum

1. First time offense: 36 months formal probation, 1VCJ, fine

2. With one prior conviction within 10 years: 60 months formal probation, abstain, interlock, 25 days jail (add 15 days jail if still on probation for DUI)

3. Two prior convictions within 10 years: 120 days jail (add 30 days for each probation or out of time prior).

b. Trial disposition minimum

1. First time offense: 36 months formal probation, 48 hours jail, fine

2. With one prior conviction within 10 years: 60 months formal probation, abstain, interlock, 35 days jail (add 15 days jail if still on probation for DUI)

3. Two prior convictions within 10 years: 130 days jail (add 30 days for each probation or out of time prior).

c. Fourth offense within 10 years: will be filed as a felony.

4. MISDEMEANOR COMPLAINT DISMISSALS

A deputy shall not dismiss a misdemeanor complaint without the prior approval of a supervisor. If such dismissal approval is given, the supervisor or a deputy acting upon the supervisor's direction shall record that fact in VCIJIS case maintenance (Tab #19 "Dismissal Notes") with the date and reason(s).

5. REDUCTION OF MISDEMEANORS

A deputy shall not reduce a misdemeanor count without the prior approval of a supervisor.

EXAMPLE: Defendant is charged with violation of Penal Code section 242. Defendant shall not be allowed to plead guilty to section 415 of the Penal Code without supervisor approval.

A deputy may reduce a misdemeanor/infraction (Penal Code §§ 17(d) and 19.8) to the infraction without the prior approval of a supervisor if the "wobbler" is the only offense charged.

6. INFRACTION CASES

A deputy, without supervisor approval, may dismiss an infraction when:

a. The deputy, after considering all available evidence, is satisfied the defendant's guilt cannot be proven beyond a reasonable doubt.

b. Necessary witnesses fail to appear for trial; or

c. Necessary witnesses will be unavailable for trial.

Before dismissing an infraction, a deputy shall make every reasonable effort to discuss the case with the arresting or citing officer.

B. JUDICIAL PLEA BARGAINING

The deputy district attorney handling the case shall oppose any judge-initiated plea bargaining and/or entry of conditional pleas.

In the event that a judge initiates plea bargaining, in violation of Penal Code 1192.7, the deputy district attorney handling the case shall:

1. Object to the procedure on the ground that it violates Penal Code Section 1192.7, and

2. Shall inform the judge that if he/she continues the plea bargaining process, the District Attorney's Office will move that the judge be disqualified pursuant to Code of Civil Procedure section 170(5).

Commentary

On occasion a court is inclined to sentence bargain with a defendant. This process may involve not only a commitment regarding the particular sentence but also permission to withdraw the plea should the court later change its mind at the time of sentencing. The District Attorney's Office opposes judicially initiated bargaining because such commitments can result in the imposition of a sentence less than deserved (derogation of justice) or in prejudicial delay of the case (due to withdrawal of a plea and resetting for trial).

C. COLLATERAL CONSEQUENCES

The felony policy regarding consideration of collateral consequences such as immigration consequences, the effect of conviction upon professional licensure, or upon eligibility for public benefits (Article IV, section 4.01(A)(1)) also applies in misdemeanor cases.

D. RESTITUTION

The deputy district attorney handling the case shall request an order for restitution at the time of sentencing where the victim has sustained a pecuniary loss, whether or not the defendant is placed on probation.

Restitution orders at the time of sentencing are more effective than orders that restitution is "to be determined" at a later date. Deputies working up misdemeanor cases for trial, or the victim advocate if one has been assigned, should contact the victim to seek information and documentation regarding restitution so it can be requested at the time of sentencing. Unless we have obtained specific restitution information from the victim, no disposition offer shall contain a stipulated agreement concerning restitution.

E. CORRUPTION AND OBSTRUCTION OF JUSTICE

1. POLICY

A defendant charged with an offense involving corruption or obstruction of justice shall plead guilty to the charge or proceed to trial.

2. DEPARTURE FROM POLICY

In extraordinary circumstances, and in the interest of justice, a Chief Deputy may approve, in writing, the dismissal of a charge involving corruption or obstruction of justice. A request for such approval shall be in writing and shall set forth the basis for the request.

3. CORRUPTION AND OBSTRUCTION OF JUSTICE OFFENSES

The following are examples of charges involving corruption or obstruction of justice:

PENAL CODE

Section	Coverage
67	Offer to Bribe Executive Officer
67.5	Offer to Bribe Public Employee
68	Acceptance of Bribe by Public Employee
69	Obstructing Executive Officer
70	Public Employee Receiving Gifts
71	Threats to Public Officer
73	Appointment to Office: Giving Gratuity
74	Appointment to Office: Accepting Gratuity
92	Bribing Judicial Officer
93	Accepting Bribe by Judge or Juror
94	Judicial Officer Requesting Gifts
95	Corrupt Influencing of Jurors
96	Juror Misconduct
118	Perjury
127	Subornation of Perjury
132	Offering False Documentary Evidence
133	Deceiving a Witness

134	Preparing False Documentary Evidence
135	Destroying Evidence
136.1	Dissuading Witnesses and Victims
137	Influencing Witness Statements to Law Enforcement Officials
165	Bribery of Public Official
169	Parading by Courthouse to Influence a Judge or Jury
182(5)	Conspiracy to Obstruct Justice
653f(a)	Solicitation of Perjury

F. CIVIL COMPROMISES

A deputy district attorney shall not agree to the dismissal of a misdemeanor case pursuant to Penal Code sections 1377-1378.

Commentary

The central purpose of these sections can better be accomplished by a conviction and victim restitution pursuant to conditions of probation.

G. PROBABLE CAUSE STIPULATIONS

A deputy district attorney shall not attempt to obtain from an accused and/or his counsel a stipulation that there was probable cause to arrest the accused in cases where there is to be a reduction or dismissal of the charge(s).

H. DISMISSAL OF CASES REVERSED ON APPEAL

A deputy district attorney shall not move to dismiss a case that has been reversed on appeal without first obtaining written authorization from the Chief Deputy District Attorney or the Chief Assistant District Attorney.

Commentary

The purpose of this policy is to avoid dismissing a case that involves legal issues on which the State Attorney General may seek review. Dismissal renders review moot.

I. REPORT OF DISMISSAL

A deputy district attorney shall prepare a VCIJIS Tab #19 Dismissal Note and email it to the unit supervisor within two business days of:

- A dismissal by the court of all counts against an accused without the deputy's concurrence;
- An acquittal on all counts;
- A decision by DA supervisory personnel not to seek resetting of case after a hung jury; or
- A case disposition on terms different from the offer noted on the complaint issuance or readiness memo.

Commentary

The reporting of dismissals serves three purposes:

- It permits internal constructive review;
- It facilitates the initiation of appellate relief; and
- It makes a clear record of the reasons for a given outcome.

These notations should be an honest attempt to explore what went wrong and what can be done to improve. In preparing the notation, consideration should be given to:

- Police investigation and workup;
- Initial filing decision;
- Pretrial workup;
- Jury selection;
- Trial problems;
- Comments of jurors, judges, etc.

ARTICLE VIII. MISDEMEANORS

Section 3.02, ARRAIGNMENT

At a later date, the chapter on Arraignments will be completed and inserted.

ARTICLE IX. MISDEMEANORS

Section 3.03, TRIAL

A. DISQUALIFICATION OF A JUDGE

1. PEREMPTORY CHALLENGE IN AN INDIVIDUAL CASE

(CODE OF CIV. PROC. §170.6)

A deputy district attorney shall not peremptorily challenge a judge without first obtaining supervisorial approval. The decision to challenge shall be discreetly exercised and confined to unusual situations. The affidavit shall state that the judge is prejudiced against the interest of the People and not that he is prejudiced against the attorney for the People.

2. BLANKET PEREMPTORY CHALLENGE (CODE OF CIV. PROC. §170.6)

A deputy district attorney shall not peremptorily challenge a judge in all cases without first obtaining approval from the Chief Assistant District Attorney.

3. CHALLENGE FOR CAUSE (CODE OF CIV. PROC. §170.1 ET SEQ.)

A deputy district attorney shall not challenge a judge for cause without first obtaining the approval from the Chief Assistant District Attorney.

B. PRO TEMPORE ("PRO TEM") JUDGES

A deputy district attorney shall not stipulate to a person serving as a judge "pro tem" without the approval of a Chief Deputy District Attorney or the Chief Assistant District Attorney.

C. WAIVER OF JURY

A deputy district attorney assigned a misdemeanor case for trial may waive the People's right to a jury trial without supervisorial approval, except in special interest cases.

D. EXERCISE OF PEREMPTORY JUROR CHALLENGES

Deputy district attorneys shall not exercise a peremptory challenge against a juror based upon race, ethnicity, gender, or membership in another constitutionally protected cognizable group. (*People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79; Code Civ. Proc. 231.5.) When a *Wheeler/Baston* motion is made, before the court makes a determination as to whether a prima facie case has been made of group bias, the deputy district attorney should state the reasons why the jurors were excluded on the record. (*Williams v. Runnels* (9th Cir. 2006) 432 F.3d 1102; *People v. Gray* (2001) 87 Cal.App.4th 781, 788.) If the court finds no prima facie case has been made without first obtaining input from the deputy district attorney, the deputy district attorney shall state for the record the reasons why the jurors were excused for purposes of appellate review. When a *Wheeler/Baston* motion has been made, the deputy district attorney shall preserve the notes from jury selection for later appellate review.

E. COMMUNICATIONS WITH JURORS AFTER VERDICT

A deputy district attorney or other district attorney employee may communicate with jurors after a trial so long as the jurors have been excused from further jury service and the deputy refrains from asking questions or making comments that might tend to harass or embarrass a juror or are intended to influence the actions of a juror in future jury service.

To improve future trial performance and law enforcement questions, a deputy district attorney shall make reasonable efforts to debrief the jury foreman upon conclusion of a case. Information should be sought about issues or evidence which were of concern to the panel, and what might be done in future cases to enhance prosecution efforts. This information shall be included in the jury trial report.

Commentary

State Bar Rule 5-320(D) reads as follows: "After discharge of the jury from further consideration of a case, a member shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service."

An October 1986 informal opinion of the Attorney General in response to a request from this office concludes as follows:

A prosecutor may engage in reasonable post-trial discussion with a consenting juror. In the absence of a specific prohibitory rule or other binding provision, the prosecutor is not forbidden from providing trial jurors who have completed current jury service with information, not otherwise privileged, which was not admitted at trial, where the intent of the prosecutor is not to influence subsequent jury service or to harass or embarrass jurors. However, the prosecutor should ensure that the manner in which he goes about

this does not create the appearance that his intent is to influence subsequent jury service or to achieve any other prohibited objective."

Formal Opinion No. 1987-95 of the Committee on Professional Ethics of the State Bar of California concludes, under the predecessor to Rule 5-320, that: " an attorney may disclose to jurors after trial evidence which was excluded at trial as long as in doing so the attorney does not intend to harass or embarrass or influence the juror in future jury service.

Code of Civil Procedure section 206 provides that jurors have ". . . an absolute right to discuss the deliberation or verdict with anyone." Subsection (b) authorizes counsel to discuss the case with consenting jurors "...at a reasonable time and place." Subsections (c) and (d) require a report to the trial judge of any "unreasonable contact with a juror," and provide for monetary sanctions pursuant to Code of Civil Procedure section 177.5.

District Attorney employees should carefully consider the potential consequence of sharing with the juror facts about the case or the defendant which are not introduced at trial. The right of a juror as a citizen to know certain matters, especially matters of public record, should be balanced with the likelihood of prejudicing a juror's future jury service.

Although the applicable ethical rules directly affect only attorneys, all employees shall apply the same standards as a matter of office policy.

ARTICLE X. MISDEMEANORS

Section 3.04, POST-TRIAL

A. PROBATION AND SENTENCE HEARINGS

When a deputy district attorney represents the People at a probation and sentence hearing, (s)he shall be familiar with the facts, the District Attorney case file, the probation report, the law concerning probation eligibility, and sentencing procedures. When the deputy makes a sentence recommendation (s)he shall explain and justify that recommendation.

A proper sentence shall be commensurate with the severity of the offense and shall reflect:

1. The adequate protection of society from individuals who pose a danger to persons or property;

2. The appropriate punishment of individuals who violate the law;

3. The deterrence of the individual defendant at bar, and members of the general public, from posing a similar danger in the future;

4. The rehabilitation of individuals so they can become law-abiding participants in a free society as a result of which other members of society can thereby be secure in the enjoyment of freedom.

Whenever it appears that a defendant will be granted probation, the deputy shall request an order requiring restitution to any victim who suffered pecuniary loss.

In appropriate driving under the influence cases, a deputy district attorney shall urge the impoundment of vehicles pursuant to Vehicle Code section 23195.

B. APPEALS AND WRITS

1. PEOPLE'S APPELLATE REVIEW

A deputy district attorney shall first obtain approval from the misdemeanor supervisor before initiating appellate review in a misdemeanor/infraction case. The misdemeanor supervisor should consult with the Chief Deputy District Attorney overseeing writs and appeals, concerning the availability of a writs and appeals deputy to handle or assist with the appellate action.

2. DIRECT APPEAL BY ACCUSED

All notices of appeal in misdemeanor prosecutions shall be handled by the Writs and Appeals Unit.

3. WRIT PETITION BY ACCUSED

All writ petitions in misdemeanor prosecutions shall be forwarded to the Writs and Appeals Unit by sending a PDF copy to appellateDA@ventura.org. The writ process shall be handled by the Writs and Appeals Unit.

4. DISMISSAL FOLLOWING REVERSAL ON APPEAL

Before a deputy district attorney may move to dismiss a case reversed by the Appellate division of the Superior Court or the District Court of Appeal upon appeal, written authorization must be obtained from either the Chief Deputy District Attorney overseeing the Writs and Appeals Unit or the Chief Assistant District Attorney.

C. PROBATION VIOLATION HEARINGS

A deputy district attorney shall consider initiating probation violation proceedings, pursuant to Penal Code section 1203.2(b), in lieu of filing a criminal complaint, when:

1. There is sufficient evidence to prove the violation, and

2. The probationer's conduct, which constitutes the violation, is either not criminal or not of sufficient gravity compared to the conduct for which he is on probation to warrant an independent criminal prosecution.

ARTICLE XI. FELONIES

Section 4.01, Case Disposition Policies

A. GENERAL POLICY

The Ventura County District Attorney's Office does not engage in plea bargaining. Plea bargaining is a practice in which a criminal defendant is allowed to avoid taking responsibility for his/her most serious provable conduct in exchange for a plea to a lesser offense. Plea bargaining demeans the cause of justice and undermines public safety.

It is the responsibility of every deputy district attorney to do justice and protect the public. "Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence." (Penal Code section 1192.7(a)(2).)

If a defendant wishes to enter a plea of Nolo Contendere, a deputy may use his/her discretion in determining whether to require the defendant to plead to all counts charged, other than those where conviction and sentencing is barred pursuant to Penal Code section 654. A deputy is responsible for advocating a position which ensures the protection of victims and ensures a similar result for similar crimes. If a deputy does not require a defendant to plead to all counts when entering a plea of Nolo Contendere, other than those where conviction and sentencing is barred pursuant to Penal Code section 654, a note documenting the reasons shall be entered into the note tab in VCIJIS.

Deputies shall follow the law and any plea disposition shall hold the defendant responsible for the most serious charges which most accurately describe the essence of the criminal conduct. Charge bargaining is prohibited. These are the central principles of our "no plea bargaining" policy.

Examples of application of these principles are:

(a) A defendant charged with multiple felonies shall be required to plead to those counts sufficient to authorize appropriate punishment. This will usually require

pleas to one-third of the most serious counts and special allegations associated with those counts.

(b) A defendant uses physical force to take cash or property from his victim. The essence of the crime is robbery (PC section 211), not grand theft person or petty theft. If the provable offense is of the first degree, the defendant must plead to that offense.

(c) A defendant charged with sexual assaults or violent crimes against multiple victims shall generally be required to plead to at least one of the most serious offenses against each victim which most accurately describes the defendant's conduct toward that victim.

(d) A defendant enters a residence and steals jewelry, cash and small appliances. The defendant must plead to first degree burglary.

(e) A defendant enters a residence, rapes the occupant and has the victim orally copulate him. The defendant is charged with burglary, rape, oral copulation and a Penal Code section 667.61 allegation. The defendant must plead to rape and admit a Penal Code section 667.61 allegation.

(f) On three occasions the defendant enters different residences and rapes the occupants. He is charged with three counts each of burglary and rape. The defendant must plead to three counts of rape.

(g) The defendant robs a bartender and two customers during a single incident. The defendant must plead to one count of robbery.

(h) The defendant enters a bar to kill a person. He fires at and wounds the person. The defendant is charged with burglary, attempted murder, use of a firearm and infliction of great bodily injury. The defendant must plead to attempted murder, use of a firearm and infliction of great bodily injury.

Unless a deputy has been granted dispositional authority, a deputy may not reduce or modify an offer without supervisory approval. Deputies shall adhere to strict ethical guidelines and refrain from engaging in any undue coercion. No count or allegation unsupported by sufficient evidence shall appear on the charging document.

It is inappropriate to consider matters of caseload expediency or other personal or non-case related concerns in determining a case disposition.

1. COLLATERAL CONSEQUENCES

Except as provided below, the deputy district attorney shall not agree, and shall object, to the amendment of charges or of charging language for the purpose of allowing the defendant to avoid immigration consequences, or to avoid the effect of conviction upon professional licensure or upon eligibility for public benefits. Courts have the authority to

amend accusatory pleadings to correct a "defect or insufficiency" (Penal Code section 1009), not to confer benefits in matters collateral to the criminal justice process. If the court makes such an amendment, the deputy district attorney shall discuss with his or her supervisor the possibility of appeal.

Collateral consequences are generally a normal and just consequence of a criminal conviction. However, in unusual cases, the collateral consequences may be so disproportionate to the severity of the crime and to the criminal punishment imposed as to be unjust. In such cases, the deputy district attorney's supervisor may approve deviation from our case disposition policy to avoid such consequences.

The prosecution, in the interests of justice, and in furtherance of the findings and declarations of Penal Code section 1016.2, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution. (Penal Code § 1016.3.)

The determination regarding collateral consequences is highly case specific and shall be based upon careful consideration of all relevant factors relating to both the crime and the defendant. The following guidelines are appropriate:

a. Case disposition based upon collateral consequences is generally not in the interest of justice in a case involving a serious or violent felony pursuant to Penal Code sections 667 or 1170.

b. In general, the less serious the crime, the more likely a collateral consequence will unjustly impact the resolution of a case.

c. In general, the shorter the sentence, the more likely a collateral consequence will unjustly impact the resolution of a case.

d. In contrast, a serious felony accompanied by a lengthy sentence will rarely warrant significant consideration of collateral consequences.

e. The prosecutor should determine an appropriate sentence based upon all appropriate traditional factors, and then if a significant downward departure is appropriate due to a disproportionate collateral consequence, the prosecutor should insist upon a concession to maintain parity with the original sentence. For example, if a charge will be modified to arrive at an immigration-neutral result, such as an alteration that precludes later charging the offense as a prior, the prosecutor may insist upon more custody time or a longer period of probation.

f. Any alteration of a charge must be justified by the facts, either in the original police report, or from subsequent investigation. For example, if a charge will be modified from possession of narcotics for sale to transportation of narcotics, the factual basis for the transportation charge can be secured through an admission by the defendant.

g. In immigration matters, an individual will often allege severe immigration consequences. However, these determinations are sufficiently complicated that they are often difficult to predict or verify. The remedy is to structure the disposition so that it is comparable to the original offer. For example, if the new offer includes additional custody time to compensate for a change in charge, it is unlikely that anyone would accept the offer unless they were actually facing the claimed collateral consequence.

h. The prosecutor's decision concerning collateral consequences should be transparent, always noted in the file, and when appropriate noted on the record.

Commentary

Robert Johnson, past president of the National District Attorneys Association, wrote in 2007, "Our job, our duty is to seek justice. How can we ignore a consequence of our prosecution that we know will surely be imposed by the operation of law? . . . These collateral consequences cannot easily be changed or bargained away when justice requires them. But we must consider them if we are to see that justice is done. . .. As a prosecutor, you must comprehend this full range of consequences that flow from a crucial conviction. If not, we will suffer the disrespect and lose the confidence of the very society we seek to protect." (NDAA, Message from the President, Feb. 14, 2007.)

In *Padilla v. Kentucky* (2010) 130 S.Ct. 1473, 1481, 176 L.Ed.2d 284, the Supreme Court noted, "We have long recognized that deportation is a particularly severe 'penalty,'[citation] but it is not, in a strict sense, a criminal sanction. . . . And, importantly, recent changes in our immigration law have made removal nearly an automatic result for a broad class of noncitizen offenders." The court continued, "By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties. As in this case, a criminal episode may provide the basis for multiple charges, of which only a subset mandate deportation following conviction. Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation, as by avoiding a conviction for an offense that automatically triggers the removal consequence." (*Id*. at p. 1486.)

The California Legislature has made findings regarding immigration consequences of convictions, and requires that prosecutors consider immigration consequences as one factor in plea negotiations. (Penal Code §§ 1016.2, 1016.3.)

(See Cal. Rules of Court, rule 4.414(b)(6), which includes as a factor as to whether to grant probation "[t]he adverse collateral consequences on the defendant's life resulting from the felony conviction.")

2. DEPUTIES SHALL ENSURE THE RIGHTS OF CRIME VICTIMS

Deputies shall ensure that crime victims have a voice in the criminal justice system. Whenever possible, the victim should be contacted to ascertain the impact of the crime and be given an opportunity to express their sentiments concerning punishment. Deputies shall comply with Section 28 of Article 1 of the California Constitution (Proposition 9, Victims' Bill of Rights Act of 2008, also known as "Marsy's Rights") which provisions include that upon request, a victim has the right to be notified of and informed before any pretrial disposition of the case and to receive the pre-sentence report when available to the defendant, except for those portions made confidential by law.

A 'victim' is defined under the California Constitution as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated." (Cal. Const., art. 1, section 28(e).)

3. COMMUNICATING THE DISPOSITION OFFER

The assigned deputy shall be responsible for communicating any disposition offer. When a supervisor sets the offer (counts and sentence), the assigned deputy shall advocate that offer at all times and never represent that the attorney favors a disposition different from the official position of the office. Offers shall be written prominently in the case file. Where practicable, offers should be communicated to defense counsel in writing (electronic mail, letter, or facsimile). Any correspondence concerning the District Attorney's position on sentencing shall be stored in the physical and/or electronic case file (VCIJIS). Every aspect of a sentencing agreement shall be written on the plea form and acknowledged by the deputy and defendant at the time of the defendant's change of plea and advisement of rights.

In extraordinary cases, when the interests of justice require it, a supervising attorney may authorize a disposition which departs from the standard disposition requirement and should note this in VCIJIS.

4. SENTENCE COMMITMENTS

While sentencing is a judicial function, deputies should advocate for sentences that are lawful, just and protect the community. California Rule of Court 4.410(b) mandates that the sentencing judge should be guided by statutory statements of policy, the criteria in the California Rules of Court, and the facts and circumstances of the cases.

A deputy should never remain silent or articulate a vague position on sentencing (e.g. "No Deals"). Unless a deputy has been granted dispositional authority by the supervisor, supervisorial approval is required prior to making a sentence commitment. The felony pretrial and EDC court (currently Division 12) calendar deputy or a deputy granted

dispositional authority by the supervisor may commit to a specific term of years in a disposition agreement. A deputy must advocate for a specific term of incarceration. The deputy shall consider the circumstances of the crime(s), the defendant's criminal history and all other factors bearing on punishment, provided that any reduction or dismissal of charges would not result in a substantial change in sentence. The deputy's offer is not an invitation to bargain with defense counsel or the court. The offer should reflect the deputy's sound judgment concerning an appropriate punishment for those charges which most accurately describe a defendant's criminal conduct.

If a judicial officer attempts to sentence bargain with a defendant and undercuts the deputy's position, the deputy may require the defendant to plead guilty to all charges and admit all special allegations, other than those where conviction and sentencing is barred pursuant to Penal Code section 654. For example, when a deputy takes a position that a case is worth a specific number of years in prison and offers to dismiss counts in return for that sentence, and the court indicates a lesser prison sentence or probation, the deputy, using his/her discretion, may require the defendant to plead to all charges and admit all special allegations other than those where conviction and sentencing is barred pursuant to Penal Code section 654. A deputy is responsible for advocating a position on sentencing which ensures the protection of society during any court discussion. If a deputy does not require a defendant to plead to all counts other than those where conviction and sentencing is barred pursuant to Penal Code section 654 when the court undercuts the deputy's position, a note documenting the reasons shall be entered into the note tab in VCIJIS.

A deputy should not engage the court with regard to minor terms. Conditions of standing in the community should not result in special terms and conditions of probation unavailable to most defendants. A deputy should advocate to ensure a similar result for similar crimes, while taking into account different criminal histories of defendants and other pertinent factors in assessing an appropriate sentence.

5. ENHANCEMENTS

There are generally two kinds of enhancements: (1) those that go to the nature of the offense (specific or conduct enhancements); and (2) those that concern the nature of the offender (recidivist enhancements or priors). As directed in Article II, section C of this policy manual, a deputy shall utilize all applicable special allegations which will enhance the penalty or which will result in the denial of probation. Accordingly, a deputy shall not use the threat of charging a currently uncharged enhancement to induce a plea. In cases in which the defense asks the court to strike an enhancement and such action is contrary to the position of the District Attorney, the deputy should state our position on the record and on the plea form filed with the court.

Second and third strike enhancements shall always be charged. If the assigned deputy believes the interests of justice require dismissal of a strike enhancement, the deputy shall prepare a memorandum to the unit supervisor recommending the dismissal. Supervisors are authorized to dismiss "strike" allegations that serve to double the length of a prison

term. If the court indicates an intention to dismiss a strike enhancement and our office has declined to dismiss the enhancement, the deputy shall state our objection on the record and document our objection in part III(D) of the filed Felony Disposition Statement. As resources permit, the best practice is for the deputy to file an opposition to the court dismissing a strike enhancement. This should be done in cases in which the deputy believes there is a legitimate chance that our opposition will influence the court.

When making a sentence commitment, a deputy may agree to a court-approved disposition when an enhancement is stricken at the time of sentencing with the following exceptions:

(a) Two Strikes Enhancements: A supervisor may authorize a deputy to omit a second strike (PC 667(e)(1), PC 1170.12(c)(1)) punishment enhancement from a disposition agreement.

(b) Three Strikes Enhancements: Only the Chief Assistant District Attorney may authorize a deputy to omit a third strike (PC 667(e)(2)(A)(i)-(iii), PC 1170.12(c)(2)(A)(i)-(iii)) punishment enhancement from a disposition agreement.

(c) Penal Code section 667(a)(1) Enhancements: A supervisor may authorize a deputy to omit a prior punishment enhancement pled pursuant to Penal Code section 667(a)(1) from a disposition agreement.

(d) 10-20-Life Firearm Enhancements (PC 12022.53): A supervisor may authorize a deputy to omit a firearm enhancement pursuant to PC 12022.53 from a disposition agreement in favor of an alternative firearm enhancement (PC 12022.5(a)).

(e) Great Bodily Injury Enhancements: A supervisor may authorize a deputy to omit a punishment enhancement for great bodily injury (P.C. 12022.7) from a disposition agreement.

(f) Vulnerable Victim Enhancements: A supervisor may authorize a deputy to omit punishment enhancements pertaining to vulnerable victims (PC 667.9(a),(b)), elderly victims (368(b)(2), (b)(3)) and hate-motivated crimes (PC 422.75(a),(b)) from a disposition agreement.

(g) Sex Crime Enhancements: A supervisor may authorize a deputy to omit the punishment enhancement defined in PC 1203.066 from a disposition agreement. Written authorization that includes the supporting rationale shall be placed into the file.

(h) Life Allegations Not Referenced Above: Only a Chief Deputy may authorize a deputy to omit a punishment enhancement carrying a possible life sentence from a disposition agreement. (e.g., PC 186.22(b)(4), 667.61).

(i) Mandatory Prison Enhancements: A supervisor may authorize a deputy to omit an allegation which mandates a state prison sentence from a disposition agreement. The supervisor should only authorize such a disposition upon a determination that a grant of felony probation to be in the interest of justice.

(j) Out on Bail Enhancement: A supervisor may authorize a deputy to omit the punishment enhancement defined in PC 12022.1(b) from a disposition agreement.

(k) Gang Enhancements: A supervisor may authorize a deputy to omit the punishment enhancement defined in PC 186.22(b)(1) from a disposition agreement.

(l) Use of a Deadly Weapon Enhancements: A supervisor may authorize a deputy to omit the punishment enhancements defined in PC 12022 from a disposition agreement.

6. COMMITTING TO PROBATION

(a) Serious and Violent Felony Cases (PC 667.5(c), PC 1192.7): A deputy shall advocate for state prison sentences. A deputy shall not commit to a grant of probation except in unusual cases where the interest of justice would best be served. Unless granted disposition authority by the supervisor, a deputy shall not commit to probation. The deputy shall clearly note his/her reasoning in the case file and in tab 19 in VCIJIS and advise the supervisor. ***In a multiple count case, the defendant shall plead the sheet if the court indicates or commits to probation at an EDC or pre-trial conference when we are seeking prison.***

(b) Non-Serious and Non-Violent Felony Cases: In cases not involving an allegation mandating a state prison sentence or a presumptive state prison sentence, a deputy may enter into a disposition which commits to a grant of probation. The deputy shall consider all circumstances relevant to the case and the defendant's criminal history when evaluating the defendant's suitability for probation. Above all else, the deputy shall consider public safety before committing to a grant of felony probation.

(c) Presumptive State Prison Cases: In cases in which the law indicates a presumption that a state prison sentence will be imposed, unless granted disposition authority by the supervisor, a deputy shall not commit to probation. The deputy shall clearly note his/her reasoning in the case file and in tab 19 in VCIJIS.

7. REDUCING FELONIES TO MISDEMEANORS (WOBBLERS)

Only a supervisor may authorize a deputy to reduce a felony charge to a misdemeanor. This may only occur where new facts and insight demonstrate that the defendant is deserving of a misdemeanor conviction. The deputy shall memorialize the justification for the reduction in the case file and in tab 19 in VCIJIS.

A supervisor shall not use the felony-misdemeanor alternative as a form of charge bargaining. A deputy shall amend the charging document and reduce the felony count at issue to a misdemeanor and communicate to the defense that the reduction is not part of a plea bargain and that the defendant may proceed to trial on the misdemeanor charge. Deputies should only reduce a felony to a misdemeanor where the defendant is deserving of a misdemeanor conviction, irrespective of the defendant's desire to defend against the allegation in court.

8. SUBMISSIONS ON TRANSCRIPT

Counts will not be dismissed in connection with SOTS without supervisorial approval.

9. REALIGNMENT POLICY

The following policies are adopted in response to the enactment of the Criminal Justice Realignment Legislation first enacted in 2011.

The existing policy regarding sentence commitments which appears in this manual under the heading "4. Sentence Commitments:" shall apply to crimes to be punished by imprisonment in county jail, as defined in Penal Code section 1170(h)(1) and (2). A deputy granted dispositional authority by a supervisor should formulate offers based on the exercise of sound discretion consistent with Section (b) below.

(a) Prison-Eligible Offenses (Violent, Serious, Sex, or Excluded Offenses and Priors)

1. The deputy shall charge provable counts, priors and enhancements that would make a defendant eligible for state prison.

2. In offering a disposition or when handling a sentencing, the deputy shall determine which offenses, priors or allegations would make a defendant eligible for prison.

3. Any plea disposition shall hold the defendant responsible for the most serious charges which most accurately describe the essence of the criminal conduct. The more serious offense is generally the charge that carries the higher sentencing exposure. If a defendant is charged with both prison-eligible and "non/non/non" offenses (Penal Code section 1170(h)(1) or (2)), prison-eligible offenses will generally be considered more serious. Absent supervisory approval, the defendant shall plead to one or more prison-eligible offenses.

4. Pursuant to Penal Code section 1170(f), allegations that would make a defendant eligible for prison are not subject to dismissal under Penal Code section 1385. Dismissal or striking of priors or other enhancements must be approved as provided in the existing policy.

(b) Non/Non/Non Offenses (Penal Code section 1170(h)(1)(2) & (5))

1. In some cases, a terminal disposition of a jail sentence, or a hybrid sentence of jail followed by mandatory supervision (Penal Code 1170(h)(5)) may serve the interests of justice better than a traditional probation term (which generally will include jail as a condition of probation) (Penal Code section 1203). In other cases, a traditional probation term may be more appropriate. In offering a disposition and in arguing sentencing, the deputy shall take into account the following factors:

a. The imposition of an adequate period of incarceration for purposes of punishment, deterrence, and protection of society.

b. The severity of the crime and the prior record of the defendant.

c. The need for probation supervision to protect society and to deter the defendant from reoffending.

d. If restitution is ordered, the availability of opportunities and mechanisms to obtain restitution.

e. The rights of crime victims.

B. CORRUPTION, OBSTRUCTION OF JUSTICE, AND CIVIL RIGHTS VIOLATIONS

1. POLICY

A defendant charged with an offense involving corruption, obstruction of justice, or a civil rights violation shall plead guilty to the charge or proceed to trial. The policy is the same for felonies as it is for misdemeanors. (Refer to Article III, Section 3.01D.)

2. CIVIL RIGHTS VIOLATIONS

For these purposes “civil rights violations” include all crimes motivated, in whole or part, by race, color, religion, ancestry, national origin, disability, gender or sexual orientation.

The following are examples of charges involving civil rights violations: Penal Code sections 422.6, 422.7, and 422.9.

The requirement of a plea to a charged civil rights violation applies even where another, more serious offense is involved in the case. In such situations there must be a plea to both the civil rights violation and the more serious charge.

C. DISMISSAL OF FELONY CASES

1. CASES REVERSED ON APPEAL

Only the Special Assistant District Attorney or a Chief Deputy District Attorney may authorize dismissal of a case that has been reversed by an appellate court or on habeas corpus.

Commentary

The purpose of this policy is to avoid dismissing a case that involves legal issues on which the State Attorney General may seek review. Dismissal renders review moot.

2. FELONY DISMISSALS

A deputy shall not dismiss a felony case, including cases proposed to be dismissed and re-filed, without the prior approval of a supervisor. If such approval is given, the supervisor or a deputy acting upon the supervisor's direction shall record the approval in VCIJIS case maintenance (Tab #19 "Dismissal Notes") with the date and reason(s), and a deputy shall email the Dismissal Note drafted by the deputy to his or her supervisor.

3. REPORT OF DISMISSAL

A deputy shall prepare a VCIJIS Tab #19 - Dismissal Note and email it to the unit supervisor within two business days of:

- A dismissal by the court of all counts against an accused without the deputy's concurrence;
- An acquittal on all counts;
- A decision by DA supervisory personnel not to seek resetting of case after a hung jury;
- A reduction by the court of a felony to a misdemeanor after the case has been assigned to the court for jury trial. In such circumstances the assigned deputy shall object during any chambers conference as well as on the record.

Commentary

The reporting of dismissals serves three purposes:

- It permits internal constructive review;
- It facilitates the initiation of appellate relief; and
- Makes a clear record of the reasons for a given outcome.

These notes should be an honest attempt to explore what went wrong and what can be done to improve. In preparing the memo, consideration should be given to:

- Police investigation and work up;

- Initial filing decisions;
- Preliminary examination/post indictment memorandum and recommendation;
- Pretrial workup;
- Jury selection;
- Trial problems;
- Comments of jurors, judges, etc.

ARTICLE XII. FELONIES

Section 4.02, Preliminary Examination

A. WAIVER OF PRELIMINARY EXAMINATION

Advanced written supervisorial approval is required ***since waiver of a preliminary examination may foreclose our ability to amend the information to include additional charges.*** When a waiver occurs, the assigned deputy is responsible for obtaining the defendant's waiver in open court. A Preliminary Examination Memorandum shall be prepared even if a waiver has occurred.

B. PRO TEMPORE "PRO TEM" JUDGES

A deputy district attorney may not stipulate to a judge pro tem without the approval of a Chief Deputy District Attorney or the Chief Assistant District Attorney.

C. DISQUALIFICATION OF A JUDGE (CODE OF CIV. PROC. 170 et seq.)

(Refer to Article III, Section 3.03A. The policy is the same for misdemeanors and felonies.)

D. PRELIMINARY EXAMINATION MEMORANDUM

(For additional guidelines refer to the "Prelim Manual" located on the DA Web)

The prelim deputy shall prepare a preliminary examination memorandum within 96 hours after the prelim. The deputy shall use the following format:

DATE

TO FILE

FROM

DEFENDANT (indicate age)

CASE NO.

COMPLAINT DEEMED INFORMATION OR COURT DATE FOR ARRAIGNMENT

OFFENSE (indicate triads)

DATE OF PRELIM

DEFENSE COUNSEL

MAGISTRATE

RESULTS OF PRELIM

BAIL STATUS

ISSUING DEPUTY

POLICE AGENCY

EDC OFFER

RECOMMENDED FILING

APPROVED FILING

APPROVED OFFER

STATEMENT OF FACTS

(Summary)

(Details)

DEFENDANT'S STATEMENT

OTHER INFORMATION

WITNESS AVAILABILITY

LOCATION OF EVIDENCE

INVESTIGATION TO DO

EVALUATION OF TAPES

THEORY OF DEFENSE

NEGOTIATIONS

RAP SHEET (Date/Agency/Offense/Dispo)

EVALUATION

RECOMMENDATION

The information to be provided under each title is as follows:

DATE: The date the deputy dictates or otherwise prepares the memorandum.

FROM: The name of the prelim deputy.

DEFENDANT: The defendant's full name and age, as well as any aliases.

CASE NO.:

INFORMATION ARRAIGNMENT: The date when the defendant is ordered to appear in Superior Court by the magistrate.

The date when the Information is due for filing in the Superior Court.

Commentary: These two dates are generally the same. The magistrate generally orders a defendant to appear in the Superior Court two weeks (14 days) from the order holding to answer, and the District Attorney's Office prepares and files an Information on that day which is within the requirement of Penal Code section 739 (that an Information be filed within 15 days of the commitment order).

OFFENSE: All charges and special allegations. Indicate the charge and special allegation(s) that relate to each count. Specify the time period of each offense.

DATE OF PRELIM: The date of the preliminary examination. If the preliminary examination took more than one session, list all dates of the preliminary examination.

DEFENSE COUNSEL: The attorney who represents the defendant. In the case of multiple defendants, indicate which attorney represents which defendant. If the defendant is represented by the Public Defender's Office, identify the deputy public defender.

MAGISTRATE: The judge who presided over the preliminary examination.

RESULTS OF PRELIMINARY EXAMINATION: Set forth all the offenses on which the defendant was held to answer, whether charged or uncharged. Identify any charges on which the defendant was not held to answer. Indicate the magistrate's findings concerning any special allegations.

BAIL STATUS: Indicate the amount of bail and whether the defendant is in custody. Set forth any change in the bail or custody status during or after the preliminary examination.

ISSUING DEPUTY: The name of the filing deputy.

POLICE AGENCY:

EDC OFFER:

RECOMMENDED FILING:

APPROVED FILING/APPROVED OFFER: Leave these blank. These will be filled in by the Info Review Team, with a notation of the charges and special allegations the defendant may plead to and, where appropriate, an office commitment regarding sentence.

STATEMENT OF FACTS:

(Summary) A one-paragraph summary of the case. Provide an overview of all the pertinent facts essential to a quick evaluation/review of the case. Include the relationship of the witnesses to the defendant. Bear in mind that this is all a supervisor may have time to read before being called upon to engage in a discussion of the case at some later time with the court, defense counsel, the public, etc.

(Details) A detailed summary of all the facts in the case. Include all of the evidence presented at the preliminary examination, as well as the other case facts from police reports, witness interviews, and discussions with investigating officers. Identify the sources of the facts in the course of the discussion. Discuss the credibility of the key witnesses and participants, including the defendant. Distinguish what was said by a witness in court from what is in a police report. Set out any inconsistencies.

DEFENDANT'S STATEMENT: Indicate whether or not the defendant was interviewed and whether or not this interview was preceded by a valid *Miranda* waiver. Listen to any taped interview and report upon the quality of the advisement and waiver of *Miranda*, and the probative force of the statements.

OTHER INFORMATION: Set forth any information not discussed under Detailed Facts that relates to the case and may have a bearing on its evaluation. Include here other cases involving the defendant, witnesses, police officers, etc. Indicate significant case developments since complaint issuance. Set forth any inconsistencies between the reports and the evidence at prelim. Assess the impact of these inconsistencies on the strength of the case. Indicate the reasons for the inconsistencies and discrepancies between the police reports, and any facts that reconcile the conflicts.

WITNESS AVAILABILITY: Note if witnesses are going to be out of town, on vacation, out of the country, etc. Note any problems in getting witnesses to attend the preliminary

examination and what their future cooperativeness is expected to be. Note any need for an interpreter and the foreign language spoken.

LOCATION OF EVIDENCE: List all exhibits introduced at the preliminary examination, as well as all significant items of evidence in police custody. Note, as well, any items taken to the Crime Lab for analysis.

INVESTIGATION TO DO/STATUS OF FOLLOW-UP: Identify all investigation that should be completed prior to trial. Set forth the status of previously requested investigation.

EVALUATION OF TAPES: Describe the quality of each reviewed taped statement. In a narcotics case featuring a "controlled" buy, describe the clarity and completeness of the recording of the transaction. Review the recording for entrapment issues. Describe the clarity and contents of the defendant's statements under the title, "Defendant's Statements."

THEORY OF DEFENSE: Discuss the most reasonably foreseeable defenses (legal and factual) that the defense will put forward.

NEGOTIATIONS: All settlement discussion by the defense attorney, preliminary hearing judge, or defendant.

RAP SHEET (OR DATE REQUESTED): Set forth all prior convictions (whether felony or misdemeanor).

EVALUATION: A factual and legal assessment of the case's provability. Discuss the significant legal issues and include applicable references to cases. Discuss the defendant's record of convictions and its effect on the provability of the case and/or its seriousness.

RECOMMENDATION: Recommend one of the following:

1. A filing as a felony. Specify the charges and special allegations. Indicate whether the office should commit against state prison.

2. A filing as a misdemeanor. Specify the charges and special allegations. Provide reasons the victim and agency can understand for our decision to file misdemeanor.

3. No filing. Provide reasons the victim and agency can understand for our decision not to file.

Additionally, if the case is a three strikes case, a recommendation should be made whether or not to strike any of the qualifying priors.

ARTICLE XIII. FELONIES

Section 4.03, Post Preliminary Hearing

A. FILING OF INFORMATION

If a defendant does not agree to the original complaint being deemed an Information, the deputy assigned the preliminary examination shall promptly prepare an Information alleging all authorized charges and enhancements. The deputy is responsible for the accuracy of the pleading and shall, therefore, carefully proofread the document before signing it.

B. PRETRIAL CONFERENCE

1. PRETRIAL CONFERENCE

The deputy assigned a felony case for workup and/or trial shall complete the Readiness and Master Calendar Memorandum and, where applicable, provide it and the file to the calendar deputy no later than noon on the day preceding the pretrial conference.

2. UNUSUAL DISPOSITIONS

A deputy assigned to a felony case shall obtain supervisorial approval before agreeing to, or not opposing any disposition of the case other than a guilty plea as required by the Information Review committee. Examples of such dispositions are CRC commitments, finding of incompetency to stand trial (PC 1026), and mental health commitments which result in the suspension of criminal proceedings.

C. TRIAL

1. DISQUALIFICATION OF A JUDGE

(Policy is the same as stated previously. Refer to Article III, Section 3.03A.)

2. PRO TEMPORE ("PRO TEM") JUDGES

A deputy shall not stipulate to a judge pro tem in felony trials.

3. WAIVER OF A JURY

A deputy shall not waive jury without prior supervisorial approval.

4. EXERCISE OF PEREMPTORY JUROR CHALLENGES

Deputy district attorneys shall not exercise a peremptory challenge against a juror based upon race, ethnicity, gender, or membership in another constitutionally protected

cognizable group. (People v. Wheeler (1978) 22 Cal.3d 258; Batson v. Kentucky (1986) 476 U.S. 79; Code Civ. Proc. 231.5.) When a Wheeler/Baston motion is made, before the court makes a determination as to whether a prima facie case has been made of group bias, the deputy district attorney should state the reasons why the jurors were excluded on the record. (Williams v. Runnels (9th Cir. 2006) 432 F.3d 1102; People v. Gray (2001) 87 Cal.App.4th 781, 788.) If the court finds no prima facie case has been made without first obtaining input from the deputy district attorney, the deputy district attorney shall state for the record the reasons why the jurors were excused for purposes of appellate review. When a Wheeler/Baston motion has been made, the deputy district attorney shall preserve the notes from jury selection for later appellate review.

5. COMMUNICATIONS WITH JURORS AFTER VERDICT

A deputy or other district attorney employee may communicate with jurors after a trial so long as the jurors have been excused from further jury service and the deputy refrains from asking questions or making comments that might tend to harass or embarrass a juror or are intended to influence the actions of a juror in future jury service.

To improve future trial performance and law enforcement operations, a deputy shall make reasonable efforts to debrief the jury foreperson upon conclusion of a case. Information should be sought about issues or evidence which were of concern to the panel, and what might be done in future cases to enhance prosecution efforts. This information shall be included in the jury trial report.

Commentary

State Bar Rule 5-320(D) reads as follows: "After discharge of the jury from further consideration of a case, a member shall not ask questions of or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service."

An October 1986, informal opinion of the Attorney General in response to a request from this office concludes as follows:

A prosecutor may engage in reasonable post-trial discussion with a consenting juror. In the absence of a specific prohibitory rule or other binding provision, the prosecutor is not forbidden from providing trial jurors who have completed current jury service with information, not otherwise privileged, which was not admitted at trial, where the intent of the prosecutor is not to influence subsequent jury service or to harass or embarrass jurors. However, the prosecutor should ensure that the manner in which he goes about this does not create the appearance that his intent is to influence subsequent jury service or to achieve any other prohibited objective.

Formal Opinion No. 1987-95 of the Committee on Professional Ethics of the State Bar of California concludes, under the predecessor to Rule 5-320, that: "…an attorney may disclose to jurors after trial evidence which was excluded at trial as long as in doing so the

attorney does not intend to harass or embarrass or influence the juror in future jury service."

Code of Civil Procedure section 206 provides that jurors have ". . . an absolute right to discuss or not to discuss the deliberation or verdict with anyone." Subsection (b) authorizes counsel to discuss the case with consenting jurors ". . . at a reasonable time and place." Subsections (c) and (d) require a report to the trial judge of any "unreasonable contact with a juror," and provide for monetary sanctions pursuant to Code of Civil Procedure section 177.5.

District Attorney employees should carefully consider the potential consequence of sharing with the juror facts about the case or the defendant which are not introduced at trial. The right of a juror as a citizen to know certain matters, especially matters of public record, should be balanced with the likelihood of prejudicing a juror's future jury service.

Although the applicable ethical rules directly affect only attorneys, all employees shall apply the same standards as a matter of office policy.

D. POST-TRIAL

1. PROBATION AND SENTENCE HEARINGS

a. A deputy district attorney shall represent the People at every probation and sentence hearing. The deputy who handled the guilt phase of the case shall, whenever possible, represent the People at this hearing. When not possible, this deputy's supervisor shall have another deputy represent the People.

b. Whenever the pre-sentence report fails to provide all necessary sentence information, the deputy shall provide such information to the court consistent with Penal Code section 1204.

c. The deputy who represents the People at this hearing shall be familiar with the facts, the District Attorney case file, the probation report, the law concerning probation eligibility, and sentencing procedures. When appropriate, the deputy shall make a sentence recommendation. A deputy district attorney has discretion to recommend whatever sentence he/she believes is most appropriate, unless the Chief Deputy District Attorney or Chief Assistant District Attorney has made a sentencing commitment or otherwise determined the office's sentencing position.

d. A proper sentence shall be commensurate with the severity of the offense and shall reflect:

1) The adequate protection of society from individuals who pose a danger to persons or property;

2) The appropriate punishment of individuals who violate the law;

3) The deterrence of the individual defendant at bar, and members of the general public, from posing a similar danger in the future;

4) The rehabilitation of individuals so they can become law-abiding participants in a free society as a result of which other members of society can thereby be secure in the enjoyment of freedom.

Commentary

A deputy district attorney is urged to recommend on the record the sentence which in his or her considered judgment promotes the ends of justice. If an immediate commitment to state prison is in order, the deputy shall so advocate, articulating the reasons that compel such a decision. In cases involving multiple offenses, the possibility of consecutive sentences should always be considered. Every effort should be made to obtain maximum state prison commitments where career criminals or dangerous persons are concerned. Applicable enhancements shall be pursued vigorously where appropriate. If, at the other end of the spectrum, a probationary or a misdemeanor sentence is called for, a deputy should not hesitate to so state, urging strongly any conditions that are in order.

In matters involving sentence, the gravity of the accused's conduct, the accused's prior record, if any, and the community's needs to be protected shall always be taken into account.

E. APPEALS AND WRITS

A deputy district attorney interested in seeking appellate review of a court order in a felony case (Penal Code section 995 or section 1538.5 motion granted, defendant placed on probation, etc.), or in responding to defendant-initiated appellate review, shall follow this procedure:

a. Determine whether appellate review is possible and appropriate.

b. Discuss the matter with his/her immediate supervisor.

c. Prepare an Appellate Review memorandum if the immediate supervisor concurs that appellate review might be sought.

d. Provide the memorandum, signed by the supervisor, to the Chief Deputy District Attorney overseeing the Writs and Appeals Unit.

e. The Chief Deputy District Attorney will decide whether or not to seek appellate review or to respond to defendant-initiated appellate review.