

(a) Diversion Eligibility and programming

### Diversion Eligibility

- 1) Eligible diversion offense
- 2) Never convicted of a felony
- 3) Not on active probation
- 4) Never been terminated from probation unsuccessfully
- 5) No previous diversions for 5 years (under any program)
- 6) Crime involved no injuries
- 7) Defendant did not exhibit criminal sophistication/criminal intent

### Diversion Eligible Offenses

BP § 4060	Poss. Controlled Substance w/out prescription
BP § 25658(a)	Sell/provide alcohol to minor
BP § 25661(a)	False ID by minor
BP § 25662(a)	Under 21 poss. of alcohol
HS § 12677	Poss. of illegal fireworks or dang. fireworks w/out permit
HS § 11364	Poss. of pipe or syringe
PC § 148(a)	Resisting arrest (without violence)
PC § 148.9	False ID to an officer
PC § 240	Assault
PC § 272(a)(1)	Contributing to delinquency of a minor
PC § 381(b)	Poss. of toxic substance to inhale
PC § 415	Disturbing the peace
PC § 484	Petty theft
PC § 496	Receiving/possessing stolen property
PC § 508	Embezzlement
PC § 537	Defrauding innkeeper
PC § 587(b)	Trespass on railroad train
PC § 594	Vandalism
PC § 602	Trespass (not under (h), (i), (v), (w), (x), (y))
PC § 647(a)	Solicitation
PC § 647(b)	Prostitution
PC § 647(f)	Drunk in public
PC § 653.22	Loitering w/ intent to commit prostitution
PC § 20310	Poss. of illegal weapon (air gauge knife)
PC § 20410	Poss. of illegal weapon (belt buckle knife)
PC § 20510	Poss. of illegal weapon (cane sword)
PC § 20610	Poss. of illegal weapon (lipstick case knife)
PC § 20710	Poss. of illegal weapon (shobi-zue)
PC § 21510	Poss. of illegal weapon (switchblade)
PC § 20910	Poss. of illegal weapon (writing pen knife)
PC § 21810	Poss. of illegal weapon (metal knuckles)
PC § 22010	Poss. of illegal weapon (Nunchaku)
PC § 22210	Poss. of illegal weapon (billy club or blackjack)
PC § 22290	Poss. of illegal weapon (leaded cane)
PC § 22410	Poss. of illegal weapon (shuriken)
VC § 31	False information to peace officer
VC § 4461	Use of another's handicapped placard
VC § 4462.5	False registration w/ intent to avoid compliance
VC § 10852	Tampering with a vehicle
VC § 14601.1	Driving on a suspended license (non-DUI)
VC § 14604(a)	Allowing unlicensed driver to drive
VC § 20002(a)	Hit and run (non-injury)
VC § 23103	Reckless Driving
VC § 23109	Speed contest
VC § 23222	Marijuana/open container in car



## Fresno County Diversion Program

Administered by CorrectiveSolutions

The following is a brief description of the diversion program services. The Diversion Program includes participation in a behavioral change class. Additional conditions can be assigned on a case-by-case basis based on the circumstances of the case. CorrectiveSolutions provides person-to-person case management for the duration of the case, comprehensive reporting, and access to the complete digital case file through our SnapView app for authorized Fresno County staff.

### Behavioral Change Classes

All classes are taught **LIVE** via online webinars. Classes are facilitated by instructors with advanced degrees in the areas of psychology and social work and are accompanied by an additional facilitator that tracks offender participation throughout the class. The audit tools built into the webinar platform prevent offenders from not being actively involved (e.g. surfing the internet instead of focusing on the class) and frequent quizzes requiring their immediate responses keep participants engaged. Additionally, through video and chat features a facilitator is constantly interacting with participants.

The following are the available classes:

**Community Accountability** – Appropriate for all misdemeanor cases. Addresses values, attitudes and beliefs and systematically leads offenders to recognize their values are not aligned with their criminal behavior. Includes practical life skills and tools for managing stress, finances, and health to provide a foundation for personal responsibility and better choices in the future.

**Driving Diversion** – Appropriate for all driving related offenses.

**Financial Accountability** – Appropriate for worthless check and financial crimes.

**Substance Use and Abuse** - Appropriate for illegal drug use, drug, and drug paraphernalia possession, as well as alcohol and prescription drug abuse related offenses.

**Anger Management** – Appropriate for assault charges. Class addresses the role of anger in the offender's everyday life and outlines strategies for appropriately handling emotions.

**Petty Theft** – Appropriate for shoplifting and theft charges.

**Minors in Possession** – Appropriate for underage drinking and drug possession cases.

### Community Service

CorrectiveSolutions identifies appropriate community service projects with municipal agencies (e.g., Parks and Recreation) and verifiable non-profit organizations (e.g., Goodwill, Salvation Army, etc.). CorrectiveSolutions tracks and verifies offenders have fulfilled the required number of service hours ordered per the referral and reports completion back to the District Attorney's office. The supporting documentation is added to the digital case file and is available for viewing through the SnapView app.

### Victim Restitution

CorrectiveSolutions' will recover and disburse victim restitution. The restitution amount and valid victim contact information including name, address and telephone must be included on the referral form at the time of referral. All victim restitution payments are documented in the digital case file.

### Random Drug Testing

CorrectiveSolutions provides a robust random drug testing service including a daily call in to the drug test hotline. Drug tests are administered via direct observed urine.

### Apology Letters to Victims

To support accountability and facilitate opportunity for offenders to express remorse, CorrectiveSolutions will help coordinate handwritten apology letters from offenders to victims. CorrectiveSolutions facilitates the process including providing the instructions and guidelines for offenders, review of written apologies and forwarding of letters to impacted victim.

If you have any questions regarding the above services offered, please call CorrectiveSolutions DA Hotline at (800) 582-3760.

VETERANS TREATMENT COURT  
REFERRAL GUIDE

The Fresno County Veterans Treatment Court [VTC] will consider individuals eligible under Penal Code section 1170.9 for Probation supervision subject to certain limitations as set out below. The court will have a configuration similar to Behavioral Health Court, in that the plea will occur in the Home Court or misdemeanor department with a referral to the VTC for sentencing. Individuals in the VTC will receive treatment services through the V.A., will have a mentor (another veteran) and will be supervised by Probation with regular review hearings on biweekly basis. The eligibility criteria, exclusions and procedure for referral are set out below.

**ELIGIBILITY:**

1. Legal resident of Fresno County is preferred.
2. Must be eligible for full V.A. health care benefits
3. Must be a felony charge
4. Persons on active military duty are excluded.
5. **Participant must suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or other mental health condition stemming from military service that resulted in the commission of the current offense (PC § 1170.9 nexus necessary for eligibility)** The mere fact defendant is veteran does not entitle defendant to VTC. In determining whether this factor is present, the court may consider information from a variety of sources, including but not limited to an assessment utilizing existing resources.
6. Participant must be placed on probation. The fact an executed prison sentence is suspended will not be a disqualifying factor
7. Participant must voluntarily and willingly agree to participate in the VTC program
8. Victim Impact will be considered

**The following cases are ineligible:**

1. Cases where current offense alleges that the victim suffered death, great bodily injury, or a permanent disability.
2. Cases where the current offense would require registration pursuant to Penal Code section 290.
3. Cases where the current offense alleges criminal gang activity as described in Penal Code section 186.22
4. Cases where the current offense involves driving under the influence causing injury.
5. Cases where the current offense is a serious or violent strike as alleged under Penal Code sec. 667.5 or 1192.7, unless listed below.

**\*\*When the current offense is a violent strike as alleged under Penal Code sec. 667.5, or serious strike as alleged under 1192.7, please refer to the below list to determine if the strike allegation may still be considered for participation “in the interest of justice.”**

1. The *following felonies alleged under Penal Code sec. 667.5 are presumptively excluded but may be allowed to participate in VTC in the interests of justice:*
  - a. Penal Code 211- Robbery
  - b. Penal Code 451(b) – Arson
  - c. Penal Code 459/460 1<sup>st</sup> Degree Burglary (*involving a non-participant present pursuant to 667.5(c)(21).*)
2. The *following felonies alleged under Penal Code sec. 1192.7 are presumptively excluded but may be allowed to participate in VTC in the interests of justice:*
  - a. Penal Code 451(c)-(e) – Arson
  - b. Penal Code 459/460 1<sup>st</sup> Degree Burglary
  - c. Penal Code 487(d)(2) – Grand Theft of a Firearm
  - d. Penal Code 246 D- Discharge of a Firearm at an Inhabited Dwelling, Vehicle or Aircraft
  - e. Penal Code 26100- Shooting from a Vehicle
  - f. Penal Code 136.1- Intimidation of Victims/Witnesses
  - g. Penal Code section 422
  - h. Cases involving the personal use of a firearm or dangerous/deadly weapon

## **REFERRAL PROCESS**

1. The first step is to determine if the veteran is eligible for services through the V.A.
  - a. Continue the matter **two weeks**, and the matter is referred to the Veterans Justice Outreach Coordinator (VJO), using a form MIL 100, and a release of information.
  - b. If the defendant is NOT ELIGIBLE for V.A. services, the defendant is not eligible for VTC.
  - c. If the defendant IS ELIGIBLE for V.A. Services go to Step 2.
2. The defendant will submit an Application for Veterans Treatment Court [court form TCR-95] and the parties and the court will discuss whether the defendant is an appropriate referral candidate.
3. If a referral to VTC is to be made, the defendant shall enter a change of plea to, or be convicted of, a probation eligible offense, with the terms and conditions of probation, other than the usual terms, expressly stated on the record. The matter will be set in Department 97B for sentencing as set out in step 6 listed below.
  - a. The attorneys shall state on the record the agreement for participation, including expressly any P.C. section 1170.9 remedies that will not be available to a defendant who graduates from VTC.

- i. General rule outside of DV cases is that all PC § 1170.9(h) remedies will be available to a defendant.
4. If the defendant has already been diagnosed and is receiving V.A. services that information will be communicated with the parties and the court and Probation by the VJO.
5. If a defendant has not been diagnosed by the V.A. /is not receiving services, the matter will be referred to the V.A. for a mental health assessment or substance abuse assessment or other required assessment to be done. Individuals not in custody will be directed to contact the V.A. for the assessment.

**Debbie Mattos**  
**VJO Specialist**

[REDACTED]

[REDACTED]

Individuals in custody will be assessed in custody by the VJO via phone for the mental health assessment. This referral may be done simultaneously with the RPO referral.

6. Felony matters will be referred to the Probation Department for an R.P.O. with an Arbuckle waiver, and **set four weeks out on a VTC date** for sentencing.
7. The suitability of defendants for participation in the VTC will be made by the VTC team. If a defendant is found not suitable for VTC, he/she will be permitted to withdraw their plea when referred back to the home department.

(b) Custody and Bail

[REDACTED]

---

**From:** Wright, Steve [REDACTED]  
**Sent:** Tuesday, September 26, 2023 2:41 PM  
**To:** Miller, Deborah [REDACTED] Gularte, Christopher  
[REDACTED] Lacy, William [REDACTED] Howo, Midori L.  
[REDACTED] Monopoli, Carl [REDACTED] Lambert,  
Nathan [REDACTED] Rutiaga, Galen [REDACTED] Jimenez,  
Manuel C [REDACTED]; Hoedt, Scott [REDACTED]  
**Cc:** Fritzler-Kirkorian, Traci [REDACTED] Stanley, Jerry  
[REDACTED] Smittcamp, Lisa [REDACTED]  
**Subject:** Pre-Arrestment Release - Fresno Pilot Program

Chiefs,

The Fresno Superior Court, along with Probation, will be implementing a Pre-Arrestment Release Program on direction from the Judicial Council. This will be a pilot program that will be re-assessed after a few months to see if it will end, continue, or be modified.

Basically, the Pre-Arrestment Release Program will consist of Probation determining whether or not an IC at the FCJ meets criteria for release. If they meet criteria, an on-call Judge will review and either grant or deny release. This will all occur prior to our office receiving a case for filing.

**Details:**

1. Probation will be monitoring/reviewing/writing reports only on Monday – Friday from 8:30 a.m. – 4:00 p.m.;
2. The Probation Department monitors FCJ bookings real-time during this time period;
3. Probation will screen an arrestee to see if they have any disqualifiers that would make them ineligible for release. (see attached Ineligibility sheet) Disqualifiers include factors such as:
  - Arrest is for a serious felony; a violent felony; PC 290 offense; previous felony FTA; currently on Probation/Parole/PRCS; currently on pre-trial release or previously terminated from pre-trial release;
4. If they are eligible for release, a report is forwarded to an on-call Judge. There will be an on-call list exactly like for Search Warrant duty. (see attached Release Report);
5. The Judge will review the report along with the EPCD. If they deny release – arrestee stays IC. If the Judge approves of release, paperwork will be forwarded to the FCJ;

6. FCJ staff will review Release Contract (see attached copy) with arrestee. Arrestee must agree to and sign contract to be released. If they refuse – they stay IC;
7. Released arrestee will be ordered to report to Probation the following day, and will be directed to report to the Clerk's Office in 2 weeks for Arraignment;
8. Probation will text/call/remind the participant to appear in Court on the scheduled date;
9. If participant appears at Clerk's Office and case has not yet been filed – they will be asked to return in 2 weeks. Court will continue the case to see if charges are filed up to 3 times – for a total of approximately 60 days from date of arrest. (just like Bail Bond calendar);
10. At Arraignment – Judge in Home Court can set terms of release like GPS.

Probation and the Court anticipate very few arrestees qualifying (3-4 a week) – for [REDACTED] offenses such as PC 496, VC 10851, etc.

Target date to go live is November 1.

Please share with your teams. We will keep you updated on any developments.

Thanks.

Steve

**Steve E. Wright**

Assistant District Attorney

Fresno County District Attorney's Office

[REDACTED]  
[REDACTED]

## Ineligibility Criteria for Pre-Arrestment Release

Category	Ineligible for Pre-Arrestment Release (Appearance in open court required)
Charges (Statute)	<p><b>Judges will <u>not</u> review pretrial assessment reports for individuals arrested on the following charges:</b></p> <ul style="list-style-type: none"> <li>• <b>No-bail warrant</b></li> <li>• <b>PC 1270.1(a):</b> <ul style="list-style-type: none"> <li>○ Serious felony per PC 1192.7</li> <li>○ Violent felony per PC 667.5(c), excluding PC 459/460(a) residential burglary</li> <li>○ Violation of section PC 136.1, where punishment imposed is pursuant to subdivision (c) of section PC 136.1, former section PC 262, PC 273.5 or PC 422 where offense punished as a felony, or section PC 646.9</li> <li>○ Violation of section PC 243(e), paragraph 1</li> <li>○ Violation of section PC 273.6 if person made threats to kill or harm, has engaged in violence against or gone to residence/workplace of protected party</li> </ul> </li> <li>• <b>PC 1319:</b> Violent felony per PC 667.5(c) <ul style="list-style-type: none"> <li>• Previously charged with felony offense and failed to appear</li> <li>• Outstanding felony warrants</li> </ul> </li> <li>• <b>PC 1319.5:</b> <ul style="list-style-type: none"> <li>○ Currently on Adult Felony Probation, Felony Parole, Mandatory Supervision, or Post-Release Community Supervision (PRCS)*</li> <li>○ Failed to appear (FTA) 3 or more times in the last 3 years resulting in a warrant being issued <i>and</i> who is arrested for: <ul style="list-style-type: none"> <li>(A) gang enhancement [Chap 11 (commencing with Section 186.20) of Title 7 of Part 1]</li> <li>(B) assault/battery [Chap 9 (commencing with Section 240) of Title 8 of Part 1]</li> <li>(C) residential burglary [Section 459/460(a)]</li> <li>(D) armed with or personally used a firearm</li> <li>(E) any offense involving domestic violence</li> <li>(F) caused great bodily injury</li> </ul> </li> </ul> </li> </ul> <p>*While PC 1319.5 specifies that arrestees who are on felony probation or felony parole are ineligible for pre-arrestment release, per guidance from Judicial Council, arrestees on PRCS and MS are also ineligible for pre-arrestment release.</p>
Category	<b>Local Standard Exclusions: Ineligible for Immediate Release</b>

## Ineligibility Criteria for Pre-Arrest Release

Case-Specific Circumstances	<ul style="list-style-type: none"><li>• Any offense listed on the PSA Violent Offense list.</li><li>• Any sex case that falls within the parameters of PC 290.</li><li>• Any weapon-related offense.</li><li>• A defendant being booked on an out-of-county/out-of-state warrant is not eligible to be released immediately. However, if the defendant is also booked on new charges, a report for the new charges will be submitted at the arraignment hearing.</li><li>• Any hold/remand/commitment/Superior Court order/refused by nurse/cite and release.</li><li>• Two or more prior felony convictions.</li><li>• Four or more prior misdemeanor convictions.</li><li>• Possession for sales of narcotics.</li><li>• A person arrested for a third offense within the past 10 years of driving under the influence of alcohol or drugs or any combination thereof, or for an offense of driving under the influence of alcohol or drugs with injury to another, or for an offense of driving with a blood alcohol level of .20 or above.</li><li>• A person who, at the time of arrest, was pending trial or pending sentencing for a misdemeanor or a felony.</li><li>• A person who has three or more prior warrants for failure to appear within the previous 12 months.</li><li>• A person who is currently on pretrial release.</li><li>• A person who has violated a condition of pretrial release within the past five years.</li><li>• A person arrested for a violation of any type of restraining order within the past five years.</li></ul>
PSA Score	<ul style="list-style-type: none"><li>• <b>PSA Release Matrix Level 3</b></li></ul>

# Ineligibility Criteria for Pre-Arrest Release

§ (all refer to Penal Code unless otherwise indicated)	Description	Serious Felony?	Violent Felony?	Pen. Code, § 1270.1 Reference	Cal. Const. & Pen. Code, § 292 Reference/Other Authority
<p><b>*Note: Some offenses below are only serious felonies when the defendant <i>personally</i> used a deadly weapon or firearm or <i>personally</i> inflicted great bodily injury. They are indicated with an asterisk after the section number.</b></p>					
37	Treason	Serious felony as defined in 1192.7(c)(7) [punishable by death or life imprisonment]	Violent felony as defined in 667.5(c)(7) [punishable by death or life imprisonment]	1270.1(a)(1)	
128	Perjury resulting in execution of innocent person	Serious felony as defined in 1192.7(c)(7) [punishable by death or life imprisonment]	Violent felony as defined in 667.5(c)(7) [punishable by death or life imprisonment]	1270.1(a)(1)	
136.1	Intimidation of a witness	Serious felony as defined in 1192.7(c)(37)	Violent felony as defined in 667.5(c)(20), if it would be felony violation of 186.22	1270.1(a)(1), (a)(2)	
140*	Threatening victims, witnesses, or informants [if charged as felony and with personal use of firearm]	Serious felony as defined in 1192.7(c)(8)			
148.10(a)*	Resisting arrest resulting in serious bodily injury or death	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
182/serious felony	Conspiracy to commit a serious felony	Serious felony as defined in 1192.7(c)(42)		1270.1(a)(1)	
186.22	Criminal street gang activity that constitutes a felony	Serious felony as defined in 1192.7(c)(28)		1270.1(a)(1)	
187	Murder	Serious felony as defined in 1192.7(c)(1)	Violent felony as defined in 667.5(c)(1)	1270.1(a)(1)	
664/187	Attempted murder	Serious felony as defined in 1192.7(c)(9)	Violent felony as defined in 667.5(c)(12)	1270.1(a)(1)	
191.5*	Gross vehicular manslaughter while intoxicated	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	

# Ineligibility Criteria for Pre-Arrest Release

192(a)	Voluntary manslaughter		Violent felony as defined in 667.5(c)(1)	1270.1(a)(1)	
192(b)*	Involuntary manslaughter <i>if defendant personally inflicted GBI</i>				<i>People v. Brown (1988) 201 Cal.App.3d 1296</i>
192(c)(1)*	Vehicular manslaughter with gross negligence or while intoxicated	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
192 (c)(3)*	Vehicular manslaughter for financial gain	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
192.5(a)*	Manslaughter while operating a vessel with gross negligence or while intoxicated	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
192.5(b)*	Manslaughter while operating a vessel while intoxicated	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
192.5(c)*	Manslaughter while operating a vessel while intoxicated	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
203	Mayhem	Serious felony as defined in 1192.7(c)(2)	Violent felony as defined in 667.5(c)(2)	1270.1(a)(1)	
205	Aggravated mayhem	Serious felony as defined in 1192.7(c)(2)	Violent felony as defined in 667.5(c)(2)	1270.1(a)(1)	
206	Torture	Serious felony as defined in 1192.7(c)(7) [punishable by life imprisonment]	Violent felony as defined in 667.5(c)(7) [punishable by life imprisonment]	1270.1(a)(1)	

# Ineligibility Criteria for Pre-Arrest Release

207	Kidnapping	Serious felony as defined in 1192.7(c)(20)	Violent felony as defined in 667.5(c)(14)	1270.1(a)(1)	
209	Kidnapping for gain or robbery	Serious felony as defined in 1192.7(c)(20)	Violent felony as defined in 667.5(c)(14)	1270.1(a)(1)	
209.5	Kidnapping in course of carjacking	Serious felony as defined in 1192.7(c)(20); (c)(7) [punishable by life imprisonment]	Violent felony as defined in 667.5(c)(14); (c)(7) [punishable by life imprisonment]	1270.1(a)(1)	
211	Robbery	Serious felony as defined in 1192.7(c)(19)	Violent felony as defined in 667.5(c)(9)	1270.1(a)(1)	
212.5	Robbery of transportation operator or passenger or person using ATM	Serious felony as defined in 1192.7(c)(19)		1270.1(a)(1)	
214	Train robbery	Serious felony as defined in 1192.7(c)(19)	Violent felony as defined in 667.5(c)(9)	1270.1(a)(1)	
215	Carjacking	Serious felony as defined in 1192.7(c)(27)	Violent felony as defined in 667.5(c)(17)	1270.1(a)(1)	
217.1(b)	Attempted murder of government official	Serious felony as defined in 1192.7(c)(9) [attempted murder]	Violent felony as defined in 667.5(c)(12) [attempted murder]	1270.1(a)(1)	
218	Train wrecking	Serious felony as defined in 1192.7(c)(7) [punishable by life imprisonment]	Violent felony as defined in 667.5(c)(7) [punishable by life imprisonment]	1270.1(a)(1)	
219	Train derailing	Serious felony as defined in 1192.7(c)(7) [punishable by life imprisonment]	Violent felony as defined in 667.5(c)(7) [punishable by life imprisonment]	1270.1(a)(1)	
220	Assault with intent to commit mayhem, rape, sodomy, or oral copulation	Serious felony as defined in 1192.7(c)(29)	Violent felony as defined in 667.5(c)(15)	1270.1(a)(1)	
236.1(c)(2)*	Human trafficking; provisions regarding minors	Serious felony as defined in 1192.7(c)(8) [punishable by life imprisonment]		1270.1(a)(1)	
236.4(b)*	GBI on victim in commission or attempted commission of human trafficking	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
243(d)*	Battery with infliction of serious bodily injury (if charged as a felony and personally inflicted or firearm used)	Serious felony as defined in 1192.7(c)(8) if personally inflicted or firearm used		1270.1(a)(1)	
243(e)(1)	Battery of spouse, cohabitant, co-parent, former spouse, fiancé			1270.1(a)(3)	

# Ineligibility Criteria for Pre-Arrest Release

243.4*	Sexual battery	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	People v. Torres (2018) 23 Cal.App.5th 185, 204
244	Assault with caustic chemicals or flammable substances	Serious felony as defined in 1192.7(c)(30)		1270.1(a)(1)	
245(a)(1)*	Assault with deadly weapon or force likely to produce great bodily injury	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
245(a)(2)*	Assault with deadly weapon or force likely to produce great bodily injury	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
245(a)(3)*	Assault with deadly weapon or force likely to produce great bodily injury	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
245(b)*	Assault with firearm	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
245(c)	Assault with a deadly weapon or instrument on a peace officer or firefighter	Serious felony as defined in 1192.7(c)(11), (31)		1270.1(a)(1)	
245(d)	Assault with a deadly weapon or instrument on a peace officer or firefighter	Serious felony as defined in 1192.7(c)(11), (31)		1270.1(a)(1)	
245.2	Assault with deadly weapon against transportation personnel or passenger	Serious felony as defined in 1192.7(c)(32)		1270.1(a)(1)	
245.3	Assault on custodial officer with deadly weapon	Serious felony as defined in 1192.7(c)(32)		1270.1(a)(1)	
245.5	Assault with deadly weapon on school employee	Serious felony as defined in 1192.7(c)(32)		1270.1(a)(1)	
245.6(d)	Hazing resulting in death/serious bodily injury [if felony]	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
246	Discharge of firearm at inhabited dwelling, vehicle, or aircraft	Serious felony as defined in 1192.7(c)(33)		1270.1(a)(1)	
246.3(a)*	<i>Personal</i> discharge of firearm in grossly negligent manner	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
247(a)*	<i>Personally</i> shooting at unoccupied aircraft	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
247(b)*	<i>Personally</i> shooting at unoccupied dwelling, building, vehicle [if charged as a felony]	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
261	Rape	Serious felony as defined in 1192.7(c)(3)	Violent felony as defined in 667.5(c)(3) [261(a)(2) or (6)]	1270.1(a)(1)	

# Ineligibility Criteria for Pre-Arrest Release

262	Spousal rape	Serious felony as defined in 1192.7(c)(3)	Violent felony as defined in 667.5(c)(3) [262(a)(1) or (4)]	1270.1(a)(2), (a)(1)	
264.1	Rape, spousal rape, or sexual penetration in concert	Serious felony as defined in 1192.7(c)(34)	Violent felony as defined in 667.5(c)(18)	1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292 [261(a)(1), (2), (4), (6)]
269	Aggravated sexual assault on child under 14	Serious felony as defined in 1192.7(c)(3), (4), (5)		1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292
273ab*	Assault on child with GBI resulting in death	Serious felony as defined in 1192.7(c)(8) [punishable by life imprisonment]		1270.1(a)(1)	
273.4*	Female genital mutilation	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
273.5	Corporal injury of spouse or cohabitant			1270.1(a)(2)	
273.6	Violation of protective order, *if the D made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party			1270.1(a)(4)	
286(c)	Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person	Serious felony as defined in 1192.7(c)(4)	Violent felony as defined in 667.5(c)(4)	1270.1(a)(1)	
286(d)	Sodomy committed in concert		Violent felony as defined in 667.5(c)(4)	1270.1(a)(1)	
287(c)	Oral copulation by force, violence, duress, menace or fear	Serious felony as defined in 1192.7(c)(5)	Violent felony as defined in 667.5(c)(5)	1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292
287(d)	Oral copulation by force, violence, duress, menace or fear – acting in concert	Serious felony as defined in 1192.7(c)(5)	Violent felony as defined in 667.5(c)(5)	1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292
288(a)	Lewd act on child under 14	Serious felony as defined in 1192.7(c)(6)	Violent felony as defined in 667.5(c)(6)	1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292
288(b)	Lewd act on child under 14	Serious felony as defined in 1192.7(c)(6)	Violent felony as defined in 667.5(c)(6)	1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292
288.5	Continuous sexual abuse of a child	Serious felony as defined in 1192.7(c)(35)	Violent felony as defined in 667.5(c)(16)	1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292 [288(b)]
288.7	Sex/sodomy with a child under 10	Serious felony as defined in 1192.7(c)(6)		1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292 [288(b)]

# Ineligibility Criteria for Pre-Arrest Release

289(a)	Forcible penetration with foreign object	Serious felony as defined in 1192.7(c)(25)	Violent felony as defined in 667.5(c)(11)	1270.1(a)(1)	Cal. Const., art. I, § 12 & PC 292 [289(a)]
289(j)	Sexual penetration by foreign object of a child under the age of 14		Violent felony as defined in 667.5(c)(11)	1270.1(a)(1)	
347(a)(2)*	Poisoning or adulterating food or drink	Serious felony as defined in 1192.7(c)(23) (dangerous weapon)		1270.1(a)(1)	
368(b)(2)	Personally causing GBI to elder dependent adult	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
368(b)(3)*	Cause harm/death to elder dep adult	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
404.6(c)*	Inciting riot in prison or jail resulting in SBI [if personal infliction of GBI]	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
417(b)	Brandishing firearm in childcare facility [if charged as a felony]	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
417(c)	Brandishing firearm in presence of police	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
417.3	Brandishing firearm to person in vehicle	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
417.6	Brandishing firearm with infliction of GBI [if charged as a felony]	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
417.8	Brandishing to prevent arrest	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
422	Criminal threats	Serious felony as defined in 1192.7(c)(38)		1270.1(a)(1), (a)(2) [felony violations]	
451	Arson	Serious felony as defined in 1192.7(c)(14)	Violent felony as defined 667.5(c)(10) [451(a) or (b)]	1270.1(a)(1)	
451.1	Arson with added circumstances	Serious felony as defined in 1192.7(c)(14)		1270.1(a)(1)	
451.5	Aggravated arson	Serious felony as defined in 1192.7(c)(14)		1270.1(a)(1)	
452(a)	Arson causing GBI		Violent felony as defined in 667.5(c)(8)	1270.1(a)(1)	
452(b)	Arson of inhabited structure	Serious felony as defined in 1192.7(c)(14)			
452(c)	Arson of structure or forest land [if charged as a felony]	Serious felony as defined in 1192.7(c)(14)			

# Ineligibility Criteria for Pre-Arrest Release

453	Arson [if felony]	Serious felony as defined in 1192.7(c)(14)		1270.1(a)(1)	
455	Attempted arson	Serious felony as defined in 1192.7(c)(39) [attempt to commit crime other than assault]		1270.1(a)(1)	
487(d)(2)	Grand theft of firearm	Serious felony as defined in 1192.7(c)(26)		1270.1(a)(1)	
518	Extortion [if in violation of Penal Code Section 186.22]		Violent felony as defined 667.5(c)(19)	1270.1(a)(1)	
550(g)*	Participating in fraudulent auto accident causing serious bodily injury	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
600(d)	Personally causing GBI to any person (other than accomplice) while obstructing, harming, or interfering with police horse or dog	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
626.9(d)*	Discharging firearm in school zone	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
646.9	Stalking			1270.1(a)(2)	
664	Attempt [if to commit a serious felony, <b>except</b> assault]	Serious felony as defined in 1192.7(c)(39)		1270.1(a)(1)	
667.61	Aggravated sexual assault		Violent felony as defined in 667.5(c)(6)	1270.1(a)(1)	
667.75	Habitual drug dealing with minors	Serious felony as defined in 1192.7(c)(24) [potentially punished as a life imprisonment]		1270.1(a)(1)	
667.8	Kidnapping victims to commit felony sexual offense	Serious felony as defined in 1192.7(c)(20)	Violent felony as defined in 667.5, subd. (c)(14)	1270.1(a)(1)	
667.85	Kidnapping child under age 14	Serious felony as defined in 1192.7(c)(20)	violent felony as defined in 667.5, subd. (c)(14)	1270.1(a)(1)	
4500	Assault by a life prisoner	Serious felony as defined in 1192.7(c)(12)		1270.1(a)(1)	
4501(a)	Aggravated assault by a prisoner	Serious felony as defined in 1192.7(c)(13)		1270.1(a)(1)	
4501.1(a)	Aggravated battery	Serious felony as defined in 1192.7(c)(23)			

# Ineligibility Criteria for Pre-Arrest Release

4503	Holding hostage in prison	Serious felony as defined in 1192.7(c)(21)		1270.1(a)(1)	
11413(a)	[Exploding destructive device] or arson in specified places	Serious felony as defined in 1192.7(c)(14) [arson]		1270.1(a)(1)	
11418(b)	Possession, use or manufacture of weapon of mass destruction	Serious felony as defined in 1192.7(c)(41)	Violent felony as defined 667.5(c)(23)	1270.1(a)(1)	
11418(c)	Possession, use or manufacture of weapon of mass destruction	Serious felony as defined in 1192.7(c)(41)	Violent felony as defined 667.5(c)(23)	1270.1(a)(1)	
12022(b)(1)	Personal use of deadly weapon	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
12022(b)(2)	Personal use of assault weapon, machine gun, etc.	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
12022.3(a)	Sex offense with use of firearm or deadly weapon		Violent felony as defined 667.5(c)(8)	1270.1(a)(1)	
12022.5(a)	Use of firearm		Violent felony as defined 667.5(c)(8)	1270.1(a)(1)	
12022.5(d)	Shooting firearm from vehicle at a person				
12022.53	Use or discharge of firearm in specified felonies	Serious felony as defined in 1192.7(c)(40)	Violent felony as defined 667.5(c)(22)	1270.1(a)(1)	
12022.55	Discharging firearm from vehicle		Violent felony as defined 667.5(c)(8)	1270.1(a)(1)	
12022.7	Personal infliction of GBI	Serious felony as defined in 1192.7(c)(8)	Violent felony as defined 667.5(c)(8)	1270.1(a)(1)	
12022.8*	In infliction of GBI during a sex crime		Violent felony as defined 667.5(c)(8)	1270.1(a)(1)	
12022.9	Personal infliction of GBI resulting in termination of pregnancy		Violent felony as defined 667.5(c)(8)	1270.1(a)(1)	
12022.95*	Death of child during 273a violation	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
18740	Exploding device with intent to injure	Serious felony as defined in 1192.7(c)(15)		1270.1(a)(1)	
18745	Exploding destructive device with intent to murder	Serious felony as defined in 1192.7(c)(17)	Violent felony as defined 667.5(c)(13)	1270.1(a)(1)	
18750	Exploding destructive device causing injury	Serious felony as defined in 1192.7(c)(16)	Violent felony as defined 667.5(c)(13)	1270.1(a)(1)	
18755	Exploding destructive device causing mayhem	Serious felony as defined in 1192.7(c)(16)	Violent felony as defined 667.5(c)(13)	1270.1(a)(1)	
26100(c)	Discharge of firearm from motor vehicle	Serious felony as defined in 1192.7(c)(36)		1270.1(a)(1)	

# Ineligibility Criteria for Pre-Arrest Release

26100(d)	Discharge of firearm from motor vehicle	Serious felony as defined in 1192.7(c)(36)		1270.1(a)(1)	
Vehicle. Code 2800.3*	Death/GBI while evading officer	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
Vehicle Code 23104(b)*	Reckless driving with intentional use as deadly weapon or personally causing GBI with specified prior	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
Vehicle Code 23153*	Driving under influence with intentional use as a deadly weapon or personally causing GBI	Serious felony as defined in 1192.8 [Must involve the personal infliction of GBI or personal use of dangerous or deadly weapon within meaning of 1192.7(c)(8) or (23)]		1270.1(a)(1)	
Health & Safety Code 11353	Furnishing, etc. a minor with heroin, cocaine base, or cocaine	Serious felony as defined in 1192.7(c)(24)		1270.1(a)(1); 1192.7(c)(24)	
Health & Safety Code 11380	Furnishing, etc. a minor with PCP or methamphetamine or a precursor	Serious felony as defined in 1192.7(c)(24)		1270.1(a)(1); 1192.7(c)(24)	
Health & Safety Code 25189.7*	GBI during burning of hazardous waste	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
Military & Veterans Code 1670/1671/1672	Sabotage resulting in death or GBI	Serious felony as defined in 1192.7(c)(7) [punishable by death or life imprisonment]	Violent felony as defined in 667.5(c)(7) [punishable by death or life imprisonment]	1270.1(a)(1)	
Military & Veterans Code 1674	Conspiracy to sabotage with death or GBI	Serious felony as defined in 1192.7(c)(42) [conspiracy to commit offense other than assault]		1270.1(a)(1)	
Welfare & Inst. Code 1768.8(b)*	Assault with personal use of a deadly weapon by CYA inmate on non-inmate	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	
Election Code 18540*	Use of force or violence to intimidate a voter	Serious felony as defined in 1192.7(c)(8)		1270.1(a)(1)	

# Ineligibility Criteria for Pre-Arrest Release

PC 1319.5 Exemptions		
	<b>(1) Any person who is currently on felony probation, felony mandatory supervision, felony PRCS or felony parole</b>	1319.5(b)(1)
	<b>(2) Any person who has failed to appear in court as ordered, resulting in a warrant being issued, three or more times over the three years preceding the current arrest (except for Vehicle Code infractions) AND who is arrested for any of the following</b>	1319.5(b)(2)
166(c)(1) or (c)(2)	Violation of a protective order if the victim is a spouse, cohabitant, co-parent, etc., and: (c)(1) the violation places the protected person “in reasonable apprehension of imminent serious bodily injury to themselves or another,” or (c)(2) the violation results in physical injury to the protected party.	1319.5(b)(2)(E)
186.26	Criminal street gang: solicitation or recruiting another to actively participate; use of coercion solicitation or recruiting another to actively participate; use of coercion or violence	1319.5(b)(2)(A)
186.28	Person/corporation/firm knowingly supplies firearm to criminal street gang	
186.33	Failure to register of person required to register as member of criminal street gang	
240	Assault	1319.5(b)(2)(B)
241	Assault	1319.5(b)(2)(B)
241.1	Assault on custodial officer	1319.5(b)(2)(B)
241.2	Assault on school or park property	1319.5(b)(2)(B)
241.3	Assault against person on public transportation, both on property of and within motor vehicle of provider	1319.5(b)(2)(B)
241.4	Assault on peace officer of a school district	1319.5(b)(2)(B)
241.5	Assault on a highway worker	1319.5(b)(2)(B)
241.6	Battery on school employee	1319.5(b)(2)(B)
241.7	Assault against jurors	1319.5(b)(2)(B)
241.8	Assault against member of US armed forces	1319.5(b)(2)(B)
242	Battery	1319.5(b)(2)(B)
243	Battery	1319.5(b)(2)(B)
243.1	Battery on custodial officer	1319.5(b)(2)(B)
243.2	Battery on person on school/park/grounds	1319.5(b)(2)(B)
243.25	Battery on an elder or dependent adult	1319.5(b)(2)(B)
243.3	Battery on transportation personnel/passenger	1319.5(b)(2)(B)
243.35	Battery on public transportation provider	1319.5(b)(2)(B)
243.5	Assault or battery on school prop	1319.5(b)(2)(B)

# Ineligibility Criteria for Pre-Arrest Release

243.6	Battery on school employee	1319.5(b)(2)(B)
243.65	Battery against a highway worker	1319.5(b)(2)(B)
243.7	Battery against jurors	1319.5(b)(2)(B)
243.8	Battery against a sports official	1319.5(b)(2)(B)
243.83	Throw object on court/field w/intent to interfere or distract player	1319.5(b)(2)(B)
243.9	Aggravated battery by gassing on peace officer or local detention facility employee	1319.5(b)(2)(B)
243.10)	Battery against member of US armed forces	1319.5(b)(2)(B)
243.15	Battery by confined person against individual who is not confined	1319.5(b)(2)(B)
244.5	Assault with stun gun/taser	1319.5(b)(2)(B)
245*	Assault w/ deadly weapon/GBI	1319.5(b)(2)(B)
245.6*	Hazing	1319.5(b)(2)(B)
246.3	Discharging firearm/BB device in grossly negligent manner	1319.5(b)(2)(B)
247	Discharging firearm willfully/maliciously at unoccupied aircraft	1319.5(b)(2)(B)
247.5	Discharging laser willfully/maliciously at occupied aircraft	1319.5(b)(2)(B)
248	Shining light/bright device w/intent to interfere w/operation of aircraft	1319.5(b)(2)(B)
459	Residential burglary	1319.5(b)(2)(C)
<b>Any offense where the defendant is alleged to have been armed with or personally used firearm</b>		1319.5(b)(2)(D)
12021.5	Use of firearm	
12022(a)	Being armed with firearm in commission of felony or attempted felony	
12022(b)	Being armed with assault weapon during commission of felony or attempted felony	
12022(c)	Being personally armed with firearm while committing drug offenses	
12022.2(a)	Being armed with firearm and possessing metal-piercing ammunition	
12022.3(b)	Being armed with firearm or deadly weapon in commission of sex offense	
12022.5	Personally using firearm	
<b>Any offense involving domestic violence</b>		1319.5(b)(2)(E)
653m	Telephone or electronic communication with intent to annoy or harass (if victim is spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship)	
<b>Any offense where the defendant is alleged to have caused GBI</b>		1319.5(b)(2)(F)
<b>Any other felony not described unless person released pursuant to a court-operated pretrial release program</b>		1319.5(b)(2)(G)

(c) Charging recommendations and/or decisions

---

## 6.01 FILING OF CRIMINAL CHARGES

All attorneys responsible for reviewing cases for the filing of criminal charges shall keep up to date on their filings so as to not miss the defendant's "cite" or "bond" dates.

### FILING CRITERIA

In making crime charging decisions, prosecutors should be guided by established standards. The **California District Attorneys Association's** crime charging standards state that a prosecutor should file a criminal complaint only if four basic requirements are satisfied:

1. There has been a complete investigation and thorough consideration of all pertinent data;
2. There is legally sufficient, admissible evidence of a corpus delicti;
3. There is legally sufficient, admissible evidence of the accused's identity of the perpetrator of the crime; and
4. The prosecutor has considered the probability of conviction by an objective factfinder 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 factfinder after hearing all of the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor. (CDAA Uniform Crime Charging Standards.)

The **American Bar Association** has also promulgated standards for both crime charging and maintaining criminal prosecutions. The ABA's standard states that:

- (a.) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.
- (b.) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt.
- (c.) If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, or sufficiency of the evidence in any criminal case assigned to the prosecutor, the prosecutor should disclose those doubts to supervisory staff. The prosecutor's office should then determine whether it is appropriate to proceed with the case.
- (d.) A prosecutor's office should not file or maintain charges if it believes the defendant is innocent, no matter what the state of the evidence. (Standard 3-4.3—Minimum Requirements for Filing and Maintaining Criminal Charges, ABA Criminal Justice Standards for the Prosecution Function, 4<sup>th</sup> Edition, See also Standard 3-4.4.)

### IMPROPER FILING CRITERIA

Prosecutors must avoid improper bases for charging. It is improper, and a violation of the law, if any or all of the following factors are the only reasons for charging:

1. Race, religion, nationality, gender, occupation, economic class, or political association or position of the victim, witnesses, or the accused;
2. The mere fact of a request to charge by a police agency, private citizen, or a public official;
3. Public or journalistic pressure to charge;
4. The facilitation of an investigation, including obtaining a statement from the accused; and
5. To intentionally resist or impede the efforts of any public official, candidate, or prospective candidate for elective or appointed public office

Additionally, a prosecutor should not attempt to dissuade a witness from testifying or attempt to affect a witness' testimony by threatening to file charges if the witness testifies for the defendant or in a particular manner.

Except as provided by statute, a prosecutor should not threaten or institute criminal proceedings to coerce a civil settlement or compromise. A prosecutor does not represent the victim of a crime, and it is an abuse of prosecutorial discretion to threaten criminal prosecution or to institute criminal proceedings in order to redress a victim's personal or financial loss. (Rule 3.10, Rules Prof. Conduct of State Bar.)

### REVIEW OF A DEFENDANT'S CRIMINAL HISTORY

When reviewing a case for filing and when resolving a case, you have an absolute obligation to this office and to your fellow prosecutors to check the defendant's rap sheet in our Case Management System to determine if the defendant has any other active cases. If there are other active cases, you must notify the DDA assigned to the other case(s) of the new case, your filing decision, and the status of your case.

(revised 02/2019)

(d) Compliance with Brady v. Maryland

### **6.03 DISCOVERY POLICY**

The District Attorney's Office's discovery policy is expressed by the law as set forth in Brady v. Maryland and Penal Code Sections 1054, et seq.. Any questions, including those relating to the safety of a witness or an ongoing investigation, should be directed to one's supervisor.

If discovery is provided to the defense by leaving a hardcopy or disc with our receptionist, you must attach two (2) copies of a “Discovery Receipt” to that discovery.

The individual picking up the discovery will sign and leave one copy for our records, and the second copy will be taken for the defense’s records.

(revised 02/2018)

#### **6.04 BRADY PROCEDURE**

The Fresno County District Attorney’s Office and the individual prosecutors therein have an obligation under the Due Process Clause of the 14<sup>th</sup> Amendment to disclose to the defense any evidence which is favorable to the defendant and is material to issues of either guilt or punishment, as confirmed by the United States Supreme Court in Brady v. Maryland (1963) 373 U.S. 83.

Each prosecutor has an affirmative duty to evaluate every case assigned to them to determine if there exists any information that may require disclosure pursuant to Brady. This duty also requires a review of all information which is in the possession of this office or the prosecution team. This shall be done to ensure that any material which falls under the ambit of Brady and its progeny is disclosed to the defense, as is our constitutional, statutory, and ethical obligations.

Law enforcement personnel, informants, cooperating individuals, and other witnesses who have been found to have an issue that could constitute Brady material are noted in this office’s case management system. Every prosecutor shall check the case management system in any case assigned to them to determine whether a witness has been so noted. If a witness is so noted, the prosecutor shall consult with the designated Assistant District Attorney to gain access to the information. That prosecutor shall then analyze the information pursuant to Brady and its progeny to determine if it should be disclosed to the defense in their case. Any prosecutor making a filing decision as to a case should reference the case management system to determine if any critical witness is so noted, and if such information should be considered in the filing decision.

Any member of this office, including individual prosecutors or investigators, who become aware of any witness who they believe has engaged in conduct that could fall under Brady (including any information provided by the defense), shall bring the matter to the attention of the designated Assistant District Attorney for review to determine if it meets the requirements to be disclosed to the defense pursuant to Brady.

Members of this office shall not maintain any list of law enforcement personnel, informants, experts, or any other witnesses who they believe have engaged in conduct that could fall under Brady. Each prosecutor has an obligation to make certain that all information as to such witnesses is available to every prosecutor in this office. Brady material known by anyone in this office is viewed by the Courts as being known by everyone in this office.

(revised 02/2019)



## COUNTY OF FRESNO

Lisa A. Smittcamp  
District Attorney

### MEMORANDUM

DATE: 10/27/2021

TO: All Attorney and Investigative Staff

FROM: ADA Steve Wright

RE: Subpoenas and Testimony of a Represented Victim/Witness with a Pending Criminal Matter

---

In the event that a victim/witness in a criminal prosecution is subject to their own separate pending criminal matter, PRIOR to subpoenaing that individual to testify, the DDA handling that case SHALL contact:

- 1.) the DDA handling the victim's/witness's pending matter to advise them about the current criminal prosecution and the anticipated testimony; AND
- 2.) the defense attorney representing the victim/witness in their pending matter.

If the DDA is not aware of a victim's/witness's pending matter prior to the issuance of the subpoena, the notifications above shall be made as soon as practicable after learning of the victim's/witness's pending matter.

Not only should the notification be made to the attorney for the victim/witness out of *professional courtesy*, direct contact with that victim/witness with a discussion about their pending matter may arguably be a violation of Rule of Professional Conduct Rule 4.2 which prohibits communications with a represented person.

If the victim/witness is not represented by counsel in their pending matter, please be mindful of Rule 3.8 which prohibits prosecutors from seeking a waiver of important pretrial rights from an unrepresented accused.

No offers or promises of leniency shall be made to the victim/witness by anyone in this office without having first discussed that subject with the DDA handling the victim's/witness's pending matter and their supervisor. Consistent with your Brady obligation, any agreement made with a victim/witness shall be disclosed to the defense in the criminal prosecution and shall also be forwarded to ADA Stanley for possible Brady notifications in the future.

Whether or not an agreement for testimony is made with a victim/witness, the DDA handling the criminal case shall also comply with their Brady obligation by advising the defense of the victim's/witness's pending criminal matter. The fact that a prosecution witness is facing pending criminal matters "constitutes evidence 'favorable' to the defense, in that a jury could view this circumstance as negatively impacting the credibility of testimony by the witness that was helpful to the prosecution." (People v. Letner (2010) 50 Cal.4<sup>th</sup> 99, 176; see also J.E. v. Superior Court (2014) 223 Cal.App.4<sup>th</sup> 1329, 1335; People v. Coleman (2014) 230 Cal.App.4<sup>th</sup> 1379; 1390; People v. Hayes (1992) 3 Cal.App.4<sup>th</sup> 1238, 1245 [a post-Prop 115 case citing to pre-Prop 115 case of People v. Coyer (1983) 142 Cal.App.3d 839, 842 for proposition that a "defendant is entitled to discovery of criminal charges currently pending against prosecution witnesses anywhere in the state."]; Kennedy v. Superior Court (2006) 145 Cal.App.4<sup>th</sup> 359, 379 [fact charges are pending against a prosecution witness at the time of trial is relevant for impeachment purposes].) The theory is that it may show that the witness, by testifying, is seeking favor or leniency. (People v. Martinez (2002) 103 Cal.App.4<sup>th</sup> 1071, 1080.) (Please see ADA Stanley regarding any Brady issues/questions.)

(f) Sentencing recs

## **6.08 FELONY SENTENCINGS**

There has been a concerted push to reduce the inmate population in our state prisons. To further that order, new programs have been imposed that can have a substantial effect on tough sentences, be it determinate or indeterminate.

These further efforts to reduce the state inmate population make it imperative that the Office makes an even greater effort on any case where a life term(s) or lengthy determinate sentence is imposed. In such cases, the assigned attorney should consider the following:

1. Making the defendant plead to as many violent/serious offenses as possible.
2. Write a sentencing letter with an eye not only to your sentencing judge but also the future. As decades pass, prosecutors retire, memories fade and key details that are not in the RPO or Appellate opinion are forgotten. Make certain that the outrageous facts, actions or statements in your case are memorialized for the future. Then get your judge to order that your letter accompany the RPO when it is sent to CDCR.

3. Make sure your victim(s) or next-of-kin know that the defendant may be getting released long before they might expect from the sentence that was pronounced. Ask your victim(s) or next-of-kin to consider registering with the CDCR Office of Victim & Survivor Rights & Services and keeping them advised of any address changes. That office adamantly keeps such personal information secret (they refuse to give it to DA Offices) and that is the **only** way to be advised of parole hearings or other release proceedings, not to mention when an inmate is released.
4. Ask your victim(s) to memorialize their feelings about the defendant and the case either through a Victim Impact statement or at sentencing. We routinely check for such statement or sentencing transcript in the court or D.A. files before a lifer parole hearing. Also ask your sentencing judge to order that a copy of the sentencing transcript be sent to CDCR with the RPO. Consider making that request at any future court hearings which might bear on a parole decision.
5. Ask your Chief to have your DA & Investigator files stored electronically. It costs money that we do not have, but is well spent when the defendant qualifies for a parole hearing years later.

(renumbered 02/2018)

## **6.09 THREE STRIKES**

We rely on every prosecutor in this office to evaluate their cases to make determinations as to what charges should be filed and what ultimate outcome should be sought. As part and parcel of those responsibilities, please bear the following in mind:

1. In every felony case filed where a defendant has one or multiple strike priors, please file all such priors that can be pled and proven beyond a reasonable doubt. What sentence any particular defendant will ultimately receive is dependent on many factors but the full extent of any defendant's prior violent/serious convictions should be laid out in the Complaint;
2. Please consult with your Chief DDA prior to making any decision to dismiss or not file any or all of a defendant's strike priors in the Information. This consultation should take place after the preliminary hearing has been conducted;
3. After consulting with your Chief, a decision can be made on how best to proceed, based on the evidence and pertinent law in your case.

(renumbered 02/2018)

## What is restitution?

Restitution is payment of money to cover financial losses caused by criminal activity. Restitution is ordered at the time of sentencing or as part of a conditional sentence to have criminal charges reduced or dismissed.

## When can restitution orders be paid?

After sentencing, or agreement to a conditional sentence, the District Attorney prosecuting the case will request that an account be set up with RCU (Revenue Collections Unit) so that payments can begin to be made. Setting up an account takes some processing. *Accounts will be active in most cases within 3-4 business days after sentencing.*

## How can restitution orders be paid?

Payments can be made online, via telephone, or in person at RCU.

Please do not contact the District Attorney's Office regarding making payments. Payments will not be accepted on the behalf of defendants.

**Questions or concerns about restitution orders should be answered by the defendant's attorney.**

**The District Attorney's Office represents the People of the State of California and cannot give legal advice.**

### Fresno County Public Defender's Office

2135 Fresno St # 100, Fresno, CA  
93721

Telephone: 559-600-3546

### The Law Office of Fitzgerald, Alvarez & Ciummo

2014 Tulare Street # 420  
Fresno, CA 93721

Telephone: 559-441-0114

### Fresno Alternate Defense Office

2014 Tulare Street, Suite 400  
Fresno, California 93721

Telephone: 559-264-8872

## Where can restitution payments be made?

Restitution payments are made directly to RCU (Revenue Collections Unit). They accept cashier's check, money order, credit/ debit cards. *Cash will be accepted in person only.* **Make sure to include the court case number on the check or money order.**

### Payments in Person

Hall of Records  
2281 Tulare Street, Room 105  
Fresno, CA 93721

### Payments Via Online

Link:

<https://heartlandpaymentservices.net/PaymentPortal/FresnoCountyRevenueCollectionsUnit/Home>

### Payments Via Telephone

Phone Number: 877-760-6525

### Office Hours

Monday through Friday  
8:00 a.m. - 5:00 p.m.

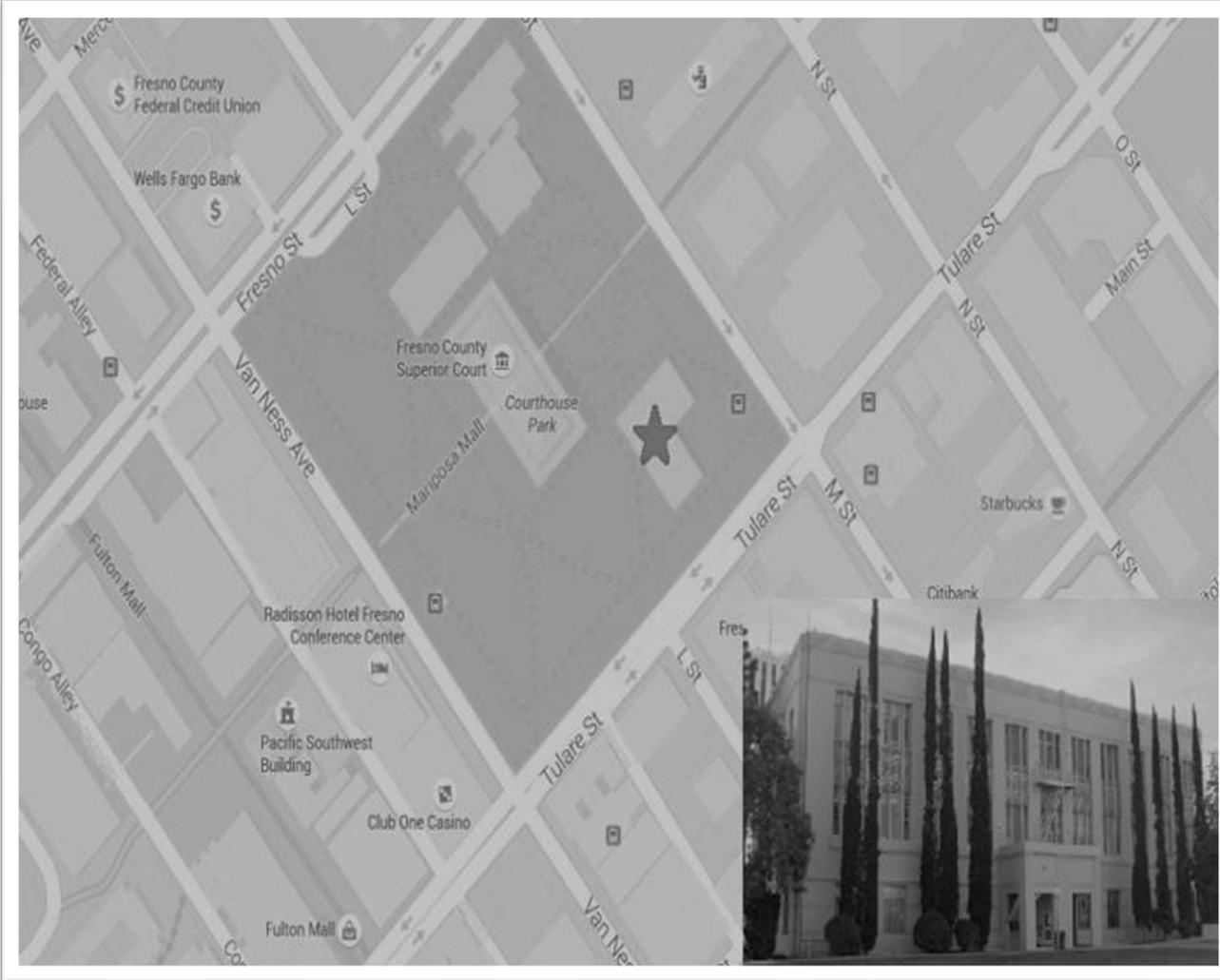
### Contact

(559) 600-3815 Phone  
(559) 600-1451 Fax

[acttc-rcuwebmail@co.fresno.ca.us](mailto:acttc-rcuwebmail@co.fresno.ca.us)

## Map to Revenue Collections Unit:

RCU is located on Tulare Street between Van Ness Avenue and “M” Street, south-east of the Fresno County Superior Court House.



# Restitution Guide For Defendants

---



**County of Fresno**  
**LISA A. SMITTCAMP**  
District Attorney

---

Office of the District Attorney  
2100 Tulare Street  
Fresno, CA 93721  
(559) 600-3141

**From:** [Hoedt, Scott](#)  
**To:** [Alchian, Roxanna](#); [Aliyev, Ismail](#); [Ancheta, Erica](#); [Anderson, Miiko](#); [Avent, Jon Paul](#); [Baldovi, Stephanie](#); [Banta, Carol](#); [Barnes, Cecilia](#); [Baskin, Rachel](#); [Bigwood, Alexander](#); [Bruce, Carlie](#); [Butkus, Jamie](#); [Carlson, Taylor](#); [Christopherson, Adam](#); [Clarke, Corrie](#); [Cline, Jarrett](#); [Cobb, Amy](#); [Conklin, Jason](#); [Craddock, Zaren](#); [Devencenzi, David](#); [DeVita, Tatiana](#); [Donovan, Tim](#); [Dotson, Foshia](#); [Drake, Kaitlin](#); [Dukes, Samantha](#); [Exline, Brian](#); [Fernandez, Emily](#); [Fritzler-Kirkorian, Traci](#); [Galstan, Nicole](#); [Galstan, Timothy](#); [Garcia, Elizabeth](#); [Garcia, Esmeralda H.](#); [Garcia, Sandra \(DA\)](#); [Gillespie, Leslie](#); [Gong, Becky](#); [Guillermo, AJ](#); [Gularte, Christopher](#); [Haas, Doug](#); [Hamilton, Matthew](#); [Herrera, Ricky](#); [Hill, Andrea](#); [Hinton, Brandon](#); [Hoedt, Scott](#); [Howo, Midori L.](#); [Hulett, David](#); [Idiart, Nicole](#); [Irving, Tess](#); [Jimenez, Manuel C](#); [Kalebjian, Jamie](#); [Keel, Justine](#); [Kirby, Dustin](#); [Kook, Adam](#); [Collins, Amber](#); [Kubota, Scott N.](#); [Kuykendall, Amy](#); [Lacy, William](#); [Lai, Victor](#); [Lambert, Nathan](#); [Lewis, Dennis-DDA](#); [LiCalsi, Eric](#); [Long, Taylor P.](#); [Malazo, Nate](#); [Maxwell, Kristin \(DA\)](#); [McClaskey, Maxton](#); [McClellan, Sheila](#); [McGinthy, Ryan](#); [McPherson, Kyle](#); [McWilliams, Keith](#); [Mehta, Prathna](#); [Menchaca, Laura](#); [Miller, Deborah](#); [Mitchell, Karen](#); [Monopoli, Carl](#); [Moss, Christopher](#); [Muja, Anthony](#); [Murphy, Ty](#); [Musto, John](#); [Ocampo, Carina](#); [Olmos, David](#); [Oppliger, Trevor](#); [Owen, Elizabeth](#); [Padilla, Danielle](#); [Panosian, Karnig](#); [Paulson, Ashley](#); [Peterson, Kelsey](#); [Pettebone, Alethea L.](#); [Prabhakar, Deepti](#); [Prince, Rachael](#); [Rand, Susan](#); [Reynolds, Kendall](#); [Ricks, Sydney](#); [Rios, Aimee](#); [Roberts, Denise](#); [Rodriguez, Jessica - DA](#); [Rollins, Kellie](#); [Roush, Heather](#); [Rutiaga, Galen](#); [Salazar, Leonel](#); [Saleh, Aosam](#); [Shahrestani, Neda](#); [Shirzad, Roshana](#); [Smith, Elana Aron](#); [Smith, Jennifer](#); [Smith, Kelly - DA](#); [Smittcamp, Lisa](#); [Spurling, Heather](#); [Stanley, Brianna](#); [Stanley, Jerry](#); [Sterios, Darla](#); [TeNyenhuis, Sierra](#); [Torres, Alexander](#); [Tovar, Jacquelyn](#); [Tully, John](#); [Ueltzen, Steven](#); [Urrizola, Lisa](#); [Vallejos, Katherine](#); [Veneman-Hughes, Robert](#); [Verzosa, Dennis](#); [Volanti, Jenny](#); [Walters, Daniel](#); [Wells, Ronald](#); [Whalen, Robert](#); [Whitehead, Ian](#); [Whiting, Rachel](#); [Wright, Steve](#); [Yenokian, Innessa](#)  
**Subject:** Restitution Orders  
**Date:** Friday, December 16, 2022 9:21:00 AM

---

Good morning,

Our office has been having quarterly meetings with the Court and Probation, and will be adding representatives from the Action Center and CDCR, to ensure that we are all on the same page when it comes to getting restitution ordered and collected. This email is to help serve as a reminder to all DDAs that we have an obligation to request restitution for our victims. While we will not be the ones personally collecting payment, it is our duty to ensure the appropriate accounts get set up in a timely manner. As a general rule, payments by defendants are to be made to the Revenue Collections Unit (RCU) and not our office. They collect the money and forward it to the victim(s). The important thing is to ensure that an account gets created so the money can be collected.

The court tends to default to reserving restitution, but we need to get a specific order when possible. This should be done at sentencing for most cases but can also be done for pre-plea resolutions as well. Just be sure to contact [REDACTED] so she can set up an account.

If you have a case where you need assistance contacting the victim(s) to get restitution information or paperwork, please let [REDACTED] know and she will try to help you out.

The type of account that gets set up depends on the type of sentence imposed.

**CDCR** – the prison should take care of setting up an account. The attorney must be sure to state on the record the restitution amount and who it is payable to. The attorney will also need to ensure that the clerk has contact information for the victim, and remind the clerk to send a certified copy of the documents to CDCR. CDCR will then take care of collecting and distributing the money.

**Local Prison WITHOUT MSR** – Probation is not involved if there is no MSR. The responsibility falls on the attorney to get a stipulation to an amount and to ensure that the minute order says “Payable Through RCU.” The attorney will then need to notify [REDACTED] so she can have RCU open an account. Be sure to provide her with the DA #, defendant’s name, victim’s information, and the amount owed. If you reserve restitution and later want to get an amount set, it will be on our office to

calendar the matter and provide proper notice to the defendant and their attorney, something that is not always easy to do.

**Local Prison WITH MSR** – Probation will set up an account with RCU. Your contact person will be DPO [REDACTED]. The attorney's responsibility is to make sure the amount owed and who it is payable to are stated clearly on the record. It is not enough to submit on the RPO containing the information. Please also ensure that [REDACTED] has updated contact information for the victim if it differs from what is in the reports.

**Formal Probation** – same as if there is an MSR term. Probation will set up an account with RCU. Your contact person will be DPO [REDACTED]. The attorney's responsibility is to make sure the amount owed and who it is payable to are stated clearly on the record. It is not enough to submit on the RPO containing the information. Please also ensure that Tami has updated contact information for the victim if it differs from what is in the reports.

**Informal Probation** – it is on our office to set up an account with RCU. Once a case is sentenced, you will need to email [REDACTED] with the DA #, defendant's name, victim's name, and the amount owed. [REDACTED] relies on the contact information in ePro for our victims, so please include any updated information if it has not already been noted in ePro. If you do not send this email then [REDACTED] will not know to set up an account and the defendant will not be able to make payments. Please also ensure that the amount owed, who it is payable to, and that it will be paid through RCU are all clearly stated on the record.

For cases involving **Cal-VCB**, be sure you are in contact with [REDACTED] and are checking ePro for claim information prior to sentencing. You will see a notification in ePro in bold, red letters next to the case facts tab notifying you that there is a claim pending. Please be sure to touch base with [REDACTED] prior to sentencing to ensure you have up to date information.

If you have **multiple victims**, please be sure you specify what amount is owed to each victim. If you just give a lump sum there is no good way for any of the various agencies to distribute the money.

It is important that we attempt to address restitution at sentencing for each case. It should be understood that restitution will be part of the resolution. If possible, it is best for us to try to get a fixed number and ask for a stipulation as part of any plea agreement. If that is not practical, we need to try to get a stipulated amount prior to the sentencing date. Our office will be working with the courts to try to ensure the court is paying more attention to restitution as well, so you may start getting more questions from judges about if there is a stipulated amount.

If you hold a restitution hearing after the defendant is initially sentenced, you will need to follow up to ensure that the documentation is getting sent to the appropriate agency, as sometimes the documents don't get sent automatically like they do after sentencing. If it is CDCR, you will need to ask the clerk to send a certified copy of the minute order to the prison. If it is a local prison commitment, it depends if an MSR term is ordered or not. If there is no MSR it is on us and you will need to contact [REDACTED]. If there is an MSR term, you will need to contact [REDACTED]. Likewise, if it is formal probation, you will need to reach out to [REDACTED] and if it is informal probation you will need to

touch base with [REDACTED].

[REDACTED] and [REDACTED] can only work on the cases they know about. Please be sure you are keeping them up to date. If you have any questions please let me know and I'll try to find answers.

Thanks,  
Scott

**From:** [Hoedt, Scott](#)  
**To:** [Aguilar, Yvette](#); [Alchian, Roxanna](#); [Aliyev, Ismail](#); [Ancheta, Erica](#); [Anderson, Miiko](#); [Avent, Jon Paul](#); [Baldovi, Stephanie](#); [Banta, Carol](#); [Barnes, Cecilia](#); [Baskin, Rachel](#); [Bigwood, Alexander](#); [Bruce, Charlie](#); [Butkus, Jamie](#); [Carlson, Taylor](#); [Christopherson, Adam](#); [Clarke, Corrie](#); [Cline, Jarrett](#); [Cobb, Amy](#); [Coker, Ross](#); [Conklin, Jason](#); [Craddock, Zaren](#); [Devencenzi, David](#); [Donovan, Tim](#); [Drake, Kaitlin](#); [Dukes, Samantha](#); [Exline, Brian](#); [Fernandez, Emily](#); [Freeman, Amythest](#); [Fritzler-Kirkorian, Traci](#); [Galstan, Nicole](#); [Galstan, Timothy](#); [Garcia, Elizabeth](#); [Garcia, Esmeralda H.](#); [Garcia, Sandra \(DA\)](#); [Gong, Becky](#); [Goodrich, Autumn](#); [Guillermo, AJ](#); [Gularte, Christopher](#); [Haas, Doug](#); [Hamilton, Matthew](#); [Herrera, Ricky](#); [Hinton, Brandon](#); [Hoedt, Scott](#); [Howo, Midori L.](#); [Hulett, David](#); [Idiart, Nicole](#); [Irving, Tess](#); [Janz, Andrew](#); [Jimenez, Manuel C](#); [Kalebjian, Jamie](#); [Keel, Justine](#); [Kirby, Dustin](#); [Kook, Adam](#); [Collins, Amber](#); [Kubota, Scott N.](#); [Lacy, William](#); [Lai, Victor](#); [Lambert, Nathan](#); [Lewis, Dennis-DDA](#); [LiCalsi, Eric](#); [Malazo, Nate](#); [Maxwell, Kristin \(DA\)](#); [McClaskey, Maxton](#); [McClellan, Sheila](#); [McGinthy, Ryan](#); [McPherson, Kyle](#); [Meegan, Lauren](#); [Mehta, Prathna](#); [Miller, Deborah](#); [Mitchell, Karen](#); [Monopoli, Carl](#); [Moss, Christopher](#); [Muia, Anthony](#); [Murphy, Ty](#); [Musto, John](#); [Ocampo, Carina](#); [Olmos, David](#); [Oppliger, Trevor](#); [Owen, Elizabeth](#); [Padilla, Danielle](#); [Panosian, Karnig](#); [Paulson, Ashley](#); [Peterson, Kelsey](#); [Pettebone, Alethea L.](#); [Prabhakar, Deepti](#); [Prince, Rachael](#); [Rand, Susan](#); [Reynolds, Kendall](#); [Ricks, Sydney](#); [Rigby, Katherine](#); [Roberts, Denise](#); [Rodriguez, Jessica - DA](#); [Rollins, Kellie](#); [Rutiaga, Galen](#); [Salazar, Leonel](#); [Saleh, Aosam](#); [Shahrestani, Neda](#); [Shirzad, Roshana](#); [Simoes, Cameron](#); [Smith, Elana Aron](#); [Smith, Kelly - DA](#); [Smittcamp, Lisa](#); [Spurling, Heather](#); [Stanley, Brianna](#); [Stanley, Jerry](#); [Sterios, Darla](#); [Tedrow, Elizabeth](#); [TeNyenhuis, Sierra](#); [Thomas, Richard](#); [Torres, Alexander](#); [Tovar, Jacquelyn](#); [Tully, John](#); [Ueltzen, Steven](#); [Urrizola, Lisa](#); [Vallejos, Katherine](#); [Veneman-Hughes, Robert](#); [Verzosa, Dennis](#); [Volanti, Jenny](#); [Walters, Daniel](#); [Wells, Ronald](#); [Whalen, Robert](#); [Whitehead, Ian](#); [Whiting, Rachel](#); [Wright, Steve](#); [Yenokian, Innessa](#)  
**Subject:** Victim Restitution  
**Date:** Tuesday, August 23, 2022 8:44:33 AM  
**Attachments:** [Informal Restitution Defendant Guide Revised.docx](#)

---

Good morning,

[REDACTED], and I had a meeting with Probation and Court staff recently to ensure we are all on the same page when it comes to getting restitution ordered and collected for our victims. While we will not be the ones personally collecting payment, it is our duty to ensure the appropriate accounts get set up in a timely manner. As a general rule, payments by defendants are to be made to the Revenue Collections Unit (RCU) and not our office. They collect the money and forward it to the victim(s). The important thing is to ensure that an account gets created so the money can be collected.

Each DDA's responsibility varies depending on the type of sentence imposed:

**CDCR** – the prison should take care of setting up an account. The attorney must be sure to state on the record the restitution amount and who it is payable to. The attorney will also need to ensure that the clerk has contact information for the victim, and remind the clerk to send a certified copy of the documents to CDCR. CDCR will then take care of collecting and distributing the money.

**Local Prison WITHOUT MSR** – Probation is not involved if there is no MSR. The responsibility falls on the attorney to get a stipulation to an amount and to ensure that the minute order says "Payable Through RCU." The attorney will then need to notify [REDACTED] so she can have RCU open an account. Be sure to provide her with the DA #, defendant's name, victim's information, and the amount owed. If you reserve restitution and later want to get an amount set, it will be on our office to calendar the matter and provide proper notice to the defendant and their attorney, something that is not always easy to do.

**Local Prison WITH MSR** – Probation will set up an account with RCU. Your contact person will be DPO [REDACTED]. The attorney's responsibility is to make sure the amount owed and who it is payable to are stated clearly on the record. It is not enough to submit on the RPO containing the information. Please also ensure that [REDACTED] has updated contact information for the victim if it differs from what is in the reports.

**Formal Probation** – same as if there is an MSR term. Probation will set up an account with RCU. Your contact person will be DPO [REDACTED]. The attorney's responsibility is to make sure the amount owed and who it is payable to are stated clearly on the record. It is not enough to submit on the RPO containing the information. Please also ensure that [REDACTED] has updated contact information for the victim if it differs from what is in the reports.

**Informal Probation** – it is on our office to set up an account with RCU. Once a case is sentenced, you will need to email [REDACTED] with the DA #, defendant's name, victim's name, and the amount owed. [REDACTED] relies on the contact information in ePro for our victims, so please include any updated information if it has not already been noted in ePro. If you do not send this email then [REDACTED] will not know to set up an account and the defendant will not be able to make payments. Please also ensure that the amount owed, who it is payable to, and that it will be paid through RCU are all clearly stated on the record.

For cases involving **Cal-VCB**, be sure you are in contact with [REDACTED] and are checking ePro for claim information prior to sentencing. You will see a notification in ePro in bold, red letters next to the case facts tab notifying you that there is a claim pending. Please be sure to touch base with Jacquelyn prior to sentencing to ensure you have up to date information.

If you have **multiple victims**, please be sure you specify what amount is owed to each victim. If you just give a lump sum there is no good way for any of the various agencies to distribute the money.

It is important that we attempt to address restitution at sentencing for each case. It should be understood that restitution will be part of the resolution. If possible, it is best for us to try to get a fixed number and ask for a stipulation as part of any plea agreement. If that is not practical, we need to try to get a stipulated amount prior to the sentencing date. Our office will be working with the courts to try to ensure the court is paying more attention to restitution as well, so you may start getting more questions from judges about if there is a stipulated amount.

If you hold a restitution hearing after the defendant is initially sentenced, you will need to follow up to ensure that the documentation is getting sent to the appropriate agency, as sometimes the documents don't get sent automatically like they do after sentencing. If it is CDCR, you will need to ask the clerk to send a certified copy of the minute order to the prison. If it is a local prison commitment, it depends if an MSR term is ordered or not. If there is no MSR it is on us and you will need to contact [REDACTED]. If there is an MSR term, you will need to contact [REDACTED]. Likewise, if it is formal probation, you will need to reach out to [REDACTED] and if it is informal probation you will need to touch base with [REDACTED].

Please also take a minute to review the informal restitution guide for defendants that is attached. This provides defendants with information on how to make payments through RCU and will hopefully reduce the number of people who are trying to pay Blanca even after she tells them she can't take their money.

[REDACTED] and [REDACTED] can only work on the cases they know about. Please be sure you are keeping

them up to date. If you have any questions please let me know and I'll try to find answers.

Thanks,  
Scott

(g) Prosecution of minors

# MEMORANDUM

**To: New Juvenile Attorney**

**From:** [REDACTED]

**Date: June 2018**

**Re: Everything you ever wanted to know about juvenile**

## Introduction

The learning curve here is steep, and I'm assuming you know absolutely nothing.

## Glossary

In juvenile, there's a whole different language than in adult court. Juvenile is supposed to be a quasi-civil process aimed at rehabilitation, so the Welfare and Institutions Code (WIC) uses language that is supposed to be less stigmatizing.

Minor = defendant

Petition = the charges filed against the minor

Adjudication = court trial

Found True = found guilty

Found Not True = found not guilty

Disposition = sentencing

Admit = plead guilty

Deny = plead not guilty

Juvenile Justice Campus (JJC) = juvenile hall, located behind court house

## The Process

A kid commits a crime. The cops arrest him. The cops either book him in juvenile hall, or cite him and release him to his parents. If they book him in juvenile hall, the hall might either then release the kid to the parents, or continue to detain the kid, depending on their own mysterious criteria. In either case, the police then submit their reports to the probation department (not to us). Probation then makes a decision to either handle the case themselves if it is a misdemeanor or to submit the case to us for filing (See Cal. Rule of Court 1405(b)). All felony arrests must be submitted for our review.

If they submit the case to us, then somebody from probation brings over the report and gives it to [REDACTED]. She puts together a file, and puts the file on the rack in the first cubicle. If the kid is in custody in juvenile hall, then [REDACTED] puts the file in the tray on top with a pink-highlighted note saying "Last Day, 4:00" or some other time of day. That means someone in the office has to read the case and make a filing decision before that deadline. I am the person primarily responsible for "last day" filings. If the kid is not in custody in juvenile hall (Not yet arrested (NYA)), and instead was released at some point to his parents, then [REDACTED] puts the file on the rack to the left of her, without any notes on it. Those files have no particular deadline, other than

the statute of limitations (typically one year from when the incident is reported to the police.) We do not let files sit there for a year, though.

After a filing decision is made, the file is returned to [REDACTED] and she or one of the other staff does the actual filing of the case with the clerk's office. Then the court sets an arraignment date—the very next day for kids who are in custody, but generally a few weeks later for out-of-custody cases. For kids who are in custody, at the same time as the arraignment there is a brief hearing (a “detention hearing”, or “detent”) to determine what the minor's custody status should be. There are four possibilities:

1. Detained in Juvenile Hall. While kids are in juvenile hall, they earn points based on their behavior, and “make stages” as they earn more points. For boys, the stages go from “HSP” for high security, then “SP” for special program, then “BC” for behavior contract, then “Stage 1”, “Stage 2”, and finally “Stage 3” for kids who behave the best. For girls, they have colors instead of numbers—“Stage Blue” instead of 2, and “Stage Gold” instead of 3. I'm not sure what the girl's equivalent of Stage 1 is. It's often good to ask your probation officer what stage your kid is at, when you make offers and also at Dispo.
2. Released on the GPS, an ankle bracelet that has nothing to do with GPS. The probation department installs a gizmo on the parent's phone, which automatically calls probation any time the ankle bracelet is more than a certain distance away from the gizmo. So any time the minor leaves the house, probation knows about it. To get “released on the monitor” or “released on EM”, the parents have to have a working phone that they're willing to have a gizmo attached to, and the minor has to care that probation is keeping tabs on him. The monitor is not a ball-and-chain, and kids run away from home all time on EM, or cut the bracelet off. So, generally, if the kid has been on the monitor before and violated it, the court won't grant it again, although some judges have been known to give kids second, third, and fourth chances. Generally, the court will allow the minor to go to school or church or other approved activities—the kid just has to give the EM office his schedule, so they know when to expect the EM gizmo to report “out of range.”
3. Released on Supervised Home Detention (SHD)—house arrest, but without anyone enforcing it except for the parents. If the kid runs away, or otherwise violates the terms of the SHD contract (which the parents and minor sign), then the parents are expected to report the violation to the probation department.
4. Outright release to the parents.

**Note: There is no bail in juvenile.**

Approximately a week after the arraignment, a hearing is set called a Settlement Conference (“SC”). At the SC, the DDA and the defense make an effort to settle the case. Also, if there is some discovery the defense wants, they'll frequently request it at SC. Generally, the point of a SC is that, at that point, both parties have had a chance to read over the reports and do some follow-up investigation if necessary, and the defense has had a chance to talk at some length with

the kid, so that both parties have a better sense of what kind of plea bargain would be appropriate. For every day that you're scheduled to handle the calendar in a particular courtroom, on the day before, you should read over all the cases you have set for SC and decide on what, if anything, you want to offer as a plea bargain.

**The code sets very tight deadlines for speedy trials for juveniles:** the adjudication, if there is one, must take place within 15 court days from the arraignment for in-custody minors, or 30 calendar days if they're out of custody. The SC is generally 5 court days after arraignment, so that leaves 10 court days for in-custodys and usually about 15 court days for out-of-custodys to have their adjudication. The court will usually set the adjudication seven or eight court days out from the SC, to leave a little cushion at the end, in case the adjudication gets delayed for any reason. If the adjudication does not happen within the statutory time, the case "times out" and must be dismissed.

Cases can be dismissed "with prejudice", meaning they can't be refiled, or "without prejudice", meaning they can. Generally, if we have to dismiss a case, we ask the court that it be without prejudice. If the court wants to dismiss a case with prejudice, the court must specifically find that doing so is in the interests of justice and the welfare of the minor. The only time the court is required to dismiss a case with prejudice is after double jeopardy attaches. For a court trial (all juvenile adjudications are court trials), that's when the first witness is sworn.

The defense, of course, can always continue things well beyond the time-out date—speedy trial is the minor's right, not the People's. Sometimes, they want to do more investigation, so they'll ask for a second SC or even a third. If they do that, you need to be careful that the defense also gives a "time waiver." Since the first SC is usually 10 days before the time out for in-custodies, and 15 for out of custodies, we customarily ask for the same amount of time if the defense asks for another SC. Here's an example:

Minor is in custody and arraigned on March 1, 2019. That makes the timeout date March 22, 2019. The SC is set on March 8. The defense asks for another TC on March 15. Without a time waiver, if on the 15<sup>th</sup> an adjudication gets set, then it would have to be set on or before March 22, leaving us less than a week to send out subpoenas. Not enough time. So on March 8, if the court sets another TC on the 15<sup>th</sup>, we should ask for a ten day time waiver beyond that date, making the new timeout date March 29. If the minor refuses to waive time, then you should object to any defense continuance.

The minor might admit to all the charges, or you might reach a plea agreement with the defense, at either the arraignment, at a SC, or even on the date of adjudication. Or, you might have a petition found true at the adjudication. The next hearing after any of those events would be the Dispositional Hearing, or Dispo. That's supposed to happen within ten days from the date the allegations are proven or admitted, but we don't have to worry about time waivers for that—that's between the court and the defense.

## **Plea Agreements**

The vast majority of cases plea out without a trial. You have wide latitude to make whatever offer you deem appropriate. However, there are a couple things you should keep in mind:

All 707(b) cases

Especially when you're new, talk with me before you make offers on your more serious cases. Particularly cases where you have a victim with significant injuries (more than bruises).

Don't reduce residential burglaries to something lesser (like second-degree burglary or trespassing) unless there are serious evidentiary problems. When in doubt see me.

Don't reduce DUI's unless there are serious evidentiary problems. When in doubt see me.

Whatever charges you dismiss as part of the plea, should be dismissed "reserving comment and restitution." This allows the probation department to talk in their dispo report about whatever the minor did in the dismissed count(s), and allows the victims in the dismissed counts to receive any compensation they should get.

Lots of crimes can be either misdemeanors or felonies. They're known as "wobblers". If you plea a kid to a felony, the defense can still turn around and ask the judge to reduce it to a misdemeanor. That's called "17(b)"-ing a charge. See PC 17(b). Watch out for this.

For minors under the age of 14, there is caselaw (Penal Code 26) that says you also have to prove that they knew what they did was wrong at the time they did it. During a plea, make sure the court asks the minor that. If you go to trial on a minor under 14, you'll need to subpoena a parent or teacher or someone who can testify that they taught the minor not to steal, or hit people, or whatever.

After you plea a felony case out, or the court renders a decision, there's a legal-sized blue sheet in the file you need to fill out. On that form, you write down what happened and why. In particular, when you plea a case out, you need to explain why you offered that plea agreement. These are really notes to yourself, so that if anybody ever complains about what you did, you'll remember why you did what you did.

## **Amending the Petition**

Lots of times, when you get a case for SC, you'll read over it and decide it's actually more serious than the filed charges reflect. Or, maybe you'll do some follow-up investigation and decide you can't prove one or more elements of one of the charged crimes. At any time up to and including the date of adjudication, you can amend the petition to add, remove, or change any of the charges. Just give the file to [REDACTED], tell her what you want changed, and she'll print out a new petition for you. Then take the new petition to the clerk's office (or to the clerk in your

department, if she knows how to enter it into the system). At the next hearing, the court will arraign the minor on the amended petition.

### **Wards of the Court**

Technically, when a kid is on probation after a petition has been found true, the kid is considered a ward of the court, even if he continues to live with his parents. But committing a crime is not the only way a kid can become a ward of the court. Wards come in three flavors:

1. 602. As in, WIC 602. Look it up if you want. These are the kids we handle, the ones who are wards because they committed a crime. They are supervised by the Probation Department.
2. 601. A 601 is a kid who hasn't committed a crime, but is just out of control. Disobeying his parents, running away from home, that sort of thing. There isn't really a system in place for dealing with 601s in this county and had previously been used for truancy issues. If a kid stays out late in defiance of his parents, the parents can call the cops, and the cops will give the kid a ticket that says 601 on it, but nothing happens after that. Sometimes we deal with particularly out of control kids as 602s when they commit violations of the law.
3. 300. These are wards of the court in the Dickensian sense. Orphans, homeless kids, kids whose parents are crazy or in prison, children of abusive parents—that sort of thing. There's a whole different system set up for dealing with them, called Dependency Court. They are supervised by the Department of Children and Family Services (DCFS).

### **241.1 Staffings**

Sometimes a kid who is already a 300 commits a crime. A decision has to be made whether to continue to handle the kid as a 300, or make him into 602. That decision is made between Probation and DCFS, at a meeting called a "241.1 staffing", after WIC 241.1. Typically, the way this comes up, is we file charges (say, felony vandalism) on a kid who smashes the TV and other property at a group home. At the arraignment, the defense asks for a 241.1 staffing, and the court orders it. Representatives from Probation and DCFS get together and decide the kid was an out-of-county 300 kid stuck in the foster care system. They will make a recommendation and submit a report on it, which the court, the DA, and defense all get copies of at the next date. The court reads the report, invites commentary from both parties, and then makes their decision. Do not be surprised that they do not follow a recommendation to go to 600.

Sometimes defense attorneys will disagree with the recommendation, and they'll want a contested hearing on the matter, with witnesses giving testimony under oath. Read WIC 241.1—there's no authority for that. A 241.1 decision is made between Probation and DCFS, with the court's blessing. Neither we nor the defense have any real role. If the defense requests such a thing, you should object vigorously. Less experienced judges have been known to order contested hearings anyway, which is incredibly awkward. Do not let the court do so.

## MPC

**Maximum Period of Confinement.** This is one of the most *important* factors to consider in filing charges, as well as making plea deals. As the name implies, this is the longest period of time the minor can be kept in custody, based on whatever charges have been found true against him. For most crimes, the penal code sets a sentence, but for felonies it's always a range. For instance, if you look up robbery, PC 211, the code says you can go to state prison for 2, 3, or 5 years. Juveniles don't go to state prison, but if a minor admits or is found true on a 211, and has no other charges, then his MPC is capped at the middle term from the triad so 3 years.

\*\*\*\*Starting 7/1/21, only the middle term can be imposed\*\*\*\* If the penal code simply states the crime is a felony, without stating a term, then the triad is 16 months, 2 years, or 3 years, and so the MPC is 2 years, the middle term. If the code says a crime is a misdemeanor, without stating a term, then the time is 6 months.

If you have multiple charges, it gets more complicated. You take the charge with the biggest MPC, and that's your base term. For all other felony charges, you add on one-third of the middle term of the triad. So if you have a robbery (PC 211, MPC 3 years) and a possession of a shobizue (PC 12020, a 16-2-3), one-third of two years is eight months, so you end up with an MPC of 3 years and 8 months. For misdemeanors, technically you can just add them up consecutively, but it's customary here to do one-third of those, too. So if you have a kid who robs someone (5 years) and then gives away live ducklings as an inducement to enter a place of amusement (PC 599, 6 months), the MPC would be 5 years and 2 months.

This can be an issue if a kid keeps coming back to court on violations of probation. Say a kid commits a battery, (PC 242, 6 months). Let's say the kid is in custody, too, so by the time he admits the charge at TC, he has 9 days of custody credits. He is released. He violates the electronic monitor, and comes back to court on a violation of probation (VOP). 9 more days of credits. The court puts him in a group home and he runs away. He gets picked up on another VOP and this time the court gets mad and puts him in the pre-adolescent program: 63 days. Now we're up to 81 days of credits, and we only have 99 days left to work with.

It's very rare that minors actually run out of MPC. But the remaining MPC can be too little to sentence a kid to SAU, as in the above example. Another issue is when kids pick up new charges: to allege sole wardship, or not?

\*\*\*\*\*Update: Starting July 1, 2021 ALL juveniles can only have the mid-term imposed before enhancements or prior cases. See WIC730(a)(2) effective 7/1/21. See below.\*\*\*\*\*

## Sole Wardship (WI 726)

When you file charges on someone who is already on probation, you generally want to mark on the filing decision form "SW" for sole wardship. This allows the court to aggregate the MPC on his new charges with the MPC from his old charges. Let's say a guy is on probation for a misdemeanor battery on school grounds (PC 243.2), MPC 1 year. He picks up another battery,

this time on the street (PC 242): 6 months. Without alleging sole wardship, if he admits the new charge, his MPC becomes 6 months and the old time just goes away.\* If you allege sole wardship, though, you add all the charges up, and you get 1 year and 2 months.

Sometimes, though, you don't want to allege sole wardship. When you allege sole wardship, you get to add up all the MPC from the old and new charges, but the minor also gets all his time credits for the old charges. Let's say you've got that same guy, and his current MPC is now 1 year and 2 months. The court sends him to boot camp, and he racks up a total of 250 days of time credits. Then he gets out and commits a robbery, and spends another ten days in the hall before he admits at TC. If you allege sole wardship, the robbery is now the principal term, and you have 5 years and 6 months (the one year for the 243.2 gets reduced to 4 months, and the 2 months for the 242 stays the same). But with now 260 days of time credits, that 5 years and 6 months is actually less than just getting the five years, with only 10 days of time credits.

One other note: you only allege sole wardship on your filing determination if the minor is currently on probation for something. If he used to be on probation, but completed it and probation was terminated, then you're out of luck. If he's on informal probation you're out of luck. If he's on a conditional (see below) you're out of luck. If he's on DEJ (see below) you're out of luck.

## **Dispos**

At the Dispo hearing, the probation department submits a report with all sorts of information about the minor and his family, with a recommendation for what the court should order. There will be a probation officer who will be sitting next to you in court—at TC's that officer doesn't do anything but take notes on what happens. But at Dispo's, the probation officer takes the lead, and argues for whatever the probation department is recommending. You are free to agree or disagree with probation's recommendation, and recommend whatever you want to the court. Usually the recommendation is on target, but sometimes it's way off, either because the person who wrote the report was hamstrung by probation's own internal guidelines of what they're allowed to recommend, or because they just grossly misunderstood what the case was really about. Here's an outline of all the usual Dispo's:

1. Standard grant of probation: generally, 30, 60, or 90 days on the monitor, plus 50 or 100 or 200 hours of community service, or up to 14 days on the Community Service Work Program (CSWP). CSWP is an eight hour day spent raking leaves or picking up trash or some other kind of probation-supervised work. CSWP takes place in Fresno, so if the kid is from some outlying area then the court will just order regular community service. This is appropriate on a first offense, where the offense is a misdemeanor. Additionally, with this and all the other possible dispo's, the court

---

\* Not exactly—that's an over-simplification. He would continue to be on probation for the 243.2, as well as the 242, but his time credits would run simultaneously on both, rather than consecutively. So, if he has already racked up 30 days of time credits on the 243.2, he'd still have those, but at the same time he'd have zero time credits on the 242. If the court then put him in the hall for 100 days, he'd have 130 days of credits against the one-year 243.2, and 100 days against the six-month 242. Eventually, he could time out on the 242, but still go into custody for a while longer on the 243.2.

may order counseling, substance abuse treatment, anger management classes, gang redirection classes, property offender classes, or any other counseling or programs that seems appropriate, depending on what the minor's issues are.

**UPDATE:CSWP suspended during COVID, unknown now how we are moving forward.**

2. Placement. This is what the court orders when it appears that the minor's biggest problem is that his family is screwed up, or if his parents are just unable to deal with him. This means the minor stays in juvenile hall for a few days up to a few weeks, until the probation department finds a group or foster home that seems good for the minor. There are specialized group homes for dealing with minors with particular issues—group homes that offer substance abuse treatment, or treatment for sex offenders, or treatment for pyromaniacs. Sometimes the court will order placement with a relative, like a grandparent, if the relative is willing to take the minor and it seems like they have a more stable household than the one the minor is currently in. Sometimes the court will order placement in a group home but send the minor home with his parents or a relative on “pre-placement” status, which is sort of a warning to everyone involved as to what's coming. Whenever placement is ordered, the hope is always to eventually send the minor home with his parents once his or his family's issues are dealt with. Whenever placement is ordered, review hearings are also set, so that the court can keep tabs on where the minor gets placed and how he's doing in his placement.
3. Custody time. This just means locking the kid up in juvenile hall for a period of time—maybe a few days, maybe a few weeks, maybe as much as six months. This is typical for a minor coming in on a second offense, or a violation of probation, or a particularly egregious first offense. Probation generally doesn't recommend this—their internal policies generally dictate recommending juvenile hall only if the minor is going to be in a particular program there, as described next.
4. Juvenile Hall programs. For boys under 14 who commit more serious offenses, there is the Pre-Adolescent (Pre-Ad) program.(Very rarely used currently) For girls, there is a similar program called New Directions (a.k.a. Girl's Treatment).
5. Day Reporting Center (DRC). Violet Heintz Educational Academy 4939 E. Yale, Fresno CA. D.R.C. is an alternative to incarceration; however, does incorporate an initial 30 days on the Electronic Monitoring Program.
6. Juvenile Drug Court (JDC). For minors who commit less serious crimes—misdemeanors, or lesser felonies like, say, vehicle burglary—and whose main problem seems to be substance abuse, the defense will request the minor “be screened for JDC.” The dispo will be set out a week or two, and in the meantime, the minor's case will be discussed by the drug treatment people who will decide whether the minor is suitable for that. If he is suitable, then the minor is released from custody, and has to go to various therapy sessions every week, get tested for drugs every few days, and go see the judge at Drug Court every other Wednesday afternoon. Eventually, after about a year, if the

minor does everything he's supposed to and becomes drug-free, he gets his charges dismissed. If he doesn't, the penalties get increasingly severe, up to multiple days in juvenile hall. If he still keeps doing drugs, he gets dropped from the program and there will be a new Dispo hearing to select one of the other options on this list. We have essentially no role once the minor is accepted into drug court. We do have to attend drug court, but essentially all we do there is clap every time a minor says he's been clean and sober for x number of days. While drug court is great for minors who commit petty crimes, sometimes the defense will ask for it when the kid has done something serious, like ADW (PC 245). If that happens, object.

7. Substance Abuse Unit (SAU). This is another of Juvenile Hall's programs, but it deserves its own spot on this list. For minors with more serious drug addictions, and whose offenses are more serious, there's SAU. This is a 180 day commitment to juvenile hall, where the minor receives daily in-patient drug treatment. Every minor facing DJJ\* or New Horizon's wants in to this program, and every defense attorney wants their minor in.

8. New Horizons: a 365 day in custody program at JJC. Since it is only one pod at JJC only 30 or so minors are available to be in the program at one time. This is typically the last step before ~~Department of Juvenile Justice (DJJ)\*~~ Secure Track commitment.

9. Leadership Pod: This is a special program where a minor in good standing (level 3) can apply to go to this pod. An interview with staff and other in custody minors determine if the minor can enter. Once any the minor has access to more activities and lesser oversight. They also get special excursions outside of JJC. They dress in blue polos and khaki pants. **This may still be on pause.**

10. ~~Department of Juvenile Justice (DJJ). The ultimate sanction. Only 707(b) offenses can go to DJJ. For all the other dispo's, the minor is under the supervision of the Fresno County Probation Department. Once they go to DJJ, Fresno County washes its hands and the kid is in the custody of the state of California. They get locked up in what is essentially juvenile prison, and receive a high school education, and whatever other services or treatment they need, but we have essentially no part in any of that. You will need special recommendations in your dispo report to support the sending of a minor to DJJ. Ask when this comes up. (SUBJECT TO CHANGE COME 06/30/21)\*\*\*\*\*~~

10. Secure Track Youth Facility (STYF) the new local DJJ. Only 707(b) offenses are eligible to go to Secure Track. The stay here for a determined amount of time called "baseline" which is set depending on the exact charge. They get an initial 30 day review where the court determines the programs he needs. Then he is reviewed every 60 days to determine how he is doing and the court can reduce up to six months each time.

**A separate discussion on this issue coming soon.**

## Other Options

There are three other things you can do with minors, but none of them are technically “dispo’s”.

1. Informal Probation. This is just a hair more punitive than just dismissing the case outright. The kid makes no admission, the court sets a review hearing six months out, and the probation department tries to work with the kid. Maybe a little community service, maybe a little therapy, whatever, but in any case, nothing much. If the kid doesn’t do what he’s supposed to, the kid comes back to court, and you’re right back where you started—at TC. If the kid does what he’s supposed to, though, the court dismisses the case at the review hearing. The code says certain categories of minors should not get informal, so watch for these—the defense will still ask for informal, and if you say no they might go over your head and ask the judge, so you need to be ready to quote chapter and verse to keep it from happening. See WIC 654.3.

2. Deferred Entry of Judgment (DEJ). This is like a conditional, except that there’s actual statutory authority for it, and you’re not making things up as you go along (see WIC 790-795). Any time you file a felony on a kid over the age of 14, you need to also file DEJ forms (which you’ll get from me or somebody else). If he meets the statutory requirements, he can “admit for DEJ.” The statute requires that he admit all the charges in the petition. A DEJ suitability hearing is set two weeks out, and the probation department writes up a report, like a dispo report, talking about the minor and his family and whether he’s likely to complete DEJ without violating its conditions at some point. The probation department makes its recommendation as to whether the minor is suitable for DEJ or not, and you’re free to agree or disagree with them and argue your position to the court. The court makes the ultimate determination. If the minor is found suitable, then he’s put on DEJ. DEJ officially lasts three years, but the court sets a review hearing in one year, and if he’s in full compliance then, he gets to withdraw his admission and the case is dismissed. If he’s in partial compliance, then the court might set another review and give the kid another chance. If the kid does not comply at all or picks up new charges, then he gets a regular dispo—boot camp, whatever. The conditions of DEJ are generally identical to standard probation: some EM time, and some community service. Pretty sweet for kids who commit felonies.

3. Conditional Plea.(**VERY, VERY RARELY USED HERE**) This cuts the probation department out of the loop, and is good for getting rid of very minor cases. The kid admits one or more of the charges, and the dispo hearing is set out six months or a year, or however long you want. In the mean time, the minor agrees to do some amount of community service, obey all laws, go to school, and whatever other conditions you want to impose. When the kid comes back to court after that six month or one year period, he has to show proof that he completed all those conditions. If he did, he gets to withdraw his admission and you dismiss the case. If did not, he gets a normal dispo—DRC, whatever.

## **Transfer Hearings**

At the complete opposite end of the spectrum from the above three options, when kids commit very serious offenses, they can be tried as adults. But just so you know, the minor does get to have a hearing to determine whether he should be “transferred” to adult court. If he’s not transferred, he stays in juvy.

## **707(b)**

You can only do fitness hearings on kids who commit crimes listed in WIC 707(b). That list is important for all kinds of other purposes as well—all kinds of code sections refer back to it. A crime is a strike for three-strikes purposes against a juvenile only if it is both a 707(b) offense, and it’s a strike for adults. So, for instance, residential burglary (PC 459/460(a)) is a strike for adults, but not for juveniles, because it’s not listed in 707(b). Additionally, for a crime to be a strike, the kid has to be over 16. Another place 707(b) is referenced is for DEJ—a minor is only DEJ eligible if they commit a felony that is not a 707(b) offense. So, for instance, minors can and regularly do get DEJ on residential burglaries—getting community service and time on the monitor for an offense that would be a strike for an adult.

## **Sealings**

Effective January 1, 2018, AB 529 and SB 312 modified the procedure for sealing juvenile records. Below is a summary of the modified sealing statutes as well as a procedure for determining eligibility.

## **WI 786**

Sealing under WI 786 applies whenever a ward satisfactorily completes:

1. Informal probation under WI 654.2
2. Probation under WI 725
3. Wardship probation\*
4. Petition is dismissed (at or before disposition)

\*This excludes any petition where a WI 707(b) offense was sustained when the minor was 14 years of age or older.

**Satisfactory Completion:** No new adjudication or conviction for a felony offense or a misdemeanor offense involving moral turpitude AND the ward has not failed to substantially comply with the reasonable orders of probation.

At the time of the sealing, the court may also seal any other petitions which meet the above requirements.

Records sealed under this provision CAN still be accessed by the prosecutor and probation to determine eligibility for programs such as DEJ or WI 654. These records can also be used in

wardship disposition (including dispositional reports) for subsequent felony offenses. (As well as in Transfer Hearings.)

### **WI 786.5**

Sealing under 786.5 applies whenever a minor satisfactorily completes:

1. Information probation under WI 654

Satisfactory Completion: Substantial compliance by the participant with the reasonable terms of program participation which are within the capacity of the participant to perform.

Records sealed under this provision CAN still be accessed by probation to determine eligibility for WI 654.

This sealing is done by probation only. Probation is required to seal their own records as well as any agency which provided services for the informal probation.

Note: This statute imposes new 654 procedures, requiring probation to notice a minor whether or not informal probation has been successfully completed and giving a minor a right to a hearing on that decision.

### **WI 790 (via WI 793)**

Sealing under WI 793 applies whenever a minor satisfactorily completes DEJ (WI 790).

Satisfactory Completion: The court finds the minor is performing satisfactorily in the assigned program and is complying with the terms of the minor's probation and the minor has not been convicted/adjudicated of any felony offense or of any two misdemeanor offenses committed on separate occasions.

Records sealed under this provision CAN still be accessed by the prosecutor and probation for determining DEJ (WI 790) eligibility.

### **WI 781**

Sealing under WI 781 applies in all other circumstances but can only be done once the ward reaches 18 years of age OR it has been 5 years after juvenile proceedings have terminated. (Examples when this could be used include when there is only an arrest or after unsuccessful completion of probation.)

Note: Sealing under WI 781 is initiated by the minor by applying to the probation department. Then the probation department must investigate and file a petition if necessary. (See Rule of Court 5.830.)

Sealing Requirement: Minor has not been convicted of a felony or of any misdemeanor involving moral turpitude and rehabilitation has been attained to the satisfaction of the court.

### **WI 707(b) Offenses**

Can be sealed after age 18 if not committed to DJJ OR age 21 if committed to DJJ.

Despite sealing, can be used for Transfer Hearings, subsequent felony sentencing (adult) or dispositions (minor), and as an adult strike.

**Sealing under any section DOES NOT prevent the enforcement of restitution orders but we should file paperwork allowing civil enforcement**

### **Destruction of Records**

#### WI 786 Sealing

Court Destruction: Must be afterward reaches 18 and before ward reaches 38.

Other Agencies: Must be afterward reaches 18 and before 5 years after sealing order.

#### WI 786.5 Sealing

Unclear, most likely the same procedure as WI 786.

#### WI 790 Sealing

Unclear, but access is useless once minor turns 18, so this is probably an acceptable destruction date. (Note JV-755 does not require listing a specific date.)

#### WI 781 Sealing

Court Destruction: When the ward reaches 38 years of age. Except no destruction of WI 707(b).

Other Agencies: May destroy 5 years after order sealing.

**Make sure you designate under what statute the court ordered sealing.**

### **The Court**

There are three departments (court rooms) here at juvenile: A, B, and C.

Department A: Judge Dolas, the presiding judge here at juvenile. She handles arraignments, detention hearings, and review hearings on informal, DEJ, and placement cases. [REDACTED] is assigned to this courtroom, so she gets her hands on every case we file, at arraignment. Some kids admit the charges then, or [REDACTED] will cut them a deal, but if not, Dept. A will assign the case out to Dept. B or C for SC.

Department B: Judge De Alba. This department handles SC's, dispos, and adjudications that are expected to take less than three hours. Trials longer than three hours are sent downtown. (Pre-COVID) currently cases are going in the afternoons.

Department C: Judge Whitehead. This department handles SC's, dispos, and adjudications that are expected to take less than three hours. Trials longer than three hours are sent downtown. (Pre-COVID) currently cases are going in the afternoons.

B and C have two DA's assigned to each courtroom. The way it's supposed to work, one DA does the calendar on even days, and the other DA does the calendar on odd days. If you're on

odd days, you try to make sure all your short trials, continued SCs, and dispos get set on an odd day. If you have a longer trial, you try to set it on an even day in D, so you won't have to be in two departments at the same time. Sometimes that's not possible, because the minor won't waive time, or the minor has a private attorney with their own scheduling difficulties, or whatever. You do the best you can, and if you end up with trial(s) on the same day you're supposed to do calendar in C, you try to arrange coverage with your courtroom partner, or if that doesn't work, somebody else in the office.

### **How to Cover a Calendar**

At least 24 hours before you have to cover a calendar, the staff will pull all the cases set for that day and put them in a neat stack somewhere in your office, along with a printout with all the cases listed. Sometimes other DA's might have cases set in your department, and the printout will show that. If you get to court and the court's calendar shows a case set and you don't have the file, check that printout before you panic—maybe it's somebody else's case.

As discussed above, you'll want to read over all your SC's well before and make offers. You'll also want to read over the probation reports for all your dispo's, and decide whether you'll agree with the recommendation or argue for something different.

When you leave for court, mark yourself "out" on the whiteboard by the door. Mark yourself "in" when you get back.

In court, if you agree with what's happening, say "submit" or "submitted" or "I'll submit to the court on that" or "the people submit on probation's recommendation." Otherwise, argue.

Much of the time you're in court, you'll feel like a stenographer. Every file has a stiff, yellow, legal-sized piece of paper called a Docket Sheet. Every time a case gets called, you need to write down the following information:

1. date
2. department
3. judge's name
4. whether minor is present in custody (I/C), out of custody (O/C), or not present (FTA—Failed to Appear)
5. the defense attorney's name (last name is usually sufficient—put down a first initial if it's Smith)
6. the probation officer's name (again, last name is enough)
7. any family members present
8. any interpreters present ("w/sp int" = with spanish interpreter)
9. some brief notes about what happened—be *especially careful to write down any time waivers*
10. the date and department of the next hearing, if any

When you get back from court, place all your files assigned to your department on the bookshelf at the main entry to the office. They'll enter the information from the docket sheets and dispo sheets into STAR, then return the files to your office.

Empty your mail slot regularly throughout the day. Put the files away in your filing cabinet.

### **How to Prep a Trial**

In order to issue subpoenas, there's a legal-size form you fill out. Make sure you put in the full name, address, phone number and date of birth of every civilian witness, or as much of that information as you have. For witnesses under the age of 18, you also have to subpoena the parent. For police officers, just put down their department, last name, and badge number. If any of your witnesses seem shady or marginal, or if there's no phone number in the police report (a good sign of shadiness), request personal service by checking the box on the form, and highlight it too so the staff won't miss it. Other shady or unreliable witness categories: gang members, victims of gang violence (who may be intimidated), and domestic violence victims (who always recant). In addition to the legal-size form, there's also a pink-colored form you need to fill out and attach to the file. That one doesn't need to be filled out completely—I just put in the minor's name, the file number, the date and location of the trial, and the charges.

After filling out the forms, you give the file to the staff person in charge of subpoenas (currently [REDACTED]). She'll print them out and mail them off. If your witnesses are on the ball, they'll read their subpoena and it will tell them to call our office. When they do that, [REDACTED] will put them "on call"—meaning they don't actually have to come to court on the day of trial, unless we call them. They just need to be near their phone, or otherwise reachable on short notice. The subpoena staff person keeps a three-ring binder with lists of all the witnesses sub'ed on upcoming trials. As your trial approaches, check with [REDACTED] and see if your witnesses are on call or not. If they haven't called in, call them yourself. If you can't reach them, consider asking for personal service.

For personal service subs, you'll get the subpoena, and you'll need to then give it to one of the investigators to go out and serve, along with an investigation request (see below). There are several reasons to do personal service. One is, when an investigator tracks a witness down and hands them the subpoena in person and explains it to them, they tend to take it a lot more seriously than when they get something in the mail. You also have the assurance that they actually got the subpoena—you never know for sure that the mailing address in the police report is any good. The final reason to do personal service is that if the witness has been personally served, and they still fail to show up at court, you can ask the court for a body attachment, which is essentially a warrant for their arrest.

If you get a body attachment ordered by the court, you go to the clerk's office and let them know. They'll ask you for the witness's information, and then give you the warrant. Their standard procedure is also to fax the warrant to the sheriff's department. You could also request and hold the body attachment.

Short of a body attachment, sometimes witnesses just need a ride to court. Investigators can do that too.

Another issue to consider is medical records. If you have a victim with injuries, you'll want those. To get them, put "SDT" (for subpoena duces tecum) on your subpoena sheet, along with the hospital the victim went to, the dates they were there, and the victim's name and date of birth. The subpoena staff person will then give you three forms. One of them has a blank for you to sign. Sign that, and then take all three forms to any judge you like, and ask the judge to sign off. When you have a judge's signature, then give all three forms to an investigator, who will then go and serve the SDT on the hospital. In about a week, the records will get mailed to the court, along with a declaration stating that they are in compliance Evidence Code sections 1560-1562. At that point, the records are self-authenticating and you don't need to call any witnesses to lay any foundation for them. Obtain a stipulation from defense counsel to open, inspect, copy and return to the court the records without disturbing the admissibility. CAVEAT admissibility to the records will be subject to a foundation on any opinions contained therein. The defense may object that the records require an expert to interpret—at that point, you can ask the court on its own to decide which portions of the records are understandable to a layperson and which ones are jibber-jabber, and to exclude the jibber-jabber. **If the victim's injuries are so complicated that the jibber-jabber is important, consider subpoenaing the doctor.**

If the police report talks about photos having been taken, you'll probably want those at trial. For Fresno PD, all you have to do is call up I-Bureau and ask. Most other agencies want you to fax them a request—just fill out a fax cover sheet asking for photos on case number x. The sheriff's department has a special form they want you to fill out—you can get a copy from me or somebody else in the office.

For copies of interview tapes, you'll have to ask the cop who did the interview. Sometimes you'll have to ask again and again.

For drugs, some police departments will run presumptive (i.e. preliminary, no good in court) tests themselves. Then they may or may not submit the drugs to a lab for conclusive (i.e., usable in court) tests. If you have a drug case, call to make sure that the drugs get submitted for conclusives ASAP—it always takes time. The sheriff's office has its own lab, and some outlying police agencies use their services. Fresno PD and most other agencies submit their drugs to the Department of Justice (DOJ) lab, located on the campus of Fresno State.

You need to run CLETS on all of your civilian witnesses. Do it through ePro.

Remember, anything you're going to use at trial, you have to show to the defense. Sometimes the defense will want to take a look at some physical evidence or see photos before you've gotten copies for yourself. There's a release form you can email over to them but depending on the type of evidence you may want an investigator to go with them

Always check and share all bodycams associated with your case.

## **Investigation Requests**

There is one investigator assigned to juvenile—currently, [REDACTED]. He will do pretty much anything you ask him to do. Other investigators are here to assist if needed. Generally, you will want to investigate felonies although occasionally you might want investigation on a misdemeanor case that really bugs you. They can serve emergency subpoenas and body attachments and transport witnesses, make, but where they really shine is doing follow-up interviews. Lots of times, a witness statement in a police report will be very brief and short on details, and you'll have a feeling that there's more to the story. Get an investigator to talk to the witness, and you'll find out.

Even though you can just pop into their office and ask them in person to do something for you, their boss wants you to type up a formal request every time you ask them to do anything. Fill it out, and then you email it to me and use ePro to request that the work be done. [REDACTED] is the commander here, he then “assigns” the task to them, who by that time has already completed the job because you talked to them in person before you bothered to fill out the form.

## **MDIC**

You will handle MDIC interviews on a rotating basis on a one week interval. Right now you are the assigned DA once every six weeks. An MDIC is an interview with a child-victim of a sex crime. They can happen any time of the week, and they take place at a two different locations. A specially-trained interviewer does all the talking. A DA, along with a group of other professionals, watches in a separate room over closed-circuit TV. If the DA has any questions they want asked, they can ask the interviewer to ask the kid, via a radio thingy the interviewer has in their ear. The whole thing is recorded.

## **Occasional Hearings**

Dennis H. Hearing- After detention if defense believes that there is insufficient evidence (i.e. the police reports do not contain factual basis for the charged offenses.) then they will ask for a Dennis H. hearing. Your responsibility will be to make sure the officer is subpoenaed and ready for the hearing. The defense attorney gets to cross exam the officer about the contents of his report. That is the limit of the hearing. We can discuss further when one comes up. They are rare but come in cycles.

## **Shackling Hearing**

Occasionally when the minor has been acting up while in custody or transport, the court deputies will want the minor to be shackled while in court. WIC 210.6 lays out the procedure the court must follow. As you see below, it is our burden to establish the need.

When this situation comes up in court, you will likely have little forewarning. Take a moment and talk to the deputy in court or the transport deputy who knows what happened and can state why restraints are necessary. Make sure they are able to articulate all relevant information to the court.

While this is not a formal evidentiary hearing and is often directly conducted by the court, the court may ask for your input. We should, under most circumstances, be arguing for shackling when the issue has been raised. Remember shackling is to prevent harm to the minor or *another* person, not just defense counsel. Ultimately, the court will make the final decision.

Often times this occurs at the initial appearance at detention but can come up at any time. Remember that the deputies are our first line of defense and have our safety (and the entire courtroom occupants) at heart.

Lastly, this does not apply to former minors housed at FCJ.

See me with questions.

#### WIC 210.6. Use of mechanical restraints

##### (a)

(1) Mechanical restraints, including, but not limited to, handcuffs, chains, irons, straitjackets or cloth or leather restraints, or other similar items, may be used on a juvenile detained in or committed to a local secure juvenile facility, camp, ranch, or forestry camp, as established pursuant to [Sections 850](#) and [881](#), during transportation outside of the facility only upon a determination made by the probation department, in consultation with the transporting agency, that the mechanical restraints are necessary to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.

(2) If a determination is made that mechanical restraints are necessary, the least restrictive form of restraint shall be used consistent with the legitimate security needs of each juvenile.

(3) A county probation department that chooses to use mechanical restraints other than handcuffs on juveniles shall establish procedures for the documentation of their use, including the reasons for the use of those mechanical restraints.

(4) This subdivision does not apply to mechanical restraints used by medical care providers in the course of medical care or transportation.

**(b) (1) *Mechanical restraints may only be used during a juvenile court proceeding if the court determines that the individual juvenile's behavior in custody or in court establishes a manifest need to use mechanical restraints to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.***

**(2) *The burden to establish the need for mechanical restraints pursuant to paragraph (1) is on the prosecution.***

(3) If the court determines that mechanical restraints are necessary, the least restrictive form of restraint shall be used and the reasons for the use of mechanical restraints shall be documented in the record.

#### **Conclusion**

Well, that's all I can think of. Have fun in juvenile!

(j) Reports to the state bar

---

## 12.04 STATE BAR CONTACTS

Correspondence or communications with the State Bar of California complaining about an attorney's misconduct are to be considered serious. Such referrals from the District Attorney's Office will obviously be given careful review by the State Bar, because they have been made in the name of the Fresno County District Attorney's Office.

Therefore, if an attorney wishes to make such a referral or detail the potential of such a referral in any official office correspondence, the prior approval of the attorney's supervisor is required.

Pursuant to Business and Professions Code section 6101(b), this office has an obligation to notify the Office of the State Bar of California of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. All attorneys should report to Administration any request for charges to be filed that is submitted against an attorney.

In the event that an attorney in this office is the subject of a State Bar investigation or proceeding, that attorney must immediately report this fact to the District Attorney.

This policy does not apply to requests from the Judicial Nominees Evaluation Committee of the State Bar for the purpose of evaluating judicial nominees. Whenever possible, attorneys are urged to cooperate with the JNE Commission in the interests of having the best candidates selected.

(revised 02/2019)

(m) Training

## **8.13 TRAVEL AND TRAINING**

### **Travel and Training Requests**

Employees must prepare a current “Request for Travel/Training” Form and have it approved by their Supervisor and Department Head in **advance** of the travel and/or training. For trainings, and when the travel involves attendance at a conference, meeting, or workshop, a copy of the agenda or program for the event must be attached to the Form, along with copies of training, travel, and lodging reservations. Completed Forms must include:

1. The date and time of departure and return
2. Destination
3. Expenses and transportation details (*meals, lodging, county auto vs. private auto, mileage, airline, registration fees, etc.*)

### **Travel and Training Guidelines**

The department will follow the general travel guidelines of Fresno County. (See Fresno County Management Directive section 512.)

For travels/trainings that require the advance payment of tuition, the approved Request for Travel/Training Form must be received by the Business Office no later than 3 weeks prior to the travel date.

Employees are responsible for registering for the conference, meeting, or workshop, and for making lodging reservations directly with the hotel. You will not be reimbursed for reservations made through on-line services such as Hotels.com, Expedia, Travelocity, Priceline, etc.

Examples of Reimbursable Costs – lodging, airline tickets, and other travel-related expenses (*self-parking, taxi, toll fees, etc.*) are reimbursed at the actual cost, *provided that you have a receipt*. Meals and mileage are reimbursed in accordance with the GSA Federal Per Diem Rates.

Examples of Non-Reimbursable Costs – Personal expenses, telephone calls, alcoholic beverages, tips, cost of traffic fines and tickets, travel insurance, incidental expenses, and any expense of a non-employee traveling with the employee will not be reimbursed.

Out-of-State travel for trainings, seminars, conferences, and workshops require prior approval from the County Administrative Office, whether or not such travel is budgeted. Requests should be submitted by the Business Office to the CAO Analyst a minimum of 30 days prior to the event.

All travel claims must be completed within five days of your return to the Business Office.

Please consult the Business Office if you have any questions.

(revised 02/2021)

**From:** [Hoedt, Scott](#)  
**To:** [Aguilar, Yvette](#); [Alchian, Roxanna](#); [Aliyev, Ismail](#); [Ancheta, Erica](#); [Anderson, Miiko](#); [Avent, Jon Paul](#); [Baldovi, Stephanie](#); [Banta, Carol](#); [Barnes, Cecilia](#); [Baskin, Rachel](#); [Bigwood, Alexander](#); [Bruce, Charlie](#); [Butkus, Jamie](#); [Carlson, Taylor](#); [Christopherson, Adam](#); [Clarke, Corrie](#); [Cline, Jarrett](#); [Cobb, Amy](#); [Coker, Ross](#); [Conklin, Jason](#); [Craddock, Zaren](#); [Devencenzi, David](#); [Donovan, Tim](#); [Drake, Kaitlin](#); [Dukes, Samantha](#); [Exline, Brian](#); [Fernandez, Emily](#); [Freeman, Amythest](#); [Fritzler-Kirkorian, Traci](#); [Galstan, Nicole](#); [Galstan, Timothy](#); [Garcia, Elizabeth](#); [Garcia, Esmeralda H.](#); [Garcia, Sandra \(DA\)](#); [Gong, Becky](#); [Goodrich, Autumn](#); [Guillermo, AJ](#); [Gularte, Christopher](#); [Haas, Doug](#); [Hamilton, Matthew](#); [Herrera, Ricky](#); [Hinton, Brandon](#); [Hoedt, Scott](#); [Howo, Midori L.](#); [Hulett, David](#); [Idiart, Nicole](#); [Irving, Tess](#); [Janz, Andrew](#); [Jimenez, Manuel C](#); [Kalebjian, Jamie](#); [Keel, Justine](#); [Kirby, Dustin](#); [Kook, Adam](#); [Collins, Amber](#); [Kubota, Scott N.](#); [Lacy, William](#); [Lai, Victor](#); [Lambert, Nathan](#); [Lewis, Dennis-DDA](#); [LiCalsi, Eric](#); [Malazo, Nate](#); [Maxwell, Kristin \(DA\)](#); [McClaskey, Maxton](#); [McClellan, Sheila](#); [McGinthy, Ryan](#); [McPherson, Kyle](#); [Meegan, Lauren](#); [Mehta, Prathna](#); [Miller, Deborah](#); [Mitchell, Karen](#); [Monopoli, Carl](#); [Moss, Christopher](#); [Muia, Anthony](#); [Murphy, Ty](#); [Musto, John](#); [Ocampo, Carina](#); [Olmos, David](#); [Oppliger, Trevor](#); [Owen, Elizabeth](#); [Padilla, Danielle](#); [Panosian, Karnig](#); [Paulson, Ashley](#); [Peterson, Kelsey](#); [Pettebone, Alethea L.](#); [Prabhakar, Deepti](#); [Prince, Rachael](#); [Rand, Susan](#); [Reynolds, Kendall](#); [Ricks, Sydney](#); [Rigby, Katherine](#); [Roberts, Denise](#); [Rodriguez, Jessica - DA](#); [Rollins, Kellie](#); [Rutiaga, Galen](#); [Salazar, Leonel](#); [Saleh, Aosam](#); [Shahrestani, Neda](#); [Shirzad, Roshana](#); [Simoes, Cameron](#); [Smith, Elana Aron](#); [Smith, Kelly - DA](#); [Smittcamp, Lisa](#); [Spurling, Heather](#); [Stanley, Brianna](#); [Stanley, Jerry](#); [Sterios, Darla](#); [Tedrow, Elizabeth](#); [TeNyenhuis, Sierra](#); [Thomas, Richard](#); [Torres, Alexander](#); [Tovar, Jacquelyn](#); [Tully, John](#); [Ueltzen, Steven](#); [Urrizola, Lisa](#); [Vallejos, Katherine](#); [Veneman-Hughes, Robert](#); [Verzosa, Dennis](#); [Volanti, Jenny](#); [Walters, Daniel](#); [Wells, Ronald](#); [Whalen, Robert](#); [Whitehead, Ian](#); [Whiting, Rachel](#); [Wright, Steve](#); [Yenokian, Innessa](#)  
**Subject:** New Implicit Bias MCLE Requirement  
**Date:** Thursday, August 25, 2022 2:39:19 PM

---

Good afternoon,

As you may or may not know, the State Bar amended the MCLE requirements effective January 1, 2022. While you must still complete 25 hours every three years, the specific subsections have been slightly altered. You still need 4 hours of legal ethics and 1 hour addressing competence issues. The change relates to the 2 required hours of elimination of bias. Now, at least one hour must focus on implicit bias and the promotion of bias reducing strategies. Please see State Bar Rule 2.72, subsections (A)(1)(b) and (B)(2)(a)(ii)(1) for the full definitions. This new requirement starts to apply to attorneys in reporting group 3 (N-Z) that must report no later than January 31, 2023. See this link for more details: <https://www.calbar.ca.gov/Attorneys/MCLE-CLE> As always, you can complete up to 12 ½ hours of the required 25 as self-study.

This is a very specific new requirement and it is not easy to find a qualifying training. Fortunately, the State Bar offers a free, one hour, online course that was specifically designed for this new subsection. The course is available through the State Bar E-Learning Portal which you can find after you log into your State Bar Profile. If you haven't logged in recently, it may ask you to update/confirm your information first. Once you have logged in, you should see a notice in the middle of the left hand side of the screen about the new MCLE Elimination of Bias Course being available along with a link to the State Bar E-Learning Portal. Once there, you should be taken to a dashboard, and on the right hand side it should show your "total enrollments." Clicking on that should show you the tab for the "Disrupting Implicit Bias" training. The training takes about an hour to complete, and there is a short test at the end. Please be sure to save and/or print your completion certificate once you pass the course as I will not have access to these records and will not be able to resend it should you need it at a later date. This link gives more information on the training: <https://www.calbar.ca.gov/Attorneys/MCLE-CLE/E-Learning-Portal>

This free training is only available until **February 9, 2023**, so I would recommend watching it sooner rather than later, even if you don't have to report for another few years, as I am not sure how/when we will be able to put on a training that meets this specific subsection.

Thanks,  
Scott