

# LEGAL POLICIES GUIDE



**San Diego County District Attorney's Office  
District Attorney Summer Stephan  
June 2022**

## PREFACE

This updated Legal Policies Guide contains legal and ethical guidelines that our District Attorney Team must follow. It also provides policy frameworks that promote best practices in the pursuit of equal and fair justice for all and strives to uphold and promote the protection of victims' rights, the rights of those accused of a crime and the right of the community to be safe from the harm that crime brings. Each prosecutor and team member has the duty to serve our mission of justice with ethics and integrity and while this guide doesn't answer every question that may arise, it does provide pertinent information that you are expected to learn and follow. This is a living document and will be updated as new policies arise.



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## **SAN DIEGO COUNTY DISTRICT ATTORNEY'S OFFICE MISSION AND VALUES**

The mission of the San Diego County District Attorney's Office is to provide fair and equitable justice for all. We do this by combining four core pillars we call the "Four Ps:" Prosecution, Prevention, Protection and Partnerships. We prosecute individuals who commit crime when it is ethical and fair to do so, and when the evidence supports it beyond a reasonable doubt. We prevent crime by first listening to our communities about what they need most and then dedicating resources to awareness and prevention programming around those needs. We protect victims by using necessary legal tools provided us to hold individuals appropriately accountable. We partner with those in our community who share our vision of building better and healthier neighborhoods.

Our office values include ethics, respect, accountability, diversity, and community partnerships. We hold ourselves to the highest standard of integrity in personal and professional conduct. We treat each other and all members of the public with dignity and respect. We accept a shared responsibility for ensuring sound fiscal management, operational efficiency, and continuous improvement. We are committed to diversity and inclusion and the valuable contribution they make toward advancing our justice mission and building trust with the communities we serve. We advocate and support the building of strong and viable partnerships with law enforcement, all members of the criminal justice system, and the community we serve for the purpose of achieving the highest level of public safety for our citizens.

## **SAN DIEGO COUNTY DISTRICT ATTORNEY CODE OF PROSECUTOR ETHICS**

It is vital to the integrity of the adversarial process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law. Because the public and the judiciary correctly hold prosecutors to the highest ethical standards, San Diego County District Attorney prosecutors, also known as Deputy District Attorneys, must always act with personal and professional integrity. This includes maintaining a current, working knowledge of the prosecutor's constitutional and statutory obligations, and duties identified in the California Rules of Professional Conduct.

Deputy District Attorneys must respond promptly and appropriately to accusations of professional misconduct made against them. Deputy District Attorneys accused of misconduct, orally or in writing, must report such allegations to their supervisor at the earliest possible opportunity, to the Ethics Coordinator in the Appellate and Training Division, and to the State Bar of California when legally required. Ethics Advisors throughout the office and the Ethics Coordinator in the Appellate and Training Division are available for consultation on ethics issues. Deputy District Attorneys should exercise caution in instances where the allegation(s) involve potential factual disputes upon which the Deputy District Attorney may be able to give evidence and should consult with the Ethics Coordinator for guidance. Because integrity is crucial to the ability to serve as a prosecutor, Deputy District Attorneys should admit any mistakes they have made and contest any allegations that are without merit.

San Diego County Deputy District Attorneys pledge the following oath:

### **PROSECUTOR CODE OF ETHICS**

**AS A PROSECUTOR, I PLEDGE MYSELF TO TRUTH AND THE PROTECTION OF THE COMMUNITY. I WILL SAFEGUARD LIVES AND PROPERTY. I WILL PROTECT THE PEACEFUL AGAINST VIOLENCE. I WILL PROTECT THE WEAK AND THE INNOCENT AGAINST DECEPTION, OPPRESSION, AND INTIMIDATION. I WILL RESPECT THE CONSTITUTIONAL RIGHTS OF ALL PEOPLE TO LIBERTY, EQUALITY, AND JUSTICE.**

**I WILL HOLD ACCOUNTABLE THOSE WHO COMMIT CRIME THROUGH ETHICAL, FAIR, IMPARTIAL, AND EQUAL PROSECUTION UNDER THE LAW. I WILL STRIVE TO CONVICT THE GUILTY AND TO EXONERATE THE INNOCENT. I WILL NEVER SUPPORT UNNECESSARY FORCE OR VIOLENCE. I WILL MAINTAIN CONFIDENCES AND CONFIDENTIAL INFORMATION PURSUANT TO THE LAW, AND THE REGULATIONS OF MY OFFICE. I WILL MAINTAIN COURAGE AND CALM IN THE FACE OF DANGER, SCORN, OR RIDICULE.**

**I WILL ENFORCE THE LAW COURTEOUSLY AND APPROPRIATELY WITHOUT MALICE, FEAR, OR FAVOR. I WILL NEVER ACCEPT GRATUITIES IN THE EXERCISE OF MY PROFESSIONAL DISCRETION.**

**I WILL BE HONEST IN THOUGHT AND DEED IN MY PERSONAL LIFE, AS IN MY PROFESSION. I WILL BE EXEMPLARY IN OBEYING THE LAW OF THE LAND. I WILL DEMONSTRATE SELF RESTRAINT, AND BE CONSTANTLY MINDFUL OF THE WELFARE OF OTHERS.**

**I RECOGNIZE THE BADGE OF MY OFFICE AS A SYMBOL OF PUBLIC TRUST. I ACCEPT IT AS AN HONOR TO BE HELD SO LONG AS I AM TRUE TO THE ETHICS OF THE PROSECUTION.**

### **COMMITMENT TO RACIAL JUSTICE AND EQUITY**

Our office mission and values are firmly rooted in a commitment to racial justice, equity, diversity, and inclusion. Maintaining a District Attorney's Office that works to reflect the diversity of the community we serve helps to advance those ideals and allows people to see themselves represented in government.

San Diego County Deputy District Attorneys shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin. We are committed to enforcing and upholding the elements and principles of Penal Code section 745 (California Racial Justice Act) within our office and throughout our involvement in the criminal justice system.

Our commitment to equality and equity extends to all individuals including those accused of, witness to, or victims of crime as well as the families of such individuals.

## OFFICE STRUCTURE AND CASEFLOW

The San Diego County District Attorney's Office has operations in five main and distinct locations based on the various county courthouses and geographical regions. The Office also has staff in our [CARE center](#) which links members of the community to community-based prevention and intervention services in order to build strong community relationships and reduce crime, and our North County Family Justice Center "One Safe Place," a one stop shop for victims and survivors of abuse and trauma to receive full and equitable access to necessary supportive services designed to help victims heal and thrive.

The District Attorney's Office is not a traditional investigatory law enforcement agency. Rather, trained, and experienced Deputy District Attorneys thoroughly screen each case submitted by local law enforcement to determine if charges can or should be filed based on legal and ethical standards.

Many distinct divisions within the District Attorney's Office handle, further investigate, and/or prosecute criminal cases. Cases are handled within the office according to the following general structure:

### **Appellate and Training Division**

The Appellate and Training Division files People's appeals and handles writ petitions, capital case litigation related to habeas issues, California Public Records Act requests, inter-agency requests for records, and subpoenas for District Attorney's Office employees and/or records. This division further serves as the legal research arm of the District Attorney's Office, handling special projects, complex legal issues, and the analysis and/or implementation of new laws. The Training Unit within the Appellate Division provides quality legal training for office staff and tracks state bar Minimum Continuing Legal Education compliance.

### **Case Issuance Division**

The Case Issuance Division is dedicated to ensuring justice is ethically served throughout the life of a case from pre-issuance through post-release. This division reviews all general felony case submissions within the Central Division, oversees the electronic discovery process that makes discovery available to criminal defense attorneys, orders and obtains documentation for proving prior convictions, processes extradition cases, and provides two Deputy District Attorney liaisons to local law enforcement agencies. The Case Issuance Division provides guidance to all branch issuing departments to ensure fair and equal treatment of all suspects and victims countywide.

### **Collaborative Justice Division**

The Collaborative Justice Division (CJD) is the host to several collaborative courts that combine rehabilitative services with intensive judicial supervision. Deputy District Attorneys in this division, experienced in evidence-based practices and alternatives to incarceration, collaborate on multi-disciplinary teams that work to divert participants away from jail and to prepare them for successful reentry as thriving members of our community. CJD consists of the Collaborative Courts Calendar Team, the Restitution Recovery Team, and Deputy District Attorneys specially trained to participate in and represent victims' rights at parole hearings. CJD responds to Prop 47 and Prop 64 petitions filed with our Superior Court. Deputy District Attorneys in our Collaborative Courts Calendar Team represent the office at Drug Court, Reentry Court, Veteran Treatment Court, Behavioral Health Court, Mental Health Diversion Court, Mandatory Supervision Court, Homeless Court, and Parole/Post-Release Community Supervision Court. The CJD oversees administration of the District Attorney Community Justice Initiative program (DA CJI), a diversion program providing second chances to individuals who commit crime through a specifically-

designed and evidence-based therapeutic cognitive behavioral therapy program intended to help individuals change beliefs, thoughts, and patterns that lead to problematic behaviors.

### **East County Division**

The East County Division screens for criminal charging and handles all misdemeanor and felony cases that occur in the East jurisdictional region.

### **Economic Crimes Division**

The Economic Crimes Division handles Complex Theft, Consumer Fraud, Real Estate Fraud, Environmental Crimes, Complex Identify Theft, Public Assistance Fraud, and Securities Fraud cases. Within the Economic Crimes Division is the CATCH (Computer and Technology Crime High-Tech) Response Team.

### **Family Protection Division**

The Family Protection Division vertically prosecutes crimes involving (1) domestic violence (2) physical and sexual child abuse and neglect when the child is under age 14, (3) physical, sexual, and financial elder/dependent adult abuse and neglect including when those cases occur in nursing homes or assisted living facilities (4) child abduction, (5) animal cruelty, and (6) crimes which target children using computers and/or technology.

### **Gangs Division**

The Gangs Division prosecutes violent gang crime such as murder, attempted murder, felony assaults, drive by shootings, conspiracies, car jackings, and robbery. In order to meet the goals of reducing the level of gang violence in San Diego County and preventing more violent crimes from occurring. The Gangs Division handles cases:

- where the suspect or the victim is a known gang member, or the suspect is believed to have been involved in other gang-related violence; or
- where the expertise of the Gangs Division is required based on the dynamics of the crime case including but not limited to witness intimidation issues, retaliation for prior gang-related activity, or overt evidence of gang motivation; or
- all cases in which a gang allegation will be alleged.

### **Insurance Fraud and Workplace Justice Division**

The Insurance Fraud and Workplace Justice Division prosecutes Workers Compensation Fraud, Auto Insurance Fraud, Urban/Organized Auto Insurance Fraud, Disability Healthcare Insurance Fraud, Life and Annuity Fraud, and handles and investigates Regional Auto Task Force cases. This division is the home to the Workplace Justice Division that seeks to promote equitable and fair workplaces by prosecuting unfair business practices, wage and hour violations, payroll tax evasion, wage theft, and labor trafficking cases.

### **Juvenile Division**

The Juvenile Division works within the stated goals of juvenile justice which are focused not on punishing the minor but rather on rehabilitation and trauma-informed, culturally-sound treatment so the minor can contribute positively to the community moving forward. Minors and their cases should remain in the juvenile justice system except for cases where charges include, but are not limited to, murder, attempted murder, or forcible sexual crimes, and where credible evidence exists of the factors outlined in Welfare and Institutions Code section 707(b)(3)(A)-(E). Decisions to request transfer hearings to adult court on any minor's case requires Chief Deputy approval. Cases with minor suspects should remain in and be handled by a Juvenile Division Deputy District Attorney assigned to the Juvenile Branch (with the exception of the Gangs Division) because of

the expertise required to handle the case and recent legal changes involving the presumption for handling cases in juvenile court as opposed to adult court.

Misdemeanors and low-level felonies committed by minors will be referred for assessment and treatment within the community through restorative justice practices rather than be prosecuted as a criminal case. Our office is committed to promoting second chances for minors, to reducing juvenile entrance into the criminal justice system, and to implementing best practices to address, respond to, and provide resources for the root cause of a juvenile's actions.

### **Narcotics Division**

The Narcotics Division handles cases involving distribution of specified weights of certain drugs, possession of drugs that can incapacitate another individual, drug-endangered-children cases, cases involving a narcotics-potential cooperating individual or a narcotics cooperating individual, cases involving clandestine laboratories, cases involving illegal cannabis dispensaries, or large-scale marijuana distribution cases that are chargeable as felonies. This division reviews and assists in all state wiretap cases, and handles cases submitted by the Narcotics Task Force and that fall under the High Intensity Drug Trafficking Area grant. The Narcotics Division evaluates all cases where there exist possible charges associated with any drug overdose, including drug overdose deaths.

### **North County Division**

The North County Division screens for criminal charging and handles all misdemeanor and felony criminal cases that occur in the North jurisdictional region.

### **Sex Crimes and Human Trafficking Division**

The Sex Crimes and Human Trafficking Division prosecutes almost all felony and misdemeanor sexual crimes when the victim is 14 years of age or older, and not an intimate partner or an elder 65 years or older. This division vertically handles all Sexually Violent Predator petitions and resulting litigation, as well as felony and misdemeanor sexual assault and sexual abuse cases involving institutional abuse when the offender is in a position of trust to the victim including but not limited to school teachers, clergy members, coaches, teachers or mentors.

### **South County Division**

The South County Division screens for criminal charging and handles all misdemeanor and felony criminal cases that occur in the South jurisdictional region.

### **Special Operations Division**

The Special Operations Division handles, investigates, and/or prosecutes:

- Misconduct by public employees or officials;
- State and local election fraud;
- Use of deadly force by peace officers which has a substantial risk of causing serious bodily injury or death;
- Peace officer misconduct occurring on duty;
- Conviction review to exonerate anyone wrongfully convicted;
- Resentencing pursuant to Penal Code section 1170(d);
- Hate crimes;
- Crimes which threaten the integrity of the justice system, including threats against witnesses, judges, and employees of the justice system, perjury and submission of false documents;



- Failure to fulfill mandatory duty to report suspected abuse against school-aged children by teachers or other employees of a school; and
- Report crimes filed against licensees of the Medical Board or State Bar and employees of educational institutions.

The Special Operations Division is the custodian of a centralized index of potentially discoverable impeachment material on peace officers or expert witnesses and handles the overall logistical support for Deputy District Attorneys utilizing the Grand Jury.

### **Superior Court Division**

The Superior Court Division screens and handles all general felony criminal cases not handled by specialized units that occur in the Central jurisdictional region and is home to the Major Violators and Cold Case Homicide Teams.

### **Victim Services Division**

The Victim Services Division is comprised of three programs: The Victim Assistance Program, the Joint Powers Claims Unit, and the Criminal Restitution Compact.

The Victim Assistance Program consists of trauma-informed and specially trained victim advocates who proactively communicate with victims, often before a case is submitted to our office for criminal review. Advocates assist crime victims through the criminal process, provide victims' rights information, connect victims with resources and supportive services, and, upon request, assist victims with the filing of California Victim Compensation Board (VCB) applications. The VCB reimburses eligible out-of-pocket crime-related expenses.

The Joint Powers Claims Unit (JPCU) consists of paralegals who administer the Victim Compensation Program. The JPCU staff determines claim eligibility and authorizes payment of eligible expenses.

The Criminal Restitution Compact paralegals track criminal cases to ensure restitution is ordered on cases where VCB has paid crime-related expenses on behalf of victims.

### **Crossover Cases**

Some cases may cross over into multiple divisions, such as an elder financial abuse crime involving complex real-estate transfers, or a gang-related crime that involves sophisticated drug involvement, or a murder motivated by or a cover up for sophisticated financial crimes. In these cross-over areas, Division Chiefs will work together to analyze and determine which division is best suited to handle the case based on the required expertise and personnel. While one division may be selected to handle a particular case, other divisions may lend personnel support or expertise depending on the nature of the case.

## **COMMUNITY PARTNERSHIP PROSECUTOR TEAM**

Each branch location will be assigned one full-time Community Partnership Prosecutor. Community Partnership Prosecutors collaborate with law enforcement partners, local governments, community leaders, residents, and non-profit organizations to address quality of life issues that often have a nexus to crime. They also organize community events and presentations, including forums on various criminal justice related topics in the community with the goal of advancing our office mission of fairly and equitably prosecuting those who commit crime, protecting victims, and preventing future crime.

## **CONFLICTS OF INTEREST**

The San Diego District Attorney's Office has over 1,000 employees and over 300 individual Deputy District Attorneys. Sometimes crimes occur that may have a connection to one of the employees in the office. In situations where a Deputy District Attorney is of the opinion that there may be a conflict of interest in a case prosecuted by the District Attorney's Office, the Deputy District Attorney shall bring the potential conflict of interest to the attention of the Branch or Division Chief. The District Attorney or Assistant District Attorney shall approve all referrals to the Office of the Attorney General, or the Office of any City Attorney based on such conflict of interest.

## **NOTIFICATION OF CRIMINAL CHARGES AGAINST CERTAIN PROFESSIONALS**

Some licensing or regulatory agencies require notification when certain individuals commit crimes. Deputy District Attorneys shall notify the Special Operations Division when any attorney, anyone who works in the healthcare field, or any school employee is charged with a crime. Special Operations will make appropriate notifications in consultation with the District Attorney and pursuant to law. The assigned Deputy District Attorney should notify the court when the charged individual is an attorney pursuant to California Business and Professions Code section 6101.

## **HOMICIDE AND SPECIAL CIRCUMSTANCES CASES**

Homicides are dangerous and tragic crimes, and this office will handle them with utmost care and sensitivity. Homicide cases are handled by the division best-suited based on the case facts, status or age of the victim, or expertise required from vertical divisions within the office. The Deputy District Attorney will be assigned based on experience level and the type and complexity of the case. All offers to resolve homicide cases shall be communicated to and either rejected or approved by a Chief Deputy District Attorney and the Assistant District Attorney. Deputy District Attorneys will keep in contact with victims' families, provide updates on case status, work in conjunction with victim advocates to inform victim families of their rights, and be accessible should the family have any questions about the criminal justice process.

The decision to seek the death penalty in any special circumstance murder is a serious one that is made by the District Attorney after careful weighing and considering of all the case facts, the recommendation from a committee comprised of experienced homicide Deputy District Attorneys, and information presented from the charged individual's attorney. Reconsideration of the penalty decision may and should be conducted if, at any time after the penalty decision is made, newly discovered evidence or other significantly changed circumstances require a different recommendation for appropriate punishment.

## **GANG CRIMES AND ALLEGATIONS**

Gang crimes tend to be more violent and more indiscriminately dangerous than any other category of crime and lead to violent retaliation, further endangering our neighborhoods and locking them into a cycle of violence. The impact of gang crimes is felt disproportionately and keenly in some of San Diego's most underserved communities, and most disconcerting, the victims are overwhelmingly members of San Diego's minority communities.

The San Diego County District Attorney Gangs Division's mission is to prosecute gang-involved crimes and individuals who commit them to achieve justice for, and safety in, communities impacted by criminal street gangs. Criminal charges can be accompanied by additional requirements for prosecutors to prove, also known as "gang allegations", when appropriate, to attempt to hold gang-involved individuals accountable for the violence they bring to our neighborhoods, and to disrupt the power that gang members have in our communities.

The following delineates the policy framework of the San Diego County District Attorney's Office regarding the use of gang allegations. This framework is to be followed unless the interests of justice and public safety require a deviation from this general framework and in that case, Chief Deputy Approval is required or higher authority if expressly stated:

1. No gang allegation may be filed on any case by any Deputy District Attorney outside the Gangs Division without the express approval of the Chief of the Gangs Division.
2. No gang conspiracy charge under Penal Code section 182.5 shall be filed without the express approval of the District Attorney.
3. Penal Code section 186.22(b) allegations shall not be filed on non-serious/non-violent offenses when the only basis for doing so would be that the crime was "committed by multiple gang members in association with one another."
4. The crime of "active gang participation" in violation of Penal Code section 186.22(a) shall not be filed without the express approval of the Chief of the Gangs Division. Approval shall only be given when the person(s) sought to be prosecuted pose a danger to the community if allowed to continue their conduct without intervention by the justice system.
5. Penal Code section 186.22(d) allegations (elevating misdemeanors to felonies when the crime was committed to benefit the gang) shall not be filed without the express approval of the Chief of the Gangs Division. Approval shall only be given for persons who have been previously placed on summary or formal probation, yet their criminal conduct continues in a manner posing a threat to the safety of others, or when the Penal Code section 186.22(d) allegation will be filed in conjunction with other serious and/or violent gang-related felonies.
6. Penal Code section 186.22(b) allegations shall not be filed on any drug offenses or possessory offenses (weapons excepted when in combination with serious or violent felony) without the approval of the Chief Deputy supervising the Gangs Division.
7. In addition to the requirements imposed by the statute, Penal Code section 186.22(b) allegations shall only be alleged on serious or violent felonies, or felonies committed which overtly seek to increase the power of gangs or gang members.
8. Penal Code section 186.22(b) allegations shall not be filed on serious/violent offenses when the only basis for doing so would be that the crime was "committed by multiple gang members in association with one another," unless the crime also meets the requirements set forth by the California Supreme court in *People v. Albillar* (2010) 51 Cal.4th 47.
9. While Cal-Gangs is utilized by law enforcement in the investigation of crimes, the fact that an individual might be listed in Cal-Gangs shall not be considered in the filing of Penal Code section 186.22(b) allegations. Whether an individual is "documented" as a gang member within such a database is wholly irrelevant to any charging decisions made by Gangs Division Deputy District Attorneys, and a person being documented in Cal-Gangs as a gang member does not constitute evidence of gang membership. The decision whether to issue a gang allegation shall only be founded upon relevant and admissible evidence.

10. Juvenile offenders less than 16 years of age shall not have a gang allegation added to their juvenile petition. Their cases shall be prosecuted by the Juvenile Division, the purpose of which is rehabilitation, not punishment. Deviation from this policy requires an exceptional circumstance and will be made on an individual case basis by the Chief of the Gangs Division in consultation with the Chief of the Juvenile Division.
11. When attempting to reach fair and just resolutions of cases with gang allegations filed, Deputy District Attorneys shall consider taking pleas wherein the charged individual admits the gang allegation (so as to truly reflect the nature of the conduct), but agree to strike the punishment associated with the gang allegation pursuant to Penal Code section 1385(b), thus not increasing the punishment. This decision will require weighing case and individual specifics facts, including but not limited to the charged individual's criminal history, the degree to which the current crimes were gang motivated, the sentencing exposure, any injuries sustained by the victim(s), and the demonstrated level of dangerousness posed by the charged individual.

## **PRETRIAL DETENTION AND BAIL ASSESSMENTS**

Conditioning freedom solely on whether an arrestee can afford bail is unconstitutional. San Diego Deputy District Attorneys shall not argue to hold accused individuals in custody pre-trial due to an inability to post monetary bail. Pretrial detention should be reserved for those who otherwise cannot be relied upon to make court appearances or who pose a risk to public or victim safety, and not on a person's financial ability to make bail. Seeking pre-trial detention (bail above what a charged individual can reasonably afford) must be thoughtful and intentional. Deputy District Attorneys should only request bail above what a charged individual can reasonably afford when supported by clear and convincing evidence that no less restrictive conditions will 1) protect the victim or public and 2) assure a charged individual's appearance in court.

Prior to requesting monetary bail, Deputy District Attorneys should consider whether there are other nonfinancial conditions that can be ordered to protect the victim and public and assure a charged individual's return to court. When public safety is not an issue, Deputy District Attorneys should collaborate with the court, the defense, and the Sheriff's Pre-trial Division to determine non-monetary conditions to satisfactorily address any failure to appear risk. If monetary bail is requested, for purposes of setting bail, the following factors should be considered: the safety of a victim or the public's exposure to harm, the seriousness of the offense, the accused's previous criminal history involving violence, or the continued or repeated victimization of persons and/or businesses, and the charged individual's ability to pay.

## **NOT GUILTY BY REASON OF INSANITY (NGI) CASES**

Individuals charged with a crime may choose to plead "Guilty, Not Guilty, or Not Guilty by Reason of Insanity." When a charged individual enters a plea of not guilty by reason of insanity (NGI), the assigned Deputy District Attorney must notify this office's NGI Expert Deputy District Attorney Consultants to ensure that appointed doctors are provided with everything necessary to ensure a proper evaluation. Once the reports from the appointed doctors are received, the Deputy District Attorney will again speak with this office's NGI Expert Deputy District Consultants before any disposition of the case. There are many considerations that are unique to NGI cases that must be resolved before any disposition can occur. The Deputy District Attorney will keep their Division Chief and/or Assistant Chief informed of the progress of the consultation and of the NGI case.

## **EXTRADITIONS AND ARTICLE IV PROSECUTIONS**

Sometimes an individual commits a crime and then escapes or flees San Diego County, making it more difficult to bring the person to justice. Legal proceedings called “extradition” proceedings may need to occur, and certain legal requirements also known as “Article IV prosecutions” are triggered. When accused individuals flee the San Diego County jurisdiction after committing a serious crime in San Diego County, Deputy District Attorneys should consult with the Case Issuance Division’s Extraditions Deputy to comply with the legal parameters of extraditions and Article IV prosecutions.

The decision to extradite is made on a case-by-case basis, considering factors including but not limited to: the location of the charged individual; the seriousness of the case; the vulnerability of the victim and or victim’s wishes; the amount of restitution involved; any additional wants or warrants for the charged individual’s presence; and general public safety when balanced against the costs of extraditing the charged individual.

The decision whether or not to extradite or to proceed by way of an Article IV prosecution is made by the Extraditions Deputy District Attorney in consultation with the Division Chief of the division prosecuting the case and/or the Deputy District Attorney to whom the Division Chief delegates the case review. In the rare instance of a disagreement between Chiefs, respective Chief Deputies will be informed and consulted.

Any commitment to waive a charge of special circumstances of a life penalty as a condition of extraditing a charged individual to the United States from another country is to be made only by the District Attorney.

## **CASE RESOLUTIONS AND DISPOSITIONS**

A criminal case is a lawsuit between the “People of the State of California” and the accused. Most criminal cases resolve prior to an actual jury trial after several different checks and balances within the system operate to secure a fair and just case resolution, also known as a “disposition.” Dispositions and negotiations of all criminal cases shall be made with public safety in mind and within a guided disposition framework. The purpose of the framework is to guide decision-making through a lens where custodial sanctions are thoughtful and intentional, and alternatives to incarceration are the norm and not the exception in cases where there is no enhanced public safety threat. Within the [case disposition policy framework](#), Deputy District Attorneys will analyze whether the current offense is serious or violent or ineligible for probation, and whether the current offense is a special-victim crime such as Domestic Violence, Human Trafficking, Child Abuse, Elder Abuse, a Sexual Crime, or a Driving Under the Influence crime. Deputy District Attorneys will further analyze whether incarceration is necessary to protect the victim or the public from harm, and whether the interests of justice, the victim, and public safety would be served by a collaborative court or other alternative to incarceration.

In Penal Code section 1016.2, the California Legislature recognized the irreparable damage immigration consequences resulting from a criminal conviction may have on a person’s current or potential lawful immigration status. San Diego County Deputy District Attorneys should be aware of these legislative findings and shall in the interests of justice consider the avoidance of

adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.

### **MENTAL ILLNESS AND SUBSTANCE USE DISORDER CASES**

Some individuals suffer from mental illness and/or substance use disorders when they commit crimes. Deputy District Attorneys and their supervisors should be informed and empowered to consider a charged individual's mental illness and/or substance use disorder in addition to all other underlying circumstances of a crime, the charged individual's criminal history, and the victims' rights while making case-filing and disposition decisions. In addition, this policy is intended to encourage program participation in diversion, collaborative courts, and alternatives to custody when it is in the interest of justice, protects victims' rights and public safety.

Deputy District Attorneys may refer a charged individual to any collaborative court, diversion program or alternative to custody who is eligible and suitable under the parameters of the program. If a charged individual would otherwise be disqualified from participation due to the program's listed exclusionary factors, Deputy District Attorneys may deviate from these factors upon the agreement of the court and justice partners.

Deputy District Attorneys should consult the Collaborative Justice Division for up-to-date information regarding eligibility and/or exclusionary factors, program requirements and procedures for collaborative courts, diversion programs, and alternative to custody programs.

### **PENAL CODE SECTION 1368 CASES (COMPETENCE TO STAND TRIAL)**

An accused individual must be legally competent to participate in the criminal justice process and there are complicated rules surrounding one's legal competence to stand trial. Our office designates a prosecutor with expertise in an accused's legal competence. Deputy District Attorneys shall consult with this office's Penal Code section 1368 Legal Competence Coordinator in cases involving harm or injury to a victim where a finding of incompetence has been offered. In all other cases where a finding of incompetence has been offered, the Deputy District Attorney should consult with the Penal Code section 1368 Legal Competence Coordinator. The Penal Code section 1368 Legal Competence Coordinator will assist the Deputy District Attorney in analyzing and addressing legal issues and to ensure deadlines for potential conservatorships are met.

### **VICTIM RESTITUTION**

Protecting victims and their right to be made whole is one of the cornerstones of the San Diego District Attorney's Office. Victims have a constitutional right to full restitution for losses sustained as the result of a crime. Deputy District Attorneys should address restitution issues during the disposition of the case and, to the extent possible and with the agreement and consent of the victim, resolve them as part of the plea bargain and receive stipulations on the amount of restitution at the plea.

Deputy District Attorneys will ensure that both restitution fines and restitution orders are obtained in appropriate amounts at sentencing or shortly thereafter in every appropriate case.

It is the policy of the District Attorney's Office to seek restitution orders that are subject to modification in lieu of "To Be Determined" (TBD) orders. When TBD orders are entered by the court, Deputy District Attorneys shall request that a restitution review hearing be set on the calendar of the sentencing judge. The division or branch where such cases are assigned will ensure that Deputy District Attorneys shall properly assist victims and witnesses, be prepared to request appropriate restitution fines, and facilitate victims' rights to present their claims for restitution to the courts and the State Victim Compensation Board.

Deputy District Attorneys may accept restitution checks in the form of money orders, cashier's checks, or attorney trust fund checks from defense counsel when appropriate on a case-by-case basis. Doing so facilitates resolution of the case and provides for complete restitution to the victim at an early stage of the proceedings. Cash will not be accepted under any circumstances. It is not the intent of this policy to substitute the District Attorney's Office for the Department of Revenue and Recovery. As a result, this policy is primarily for one-time payments of restitution and not a schedule of payments during the course of probation.

Deputy District Attorneys in vertical divisions, such as the Economic Crimes Division or the Insurance Fraud and Workplace Justice Division, that routinely receive restitution checks for significant amounts may deviate from the listed guidelines when reasonable and appropriate to efficiently get the restitution funds to the victim or victim-company. Checks may be directly delivered to an individual victim with the completion and receipt of a Receipt of Restitution Funds Form or mailed to victim-companies via certified mail. A Progress Report (PR) note should be made documenting the transmission of the check to the victim or victim-company. If a Receipt of Restitution Funds Form is completed, it should be placed in the file.

## **VICTIM AND WITNESS NOTIFICATION**

Notifying victims of their rights is a critical duty of this office. District Attorney employees shall ensure that legally mandated victim and witness notifications are accomplished in accordance with mandates established by the law, including but not limited to Penal Code section 679.02, Penal Code section 11116.10, and California Constitution, Article 1 Section 28.

Deputy District Attorneys shall strive to keep victims apprised and upon request, involved, at all stages of the criminal proceedings. Deputy District Attorneys should keep the fact that victims have suffered trauma at the forefront of any communications or discussions with the victim and enlist the expertise of a victim advocate when necessary.

## **JUDICIAL OFFICERS AND ELECTED OFFICIALS AS WITNESSES**

There are certain legal rules and requirements surrounding judicial officers being subpoenaed to testify. Deputy District Attorneys are not to subpoena any judicial officer or elected official without the direct approval of the District Attorney or Assistant District Attorney. When any Deputy District Attorney learns that a judicial officer or elected official has been subpoenaed by the defense on a case they are handling (either in court or assigned to), they must notify their Division Chief. This duty applies even if the Deputy District Attorney is not "assigned" to the case and is "covering" for another deputy. The Division Chief will notify their Chief Deputy and the Assistant District Attorney of such a subpoena. In addition, the Division Chief will ensure the provisions of Evidence Code sections 703 and 703.5 and Penal Code section 1321 are followed.

## **IMMIGRANT VICTIMS AND WITNESSES**

It is the policy of the San Diego County District Attorney's Office to protect the public from crime and violence by encouraging all persons who are victims or witnesses to crime to cooperate with the criminal justice system and not to penalize these persons for that cooperation. Immigrants should be protected from irrelevant disclosures of their immigration status and feel comfortable coming forward to testify without fear of deportation.

District Attorney employees shall refrain from inquiring into the immigration status of victims and/or witnesses unless that information is necessary to prove a crime charged.

If a Deputy District Attorney becomes aware of a victim's or witness' undocumented, unauthorized, or unlawfully present status, the Deputy District Attorney shall comply with Evidence Code section 351.4(a), which prohibits disclosing evidence of a person's immigration status in open court unless ordered by a court after an in camera review.<sup>1</sup>

## **CERTIFICATION REQUESTS FOR FEDERAL IMMIGRATION RELIEF**

Undocumented, unauthorized or unlawfully present Immigrant victims may on occasion request certification from our office granting them the ability to apply to the Federal Government to remain legally in the United States as a result of their status as a victim of a federally qualifying crime.

As a rule, the San Diego County District Attorney's Office will certify federal immigration forms when a victim so requests and meets the required legal qualifications.

Certifications will only be signed by a Division Chief or Assistant Chief. Assistant District Attorney approval is required before a Division Chief or Assistant Chief may decline certification. If the case is under investigation by a law enforcement agency and has not yet resulted in a case filed by our office, the certification application form should be referred to that agency.

## **GENERAL DISCOVERY OBLIGATIONS**

San Diego County Deputy District Attorneys must be aware of and fully comply with all currently applicable discovery obligations required by caselaw precedent, statutes, and Rules of Professional Conduct.

Deputy District Attorneys must also understand and comply with discovery rules concerning peace officer personnel files. The San Diego County District Attorney's Office does not inspect peace officer personnel files. Instead, deputies invite a defense motion when they reasonably suspect or have knowledge that there is potential exculpatory or impeachment material contained in a peace officer's personnel file. Both prosecutors and criminal defense attorneys can request disclosure of information contained within peace officer personnel files.

The District Attorney's Office shall maintain a central repository for potential impeachment information about peace officer witnesses. That central repository will be maintained by the Special Operations Division. Deputy District Attorneys who are in possession of, or have

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<sup>1</sup> This statement reflects the general sentiment of the California Values Act. (Senate Bill 54, Gov. Code, § 7284 et. seq., eff. Jan. 1, 2018.)



knowledge about, potential impeachment information concerning a peace officer, shall notify the Chief or Assistant Chief of the Special Operations Division. Deputy District Attorneys should regularly check the central repository to determine whether impeachment information exists about peace officer witnesses and assess their discovery obligations under caselaw precedent, statutes, and the Rules of Professional Conduct.

Deputy District Attorneys must comply with the statutory laws of discovery and any applicable case law, in balance with the statutory controls regarding the dissemination of criminal records including records of a charged individual's criminal history. Deputy District Attorneys must also review and redact information from records as required by law and shall understand how to review and handle discovery not picked up by the defense.

## **CHILD PORNOGRAPHY DISCOVERY**

Protection of children is of the utmost importance to the District Attorney's Office. Special safeguards are necessary to protect the privacy and safety of child victims. Images of child sexual abuse and child pornography are contraband and should be tightly controlled. All San Diego County District Attorney's Office employees must handle discovery of recorded instances of child sexual abuse, suspected child pornography, and child pornography with caution and sensitivity. Deputy District Attorneys must review all discovery to ensure that any disclosure of records does not include images of child sexual abuse, suspected child pornography, and/or child pornography.

If the defense requests a copy of contraband images, a copy will be provided separate from other discovery upon the filing of a protective order.

As an alternative to actual copying, Deputy District Attorneys who receive a defense request to view contraband images may set up a viewing of those images through a District Attorney Investigator or through the Regional Computer Forensics Laboratory (RCFL).

## **BODY WORN CAMERA EVIDENCE (BWC)**

Most police agencies in our County issue Body Worn Cameras to their officers and deputies responding to calls for service. Body Worn Cameras are worn by officers and deputies to capture events in those calls for service in a video/audio fashion and from the perspective of the individual officer. Body Worn Camera footage is provided in some cases to the San Diego County District Attorney's Office in conjunction with investigative reports. The San Diego District Attorney's Office ensures that this evidence will be disclosed, or made available, to defense counsel according to statutory discovery obligations. It is the goal of this office to produce BWC evidence as soon as possible to avoid delaying cases moving forward in the criminal process.

### **1. BWC Disclosure**

To timely provide this discovery, BWC evidence will be released without redaction in most cases, provided the assigned criminal defense attorney has signed the BWC protective order that states they will not share non-discoverable information with the charged individual and other members of the community. Should there be a substitution of the criminal defense attorney, the Deputy District Attorney must confirm that a protective order is signed by the new criminal defense attorney before supplemental release of the BWC evidence. However, if from the reports it appears the charged individual or others may pose a danger to victims and witnesses if personal information were released in its unredacted form then the Deputy District Attorney should view

and redact the BWC evidence. As with other forms of discovery, Deputy District Attorneys have the legal and ethical obligation to prevent disclosure of privileged information in BWC evidence, such as non-discoverable victim or witness information.

## **2. BWC Evidence for Official Uses Only**

BWC evidence should only be used for official purposes. It should not be copied, made accessible, or provided to third parties except as specifically authorized while carrying out official District Attorney business.

## **3. Reviewing BWC Evidence prior to issuance**

Deputy District Attorneys should review available BWC video footage when feasible in any case where a significant element in the case relies upon information likely captured in the BWC. Deputy District Attorneys are strongly encouraged to review BWC video footage prior to filing Penal Code section 148 or Penal Code section 69 charges.

## **JAIL PHONE CALLS AND INMATE E-MAILS**

The San Diego Sheriff's Department stores recordings of phone calls by inmates and emails to inmates. These phone calls and emails contain non-privileged communications, as the inmates are explicitly warned and to which they impliedly consent. Before a Deputy District Attorney or District Attorney Investigator comes into possession of such communications, they should obtain the approval of their Division Chief or Assistant Chief. Such monitoring of communications should have a clear purpose.

Once a call or email is either listened to, or downloaded to a storage device (e.g., hard drive/thumb drive/CD or other device), it is in the possession of the prosecution team and is subject to discovery analysis for statements of charged individuals and/or witnesses.

District Attorney Investigators and Deputy District Attorneys should attempt to minimize listening to or reading these consensually recorded communications when those communications involve an attorney, to avoid litigation on the issue and/or potentially compromise the case. Should a situation arise in which a communication with an attorney comes into our possession, the listening and/or reading should stop immediately when it is determined that it is a communication with an attorney. Appropriate measures shall be taken to ensure that no further monitoring of such communications occurs and that we divest ourselves of the possession of such communications and defense counsel shall be notified.

## **WIRETAPS**

Some sophisticated or complicated criminal events require specific investigatory tools to determine who, or if anyone should be held accountable. A wiretap is a method by which a connection is made to a telephone, telegraph wire, or cellular signal, to get information. To conduct a wiretap, law enforcement must apply for and receive judicial authorization. Deputy District Attorneys specially trained in the legal requirements of wiretaps may assist law enforcement in applying for and implementing a wiretap with permission from the Division or Branch Chief and in consultation with the Chief or Assistant Chief of Narcotics and the Wiretap Coordinator within the Narcotics Division. The assigned Deputy District Attorney must obtain the

next-in-order wiretap number from the Chief of the Narcotics Division or his or her designee and furnish the Narcotics Division with a copy of the affidavit.

## **TRIALS**

Jury trials are one of the most important hallmarks of the criminal justice system. Deputy District Attorneys shall work within all constitutional, statutory, and ethical boundaries to provide a fair trial to the accused.

### **1. Retaining experts**

Retaining the services of an expert requires pre-approval from the Branch or Division Chief, and in cases involving significant services or potential costs, by a Chief Deputy. All efforts will be made to be responsible in the expenditure of funds for experts.

### **2. Forensic DNA testing**

Deputy District Attorneys should consult with the Crime Laboratories Liaison on all cases involving potential biological evidence to determine what DNA tests should be sought and when those tests should be requested. Our goal is to avoid the last-minute expense of expedited testing, to ensure that the right tests are requested, and to assist the labs in prioritizing the requests they receive from this office.

### **3. Grants of immunity**

Before a Deputy District Attorney offers a grant of immunity to any witness, the Deputy District Attorney shall first analyze whether the witness should be or needs to be granted immunity based on the facts and circumstances of the case and then seek approval from the Division Chief. Deputy District Attorneys should file points and authorities authorizing the court to compel testimony resulting in use immunity, a proposed order requiring witness to answer, and then request the court to follow Penal Code section 1324 and compel the testimony.

### **4. Jury Waivers**

The decision to waive the People's right to a jury in any case is reserved to the Chief of the division or branch, or his or her designee.

### **5. Peremptory Challenges of Judges**

The decision to exercise a peremptory challenge of a judge pursuant to the Code of Civil Procedure section 170.6 is reserved to the District Attorney or the Assistant District Attorney.

## **GENERAL EXPERT FEE SCHEDULE**

Expert witnesses are witnesses who hold a unique or special knowledge such as physicians, nurses, or laboratory personnel. To conduct a fair and complete criminal hearing, expert witnesses are sometimes required to provide testimony. Such experts must set aside time to testify to the detriment of other business and are paid according to the following guidelines. It is the goal of the San Diego District Attorney's Office to be fiscally responsible when complying

with the following fee schedule guideline:

### **1. Testimony by retired or former employees**

When the witness will be testifying to information obtained during his or her former employment, the following rates will be paid:

Coroners and Medical Examiners

- 1) Trial Testimony: \$1500 per full day; \$750 per half day.
- 2) Preparation time: \$100 per hour. Amount of time needed should accurately reflect complexity of the case.
- 3) Travel expenses: mileage claims, airplane fares, hotel expenses, and meals are to be paid at the same rate as other witnesses.
- 4) Miscellaneous expenses: any other documented expenses are paid at the discretion of the Division Chief.
- 5) Unusual or unanticipated expenses are paid in the discretion of the Division Chief.

Laboratory Personnel – previously employed by or contracted by law enforcement.

- 1) Trial testimony: \$600 per full day; \$300 per half day.
- 2) Preparation time: \$50 per hour
- 3) Travel expenses: mileage claims, airplane fares, hotel expenses, and meals are to be paid at the same rate as other witnesses.
- 4) Miscellaneous expenses: any other documented expenses are paid at the discretion of the Division Chief.
- 5) Unusual or unanticipated expenses are paid at the discretion of the Division Chief.

### **2. Testimony by Current Employees**

Testimony by emergency room doctors:

- 1) Trial Testimony: \$1500 per full day; \$750 per half day.
- 2) Preparation time: \$100 per hour. Amount of time needed should accurately reflect complexity of the case.
- 3) Travel expenses: mileage claims, airplane fares, hotel expenses, and meals are paid at the same rate as other witnesses.
- 4) Miscellaneous expenses: any other documented expenses are paid at the discretion of the Division Chief.
- 5) Unusual or unanticipated expenses are paid at the discretion of the Division Chief.

SANE/SART DAFE Nurses:

- 1) Trial preparation and testimony: \$850
- 2) Subsequent days' testimony: \$650
- 3) Late cancellation (if not cancelled by 6:00 p.m. on prior day) : \$650
- 4) Extraordinary preparation: \$150
- 5) Re-examination of victim (prosecution request): \$520

Each Deputy District Attorney handling cases involving professional witnesses shall work closely

with the witnesses to control costs and foster our on-going professional relationship. Deputy District Attorneys should consult with their Division Chief on issues surrounding payment. Division Chiefs shall consult with their Chief Deputy on any substantial deviations from these guidelines.

## **HANDLING OF EVIDENCE**

Criminal cases necessarily involve evidence. Typically, evidence is stored and maintained by the local law enforcement agency that investigated the case. In some instances, evidence may need to be transported to the District Attorney's Office in connection with a jury trial or other necessary hearing. This is called "original evidence." All original evidence that is brought into the District Attorney's Office should remain in the possession of the law enforcement official who carried the evidence into the office or be turned over to the assigned District Attorney Investigator for handling.

If a District Attorney employee receives original evidence in a sealed envelope where the contents are clearly identified on the outside of the envelope, the employee should immediately request that the District Attorney Investigator return the envelope to the law enforcement agency. If the contents are not clearly identified on the outside of the envelope, then the employee should open the envelope and inventory its contents. Once the inventory is complete, the employee should have a District Attorney Investigator reseal the envelope and return the evidence to the law enforcement agency.

When original evidence items, including but not limited to contraband or firearms, are brought to court, the courtroom bailiff should be notified in advance that these items are being brought to the courtroom so that all necessary steps can be taken to ensure courtroom safety. District Attorney employees should not assume that a courtroom is a secure location and should not assume that all courts have the same procedural rules when dealing with various types of evidence.

Regardless of the outcome of a hearing, original evidence released after the hearing should only be released to a law enforcement officer or District Attorney Investigator.

## **WRITS AND APPEALS**

Sometimes justice demands that our office appeal a judicial decision to further the goals of our office and to provide fair and equitable justice.

### **1. Writ Petitions**

The Appellate and Training Division will handle all writ petitions filed in San Diego Superior Court unless otherwise decided by the Chief of the Appellate and Training Division. All writs received will be scanned and forwarded to the Chief of the Appellate and Training Division or Assistant Chief to be processed and assigned.

### **2. Prior Approval of Appellate Filings**

A Deputy District Attorney may not file a notice of appeal or initiate writ proceedings in any case without the approval of the Chief of the Appellate and Training Division or the Assistant Chief.

A Deputy District Attorney may not file or lodge any document in the Appellate Division of the

Superior Court, Court of Appeal, or the Supreme Court without prior review and approval by the Chief of the Appellate and Training Division, Assistant Chief, or his or her designee.

## **DNA CODIS HIT, CMS INTEGRATION, AND DISCLOSURE**

CODIS is the acronym for the Combined DNA Index System and is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases. The San Diego County District Attorney's Office "DNA CODIS Hit/CMS Integration Project" manages DNA hits received from the state CODIS Hit Outcome Project (CHOP). This office partners with the San Diego Police Department Crime Laboratory and the San Diego Sheriff Department Crime Laboratory to ensure notification of CODIS hits. Deputy District Attorneys and paralegals should be aware of how CODIS hits are tracked and managed within the office to ensure each hit is properly handled and reported to the state as governed by the state CHOP program. Deputy District Attorneys should also be familiar with the protocols concerning collaboration with any assigned detective or other law enforcement to evaluate the viability of a new case and disclosure to defense counsel (trial and appellate) of CODIS hits related to a prosecuted case.

The Conviction Review Unit (CRU) in the Special Operations Division is tasked with tracking CODIS hits for any suspect other than the individual who was prosecuted. The CRU will evaluate whether this post-conviction CODIS hit undermines our confidence in the underlying conviction and determine any action to be taken to exonerate anyone wrongfully convicted as justice requires.

## **REQUESTS FOR DISTRICT ATTORNEY RECORDS**

Sometimes individuals request records from District Attorney casefiles. Since District Attorney casefiles may contain privileged or private information, Any request for District Attorney records on an open, pending criminal case, issued by the criminal defense attorney in that case, should be directed to the assigned trial Deputy District Attorney, or to the current Deputy District Attorney case-holder if no trial attorney is assigned. Any subpoena or other type of request for District Attorney records on any other specific criminal case or matters other than a specific criminal case should be directed to the Appellate and Training Division.

Cases in which the District Attorney's Office is a party to the legal action (usually by way of a summons and/or complaint) are to be referred to the Chief Deputy of Human Resources, who is our County Counsel liaison officer. The Appellate and Training Division should be consulted for specific rules regarding disclosure of privileged, confidential, or legally precluded records.

## **PUBLIC RECORDS ACT REQUESTS**

Under the California Public Records Act (CPRA), any person may make a request to examine and/or obtain a copy of public records held by the District Attorney's Office. The CPRA, however, also exempts many of this office's records from disclosure. Because records requests under the CPRA must be determined within a short 10-day window, all CPRA requests received by this office shall be forwarded immediately to the Chief of the Appellate and Training Division or Assistant Chief upon receipt. The Chief of the Appellate and Training Division or Assistant Chief will designate a custodian of record to handle CPRA requests received by this office. CPRA requests shall be handled as provided for in the law. Requestors will be charged for the time it takes to

retrieve and compile the data based on 15-minute increments at the rate of the employee's salary that completes the work.

## **SUBPOENAS FOR EMPLOYEE TESTIMONY IN CRIMINAL CASES**

Should a criminal defense attorney issue a subpoena for a District Attorney employee to appear in a criminal matter, District Attorney employees should notify their Division Chief or Assistant Chief, and must cooperate in the pursuit of justice and within the confines of the employee's constitutional and statutory rights.

## **NON-PARTY CIVIL LAWSUIT SUBPOENAS**

The Appellate and Training Division should be contacted when a District Attorney employee receives a civil subpoena for records or testimony at a civil trial, deposition, or other hearing in which the District Attorney's Office is not a party but the testimony sought relates to an event or transaction the employee perceived or investigated in the course of his or her duty with this office. There are required fees to be paid to the County related to such subpoenas, and acceptance of service rules apply differently depending whether the employee named on the subpoena is a district attorney investigator. It is the policy of this office to comply with all subpoenas as required by law and to work in conjunction with any assigned County Counsel assigned the lawsuit.

## **MEDIA TRANSPARENCY**

The District Attorney's Office must strive to protect and carefully balance the accused's constitutional right to a fair trial and the public's right to information about the criminal justice system. It is the policy of this office to provide access to the news media and facilitate the flow of information necessary to educate the public, keeping in mind the ethical limitations of extrajudicial statements involving an investigation or pending case and victim or witness safety and/or privacy rights. District Attorney employees will cooperate with representatives of the media in this newsgathering and reporting function. Representatives of this office should consult with their Division Chief and the Director of Communications in disseminating information, consistent with California's ethics rules and Rules of Professional Conduct.

It is the policy of the District Attorney's Office to allow media coverage of all open court proceedings. This office does not oppose requests for news coverage with rare exceptions, e.g., when a prosecution may be jeopardized or there is special concern for victim or witness safety.

When a modification of media coverage such as tiling out the face of a charged individual will preserve the integrity of the case the Deputy District Attorney should so inform the court. Otherwise, Deputy District Attorneys should represent to the court that tiling out is unnecessary based on the public's right to access to court proceedings.

## **PEACE OFFICER-INVOLVED SHOOTINGS AND OTHER USE OF DEADLY FORCE**

The San Diego County District Attorney's Office seeks to promote transparency in its process and its findings involving peace officer-involved shootings and other peace officer use of deadly force.

Our office shall follow the 2020 Countywide Inter-Agency Memorandum of Understanding for Inter-Agency Investigations of Peace Officer Involved Shootings and Other Use of Deadly Force and shall independently review all investigations that are submitted to our office.

Pursuant to the countywide protocol, the primary investigating agency of any peace officer involved shooting or other use of deadly force submits its investigation to the District Attorney's Office for independent review and determination of whether any parties involved will be charged with criminal offenses.

Specially trained Deputy District Attorneys and investigators in the Special Operations Division shall assess the circumstances surrounding an incident. The District Attorney shall release her findings in writing to the primary investigating agency and to the public by posting them on our office's public-facing website.

Releasing video and audio evidence of an incident can assist the public in understanding how and why an incident occurred, can increase transparency by government agencies, and can increase public trust in law enforcement. It is the policy of the District Attorney's Office generally to release video and audio evidence to achieve these goals. Due process owed to the accused, the integrity of law enforcement's investigation and review, the privacy of those involved, and public and officer safety concerns will be considered in determining if, how, and when to release video and audio evidence. Community interest in receiving this kind of audio and video evidence will be balanced along with the rights of all parties involved.

## **PAROLE HEARING PARTICIPATION AND REPRESENTING VICTIMS' RIGHTS**

When an individual is sentenced for a crime that is punishable by life in the state prison, there comes a time where the California Board of Parole Hearings conducts parole suitability hearings to determine whether the individual should be released into the community. The District Attorney's Office will ethically and legally participate in parole hearings that warrant it and will continually strive to ensure that victims' rights to be present and heard at these hearings are achieved.

Parole hearings are an important function of the criminal justice system, where individuals who are incarcerated under a life sentence shall be entitled to representation of counsel and where the public prosecutor is legally authorized to present an opinion reflective of public safety. San Diego County Deputy District Attorneys will fulfill their duties and role as outlined in the law, specifically to present an opinion whether the individual inmate will pose an unreasonable risk of danger to society if released from prison, and to provide the Board of Parole Hearings an appreciation for the impact that the crime has had on the victim's life and/or next of kin.

When a charged individual is sentenced to a life sentence, Deputy District Attorneys will prepare and file a statement pursuant to Penal Code section 1203.01 within 30 days of the sentencing and refer and/or route the case to the Collaborative Justice Division. Specially trained



prosecutors will determine which parole hearings require Deputy District Attorney presence in order for our office to fulfill its legal responsibilities and ensure victims' constitutional and statutory rights are achieved.

Penal Code section 3041.7 mandates the Board of Parole Hearings to invite the prosecutor of the county from which the inmate was committed to represent the interests of the people at the hearing, and a prosecutor from the county that prosecuted the case "shall be the sole representative of the interests of the people." Prosecutors are legally authorized and duty-bound to comment on the facts of the case and present an opinion so that the parole board can make the correct decision reflective of public safety, and specifically whether the inmate will pose an unreasonable risk of danger to society if released from prison. (Cal. Code Regs. Title 15, Sections 2030(d)(2), 2281(a).)

Victims in California have the right to have notice of, be present at, and be heard at parole hearings. (California Constitution Article 1, Section 28(b)(7) and (b)(8); Penal Code section 679.02(a)(5).) They also have the right to have the safety of the victim, the victim's family, and the public considered before any parole or other post-judgment release decision is made. (California Constitution, Article 1, Section 28(b)(16).)

## **SOCIAL MEDIA POLICY**

District Attorney employees are responsible for content they publish, send to others, or make available to be viewed on user-generated social media. Employees should protect the integrity of the office and the criminal justice system as well as their own personal and professional reputation by exercising good judgment when using social media at work or at home. Employees should be mindful that the use of social media may compromise their personal information, create security risks for themselves and others, and the information they disperse can become public and permanent. All employees should assume that their speech and related activities on social media sites will reflect upon this office.

Employees are free to express personal opinions. However, if an employee has identified himself or herself as a member of the District Attorney's Office, the employee must include a statement that they are speaking as an individual and not on behalf of this office, and comply with the County's code of ethics and all applicable policies including the County's policies on social networking, discrimination, harassment, violence and threats, either express or implied, in the workplace. Employees shall not post inappropriate content such as discriminatory or harassing content, or express or implied threats of violence.

Employees shall not reveal confidential information, including information regarding any criminal case or law enforcement investigation on either closed or open cases on any social media site or by mass dissemination via any means of electronic distribution.

## **RECORDINGS WITHIN COURTROOMS**

To avoid the risk that attorney-client privileged communications may be inadvertently intercepted, no surreptitious recordings shall be conducted within the physical confines of a courtroom by any member of the San Diego District Attorney's Office.

*\*\*Deviations from these Legal Policies may be granted in individual cases, based upon extraordinary circumstances, with the explicit approval of the District Attorney/Assistant District Attorney.*