

SPECIAL DIRECTIVE 25-03

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: NATHAN J. HOCHMAN 
District Attorney

SUBJECT: FELONY/MISDEMEANOR CHARGING OF PC 666.1

DATE: JUNE 27, 2025

Penal Code section 666.1, a wobbler offense recently created by Proposition 36 (2024), provides for enhanced penalties for repeat theft offenses. This Special Directive provides filing guidelines for determining when a theft offense under this section should be filed as a felony.

Under Office policy, a wobbler offense shall be charged as felony unless the reviewing deputy determines that a misdemeanor sentence is warranted after considering all relevant circumstances. (Legal Policies Manual (LPM), section 2.09.) Effective immediately, when the total value of the property at issue is less than \$100, there shall be a rebuttable presumption that a misdemeanor violation of section 666.1 should be filed, the matter should be referred to a city prosecutor, or a probation violation (where applicable) should be pursued in lieu of a criminal filing.

In addition to the value of the property, as noted above, deputies shall consider the following factors in evaluating whether charges should be filed as felonies or misdemeanors:

- Whether the qualifying prior theft-related convictions are close or remote in time relative to the current offense – specifically, whether the suspect both remained free from custody and did not commit two or more theft-related offenses within the past five years
- Whether the suspect's previous or continuing theft-related offenses have been committed at the same location or against the same retail chain or against similar retail establishments
- Whether the theft appears related to a criminal enterprise or organized retail theft
- Whether the suspect has a pending case involving a theft-related offense
- Whether the suspect has two or more prior convictions, arrests, or grants of diversion for theft, receiving stolen property or fraud-related offenses within the past five years
- Whether the suspect is on felony probation, parole, or PRCS
- Whether a Penal Code § 12022.1 allegation can be charged because the suspect committed the current offense while out on bail or OR release on any felony case

The appropriateness of felony charges based on factors not listed above should be considered on a case-by-case basis, consistent with LPM section 2.09 and in consultation with the deputy's supervisor.

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