

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(b)(4) REFERRALS

THIS AGREEMENT is made this

THE LOS ANGELES CITY ATTORNEY'S OFFICE ("LACA"),

THE LOS ANGELES COUNTY PROSECUTORS ASSOCIATION ("CPA")

AND

THE LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE ("LADA")

All Parties believe that it is essential to ensure that prosecutorial agencies having potential jurisdiction over a criminal case have policies and procedures in place in order to accomplish consistent, predictable, and equitable investigation and prosecution of cases in order to ensure and enhance the fundamental right of the people we represent to a safe and just society.

LADA has jurisdiction over the prosecution of all felonies occurring in Los Angeles County and misdemeanors occurring in certain sections of the County in which jurisdiction over misdemeanor offenses have not been assumed by a city (*Government Code §§41803.5; 72193*). There also exists numerous offenses providing alternate penalties of county jail or state prison. Such offenses are commonly referred to as "wobblers."


Penal Code §17(b)(4) provides discretion to prosecutors as to the charging of wobblers. The Parties to this Agreement have established guidelines and procedures for the prosecution of wobbler offenses to achieve the objects of this Agreement. Those guidelines and procedures are contained within the Appendices and Schedules, attached hereto and incorporated by reference.


STEVE COOLEY
District Attorney of Los Angeles County

3/03/11
Date


CARMEN A. TRUTANICH
Los Angeles City Attorney

3-04-11
Date


MICHAEL WEBB
President, Los Angeles County Prosecutors Association

3/4/11
Date

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SUMMARY OF THE AGREEMENT*

Direct Filing Procedure

• **General Guidelines for Case Review**

- LADA – Original jurisdiction to review for prosecution all potential felony cases (this includes straight felonies and wobblers)
- City Attorneys and City Prosecutors - Original jurisdiction to review for prosecution all misdemeanors occurring in the relevant city
- Unless specified, a wobbler presented for review to a City Attorney or City Prosecutor will be immediately referred to LADA for consideration unless presented with a Charge Evaluation Worksheet (CEW) documenting that the case has been declined for felony prosecution – LADA will not decline to file or refer a case to another prosecutorial agency verbally; a written record is required and will be documented on the CEW
- As to original jurisdiction, this Agreement incorporates investigations undertaken by a prosecutorial agency in support of case review and evidence collection for cases considered for filing of criminal charges

• **Initial Case Review Procedure**

- Crimes for which a direct referral to a City Attorney or City Prosecutor is appropriate are specified. (Schedule I)
- In circumstances where the City Attorney or City Prosecutor reviews a case within this agreement but believes that the circumstances of the crime or the criminal history of the defendant(s) warrant a review of the case for felony prosecution, a referral to LADA should be pursued as specified in the agreement.
- In cases filed by a City Attorney or City Prosecutor, even when previously declined for felony prosecution, where evidence is developed that reasonably changes the posture of the case so that reconsideration should be given for felony prosecution, a referral to LADA should be pursued as specified in the agreement

* *The Summary is intended for general guidance only. Please refer to the attached Appendices and Schedules governing this Agreement for specifics regarding the Agreement.*

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Implementation

- **Inter-Agency Liaison Committee (IALC)**
 - Establish and promote direct, effective, open lines of communication between agencies on §17(b)(4) issues
 - Oversee and organize formation of working groups that are formed based upon office location and/or subject matter issues
 - Recommend policies and procedures for adoption to department heads
- **Inter-Agency Liaison Groups (IALG)**
 - Local and/or subject matter communication between deputies with filing responsibilities for each agency (Schedule II)
 - Implementing and coordinating training and other lines of communication with local law enforcement agencies.

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APPENDIX A
DIRECT FILING PROCEDURE

LADA has the authority for initial review in all cases involving wobbler offenses. LADA can determine if the filing of felony charges is appropriate following a direct review of the case as submitted by the investigating agency or whether the wobbler offense(s) should be a direct referral to the City Attorney or City Prosecutor by the local police agency for consideration of a misdemeanor filing without first being reviewed by the District Attorney.

Based upon a review of filing guidelines consistent with the established filing policies and procedures of the relevant prosecutorial agencies, the City Attorney or City Prosecutor and LADA are adopting direct filing procedures for offenses that meet specified criteria. The agencies joining in this agreement are committed to improving communications to ensure that each case is suitably reviewed in order to achieve a just result and ensure public safety. The procedures are also designed to maximize workflow efficiency and reduce the need for the burdensome practice of requiring filing officers for law enforcement agencies to transport the reports for review to multiple prosecutorial agencies.

The direct filing of appropriate wobbler offenses shall therefore only be conducted in a manner consistent with the following:

1. GENERAL GUIDELINES FOR CASE REVIEW

If either the facts of the case or the charges presented warrant consideration of a felony filing, the investigating law enforcement agency must first bring the case to LADA for filing consideration. If a decision is made not to file a felony charge, a *Charge Evaluation Worksheet* (CEW), an example of which is attached, will be generated and provided to the filing officer. Verbal referrals or declinations are outside the policy of LADA and shall not be relied upon. A written declination or referral is mandated and must be recorded on the CEW. The CEW has also

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been informally called a *blue sheet* or a *reject form*. The CEW requires the signature of the deputy district attorney responsible for reviewing the submitted case as well as the signature of the law enforcement officer submitting the case for review. The case can be declined for felony filing or referred for further investigation.

A referral for further investigation does not mean that a case has been rejected for felony filing. Rather, it means that the deputy district attorney reviewing the case has requested that the law enforcement agency conduct additional investigation or provide further information required by the deputy to make an informed decision as to whether a felony charge is appropriately filed. Cases referred for further investigation continue under the filing consideration authority of the district attorney's office and are not yet in a posture for consideration of misdemeanor filing by the local misdemeanor prosecutor. When a case is not immediately filed, a copy of the CEW must be provided to the filing officer in all cases and will record whether the case was declined for filing or referred for further investigation.

If the case is declined for filing, the reason for the declination, using Department of Justice (DOJ) codes, will also be recorded. Protocols limit the designation of a single DOJ code per CEW. If, in the assessment of the deputy district attorney reviewing the case for a felony filing, there is insufficient evidence to file the case the appropriate code will be entered (B). The comments section of the CEW will provide specific reasons for this assessment. If, in the assessment of the reviewing deputy, the evidence presented in the case does not rise to the threshold established for a felony prosecution, the CEW will reflect the DOJ code indicating that the case has been referred to the local city prosecuting agency for consideration of misdemeanor charges.

When a case is initially presented by law enforcement to a special unit of LADA, the deputy assigned to review the case for the special unit may render a decision

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that the case does not meet the filing criteria for the special unit. This does not mean that the case has been rejected for a felony filing. It could mean something as simple as the fact that a threshold dollar amount of loss was not established by the evidence presented. In such circumstances, the case should be reviewed for felony filing by the appropriate Branch or Bureau and a CEW obtained by the law enforcement agency clearly declining the case for felony prosecution before it is taken to the local misdemeanor prosecutor for misdemeanor filing consideration.

The Victim Impact Program ("VIP") was first implemented in 2001 by LADA. The core mission of VIP is to obtain justice for victims of crimes involving domestic violence, sex crimes, stalking, elder abuse, hate crimes, and child physical abuse/endorsement (referred to as VIP Category cases) through vertical prosecution of cases occurring in the jurisdiction covered by Branch and Area Operations. In the Central Judicial District, these offenses are routinely prosecuted by special units. The program represents a firm commitment by LADA for trained and qualified deputies to prosecute crimes against individuals who often target victims because of an individual's vulnerability. The goal of the program is to obtain justice for victims while holding offenders justly accountable for their criminal acts.

LADA recognizes its duty as the gatekeeper on all cases it classifies as felony VIP Category cases, which include some of the most serious cases the office prosecutes. However, there are cases which may be more appropriately referred directly to the local city prosecutor with misdemeanor jurisdiction for filing consideration and prosecution. All parties are committed to working together to ensure that cases are filed and reviewed in a just manner, with efficient procedures. Any concern regarding whether a case involving VIP category charges should be directly filed, should be resolved by contacting the LADA VIP Deputy-in-Charge assigned to the jurisdiction.

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Cases submitted for felony filing consideration involving serious injury, conduct that would ordinarily warrant a felony filing, or a defendant with a criminal history that would ordinarily warrant a felony filing, which are declined for filing should be carefully evaluated prior to a decision to file the case as a misdemeanor. In such circumstances, a deputy district attorney has determined that legally sufficient admissible evidence is not available supporting a likelihood of conviction by a reasonable and objective fact finder after considering the most plausible and reasonably foreseeable defense. In some circumstances, this decision could be based upon sufficient evidence being present; however, a victim or witness is unavailable or unwilling to participate in the prosecution of a case. In other circumstances, the potential sentence for a felony charge and/or the statute of limitations on the potential felony charges could justify caution in filing a misdemeanor because, for certain classes of crimes, evidence may require additional time to develop that would justify delaying a filing decision pending development of sufficient evidence to meet the criteria of a felony filing.

In cases declined for felony filing for which immediate consideration of a misdemeanor filing is appropriate, the case should be promptly presented for misdemeanor filing consideration to the local misdemeanor prosecutor, with a copy of the CEW, by law enforcement. Delays in presenting cases declined by LADA to the local misdemeanor prosecutor might result in the inability to file appropriate misdemeanor charges based upon the statute of limitations for the relevant charge(s).

2. INITIAL CASE REVIEW PROCEDURE

For those crimes specified in Schedule I of this Agreement, local law enforcement agencies shall take the case directly to the local misdemeanor prosecutor for a misdemeanor filing.

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In the event that a wobbler not specifically enumerated in these criteria is presented to a local misdemeanor prosecutor by a law enforcement agency, the initial review of the case should include a request to review the CEW completed by LADA. If there is no CEW, the local misdemeanor prosecutor should assume that the case has not been reviewed by LADA. LADA shall make the final determination as to whether the matter shall be charged as a felony or returned to the local misdemeanor prosecutor for further review regarding filing of possible misdemeanor charges.

There may be circumstances in which the local misdemeanor prosecutor believes that a reasonable basis exists for a referral for felony charge consideration to LADA when a case is directly submitted for review to the local misdemeanor prosecutor in compliance with this policy. In such circumstances, the case should be referred to the appropriate office of LADA for review. Upon resubmission for consideration, a supplemental report from the law enforcement agency detailing any newly developed evidence should be included. A brief written summary from the local misdemeanor prosecutor requesting reconsideration containing the basis for reconsideration should also be submitted. LADA shall make the final determination as to whether the matter shall be charged as a felony or returned to the local misdemeanor prosecutor for further review regarding filing of possible misdemeanor charges.

In some cases filed by the local misdemeanor prosecutor, evidence is developed that might change the posture of a case that was initially assessed as appropriate for a misdemeanor filing. When this occurs, it is important for the assigned local misdemeanor prosecutor to notify a supervisor for a further review of the case. If the supervisor believes that the evidence now supports further review by LADA for the filing of felony charges, the supervisor of the appropriate office of LADA should immediately be contacted and apprised of the change in circumstances so that the matter can be thoroughly reviewed.

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CAVEAT

All alternative felony-misdemeanor cases involving an allegation of police misconduct or public official corruption shall be immediately forwarded by the investigating agency to the district attorney.

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APPENDIX B
IMPLEMENTATION

In order to implement these procedures, it is essential to communicate effectively at all levels between agencies. Establishing professional relationships between staff responsible for supervision of geographic areas and special units is the first step in formalizing systemic communication. Efforts will be undertaken to institute regular meetings between leaders of both agencies on a local level in order to ensure open lines of communication. Later stages of implementation will include formal training for all relevant staff members and law enforcement.

3.1 Inter-Agency Liaison Committee

- (A) A permanent Inter-Agency Liaison Committee ("IALC") will be established, jointly chaired by one Director from LADA and two members of the Executive Board from the Los Angeles County Prosecutor's Association (LACPA), together with additional members from both LACPA and LADA as appropriate.
- (B) IALC will meet on a monthly basis during the six months following the execution of this Agreement, thereafter the IALC shall determine its own schedule based on periodic need, however IALC shall meet at least once every 4 months.
- (C) IALC shall oversee and organize the initial meeting of the Inter-Agency Liaison Groups ("IALG") as further described below, and shall set the agenda for subsequent meetings of the various IALGs.

3.2 Inter-Agency Liaison Groups

- (A) LACPA members and LADA exercise their respective jurisdictions over filing cases throughout Los Angeles County. The Inter-Agency Liaison Groups ("IALG") shall comprise working groups based on the geographical location of deputies with filing responsibilities (Branch IALGs), as well as working groups based on subject matter or classes of crimes (Subject Matter IALGs – including representatives of LADA Branch

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based Victim Impact Program (“VIP”) Teams). The IALGs initially identified are listed in Schedule 2 of this Agreement, attached hereto and incorporated by reference.

- (B) Each IALG shall comprise at least one senior deputy with filing responsibility from LACPA agencies and LADA, as well as any additional deputies as deemed appropriate.
- (C) Each IALG shall develop, maintain, and share contact information so that as issues over any particular filing decisions arise, those issues can be resolved expeditiously.
- (D) Each IALG, as identified below, shall initially meet on at least a monthly basis to discuss the implementation of and adherence to this Agreement.
- (E) A report of the monthly meeting shall be submitted to the IALC for review.
- (F) In the event that any issue cannot be resolved within the IALC, the matter shall be communicated to the IALC for decision.
- (G) All IALGs shall adhere to the case filing criteria set forth in Paragraph 4 of this Agreement.
- (H) Further, Subject Matter IALGs shall identify relevant and appropriate additional code sections for inclusion in this Agreement. The Subject Matter IALGs shall then formulate and publish a draft of proposed case filing criteria consistent with those set forth in Schedule I of this Agreement. A copy of each Subject Matter case filing criteria shall be submitted to the IALC for approval.
- (I) As soon as each IALG has met and agreed upon the implementation of this Agreement, the IALC shall organize a meeting with the senior officer from the appropriate division of the Los Angeles Police Department (LAPD) or Los Angeles County Sheriff’s Department (LASD) or the local law enforcement agency filing with the local misdemeanor prosecuting agency the working of this Agreement and to resolve any operational issues arising therefrom. Following this introductory meeting, individual IALGs shall set meetings with designated members of law enforcement as needed to resolve issues related to the terms of this Agreement.

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- (J) The IALC shall also be a forum in which other issues arising under §17(b)(4) can be discussed and, if appropriate, procedures developed to meet the goals expressed in this agreement.

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SCHEDULE I

DIRECT REFERRAL CRITERIA FOR 17(b)(4) OFFENSES

Possession of Methamphetamine (Health and Safety Code §11377)

- No prior felony convictions
- No prior misdemeanor convictions for drug related offenses within the last three years
- No evidence of sales activity connected with the current offense
- One gram or less of methamphetamine is possessed

Possession of PCP (Health and Safety Code §11377)

- No prior felony convictions
- No prior misdemeanor convictions for drug related offenses within the last three years
- No evidence of sales activity connected with the current offense.
- Three milliliters or less liquid or two "sherm" or less is possessed

Grand Theft (Penal Code §487(a))

- No prior felony convictions
- No prior misdemeanor convictions for theft or fraud related offenses within the last five years
- The theft did not involve the use of credit cards or constitute a form of identity theft
- Aggregate loss is \$2,500 or less

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Petty Theft with a Prior (Penal Code §666/484)

- No prior felony convictions
- No more than one prior qualifying misdemeanor theft or fraud related conviction within the last five years
- Property stolen was food or beverage, excluding liquor, valued at \$30.00 or less.

Auto Burglary (Penal Code §459, vehicle)

- No prior felony convictions
- No prior misdemeanor convictions for theft related offenses within the last five years
- Burglary of a single vehicle
- Aggregate damage is \$2,500 or less

Forgery (Penal Code §470, et.seq.)

- No prior felony convictions
- No prior misdemeanor convictions for theft or fraud related offenses within the last five years
- No indicia of identity theft (e.g., phony license, possession of multiple credit cards with different names)
- Forgery of a single document
- Aggregate value of attempted or actual theft is \$2,500 or less

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Vandalism (Penal Code §594)

- No prior felony convictions
- No prior misdemeanor convictions for offenses involving property damage
- No indicia that the crime was motivated by gang involvement or that the crime is hate related
- Property damage is less than \$1,000

Weapon Possession (Penal Code §12020)

- No prior felony convictions
- Weapon was not used in the commission of a crime
- No prior convictions for weapons or assault crimes
- Defendant is not a gang member or associate gang member
- The weapon is not a firearm

Commercial Burglary (Penal Code §459)

- No prior felony convictions
- No more than one prior qualifying misdemeanor theft or fraud related conviction within the last five years
- Property stolen was food or beverage, excluding liquor, valued at \$30.00 or less (Redondo Beach suggestion was that value be \$400.00 or less; LAPD suggests \$2500 or less)
- No tools were used in the entry
- No electrical devices were used to defeat alarms
- No “booster bags” were used

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Possession of a Controlled Substance (Health and Safety Code §11377/11375/11382)

- No prior felony convictions
- No prior misdemeanor convictions for drug related offenses within the last three years
- No evidence of sales activity connected with the current offense
- Quantity possessed clearly demonstrates possession for personal use

Unlawful Driving or Taking of a Vehicle (Vehicle Code §10851)

- No prior felony convictions
- No prior misdemeanor convictions for auto theft; including vehicle tampering
- The theft was not related to a criminal enterprise or chop-shop operation
- No pursuit involved in apprehension or arrest
- No significant damage to the victim's vehicle

Assault with Force Likely to Produce GBI (Penal Code §245(a) (1))[†]

- No prior felony convictions
- No misdemeanor convictions involving violence or threats of violence
- No weapon involved
- No significant injuries

[†] For cases involving family members or intimate partners, please refer to the standards for violations of 273.5 PC below.

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Battery on a Police Officer (Penal Code §243(c) (1), (2))

- No prior felony convictions
- No misdemeanor convictions involving violence or threats of violence
- No weapon involved
- No significant injuries

Spousal Abuse (Penal Code §273.5)[‡]

- No weapon involved – used, possessed or threatened
- No prior felony convictions
- No *significant injury* (including any loss of consciousness)[§]
 - Examples of *non-significant injuries*, include, but are not limited to:
 - minor redness,
 - swelling, minor scratches, or
 - minor bruising
 - Examples of *significant injury* include but are not limited to:
 - moderate to extensive bruising,
 - open wounds that required stitches or other medical care,
 - broken bones, and
 - petechiae
- No prior misdemeanor convictions involving violence, threats of violence, or weapons
- Less than three prior arrests for assaultive conduct

[‡] Cases contemplated by this agreement involve §273.5 PC cases in which parties who are or were married, are or were cohabitants, or have a child in common or §245(a)(1) offenses in which parties have a current or former dating relationship or are relatives currently living in the same household.

[§] If medical intervention is warranted, even if the victim declines, the case should be first seen by the District Attorney's Office.

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- No child present as a witness or involved in incident**
- No strangulation or attempted strangulation of victim
- No direct filing in cases where:
 - the victim is pregnant
 - the victim was particularly vulnerable (asleep, developmentally disabled, physically impaired),
 - the suspect has a history of making suicide threats,
 - the suspect has a gang affiliation,
 - the suspect previously engaged or is currently engaging in stalking behavior,
 - the suspect has threatened to abduct and/or injure children or other family members,
 - there is an injury to or threat to injure pets

Criminal Threats (Penal Code §422)

- No prior felony convictions
- No prior misdemeanor convictions involving violence or threats of violence
- No weapon was involved – used, possessed or threatened (a weapon is any instrument that can be used to inflict injury)

Unlawful Sexual Intercourse (Penal Code §261.5)

- Suspect is 20 years of age or younger
- Victim is 16 years of age or older
- Sex is consensual
- No prior felony convictions
- No alcohol or drugs involved

** See Penal Code § 273a (a) standards for further explanation.

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- No prior investigation or arrest for committing a sexual offense
- No traumatic condition in the instant case

DIRECT FILING IS NOT AVAILABLE FOR THE
FOLLOWING CRIMES

LADA will review all cases involving:

- Penal Code §646.9 - Stalking
- Penal Code §422.7 – Hate Crimes
- Penal Code §273a(a) – Child Endangerment
- Penal Code §273d – Corporal Punishment of a Child
- Penal Code §368 – Elder Abuse
- Penal Code §136.1 – Witness Intimidation

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SCHEDULE II

Inter-Agency Liaison Groups


IALG Name	LACA Location	LADA Location	LACPA Agency
<i>Central</i>	Hollywood	Central Complaints	
<i>Metro</i>	Metro	Norwalk Branch Metro Area Office	
<i>Valley South</i>	Van Nuys	Van Nuys Branch	
<i>Valley North</i>	Chatsworth	San Fernando Branch	
<i>Harbor</i>	San Pedro	Long Beach Branch	Long Beach City Prosecutor
<i>Airport</i>	Pacific	Airport Branch	Santa Monica City Attorney; Hawthorne City Attorney
<i>South Los Angeles</i>	Central	Compton Branch	Compton City Attorney
<i>South Bay</i>		Torrance Branch Inglewood Area Office	Inglewood City Attorney; Redondo Beach City Attorney; Torrance City Attorney; Hermosa Beach City Prosecutor
<i>San Gabriel Valley</i>		Pasadena Branch Alhambra Branch	Pasadena City Attorney/Prosecutor; Burbank City Attorney
<i>Real Estate Fraud</i>	Corruption, Fraud, Enforcement (CFE) III	Real Estate Fraud Unit/Major Fraud Division	By region
<i>Sex Crimes – Adult and Child</i>	Adult Victim – CFE I Child Victim – Family Violence Unit (FVU)	Sex Crimes Division/Central Family Violence Division(Spousal or Dating)/Central VIP/Branch	By region
IALG Name	LACA Location	LADA Location	LACPA Agency
<i>Domestic</i>	FVU	Family Violence	By region

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<i>Violence</i>		Division/Central; VIP/Branch	
<i>Child Abuse - Physical</i>	FVU	Family Violence Division/Central; VIP/Branch	By region
<i>Gang Crimes</i>	Gang Unit (Injunction Enforcement)	Hardcore Gang Division Central Complaints	By region
<i>Elder Abuse – Physical</i>	FVU	Elder Abuse Section/Countywide Family Violence Division/Central VIP/Branch	By region
<i>Elder Abuse – Financial</i>	CFE II	Elder Abuse Section	By region

SPECIAL DIRECTIVE 03-01

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM:  CURT LIVESAY
Chief Deputy District Attorney

SUBJECT: **INVESTIGATIVE AGENCY AND CITY PROSECUTOR
REQUEST FOR REVIEW OF FILING DECISION**

DATE: FEBRUARY 4, 2003

On occasion, an investigating officer or a city prosecutor may disagree with the decision made by a deputy district attorney assigned to evaluate a case to determine if and what should be filed. Many ad hoc procedures have been developed for reviewing filing decisions. A policy is needed to establish uniform review procedures to be used by law enforcement agencies and the eleven city prosecutor's offices in the county. This special directive outlines office policy with regard to the review process.

If an investigating officer disagrees with the charging decision of the assigned filing prosecutor in not filing a complaint, in referring the matter pursuant to P.C. 17(b)4, or in selecting appropriate charges, the officer may appeal the decision to the assistant head deputy of the branch office or division, or to the deputy-in-charge of an area office or unit. If the matter remains unresolved, the officer's supervisor may request review by the appropriate head deputy.

A city prosecutor may decide to appeal a filing deputy's decision to refer a case to their office for filing. With respect to referrals to a city prosecutor pursuant to 17(b)4 PC, the deputy city attorney assigned to review the referral may contact the deputy district attorney who made the referral decision to discuss the referral. If the matter remains unresolved, the supervisor of the city prosecutor's office may request review by the head deputy of the branch office or division or deputy-in-charge of the area office or unit in an attempt to resolve the matter. The request for review should be made at the filing stage.

This policy will be included in the Legal Policies Manual.

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