

## **CHAPTER 4**

### **CRIME CHARGING - SPECIFIC CRIMES**

#### **4.01 SEX CRIMES**

Sex crimes are extremely serious in nature and generally have a devastating effect on the victim. Victims of sex crimes often suffer severe trauma, both physical and emotional, which may affect their ability to recount and communicate the details of the assault. Initial disclosures by victims are often delayed, particularly if the victims a child or was previously acquainted with the perpetrator. This often results in the loss or destruction of corroborative evidence. When sex crimes are reported the victim may not initially reveal the full scope of the sexual assault. Accordingly, the filing process normally necessitates a pre-filing interview with the victim. A filing deputy shall verify that all possible investigative avenues have been pursued before deciding to file or decline to file a case.

##### **4.01.01 Vertical Prosecution**

Because of the sensitive nature of sex crimes, the deputy who initially interviews the victim should vertically prosecute the case through conclusion whenever possible.

##### **4.01.02 Pre-filing Interview**

A victim's ability to testify and withstand cross-examination is critically important in a sexual assault case. Additionally, the number of touchings and/or sex acts committed determines the number of fileable charges. Thus, a thorough interview with the victim should be conducted prior to a making a filing decision. This pre-filing interview will enable the prosecutor to:

- Evaluate the victim's memory, ability to communicate and competency to testify (if the victim is a young child or mentally challenged);
- Evaluate the credibility of the victim;
- Establish a rapport with the victim; and
- Determine the details of the assault in order to file the appropriate number of charges and allegations.

A sexual assault victim shall be interviewed before filing unless:

- An interview cannot be completed before filing (e.g. the victim is unavailable); and
- The victim's credibility is not an issue or the state of the evidence is of such convincing force that the case as presented satisfies departmental crime charging standards.

Every effort should be made to complete the filing process within the statutory time if the suspect is in custody. If a deputy files a case without a victim interview, an interview with the victim should be conducted prior to the preliminary hearing and as soon as practicably possible.

The deputy should go to the victim's location (e.g. home, hospital, school or place of business) when an interview at the District Attorney's Office is impossible (e.g. victim is physically incapacitated) or would create an unreasonable hardship. If the victim is unavailable during regular work hours, the filing deputy should be flexible in order to accommodate the victim.

A prosecutor shall be accompanied by an investigator when interviewing a victim in order to avoid becoming a witness.

All sexual assault victims shall be referred to a victim's services representative for assistance with counseling referrals, medical bills, and court support.

#### **4.01.03 Evaluating the Victim's Credibility**

In considering the victim's credibility and the sufficiency of the evidence to support a filing, the deputy shall consider the following factors:

- Whether the victim has a motive to lie or has been manipulated by family members to lie;
- Whether a young victim's report has been unduly suggested;
- Whether there exists any corroborative evidence to support the victim's allegations such as physical injury, damage to clothing, forensic evidence (e.g. DNA, hair, etc.)
- Whether additional witnesses corroborate the victim's account of the assault (including fresh complaint witnesses);
- The defendant's prior record for committing sexual assaults (Evidence Code sections 1108 and 1101(b) evidence); and
- Any legally admissible statements made by the defendant (including pretext phone calls).

#### **4.01.04 Sexual Abuse of a Child Under 14 Years of Age**

There is an overlap among the various statutes that apply to sexual abuse of a child under the age of 14 years. Felony violations include the following:

- Penal Code section 288(a), lewd or lascivious act upon a child under 14 years of age;
- Penal Code section 288(b), lewd or lascivious act upon a child under 14 years of age with force, violence, duress, menace or fear of immediate or unlawful bodily injury to the victim or another;
- Penal Code section 288.5, continuous sexual abuse of a child under 14 years;

- Penal Code section 269 (aggravated sexual assault of a child); and
- Penal Code sections 286(c)(1), 288a(c)(1) and 289(j), sodomy, oral copulation and sexual penetration of a victim under 14 years by a person more than 10 years older.