

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

DIRECT REFERRAL CRITERIA FOR PENAL CODE §17(b)(4) OFFENSES

INTRODUCTION

In March 2011, the Los Angeles County Prosecutors Association, Los Angeles City Attorney's Office, and the Los Angeles County District Attorney's Office (LADA) entered into an Inter-Agency Operational Agreement regarding Penal Code section 17(b)(4) referrals. The Operational Agreement streamlines the filing process by authorizing police agencies in jurisdictions served by city attorney(s)/prosecutor(s) to directly submit misdemeanor filing requests to the city attorney(s)/prosecutor(s) without first seeking review from LADA. The Operational Agreement *does not apply* to an investigation involving any offense that can only be filed as a felony (e.g., murder, residential burglary, rape). Felony investigations must always be submitted first to LADA for review.

Any investigation involving the potential violation of any crime listed in **Section A** must be submitted *first* to LADA for review. Certain offenses may be charged as either a felony or a misdemeanor ("wobblers"). **Section B** identifies wobblers that must be submitted *first* to LADA for review when any of the listed factors applies.

The Operational Agreement permits the city attorney(s)/prosecutor(s) to refer a case back to LADA if, after an initial review, the case appears to be more appropriately handled as a felony. LADA makes the final determination whether the matter will be charged as a felony or re-referred to the city attorney(s)/prosecutor(s) for misdemeanor filing.

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SECTION A

LADA must first review all cases potentially involving any of the following offenses:

- Penal Code §646.9 – Stalking
- Penal Code §368 – Elder Abuse
- Penal Code §136.1 – Witness Intimidation
- Penal Code §243(c)(1), (2) – Crimes Against Peace Officers
- All allegations involving police misconduct or public official corruption
- All Hate Crimes

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SECTION B

LADA must first review all cases involving the following offenses when any of the listed factors applies:

Assault with Force Likely to Produce GBI (Penal Code §245(a)(4))¹

- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence, or weapons
- The victim suffered a significant injury. If medical attention was warranted, even if the victim declined, the case should be reviewed by LADA.

Examples of significant injury include, but are not limited to:

- Extensive bruising
- Open wounds that required stitches or other medical care
- Broken bones
- Petechiae (minute discolored spots on the surface of the skin or mucous membrane due to ruptured blood vessel)
- Loss of consciousness

Examples of non-significant injuries include, but are not limited to:

- Minor redness
 - Swelling
 - Scratches
 - Moderate bruising
- The suspect strangled or suffocated the victim. Strangulation is knowingly or intentionally impeding the normal breathing or circulation of the blood of another by applying pressure on the throat or neck of a person.

¹ For cases involving family members or intimate partners, please refer to the standards for violations of Penal Code §273.5.

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Intimate Partner Battering (Domestic Violence) (Penal Code §273.5)

- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence, or weapons within the last 10 years
- A deadly weapon was used or brandished in the commission of the current offense. A deadly weapon is “any object, instrument, or weapon that is inherently deadly or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.”²
- The victim suffered a significant injury. If medical attention was warranted, even if the victim declined, the case should be reviewed by LADA.

Examples of significant injury include, but are not limited to:

- Extensive bruising
- Open wounds that required stitches or other medical care
- Broken bones
- Petechiae (Minute discolored spots on the surface of the skin or mucous membrane due to ruptured blood vessel)
- Loss of consciousness

Examples of non-significant injuries include, but are not limited to:

- Minor redness
- Swelling
- Scratches
- Moderate bruising
- The suspect strangled or suffocated the victim. Strangulation is knowingly or intentionally impeding the normal breathing or circulation of the blood of another by applying pressure on the throat or neck of a person.
- The victim is pregnant, and the suspect directed physical force at the victim’s abdomen or made verbal threats against the pregnancy
- The victim was particularly vulnerable (e.g., asleep, developmentally disabled, physically impaired)
- The suspect has a history of making homicidal or suicidal threats
- The suspect previously engaged or is currently engaging in stalking behavior
- The suspect has threatened to abduct or injure children or other family members
- The suspect caused an injury to a pet

² See CALCRIM 875.

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Child Abuse/Endangerment (Penal Code §273a(a)/273d)

Penal Code §273a(a) requires the likelihood of great bodily injury or death. Section 273d applies when injury is inflicted during discipline. Though a parent has a right to discipline his or her child, there are limits under the law. When a parent causes physical injury, a charge of violating section 273d may be warranted (e.g., parent punches child in face for bad grades). Section 273(a)(b) concerns child abuse cases where there is no likelihood of GBI or death and are straight misdemeanors, not wobblers.

If the victim is **under** the age of 8, the case should be brought first to LADA. If the victim is **over** the age of 8, the case should be brought first to LADA **if**:

- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence, or weapons
- There is prior DCFS contact (the results of a check of both ESCARS and the Family and Children’s Index (FCI) confirming that there is no record of prior DCFS contact must be included in the police report submitted for review by the local prosecutor)
- A deadly weapon was used or brandished in the commission of the current offense. A deadly weapon is “any object, instrument, or weapon that is inherently deadly or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.”³
- The suspect punched, strangled, suffocated or burned a child
- The victim suffered a significant injury. If medical attention was warranted, even if the victim declined, the case should be reviewed by LADA.

Examples of significant injury include, but are not limited to:

- Extensive bruising
- Injuries requiring admission to the hospital
- Open wounds that required stitches or other medical care
- Broken bones
- Petechiae (minute discolored spots on the surface of the skin or mucous membrane due to ruptured blood vessel)
- Loss of consciousness

Examples of non-significant injuries, include:

- Minor redness
- Swelling
- Scratches
- Moderate bruising

³ See CALCRIM 875.

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Unlawful Sexual Intercourse (Penal Code §261.5)

- The suspect has a prior investigation or arrest for committing a sexual offense
- The suspect is 21 years old or older
- The victim is 15 years old or younger
- Alcohol or drugs were involved
- The victim suffered from a traumatic condition (including pregnancy) in the instant case

Criminal Threats (Penal Code §422)

- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence or weapons
- A weapon was used, brandished or mentioned in the commission of the offense

Note: LADA must initially review all domestic violence-related criminal threat investigations. A crime involving domestic violence is when the victim is a spouse or former spouse, cohabitant or former cohabitant, person with whom suspect has or had a child, person with whom suspect is having or has had a dating or engagement relationship, a child of a party, or any other person related by blood or marriage.⁴

Vandalism (Penal Code §594)

- The suspect has a prior felony or misdemeanor conviction for vandalism
- There is evidence that the offense contributes to community violence
- The property damage exceeded \$2,500

Weapons Possession⁵

- The suspect has a prior conviction for weapon or assault offenses within the last 24 months
- A weapon was used in the commission of the offense
- The weapon is a firearm

⁴ See Penal Code §13700 and Family Code §6211.

⁵ Penal Code §§20310, 20410, 20510, 20610, 20710, 20910, 21110, 21310, 21810, 22210, 22410, 24310, 24410, 30210(a), 30210(b).

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Driving Under the Influence Causing Bodily Injury (Vehicle Code §23153) (Excluding offenses punishable under Vehicle Code §§23560, 23566(a) & 23566(b))

- The offense involved significant injury

Examples of significant injuries include, but are not limited to:

- Loss of consciousness
- Injuries requiring admission to the hospital
- Bone fractures
- Injuries requiring sutures

Examples of non-significant injuries include, but are not limited to:

- Complaint of pain only
- Minor bruising
- Swelling
- Abrasions

Note: If at the scene there is only a complaint of pain, the investigating officer should interview the injured party, family member of the injured party, or medical personnel to assess whether the injury is significant before presenting the case for filing. This interview should be detailed in a supplemental report. If the injury is not significant, the case may be directly referred to the city attorney(s)/prosecutor(s) for misdemeanor filing consideration.

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Hit and Run Driving Causing Injury to Another Person (Penal Code §20001)

- The offense involved significant injury

Examples of significant injuries include, but are not limited to:

- Loss of consciousness
- Injuries requiring admission to the hospital
- Bone fractures
- Injuries requiring sutures

Examples of non-significant injuries include, but are not limited to:

- Complaint of pain only
- Minor bruising
- Swelling
- Abrasions

Note: If at the scene there is only a complaint of pain, the investigating officer should interview the injured party, family member of the injured party, or medical personnel to assess whether the injury is significant before presenting the case for filing. This interview should be detailed in a supplemental report. If the injury is not significant, the case may be directly referred to the city attorney(s)/prosecutor(s) for misdemeanor filing consideration.

Auto Burglary (Penal Code §459)

- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property, or other fraud-related convictions within the last 24 months

Auto Theft/Unlawful Driving (Penal Code §487(d)(1), Vehicle Code §10851)

- The suspect has a prior felony or misdemeanor conviction for auto theft (VC §10851 or PC §487(d)(1)) within the last 24 months
- The theft appears related to a criminal enterprise or chop-shop operation
- There was a pursuit involved in apprehension or arrest

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Forgery Charges/Passing a Non-Sufficient Funds Check/Grand Theft (Penal Code §§476a(a), 473(a), 487(a))

- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property, or other fraud-related convictions within the last 24 months
- The offense involved evidence of identity theft (e.g., fraudulent license or possession of multiple credit cards with different names)
- The aggregate value of attempted or actual theft exceeded \$2,500

Commercial Burglary (Penal Code §459 (Not during business hours or amount exceeding \$950))

- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property, or other fraud-related convictions within the last 24 months