SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 1	***THE DISTRICT ATTORNEY'S OFFICE ORGANIZATION***
SECTION 1.00	**INTRODUCTION**

MESSAGE FROM JILL RAVITCH, DISTRICT ATTORNEY

As members of this Office we occupy a unique position in our community. Every day we are required to make important and often difficult decisions that ultimately affect the quality of life in our county. If we do our jobs correctly, every decision we make is in the best interest of the people we serve. Simply put, our job is to do the right thing for the right reasons every day. The policies and guidelines in this manual provide guidance for employees at every level as we carry out the work of this office.

A priority of this Office is clear and honest communication. To achieve this objective, members of the management team observe an open door policy, providing a culture of accessibility and responsiveness to all employees. All employees may meet with their supervisors regarding any matter related to the Office or their career. If this conversation is unsatisfactory to the employee or fails to resolve the issues raised, that employee may discuss the matter with their union representative, Human Resources, or the next level of management up to, and including the District Attorney.

This manual provides standards and principles that will enable the employees of this Office to maintain the highest measure of personal and professional conduct. The manual also seeks to maximize our effectiveness. The People of Sonoma County deserve nothing less than the best from the employees of this Office.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 1	***THE DISTRICT ATTORNEY'S OFFICE ORGANIZATION***
SECTION 1.01	**MISSION STATEMENT**

The Sonoma County District Attorney's Office is dedicated to providing the members of our community with a safe place to live by holding the guilty accountable, protecting the innocent, and preserving the dignity of victims and their families. We shall seek truth and justice in a professional manner, while maintaining the highest ethical standard.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 1	***THE DISTRICT ATTORNEY'S OFFICE ORGANIZATION***
SECTION 1.02	**GUIDING PRINCIPLES**

We proudly commit to adhere to the following guiding principles in the pursuit of our mission to:

PROMOTE a work environment that emphasizes high ethical standards, professionalism and competent legal representation;

ESTABLISH an atmosphere of compassion, trust and mutual respect;

MAINTAIN public confidence by creating a day to day operation that is efficient and effective;

PROVIDE training for employees and education for the public to be knowledgeable about the administration of justice;

CREATE and maintain open communication to promote the best interests of the community;

ENCOURAGE an environment that is positive and courteous among employees and members of the public;

COLLABORATE with law enforcement and community groups to deter crime;

ENSURE the rights of victims are upheld with dedication to treating victims with dignity, respect and compassion.

SONOMA COUNTY DISTRICT ATTORNEY

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ARTICLE 1	***THE DISTRICT ATTORNEY'S OFFICE ORGANIZATION***
SECTION 1.03	**FUNCTION OF THE POLICY MANUAL**

The purpose of this manual is to provide the staff with the necessary written guidance for the proper functioning of this office.

The American Bar Association Model Rules 5.1 and 5.3 provide that managerial prosecutors shall make "'reasonable efforts to ensure'" that all staff in their offices comply with their ethical obligations. Further that in order to accomplish this goal, managers must "'establish internal policies and procedures.'" [See also ABA Model Rule 3.8 at ABA Rule 3.8]

With respect to nonlawyers, it states that managers shall establish policies and procedures that provide for "'appropriate instruction and supervision concerning the ethical aspects of their employment…[that]…take account of the fact that [nonlawyers] do not have legal training and are not subject to professional discipline.'" However, the policies and procedures must facilitate compliance with ABA Model Rule 3.8 as well.

Furthermore, Section 3-2.5 of the American Bar Association Standards for Criminal Justice states:

(a) Each prosecutor's office should develop a statement of (i) general policies to guide the exercise of prosecutorial discretion and (ii) procedures of the office. The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient, and effective enforcement of the criminal law.

(b) In the interest of continuity and clarity, such statement of policies and procedures should be maintained in an office handbook. This handbook should be available to the public, except for subject matters declared "confidential," when it is reasonably believed that public access to their contents would adversely affect the prosecution function.

Obviously, no policy manual can ever be complete. When issues of policy arise that are not covered by this manual it is the duty of the staff to contact his/her supervisor so that a policy may be set by the District Attorney, as staff do not act in their own right but in the name of the District Attorney.

The policy manual of the Sonoma County District Attorney's Office is to be used in conjunction with the Uniform Crime Charging Standards published by the California District Attorneys Association and the Uniform Crime Charging Manual also published by that same organization. All attorneys in this office are also to abide by the appropriate rules of the State Bar, and by the appropriate ethics opinions of the State Bar Association and the California District Attorneys Association.

All staff are encouraged to bring to the attention of their supervisor any changes in policy which they feel would be beneficial. All policies in this manual shall be updated as needed. All personnel are responsible for updating their manual as pages are added or deleted. The policy manual should both formalize procedures already adhered to and provide guidance should questions arise. The result should be clear policies that contribute to an ethical, team-oriented and professional work environment.

Any violations of the rules and policies that follow may result in disciplinary action being taken up to and including suspension or termination. County policy will prevail in cases of conflict or omission.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.00	**EQUAL OPPORTUNITY/NO DISCRIMINATION POLICY**

Please refer to Sonoma County's Policy Manual on this topic found on the County's website. http://hr.sonoma-county.org/content.aspx?sid=1024&id=1256

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.01	**RELATIONS WITH CO-WORKERS**

The Sonoma County District Attorney's Office is privileged to have many hard-working and conscientious employees. There are many individuals performing important roles in fulfilling our mission statement. Like all organizations, our success is linked to, and dependent upon, the collective efforts of all.

To ensure the best possible work environment, all employees are expected to treat each individual in the organization in a professional and respectful manner. All employees shall be polite and courteous with each other while on duty. Being rude is unacceptable. All employees are also expected to conduct themselves in a socially acceptable and professional manner in the office.

Conduct yourself in a manner that supports and enhances our ability as an office and county to accomplish the stated missions and goals.

It is unrealistic to believe that there will be no disputes or disagreements in the District Attorney's Office. Our work can be stressful at times. It is important to deal with stress in a manner that does not place an undue burden on others, or result in negative behavior. When disagreements take place, it is incumbent upon the employee to take whatever steps are necessary to ensure a responsible and professional resolution of the problem.

Find constructive ways to handle differences. Do not allow differences with others to disrupt your work or the work of others. Follow the chain of command and attempt to resolve issues at the lowest possible administrative level, i.e., first with your direct supervisor next with the immediately higher supervisor, and so on.

Members of the District Attorney's Office must familiarize themselves with and comply with all office and county policies and procedures regarding discrimination, harassment, violence in the workplace, and drug and alcohol usage. Any violations observed should be reported to a supervisor.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.02	**SEXUAL HARASSMENT**

Please refer to Sonoma County's Policy manual on this topic found on the County website. All employees are responsible for being familiar with this policy. See http://hr.sonoma-county.org/content.aspx?sid=1024&id=1256; and http://hr.sonoma-county.org/content.aspx?sid=1024&id=1425 .

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.03	**ALCOHOL, DRUGS AND OTHER INTOXICANTS POLICY – ZERO TOLERANCE**

The Office of the District Attorney of Sonoma County is charged with the responsibility of enforcing the State's Penal and Civil Statutes. Accordingly, the public perception of this Office is critical to our ability to carry out our duties safely and competently. Deputy District Attorneys, investigators and support staff have constant public contact, not only with citizens and court staff, but also with representatives from law enforcement. District Attorney staff must not be, nor perceived to be, under the influence of alcohol, drugs or other intoxicants while performing their duties.

District Attorney employees shall not have a detectable presence of alcohol or other intoxicants in their systems during working hours. The standard is zero tolerance. In addition, District Attorney employees shall not perform any duties, including standby duty or call-back duty, if they are under the influence of alcohol, drugs or intoxicants. If a supervisor or manager concludes that there is reasonable suspicion to believe that a District Attorney employee is violating this policy, that employee may be sent for a medical evaluation.

The guidelines that apply to all County Departments and the higher standards contained in this policy were approved after consulting with employee organizations. Tobacco products (nicotine) and coffee or soft drinks (caffeine) are not intoxicants as used in this policy.

The purpose of this policy is to provide a uniform process for eliminating the negative impacts of alcohol, drugs, or other intoxicants use in the workplace. The District Attorney's policies and procedures for detectable presence of alcohol or controlled substances are designed to ensure an alcohol and drug-free workplace, to provide the employee an opportunity for assessment and treatment services as appropriate, and to outline the responsibilities of managers and employees.

The Department's primary concern is that all employees be able to perform the essential functions of their job safely and effectively. This policy is not intended to prevent the use of prescription drugs obtained lawfully from authorized medical providers. However, the policy will be applicable if use of such prescription drugs results in the employee's inability to perform assigned duties safely, effectively, and efficiently. This policy is not intended to violate an employee's right to privacy regarding

prescription drugs. An employee can choose to disclose prescription information to the Occupational Health Clinic, and not to a manager or supervisor.

EMPLOYEE RESPONSIBILITIES:

1. Not report to work or return to work after a break or lunch with any detectable presence of alcohol;

2. Not report to work, be at work or be engaged in duty if ability to perform job duties is impaired due to on or off duty use of drugs or other intoxicants;

3. Not use or possess illegal drugs or use other intoxicants while at work locations, or during working hours;

4. Not engage in standby or call-back duty if impaired by drugs or alcohol. Employees called back to duty have the obligation to communicate any inability to perform duties at the time of call back.

Standby Duty:

Deputy District Attorneys and District Attorney Investigators assigned to After Hours Standby Duty are required to adhere strictly to this Zero Tolerance policy with respect to alcohol and drug use during all hours assigned to such duty. It is the responsibility of the assigned **Deputy District Attorney** or **District Attorney Investigator** to immediately request reassignment of standby duty in the event that he/she is medically required to consume medication that may impair his/her ability to perform the assigned duties. (SCPA MOU, Art 6.24)

5. Not take any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of County equipment;

6. Provide a bona fide verification of a current valid prescription for any potentially impairing drug or medication when requested (a request will result only from an employee's own statement that use of a prescription drug is the cause of behavior observed by a manager or supervisor);

7. Cooperate fully with the Occupational Health - Kaiser when directed by management to undergo a medical evaluation as provided by Civil Service Rule 14.2, Employee Medical Reports (fitness for duty medical evaluation).

A directive to the employee to be tested for the presence of alcohol, drugs or other intoxicants will occur only after a Manager's or Supervisor's observations of employee's conduct or behavior as outlined in the County Guidelines, *Reasonable Suspicion*

section, are documented in writing.

Any one of the conditions set forth under the County Guidelines, *Reasonable Suspicion* section, shall be sufficient basis to reasonably suspect this zero tolerance standard has been violated.

Any detectable presence of alcohol (.01% or more), drugs, or other intoxicants as a result of such testing constitutes a violation of this policy, and can lead to appropriate disciplinary action, up to and including termination.

MANAGEMENT RESPONSIBILITIES:

1. Managers and supervisors are responsible for enforcement of the provisions of Departmental/County policy and for informing subordinate employees of this policy.

2. Managers/supervisors may order an employee to submit to a drug or alcohol test when the manager/supervisor has reasonable suspicion, based on observed behaviors, that the employee is under the influence of drugs or has a detectable presence of alcohol.

3. If there is reasonable suspicion to believe that the employee may have a detectable presence of drugs or alcohol, the employee will be offered an opportunity to give an explanation of his/her condition. If the employee requests representation and representation is not readily available, the meeting will be postponed until after the employee has been sent for testing. At the subsequent meeting, the employee will have the right to have his/her representative present.

EXAMINATION PROCEDURES:

The reasonable suspicion examination procedures in the *Sonoma County Personnel Department's Guidelines to Assist Managers and Supervisors in the Management of the Employee Under the Influence of Alcohol or Drugs* will be followed. Exception: The odor of alcohol alone provides a sufficient basis for *Reasonable Suspicion* under this zero tolerance policy. Testing will be done through Kaiser Occupational Health, pursuant to established procedures.

POSITIVE RESULTS:

Any measurable amount of alcohol (.01 or more) or other intoxicants is considered a positive result and in violation of this policy. Any measurable amount of drugs, other than validly prescribed drugs which an employee is presently taking for illness/injury and which does not affect the employee's ability to perform assigned duties safely and competently, is considered a positive result and in violation of this policy.

If an alcohol, drug or other intoxicant text result is positive, the County shall determine appropriate action with respect to rehabilitation and/or discipline. Disciplinary action will follow the County's progressive discipline guidelines, up to and including termination. Employees who test positive will be referred to the County's Employee Assistance Program.

COMPLIANCE:

Compliance with this policy is a continued condition of employment. All Department employees should be aware that violations of this policy may result in discipline up to and including termination from employment.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.04	**PERSONAL APPEARANCE, OFFICE SPACE**

As public servants, District Attorney staff members are subject to public comment and scrutiny. As members of a law enforcement agency, the staff is held to standards even higher than employees of other public agencies. The high-quality public service provided by the Sonoma County District Attorney's Office should be complemented by the well-groomed professional appearance of all staff members. Although special care must be taken in the courtroom setting, contacts with the public and with public officials in the course of office business are also important. Absent a medical condition or other unusual circumstance requiring an exception, the office personal appearance policy is as follows:

During regular business hours, all attorneys shall be dressed in clothing readily adaptable and appropriate for appearing in court even if he/she has no court appearances scheduled as attorneys are often subject to covering other attorneys on short notice. All non-attorney staff should be dressed appropriately for contact with the public.

On court holidays and on every Friday, business casual clothing may be worn by all employees. Business Casual Friday applies to all attorneys during business hours except for any court appearances or meetings with victims, witnesses, or other members of the public. Again, attorneys should be prepared to go to court on Friday as the office occasionally needs lawyers to cover each other in court. We advise having court appropriate attire in your office for this possibility.

Prosecutors and other staff shall maintain their office space in a professional manner. In accordance with the policies prohibiting discrimination and harassment referred to in this manual and found at the Sonoma County website, materials that are offensive or insensitive should not be displayed anywhere in the Office of the District Attorney. This policy is not intended to limit union or political speech.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.05	**CONTACT WITH VICTIMS, WITNESSES, AND PUBLIC**

Within the criminal justice system, a District Attorney employee is expected to exhibit impeccable integrity. Even the appearance of impropriety must be avoided. District Attorney employees must be completely professional during all contacts with victims and witnesses. This is especially true during the pendency of any cases. The following are important guidelines in this area:

Whenever a Prosecutor interviews or discusses a case with a victim or witness, a third party (preferably, an investigator) should be present, if reasonably possible. This will minimize the risk of the attorney being called as a witness.

During the pendency of the case, the Prosecutor should have no social contact or relationship with a victim or witness.

All necessary contacts should be in a manner and place which does not compromise the prosecution of the case or a Prosecutor’s integrity.

Members of the District Attorney's office are public servants in the highest sense of the word. They are employed by the people of Sonoma County to assist the District Attorney in carrying out the duties of law enforcement prescribed for him by the legislature of the State of California and the Board of Supervisors of Sonoma County. Our reputation should be of extreme importance to each staff member and all efforts should be made to treat the public with the highest courtesy, respect and understanding. The public has a right to anticipate thoroughly well-informed and professional personnel in the District Attorney's office. In addition, both the District Attorney and public have a right to expect that matters will be handled as expeditiously as possible. All personnel should promptly answer correspondence, email, and telephone calls requiring a reply. Staff will not use profane language nor act discourteous or disrespectful to any member of the public.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.06	**GIVING LEGAL ADVICE**

Requests for legal advice by private citizens must be handled cautiously due to the potential misuse of such information. Under no circumstances shall clerical staff give legal advice. A Prosecutor has no official obligation to advise individual citizens on legal issues. To do so is fraught with potential problems. Such advice may be recommending methods for circumvention on non-compliance with the law. A misunderstanding of this nature could be offered as a defense in a subsequent criminal prosecution (e.g., "The District Attorney's Office told me this was perfectly legal."). Moreover, the rendering of legal advice creates potential malpractice liability.

Employees are permitted to refer business to or otherwise recommend private attorneys or law firms, where the referral is sought on a criminal matter. However, caution should be exercised in deciding whether to make the referral, especially when the case is one that will be handled by the Sonoma County District Attorney's Office. At least three names must be given to the inquiring party in the event that the employee decides to make the referral. Where no personal gain will result, or appear to result, referrals may be made in civil matters by providing a list of at least three attorneys or firms. In no event shall an employee accept compensation of any kind for a referral, whether it be criminal or civil.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.07	**CITIZEN COMPLAINTS**

Complaints involving the activities of the Office of the District Attorney should be resolved as expeditiously as possible. This can often be accomplished if an employee simply talks directly to the complainant. If it cannot be resolved in that conversation the issue should be referred to the appropriate person, depending upon the issue. If the complainant desires contact with management then the employee shall refer her/him to their supervisor.

Citizens seeking to make a complaint regarding the conduct of police officers should be referred to the appropriate police department in accordance with Penal Code section 832.5. Any District Attorney employee who refers such a complaint should advise their supervisor.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.08	**MAINTENANCE OF PROFESSIONAL LICENSE OR CERTIFICATION**

Employees are responsible for maintaining a valid state license or certification if required by their job classification, including State Bar Membership or POST (Peace Officers Standards and Training) certification. Where applicable, the office will keep records of dues paid or training provided, but cannot bear the ultimate responsibility for requirements such as minimum training standards or deadlines. In-house attorney training is primarily designed for office needs, and may not satisfy all state bar requirements. Attorneys are personally responsible for satisfying their MCLE (Minimum Continuing Legal Education) requirements. Investigators are personally responsible for satisfying their continuing POST (Peace Officers Standards and Training) certification requirements.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.09	**USE OF OFFICE IDENTIFICATION, INSIGNIA AND LETTERHEAD**

All items bearing the District Attorney insignia, including the office seal, or the title, Office of the Sonoma County District Attorney or their equivalents, must be used ethically. These include but are not limited to official identification such as the "Prox" Identification Key Card which employees receive upon hiring, employee's badge, picture identification, business cards or any other item that identifies the person as an employee of this office.

These items will be restricted to use by persons employed with this office. An employee should display office identification only when it is relevant and essential to official business.

Each Prosecutor will receive a badge upon passing probation. This badge is the property of the Sonoma County District Attorney's Office and is to be used only for the purposes of identification as a Prosecutor, within the scope and duties of the position. A Prosecutor may not represent him or herself as a law enforcement officer or in any way use his/her badge to influence others or attain any benefit.

Approval must be obtained from the District Attorney before placing the District Attorney's insignia or title on manufactured items (except when such use is in conjunction with protected concerted activity related to working conditions).

Finally, items bearing the District Attorney insignia must be handled or discarded in a manner that will avoid possible misuse by anyone not employed by District Attorney's Office.

USE OF OFFICIAL TITLE

An employee's official title as an employee of the Sonoma County Office of the District Attorney is to be used only in association with official duties and responsibilities. An attorney or staff member may not use or allow the use of his or her official title at public or private events that are neither sanctioned by this office nor a part of the employee's duties and responsibilities for this office, without making it clear that the employee is not

acting in his or her official capacity, and that any opinions expressed are his/hers, and not reflective of the office.

USE OF DISTRICT ATTORNEY'S OFFICE LETTERHEAD

Office letterhead stationery is provided for correspondence in the course of office business or other official purposes. Employees must not use office letterhead for personal correspondence or, for example, expressions of political beliefs. Questions regarding the appropriate use of office letterhead should be discussed with your supervisor, the Assistant District Attorney or the District Attorney.

Only persons admitted to the Bar of the State of California may render legal advice or opinions, within the course of their duties, or hold themselves out as practicing lawyers. Under the State Bar's Certification of Law Students, law clerks or interns are not permitted to sign correspondence or legal pleadings unless done so with the permission of the directing attorney and under that attorney's signature.

LETTERS OF RECOMMENDATION

The District Attorney and Assistant District Attorney may authorize official letters of recommendation. Complex legal issues, including exposure to civil liability, surround the issue of recommendations. Anyone who writes an unauthorized letter of recommendation does so as a personal matter. Therefore, neither office letterhead stationery nor an official title shall be used in unauthorized, personal letters of recommendation.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.10	**CONFIDENTIALITY**

1. General Policy

Employees shall not reveal confidential information of any kind to persons without a right and need to know. Employees shall not use their position in the office to obtain access to information which they have no right and need to know. All information and data contained in all District Attorney's automated systems is confidential and may only be used for legitimate work related business purposes. Unauthorized access to or use of such information is prohibited and may be subject to criminal and disciplinary proceedings.

As used in this section, "confidential information" includes virtually any information, whether case-related or administrative, which is not a matter of public record, or which an individual employee does not have the legal power or office authority to release. All information and data contained in all District Attorney's automated systems is confidential. However, employees are permitted to advise members of the public about matters which are public record such as: the fact that a case has been filed with the court, the court date of a case, the type of hearing that the case is scheduled for; or that a case has been dismissed in court. Any information requested beyond those subjects, i.e., case still under investigation, should be referred to the attorney handling the case.

Release of information to the media is covered by the Media Relations Policy.

Furthermore, any statements of concern regarding work-related decisions by members of this office or other related law enforcement departments including the Sheriff, Jail, Courts, Police Departments, County Administration or Board of Supervisors should be relayed to the District Attorney, the Assistant District Attorney, a Chief Deputy District Attorney, or the Chief Investigator. Under no circumstances should employees communicate such concerns directly or indirectly, in person or by electronic means, without first advising and receiving approval of their immediate supervisor.

When a member of this office determines to communicate on their own, in their capacity as a member of this office, it has the appearance of an official position of the office itself. Public comment about a sensitive matter or a matter of public interest may

compromise ongoing discussions or future decisions. The purpose of the rules of communication with a supervisor is to bring matters of concern to management that may not otherwise be known, in order to enhance those discussions and decions.

2. Disposal Of Confidential Documents And Other Items

All confidential documents shall be disposed of only by shredding, which may be accomplished by placing them in one of the “shred” containers located in the District Attorney’s Office. Media items such as tapes, disks, CDs or photographs, need to be placed in the “shred” containers specifically marked for such items. Plastic cases should be thrown in the trash or recycled when possible.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.11	**INCOMPATIBLE ACTIVITIES POLICY**

POLICY

This policy is enacted pursuant to Government Code section 1126, a copy of which is attached and incorporated by reference.

Government Code § 1126 authorizes local agencies to adopt rules prohibiting employees from engaging in any employment, activity, or enterprise for compensation (collectively referred to as "outside employment") that is inconsistent with, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, function or responsibilities of his or her appointing power or the agency by which he or she is employed.

Government Code § 1126 further prohibits an employee from performing any employment, activity or enterprise for compensation outside his or her employment for the County of Sonoma ("County") where his or her efforts will be subject to approval by any employee, board or agency of the County unless approved by the employee's appointing authority using the process set out below.

I. RULES OF CONDUCT

A. Any employee who intends to engage in any outside employment for compensation shall notify the District Attorney or his/her designee if there is a possibility that such outside employment might be incompatible with the employee's County employment, and request a determination on incompatibility. The request should include sufficient description of the proposed duties and work schedule at the desired outside employment to permit the appointing authority to reach an informed decision.

B. Outside employment may be prohibited if it:

1. Involves the use of County resources, including but not limited to: facilities, equipment, and supplies; or the badge, uniform, prestige, or influence of the County or the employee's County position.

2. Involves the receipt or acceptance, by the employee or any entity owned in whole or in part by the employee, of any consideration or money, to perform any act that the employee is required to perform as part of his or her County employment.

3. May be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by any County employee, agency or entity unless the employee's appointing authority determines that the likelihood of any actual incompatibility, such as potential favoritism, selective enforcement, or misuse of county information, is remote.

4. Is performed during the employee's regular County work schedule.

5. Involves work on a project under contract with the County of Sonoma.

6. Involves time demands that would render the employee's performance of his or her duties as a County employee less efficient.

C. A prosecutor shall not participate in the private practice of law, except as follows: Attorneys may ask the District Attorney for permission to represent someone related by blood, marriage or domestic partnership in a non-criminal matter under extraordinary circumstances. Authorization by the District Attorney must be provided prior to handling such matters. Any such approval is subject to ongoing review by the District Attorney.

Attorneys who currently have a private practice will be permitted a reasonable amount of time, as determined by the District Attorney, to wind down their practices.

This section applies to full-time, part-time and extra-help Attorneys.

D. Any DA Investigator is prohibited from accepting outside employment as a peace officer. Peace Officer for purposes of this Policy is as defined by Penal Code Section 830.

E. Providing outside attorney referrals to the public for compensation is prohibited. Should a member of the public request such information, they should be referred to the Sonoma County Bar Association or provided at least three names for referral.

II. WRITTEN DETERMINATION

No employment which may be incompatible shall be undertaken without the employee first obtaining a written determination from the District Attorney or his/ her designee that the employment is compatible with his or her employment at the County.

III. APPEALS

An employee may appeal from a determination of incompatible activities or from the application of this policy to him or her. If an employee wishes to appeal any such

determination, he or she shall:

1. Except in matters involving the practice of law, or of Public Safety employment, the employee may file a written appeal with the Director of Human Resources within fifteen (15) calendar days of issuance of the written determination of incompatible activities. The employee's written appeal should include a copy of the initial request for determination, the appointing authority's response, and any other information the employee believes is relevant.

2. The Director of Human Resources shall issue a written determination within fifteen (15) calendar days of receiving the appeal. The Director's decision shall be mailed to the employee via first class mail and shall be conclusive, final and binding on both the employee and the appointing authority.

3. In matters involving the practice of law, or of Public Safety employment, the employee may file a written appeal with the District Attorney within fifteen (15) calendar days of issuance of the written determination of incompatible activities or within fifteen (15) calendar days of the application of this policy to him or her. The employee's written appeal shall include a detailed description of the proposed duties at the desired outside employment.

4. Within fifteen (15) calendar days of receiving the appeal, the District Attorney shall issue a written decision. This decision shall be mailed to the employee via first class mail and shall have a completed proof of service attached to it. A copy of the determination shall in addition be placed in the employee's personnel file. The department head's decision shall be conclusive, final and binding.

Nothing in this section precludes a covered employee from following the Departmental Grievance Appeal Process in the Sonoma County Law Enforcement Employees' Association Memorandum of Understanding, to appeal an alleged violation or misapplication of this Policy.

IV. VIOLATIONS

Violations of this policy may result in disciplinary action, including but not limited to suspension, demotion, or termination.

V. RECEIPT

A copy of this policy will be distributed to all current employees and all newly hired employees. Employees shall sign a receipt to show that they have been provided a copy of the policy, and return the receipt to the department. The department shall keep this receipt in the employee's personnel file.

Sample Receipt follows:

INCOMPATIBLE ACTIVITIES POLICY RECEIPT
(to be placed in Employee's Personnel File)

I received a copy of the Sonoma County District Attorney's Office Incompatible Activities Policy. I certify that I have read and understand the Policy. I acknowledge that if I fail to follow the terms of this policy I may be subject to disciplinary action, including but not limited to, leave without pay, suspension, or termination.

DATE: _____

PRINTED NAME: _____

SIGNATURE: _____

California Government Code

Section 1126

(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of

prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.12	**ELECTIONS AND CAMPAIGNING**

An employee shall not participate in political activities while on duty or on county premises.

a. **District Attorney employees have the right to engage in the following activities**:

- Campaign for ballot measures and candidates for public office during personal time.
- Attend political rallies or other political gatherings during personal time.
- Wear political badges or buttons, except in the courtroom or when having contact with the public in the course of their duties. However, if questioned by a member of the public, the employee shall state that the insignia represents the employee's individual opinion, and not that of the Office of the District Attorney.
- Express opinions as individuals privately and publicly on political subjects and candidates during personal time and outside of the office.
- Make voluntary campaign contributions with personal funds.
- Display political stickers on their privately owned cars.
- During personal time, employees can solicit or receive funds related to ballot measures that will affect their working conditions. Gov't Code 3209.
- Sign an endorsement or other political or campaign statement as long as they are clear that they are making the statement as an individual and that the statement is not an endorsement by the Office of the District Attorney. So long as this is clear, you may use your title after your name in an endorsement.

b. **District Attorney employees cannot**:

- Participate in any political activities wearing a badge or clothing that identifies the employee as a member of the District Attorney's Office such as logo shirts, jackets, or hats.
- Solicit campaign contributions for a candidate for elective office from other County officers and employees at any time, except as provided in Gov't Code 3205.
- Distribute campaign literature through the County's internal mail or email.
- Use District Attorney facilities (offices, conference rooms) or equipment (phones, computers, printers, copiers, fax machines, email system, paper) for any political activity.
- Permit others to use County governmental property and/or resources for any political activity.
- Use County property, including bulletin boards, county-related websites, or

elsewhere, to post campaign literature.
- Use public funds for any campaign-related purpose.
- Use their authority or position to influence the result of an election of a candidate for public office. For example, a County employee cannot promise another employee a change in compensation or position on the condition that the latter employee vote for or against a particular candidate. Gov't Code 3204.

The employee's obligation when participating in any political activity, is to make his or her status as a private individual fully apparent to members of the public. There should be no confusion on the part of any member of the public, at any time, as to whether an employee in this office is taking part in political activity in his or her official capacity or on office time.

All employees are encouraged to vote. If an employee does not have sufficient time outside of work hours to vote at a statewide election, the employee may take up to two hours, without loss of pay, to vote. This time should be taken at the beginning or end of the work shift, whichever allows the most free time for voting and the least time off from the regular working shift. The employee should notify their supervisor of their intention to be absent for this purpose.

Every employee in this office is encouraged to participate in the political process, on personal time and with personal funds and resources. Employees who decide to become candidates for elective office should inform the District Attorney of this fact no later than the date on which he/she files papers with the Registrar of Voters.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.13	**REPORTING RESPONSIBILITIES WHERE SELF OR FAMILY INVOLVED IN CRIMINAL ACTIVITY**

In the event an employee or a member of an employee's immediate family or an employee's roommate is arrested for, charged with, accused of, or is the subject of an investigation of any public offense (excluding traffic infractions), the employee shall notify a member of the Executive Management Team, i.e., the Assistant District Attorney, a Chief Deputy District Attorney, the Chief Administrative Officer, the Director of Victim Services, the Director of the Family Justice Center or the Chief Investigator no later than the next working day following the acquisition of knowledge of this involvement. The manager to whom the matter was reported will immediately notify the District Attorney.

Immediate family includes a spouse, fiancé or fiancée, significant other, children, siblings, parents. Roommate includes any other person who lives in the employee's residence.

An employee whose close personal friend is arrested for, charged with, accused of, or is the subject of an investigation of any public offense (excluding traffic infractions), shall also notify a supervising member of the Executive Management Team no later than the next working day following the acquisition of knowledge of this involvement. This shall be reported immediately to the District Attorney.

If an employee, or an employee's immediate family, roommate or close personal friend, is the victim of or a key witness to a crime, the employee must also promptly notify a supervising member of the Executive Management Team, who will promptly notify the District Attorney.

Anyone receiving knowledge of a report pursuant to this section will treat the information with discretion.

An employee of the District Attorney's office shall not handle any case where he/she is the victim/complainant, or defendant; or where the victim/complainant or the defendant is an immediate family member, roommate or close personal friend; nor should they access any information related to the case. Should an employee find a case assigned to him or her that involves an immediate family member, roommate or close personal

friend, that employee must immediately notify his or her supervisor. The case will be reassigned and the employee will have no unauthorized access to or contact with the case, case file, criminal database information relating to the case, or any other confidential information in the possession of the Office of the District Attorney relating to the matter.

In each of the listed circumstances, the following applies:

The employee shall not become involved in the District Attorney's case action, act as a liaison for any party in the case, or give any party information from the case file or data systems that store information relating to the case.

The employee shall not use their position to influence the court or any other agency on behalf of an immediate family member, roommate or close personal friend.

The employee shall not access any data system or use any other resource available to gain information about a case in which they have a personal interest.

The employee must use personal time, and may use paid leave to the extent allowed by law, to conduct business related to such cases, unless he/she is under subpoena to appear before the court. Contact with the caseworker, assignment attorney, accounting, or clerical staff must be done using the same procedure as used by the general public (i.e., by letter, contact sheet, phone, or appointment).

Any violations of this policy may lead to disciplinary action, up to and including termination.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.14	**OUTSIDE SPEAKING ENGAGEMENTS**

1. Official Capacity

An employee shall not accept a request by an outside group to speak on behalf of the office without first obtaining the approval of his/her supervisor. Permission should be granted if appropriate and possible. Furthermore, if approved, the supervisor must notify the Executive Administrative Assistant of the details and the approval. Consultation is not required when the employee is asked to represent the employee's personal views and is not identified in an official capacity.

At any speaking engagement, employees are expected to exercise good judgment and sound discretion. When speaking about pending cases or investigations, audiences should only be provided with information that is of public record and in accordance with guidelines set forth herein. Speakers should be aware that those in attendance will often construe their words to be representative of the position of the District Attorney. When personal views are expressed, special care must be taken to indicate very clearly that such views do not reflect the views of the District Attorney.

2. Private Capacity

An employee shall clearly state that his/her views are personal and not those of the office whenever speaking unofficially to a group that might otherwise assume that the views expressed are those of the Sonoma County District Attorney's Office.

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POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.15	**GIFTS**

No employee shall accept any fee, compensation, gift, payment of expense, or any other thing of monetary value, other than authorized salary and approved job-related reimbursements, presented and/or given in connection with an employee's service, duties, and employment with the District Attorney's Office, except as permitted below.

This policy shall not prohibit the giving or exchange of gifts between members of the District Attorney's office.

Non-consumable mementos (e.g., pens, paper clip holders, pencils, cups, etc.) of a business event valued at $25 or less may be accepted.

At times, victims, witnesses or their families express their gratitude at the conclusion of a case by presenting a token of their appreciation to a member of the District Attorney's Office. It is critical that all District Attorney employees avoid even the appearance of impropriety in such instances. See People v. Eubanks, supra, 14 Cal.4th 580 (recusal of entire district attorney's office for soliciting and accepting investigative funds from crime victim). Gifts from victims, witnesses or their families only may be accepted as follows:

- Consumables valued at $50 or less, may be accepted and be placed in the Victim Witness Unit for consumption by victims, witnesses or their families, or may be placed in a common area to be consumed by District Attorney employees generally, or may be donated to a nonprofit organization.
- Floral or plant arrangements valued at $50 or less may be accepted and displayed in common areas in the District Attorney's Office, or may be donated to a nonprofit organization.
- Gifts valued at $25 or less that have been personalized with the employee's name, or otherwise cannot be used by another, may be accepted.

This policy shall not prohibit gifts to employees merely because the employee is associated with the other person as a result of their employment, or the free attendance of an employee at an event such as a charitable dinner.

Under no circumstance shall an employee solicit or accept any fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of resulting in, the use of public

office for private gain; preferential treatment of any person, impeding governmental efficiency or economy; any loss of complete independence or impartiality; the making of a County decision outside official channels; of any adverse effect on the confidence of the public in the integrity of County government.

Those employees who are required to file a Statement of Economic Interests (Fair Political Practices Commission, Form 700), shall also comply with applicable FPPC rules and regulations regarding receipt of gifts. The District Attorney's Office will directly notify those employees who are required to file Form 700.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.16	**CARRYING OF FIREARMS**

A non-peace officer District Attorney employee shall not possess or carry a firearm while in county buildings or at any other location while on District Attorney business unless authorized by the District Attorney and that employee is licensed pursuant to, and in compliance with Penal Code Sections 26150-26225.

The phrase “possess or carry,” as used herein, includes but is not limited to placement of the firearm in an attaché case or other container, office desk or other furniture, the passenger compartment of a motor vehicle, and placement on the person.

The word “firearm” includes guns of any description whether loaded or unloaded, except guns which are items of evidence in an investigation or prosecution.

The phrase “District Attorney business” includes any activity normally associated with the discharge of the duties of a District Attorney employee, including, but not limited to going to court, visiting crime scenes, attending lifer hearings, visiting any location on District Attorney business, conducting interviews or investigations, and accompanying or assisting police agencies.

Requests to possess or carry a concealed firearm shall be made in writing to the Sonoma County Sheriff or a local law enforcement agency authorized to grant such permits. Non-peace officer District Attorney employees authorized by law to carry concealed weapons shall inform the District Attorney and Chief Investigator in writing annually of their concealed weapon approval status and provide a copy of approved concealed weapons permits.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.17	**SUBPOENA COMPLIANCE**

PERSONAL COMPLIANCE

Any employee subpoenaed to testify in a civil or criminal matter must notify his or her supervisor upon receipt of the subpoena, or earlier if otherwise notified. These matters must be reported by supervisors to the Assistant District Attorney as soon as possible.

Any attorney subpoenaed to appear as a witness in a case s/he is prosecuting must comply with California Rules of Professional Conduct, Rule 5-210.

Subpoenas must not be ignored. Compliance with court orders is the responsibility of every employee. Questions concerning this policy should be directed to a supervisor.

Employees should refer to the applicable MOU for details related to court appearances, involving issues such as pay status, and retention of payments for travel, meal, and lodging expenses incurred in compliance with the subpoena.

PERSONAL SERVICE

Service of process shall take place at the public counter. Process servers will not be admitted beyond the public counter without a court order. Employees shall not take advantage of their access to private areas of the office to serve process on fellow employees. Receptionists and other staff are not authorized to accept service of a subpoena directed to another employee.

Clerical staff may release only information generally available to the public, such as an appearance date, except that a properly credentialed probation officer may review a case file in the office to obtain necessary information for a bail review, diversion screening, or similar purpose.

a. Matters Arising From County Business

Unless otherwise instructed by County Counsel, employees shall go to the public counter to accept process in matters arising from county business. The papers served shall immediately be forwarded to the Assistant District Attorney or the Chief Deputy District Attorney, accompanied by a brief memorandum detailing the date, time, and

location of service.

Upon receipt of the above, an administrative file will be opened, and the documents hand-carried to the County Counsel.

b. Matters Arising From Employee's Personal Business

The willing receipt of lawful process, particularly when being served by the Sheriff, is encouraged. However, an employee has no obligation to accept process at the office in a private matter. The office will not assist a process server in completing service in a private matter without the consent of the involved employee. An employee who wishes to accept service at the office in a private matter shall do so at the public counter or outside the office, on personal time.

Whenever an employee is subpoenaed, they shall: 1) in a civil case, demand the appropriate one-day statutory fees (Gov't Code 68097, 68093) at the time of service; 2) notify his/her supervisor; and 3) refer any request for District Attorney records to their supervisor.

In no event shall an employee provide written materials, reports, or documents that are the property of the Sonoma County District Attorney's Office. In the event that an employee is served with a subpoena duces tecum calling for such material it should be referred to the Administrative Services Officer who shall be considered the custodian of records for the office.

If an employee is subpoenaed as a witness in a civil action to give evidence about an event he/she perceived in the course of his/her duties, and the county is not a party to the action, the county is entitled to reimbursement for employee's salary and traveling expenses incurred in complying with the subpoena. (Gov. Code 68096.1.) Employees subpoenaed in such circumstances shall immediately advise their supervisor, who in turn shall notify the Staff Services Manager, so that timely demand can be made in advance for the statutorily authorized daily reimbursement amount.

The county likewise is entitled to reimbursement for the salary and traveling expenses of District Attorney Investigators subpoenaed as witnesses in a civil action or proceeding concerning events perceived or investigated in the course of official duties, regardless if the county is a party to the action. (Gov. Code 68097.2.) Investigators subpoenaed in such circumstances shall immediately advise their supervisor, who shall in turn notify the office fiscal officer. Investigators shall demand the statutory fee (one day) at the time of service.

SONOMA COUNTY DISTRICT ATTORNEY

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ARTICLE 2	***GENERAL POLICIES***
SECTION 2.18	**CRIMINAL JURY SERVICE**

District Attorney staff called to serve as jurors in a criminal case should be certain the parties and court are aware of their employment in the District Attorney's Office, and the nature of the work performed by the employee. It is not necessary that a trial deputy exercise a peremptory challenge against a District Attorney staff member who indicates, and whom the deputy believes, can be a fair and impartial juror. However, Prosecutors should be excused from service due the implied bias from their contact with many of the cases that come through the Office of the District Attorney. See C.C.P. Section 229.

If seated on a criminal trial jury, a District Attorney staff member should advise his/her supervisor of that fact, should have no contact with the trial deputy during the pendency of the trial, and (subject to supervisor approval) should remain physically out of the office until the trial has concluded in order to minimize the possibility of allegations of impropriety.

If the court should recess the trial prior to completion of the normal work day, the juror-staff member shall contact his/her supervisor to make other work arrangements.

This policy is not meant to suggest that District Attorney Staff cannot be fair and impartial jurors in criminal cases. Rather, its purpose is simply to avoid any appearance of impropriety on the part of an individual prosecutor, or the office as a whole; to maintain the public's confidence in the criminal justice system; and to avoid placing District Attorney Staff in a situation which presents an arguable conflict of interest.

Employees are reminded that any fee or compensation for jury service (apart from mileage) must be returned to the county for any days of absence for which the employee receives salary as for a day worked, except that if jury service occurred during the employee's vacation or other authorized leave of absence, the employee may retain such fee or compensation.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.19	**COMPUTER USE POLICY**

As with other county-wide policies, District Attorney staff are expected to be familiar with and abide by the county's computer use policy. http://sc-intranet/cao/admin_policy_9-2.htm

Employees will adhere to these additional department-specific rules:

Computer Use:

1. District Attorney employees have login ID's and passwords providing sensitive data the other Justice Partners do not receive. Never share your login ID and password with anyone for any computer, including laptops.

2. Courtroom Laptops shall not be used in any manner that interferes with any court proceeding, including but not limited to accessing the internet for personal purposes. All courtroom laptops are to be shut down when unattended. The last prosecutor in the courtroom is required to make sure that the laptop is shut down before he/she leaves the courtroom.

3. If any laptop becomes lost or stolen the person who discovers it missing must immediately notify their supervisor so encryption can be deployed.

4. Employees may make reasonable and limited personal use of County of Sonoma computer resources, systems and equipment. Such personal use is allowed as long as such use does not involve inappropriate uses as defined below or in any other County policy. An employee's limited personal use must also not directly or indirectly interfere with the County's operation of electronic communications resources, interfere with the user's performance and/or obligations as a public employee, or burden the County with noticeable incremental costs. (See Sonoma County Computer Use Policy sections 9-2, Paragraph IV, C. 3.)

5. Inappropriate uses of County computer resources: Examples of inappropriate use of County computer resources include but are not limited to:

a. Conducting partisan and/or non-partisan political activity;

b. Creating and exchanging advertisements, solicitations, and other unofficial, unsolicited e-mail that violates county policy;

c. Sending messages or accessing data with content that violates any County policies, rules or other applicable laws;

d. Sending messages or accessing data that contain inappropriate, defamatory, obscene, harassing, or illegal material;

e. Sending information that violates or unlawfully infringes on the rights of any other person (including but not limited to copyrights and software licenses);

f. Restricting or inhibiting other authorized users from using the system;

g. Conducting business for personal profit or gain, or other improper activities as defined in the County's Incompatible Activities policy;

h. Attempting to hide the identity of the sender or represent the sender as someone else.

(See Sonoma County Computer Use Policy sections 9-2, Paragraph IV, C.4.)

Email:

1. All employees are required to read all e-mails received as soon as reasonably possible, except those which are obviously spam, in a timely. Employees are responsible for knowing and understanding any information received in an e-mail, whether from a manager, supervisor or co-worker, and it will be presumed you have received, read and understood the content of all emails received in your inbox.

2. Just as with telephone inquiries, staff should be reasonably responsive to internet and e-mail inquiries, balanced with other workload demands since we are routinely contacted by the general public, victims, witnesses, staff from other County departments, and other community and public agencies that way.

3. The nature of our work in the District Attorney's Office requires that our staff demonstrate professionalism, respect and good manners when communicating via electronic mail and while using the Internet. E-mail communications generally tend to be informal. For this reason, you should pause before sending e-mail communications in your official capacity to check the tone and language, particularly if the subject matter is delicate or controversial. Inappropriate, judgmental or critical comments describing a co-worker, other office units or outside agencies are unprofessional and unacceptable.

4. To assist in keeping e-mails to a minimum, do not send messages out to "all

staff” unless you’ve obtained a supervisor’s approval.

Sonoma County and the District Attorney retain the right to examine all electronic storage media, data files, logs and programs used on County-owned computer equipment.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.20	**THREATS**

In any case where a Prosecutor, District Attorney Investigator, or other District Attorney employee learns that a defendant, or any other citizen, has made an apparently credible threat of future harm to a victim, witness or District Attorney personnel, the Prosecutor, investigator or employee shall notify their supervisor who will notify the Chief Investigator. They must provide details as to the substance of the threat and the circumstances under which it was made. The Chief Investigator or his designee shall thereafter assign the matter for further investigation, if necessary, in order to assess the seriousness of the threat. The Chief Investigator shall monitor the investigation to ensure reasonable steps are taken to evaluate the safety of the employee, victim, or witness such as assigning a District Attorney Investigator to escort that individual to and from the courthouse until the threat is diminished.

If the Chief Investigator determines the threat presents a reasonable likelihood of danger to the threatened person(s), the Chief Investigator, or his/her designee shall contact Sonoma County Human Resources and engage in a dialogue to determine if the Sonoma County Threat Assessment Team (TAP) needs to be convened. The Chief Investigator shall work with the Victim Services Division to ensure that information concerning release of defendants who have made apparently credible threats of future harm shall be communicated to the person(s) threatened in advance of the defendant's release from custody. In appropriate cases, the office shall request specific terms and conditions of parole or probation in order to minimize the possibility the threat will be carried out.

An "apparent credible threat of future harm" within the meaning of this policy is one which portends serious or significant harm or injury, has a specific factual basis, and causes the person(s) threatened to actually fear harm or injury.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 2	***GENERAL POLICIES***
SECTION 2.21	**CERTIFICATES OF REHABILITATION PC 4852.01, et seq**

Penal Code Sections 4852.01 through 4852.22 enable eligible persons previously convicted of certain offenses to seek Certificates of Rehabilitation. Once a Petition for Certificate of Rehabilitation is filed and served on the District Attorney's Office the following procedures will be followed:

A. Sonoma County Case Convictions:

1. The Petition, Supporting Documents, and Notice will be given to the Prosecutor assigned to review and handle the case, along with the original file and a current RAP sheet. The prosecutor assigned to handle the case shall normally be the person responsible for that portion of the alphabetical split that the petitioner's name falls within in the courtroom where the case is assigned. In the event that there is something unusual about the case that suggests that a different person should be assigned to handle it, the prosecutor assigned by alphabetical split should bring that to the attention of their supervising Chief Deputy District Attorney.
2. The Prosecutor will review the documentation for adequacy on its face, that is, making sure that the petitioner is eligible on its face and that all of the documentation is completed.
3. In the event that either the petitioner is ineligible (as a result, for example, of having a disqualifying prior conviction) or the documentation is incomplete, then the Prosecutor shall file an opposition to the relief requested indicating the reasons for the opposition.
4. In the event that the petitioner appears to be eligible and the documentation is complete, then the case will be referred to the District Attorney's Office's Investigative Division for a more detailed investigation of the request for relief.
5. If after the report is completed, it appears that the petitioner is entitled to the relief requested, then a non-opposition shall be filed unless there are other lawful reasons that this Office should oppose the petition.
6. In the event that the report indicates that the relief should not be given, then the Prosecutor shall file an opposition to the petition stating the reasons and supported by the evidence which serves as the basis for the opposition.

B. Out of County Case Convictions:

1. The Petition, Supporting Documents, and Notice will be given to the Prosecutor assigned to review and handle the case, along with a current RAP sheet.
2. The Prosecutor will review the documentation for adequacy on its face, that is, making sure that the petitioner is eligible on its face and that all of the documentation is completed.
3. In the event that either the petitioner is ineligible (as a result, for example, of having a disqualifying prior conviction) or the documentation is incomplete, then the Prosecutor shall file an opposition to the relief requested indicating the reasons for the opposition.
4. In the event that the petitioner appears to be eligible and the documentation is complete, then the case will be referred to the District Attorney's Office's Investigative Division for a more detailed investigation of the request for relief, including obtaining a copy of any relevant reports from the county in which the conviction occurred.
5. If after the report is completed, it appears that the petitioner is entitled to the relief requested, then a non-opposition shall be filed unless there are other lawful reasons that this Office should oppose the petition.
6. In the event that the report indicates that the relief should not be given, then the Prosecutor shall file an opposition to the petition stating the reasons and supported by the evidence which serves as the basis for the opposition.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.01	**Introduction**

The official actions of the District Attorney and members of the office are matters of public concern. We must be mindful of the First Amendment privileges guaranteed to the press, a defendant's right to a fair trial, the integrity of an investigation and prosecution, and the safety and privacy of victims and witnesses. We must also be vigilant of the confidential nature of our work.

The community is entitled to know what occurs in the criminal justice system. The public obtains information about the criminal justice system from the media. The media should be given reasonable assistance in obtaining accurate and truthful information to which they are entitled. Our attitude with the press should be one of openness, frankness, and cooperation.

> *Prosecutors, of course, do not lose their First Amendment rights when they assume office…. They are, however, elected or appointed to prosecute criminal cases, rather than talk about them. By* taking *office they necessarily accept certain limitations. Their constituents may properly expect that they cooperate in the courts' efforts to avoid frustration of successful criminal prosecutions, by inhibiting conditions which prevent fair trials and call for mistrials or reversals.* Younger, et. al. v. Superior Court (1973) 30 Cal. App. 3d 138

The policy and procedure set forth below will assist the media in obtaining prompt and accurate information, without jeopardizing a fair trial or an effective prosecution in our venue.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.02	**General Guidelines**

Court orders, statutes, case law, codes of conduct and ethical proscriptions shall be observed.

This policy is applicable to discussions with the news media, as well as any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication. When drafting and causing matters to become public records, consideration must be given to the effect the content of these documents will have on a fair trial, effective prosecution, and maintaining the safety and privacy of involved parties. For example, statements about confessions, invocation of *Miranda* rights, test results, criminal history information, sexual assault victims' identities, juvenile matters, and the location of persons in danger, are to be given special attention. If necessary, court orders sealing these documents should be sought to preserve and protect the ends of justice.

An employee who becomes aware that a matter concerning the office is, or may be, of public interest shall immediately notify a supervisor. The supervisor shall promptly advise the Media Spokesperson and/or District Attorney and/or Assistant District Attorney.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.03	**Statements to the News Media**

A. Media Coordinator

The Media Coordinator shall facilitate the distribution of accurate public information.

The Media Coordinator will provide a response to direct media inquiries or media inquiries forwarded through District Attorney staff, if the information is readily available. The Media Coordinator shall promptly refer all other media inquiries to the appropriate source and ensure that there is a prompt response. An appropriate source may include the Media Spokesperson, District Attorney, other members of the administration staff, or a person previously authorized to handle the matter. The Media Coordinator shall notify the District Attorney and Media Spokesperson of non-routine inquiries or the need for media liaison.

The Media Coordinator should immediately receive notification of occurrences on cases that are likely to generate media inquiry.

B. Deputy District Attorneys

Deputy District Attorneys are expected to provide a prompt response to media inquiries whenever reasonably possible. When time demands or other reasons render it appropriate, inquiries should then be referred to the Media Coordinator.

Unless directed otherwise, Deputy District Attorneys shall answer any media inquiries as to **matters of public record** about cases they are assigned to prosecute, as further explained below. This information shall be provided so long as its dissemination will not interfere with the apprehension of a fugitive, a continuing investigation, or is contrary to law.

C. All District Attorney Staff

No one is authorized to render personal opinions that might jeopardize an effective prosecution, or a defendant's right to a fair trial. Matters of public record, that may be disseminated, will normally include:

1. The filing of a complaint, information, or indictment, including all the matter on the face of the document;
2. Statutory maximum and minimum punishment;
3. Dates set for arraignment, motions, preliminary examination, or trial;
4. The evidence presented at the preliminary examination, when such examination was not closed to the public or excluded, and which appears in the public transcript of the preliminary examination;
5. Evidence presented at the trial in open court that is part of the public record;
6. The verdict(s);
7. Any motions for new trial and the grounds stated in the brief which are part of the public record;
8. The sentence imposed by the court;
9. An appeal, together with the grounds stated in the appeal, which is part of the public record;
10. Remember: Pursuant to Penal Code § 1203.05, probation reports are public records for a period of 60 days after the date judgment is pronounced or probation granted, whichever is earlier. Pursuant to Penal Code § 1203d, the sentencing recommendations of the presentence report shall be made available to victims through the District Attorney's Office.

    The California Constitution, Article 1, Section 28(b)(11) recognizes victims' rights, on request, to receive the presentence report when available to the defendant, excluding those portions deemed confidential by law. Case law indicates that personal information may be deemed confidential by the Court. This determination could occur at either the sentencing hearing upon a request for redaction or at an *in camera* hearing in response to a petition seeking disclosure after the 60-day window has elapsed. Thus, care should be taken not to provide such potentially confidential information to the victim before the sentencing hearing.

Requests from the media for information **not in the public record or concerning office policy or regarding pending investigations** shall be referred to the Media Coordinator and the Media Spokesperson, or the Assistant District Attorney and the District Attorney, or others authorized by the District Attorney to handle these requests.

Minor errors occurring in stories concerning the work of this office should be courteously brought to the attention of the reporter involved. **Major errors** should be brought to the attention of the Media Spokesperson, Assistant District Attorney or District Attorney.

All attorneys must be mindful of California Rules of Professional Conduct, Rule 5-120 regarding trial publicity, which states:

"(A) A member who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the member knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

"(B) Notwithstanding paragraph (A), a member may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(a) the identity, residence, occupation, and family status of the accused;

(b) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(c) the fact, time, and place of arrest; and

(d) the identity of investigating and arresting officers or agencies and the length of the investigation.

"(C) Notwithstanding paragraph (A), a member may make a statement that a reasonable member would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the member or the member's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity."

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.04	**Juvenile Matters**

Juvenile matters shall be considered confidential in accordance with Welfare and Institutions Code § 827.

However, attorneys may disclose information regarding serious felonies described in Welfare and Institutions Code § 676, if that information was brought out in open court and could be heard or observed by the news media if they were present, unless the court has placed restrictions on such dissemination. All such disclosures are subject to the other media policies and procedures described herein. (Also see, 65 Op. Atty. Gen. 503 (1982); Rules 1410 and 1411 California Rules of Court.)

The name of the minor, parent, or guardian, or any means of determining their names shall not be disclosed by members of this office under any circumstances.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.05	**Grand Jury Matters**

Grand Jury matters shall be considered confidential except as to the filing of indictments after the defendants have been arrested (see Penal Code § 168) and as to transcripts that have been unsealed pursuant to Penal Code § 938.1(b). An attorney may not make statements to the news media concerning proposed or ongoing Grand Jury hearings without the prior approval of the District Attorney, or Assistant District Attorney.

Whenever the District Attorney believes that the public should be advised of Grand Jury proceedings, other than public indictments and transcripts, the Assistant District Attorney will contact the Grand Jury and explain the reasons for a deviation from our normal policy. This may be true, for example, when a press release or public statement serves to illustrate the value of the Grand Jury's investigatory role in the charging process and furthers a public interest.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.06	**Press Releases**

Press releases must have the approval of the Media Spokesperson, Assistant District Attorney or District Attorney prior to distribution. In their absence, the approval of a Chief Deputy must be obtained prior to distribution. Drafts should be submitted for review to the supervising Chief Deputy simultaneously with submission to the Media Spokesperson and Media Coordinator. Copies of all authorized press releases and public service announcements shall be immediately supplied to the Media Coordinator, who shall distribute the releases. The Media Coordinator shall copy all attorney managers on press releases at the time of distribution.

Press releases shall not contain prohibited matter such as the inappropriate release of the name of a victim or juvenile, a defendant's confession or admission, test result(s), or investigative information.

Except in extraordinary circumstances, press releases shall be uniformly available to the news media.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.07	**Requests to Inspect Records – Public Records Act**

I. Public Records Requests

The California Public Records Act declares that the records of all government agencies are subject to inspection and copying by members of the public during business hours. The statute contains certain sections which exempt documents from the disclosure requirement.

This statute applies to all District Attorney files relating to felonies, misdemeanors and civil matters. Juvenile files are outside the scope of the Act, and controlled by a standing "T.N.G." order of the Juvenile Court. (T.N.G. v. Superior Court (1971) 4 Cal.3d 767.)

California Public Records Act requests made pursuant to Government Code section 6250, et seq. shall be referred to the District Attorney's Executive Administrative Assistant, who will track and maintain a master log of Public Records Act requests and responses.

The Assistant District Attorney will be notified by the Executive Administrative Assistant of each inquiry submitted, approve any requests for extension in the reply, and review the response before it is sent to the party requesting the information. The Assistant District Attorney will coordinate with the Administrative Services Officer (ASO), Data Analyst, Chief Deputies or other staff as necessary, to ensure an appropriate response to each request. The Assistant District Attorney will coordinate responses and/or brief the District Attorney as appropriate.

All copies of requests and responses made pursuant to the Public Records Act should be kept on file per the Sonoma County retention schedule for General Correspondence.

II. **SUBPOENAED RECORDS**

Only Chief Deputy District Attorneys, the Assistant District Attorney, or the District Attorney are authorized to approve requests for inspection of District Attorney records or to accept service of a subpoena duces tecum.

All requests for inspection and subpoenas duces tecum for District Attorney records shall be referred to a Chief Deputy District Attorney or the Assistant District Attorney, who shall follow these guidelines:

a. The Chief Deputy District Attorney or Assistant District Attorney shall contact Sonoma County Counsel and notify them of the demand. The notification will include sending a copy of the demand to them.
b. Requests for police reports shall be referred to the originating police agency. Where the requesting party is a crime victim, witness, or their representative, the District Attorney Victims' Services Unit will assist in routing the requestor to the proper person at the law enforcement agency.
c. Unprivileged information from "closed" case files shall be provided either in response to a subpoena duces tecum or upon a written request which gives notice to all opposing counsel.
d. No information from or relating to an "open" file shall be provided where its disclosure would prejudice a pending prosecution, except pursuant to court order. If a subpoena demands we provide such information, a motion to quash (Code Civ. Proc. 1987.1 and 2019(b)(1)) shall be made.
e. An employee shall not provide any information that is protected under either a federal or state privilege absent a court order or waiver by the holder of the privilege. This includes but is not limited to the informant privilege, the executive or deliberative process privilege, the law enforcement investigative privilege, attorney/client, and work product privilege.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.08	**Media Coverage**

Pursuant to California Rules of Court, Rule 1.150, "... photographing, recording, and broadcasting of courtroom proceedings may be permitted as circumscribed in this rule if executed in a manner that ensures that the fairness and dignity of the proceedings are not adversely affected." Note that Sonoma County Superior Court Rules, Local Rule 21 supplements Rule 1.150.

The decision whether or not to allow extended media coverage rests with the judge before whom the court proceedings are conducted. Pursuant to Rules of Court, Rule 1.150(e)(1), the Media Request Form must be filed at least five court days before the portion of the proceeding to be covered unless good cause is shown. Counsel may object to such coverage and ask that it be refused, limited, or terminated. Rules of Court, Rule 1.150(e)(3) sets forth the following factors to be considered by the court in making a determination whether or not to allow extended media coverage:

a) The importance of maintaining public trust and confidence in the judicial system;
b) The importance of promoting public access to the judicial system;
c) The parties' support of or opposition to the request;
d) The nature of the case;
e) The privacy rights of all participants in the proceeding, including witnesses, jurors, and victims;
f) The effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding;
g) The effect on the parties' ability to select a fair and unbiased jury;
h) The effect on any ongoing law enforcement activity in the case;
i) The effect on any unresolved identification issues;
j) The effect on any subsequent proceedings in the case;
k) The effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness;
l) The effect on excluded witnesses who would have access to the televised testimony of prior witnesses;

m) The scope of the coverage and whether partial coverage might unfairly influence or distract the jury;
n) The difficulty of jury selection if a mistrial is declared;
o) The security and dignity of the court;
p) Undue administrative or financial burden to the court or participants;
q) The interference with neighboring courtrooms;
r) The maintenance of the orderly conduct of the proceeding; and
s) Any other factor the judge deems relevant.

Rule 1.150 also prohibits Judges from authorizing media coverage of the following:

a) Proceedings held in chambers;
b) Proceedings closed to the public;
c) Jury selection;
d) Jurors or spectators; or
e) Conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench.

It is the general policy of this office that deputies shall not object to media coverage consistent with the provisions of Rule 1.150, unless such coverage will adversely affect the privacy rights of a witness, or the presentation of the People's case (such as when the identification of the Defendant by potential witnesses is still an issue) and/or a defendant's right to a fair trial. The District Attorney, or Assistant District Attorney must authorize an objection to media coverage prior to it being made by a member of this office, unless time constraints prevent the prior authorization.

Whenever possible, the deputy should propose the use of less intrusive alternatives (e.g., fixed cameras, or a prohibition against showing witnesses' faces, or disclosing the identities of witnesses) to a total ban on media coverage of the court proceedings.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.09	**Office Memoranda**

All intra-office and inter-office memoranda generated by employees of this office are not to be distributed to the general public (individuals who are not District Attorney employees) unless authorized by the District Attorney or Assistant District Attorney. Intra-office memoranda are created for informational, instructional, and policy/procedural purposes. Inter-office memoranda may have confidential and/or highly sensitive information. All employees of the office are relied upon to ensure that the effective operation and the integrity of our work is not compromised by the unauthorized distribution of such information.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 3	***MEDIA POLICY***
SECTION 3.10	**Office E-Mails**

The same policy with regard to Office Memoranda applies to any e-mail generated regarding office business.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 4	***RECORDS AND INFORMATION ACCESS***
Section 4.01	**CRIMINAL OFFENDER RECORD INFORMATION**

This policy has been developed to meet the requirements of the State of California, Department of Justice, Division of Criminal Justice Information Services, for any agency that receives Criminal Offender Record Information (CORI) (rap sheets and criminal history transcripts, etc.)

To insure the suitability of employees accessing confidential criminal history records, all District Attorney employees with access to CORI will be fingerprinted and processed through the California Department of Justice. The overall responsibility for the administration of this policy rests with the District Attorney or his/her designee.

A. **RECORD SECURITY**: Any questions regarding the release, security and privacy of Criminal Offender Record Information (CORI) are to be resolved by the District Attorney or his/her designee.

B. **RECORD DISSEMINATION**: CORI will be used only for the purpose for which it was requested.

C. **RECORD STORAGE**: CORI will be securely maintained and accessible only to the District Attorney or his/her designee, who is committed to protecting CORI from unauthorized access, use, or disclosure.

D. **RECORD REPRODUCTION**: CORI may not be reproduced for secondary dissemination.

E. **TRAINING**: **The District Attorney or his/her designee shall:**

1. Understand and enforce this policy;
2. Ensure employees with CORI access are fingerprinted and have a criminal history clearance;
3. Have on file signed copies of the attached *Custodian of Records Duties* and Employee *Statement Form, in* which employees acknowledge an understanding of law prohibiting misuse of CORI.

F. **PENALTIES**: Misuse of CORI is a criminal offense. Misuse of CORI may result in criminal or civil prosecution and/or administrative action up to and including loss of

access to information maintained by the Department of Justice.

Sample Receipt follows:

CRIMINAL OFFENDER RECORD INFORMATION SECURITY REQUIREMENTS

CUSTODIAN OF RECORDS DUTIES

On behalf of our agency, I hereby acknowledge and agree to the following:

1. The information provided by the Department of Justice (DOJ) to this agency is **confidential** and shall not be disseminated to any other person or agency not authorized by law (Penal Code Section 11142). A violation of this section is a misdemeanor.

2. All personnel with access to Criminal Offender Record Information (CORI) will have a fingerprint background check completed through the DOJ as required by the California Code of Regulations Section 703(d) prior to the submission of fingerprints for employment, licensing, certification or volunteer purposes.

3. All personnel with access to CORI will have a signed "Employment Statement Form" on file acknowledging an understanding of laws prohibiting its misuse.

4. All personnel with access to CORI will be trained in the secure handling, storage, dissemination and destruction of CORI.

5. Our agency has a written policy for securing access, storage, dissemination and destruction of criminal record information. This policy includes the steps to be taken to prevent unauthorized access to CORI maintained in our agency files.

6. The Department of Justice may conduct audits of the authorized persons or agencies using CORI to insure compliance with state laws and regulations. (Section 702(c) California Code of Regulations.)

7. The information provided by the Department of Justice will be maintained in a secured area, and be used only for the purpose for which it was acquired.

8. Our agency will notify the Department of Justice with regard to any change of agency name, address, telephone number or contact person.

9. The "No Longer Interested Notification Form" will be sent to DOJ, when applicable.

Signature:	_____	Date:	_____
Printed Name:	_____	Title:	_____

EMPLOYEE STATEMENT FORM

As an employee of the SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE, you may have access to confidential criminal record information which is controlled by state and federal statutes. Misuse of such information may adversely affect an individual's civil rights and violate constitutional rights of privacy. Penal Code § 502 prescribes the penalties relating to computer crimes. Penal Code §§ 11105 and 13300 identify who has access to criminal history information and under what circumstances it may be disseminated. Penal Code §§ 11140-11144 and 13301-13305 prescribe penalties for misuse of criminal history information. Government Code § 6200 prescribes felony penalties for misuse of public records. Penal Code §§ Sections 11142 and 13300 state:

"Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor."

Civil Code § 1798.53, Invasion of Privacy, states:

"Any person who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal or confidential information maintained by a state agency or from records within a system of records maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual."

CIVIL, CRIMINAL, AND ADMINISTRATIVE PENALTIES

Penal Code § 11141: DOJ furnishing to unauthorized person (misdemeanor)
Penal Code § 11142: Authorized person furnishing to other (misdemeanor)
Penal Code § 11143: Unauthorized person in possession (misdemeanor)
California Constitution, Article 1, Section 1 (Right to Privacy)
1798.53 Civil Code, Invasion of Privacy
Title 18, USC, §§ 641, 1030, 1951, and 1952

Any employee who is responsible for such misuse may be subject to immediate termination of employment. Violations of this law may result in criminal and/or civil action.

I have read the above and understand the policy regarding misuse of criminal record information.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 4	***RECORDS AND INFORMATION ACCESS***
SECTION 4.02	**CLETS - CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM**

CLETS (CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM) and other classified information is restricted for official use and only to those persons entitled to inquire. Penal Code Section 502, et seq. makes it a felony to fraudulently access a restricted computer system and W&IC Section 11143 makes it a misdemeanor to receive unauthorized information for personal use.

A log of all **CLETS** inquiries from this department will be sent to the **CLETS** administrator for purposes of periodical audit.

Non work-related inquiries will be refused.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 4	***RECORDS AND INFORMATION ACCESS***
SECTION 4.03	**CALGANG RECORDS INFORMATION**

Only District Attorney Investigators and Legal Assistants assigned to the Bureau of Investigations who have been trained on CalGang will have access to the CalGang database. Deputy District Attorneys will not be able to access such information.

Because CalGang information is "privileged intelligence information" as defined by Government Code section 6254(f), it cannot be disclosed (also, refer to Penal Code section 1054.6). If a defense attorney makes a discovery request or serves a subpoena *duces tecum* for any information contained in the CalGang database, including a request to determine if an individual (defendant, witness or victim) is or is not included, District Attorney employees are prohibited from revealing such information. Any such requests should be referred and/or forwarded to the CalGang Node Administrator, who will then request that County Counsel intervene and request an in camera review of the records as there should be an outright motion to quash an SDT filed. **This means that employees cannot disclose to the defense whether a person is or is not in the CalGang database.**

Deputy District Attorneys assigned to the Gang Vertical Prosecution Unit may request that designated Investigations Bureau personnel access CalGang to obtain information related to their cases (defendants, witnesses, victims, etc.). **Hard copies of the CalGang information will not be provided.** If, however, there exists in the database references to police reports, field interrogation cards, or other documents to establish possible gang involvement, the Investigations personnel can provide the references in order to obtain copies of the source documents from the originating police agency. If there is exculpatory evidence in those documents, the prosecutor will be obligated under *Brady* to disclose it to the defense.

SONOMA COUNTY DISTRICT ATTORNEY
POLICY AND PROCEDURE MANUAL

ARTICLE 4	***RECORDS AND INFORMATION ACCESS***
SECTION 4.04	**RECORD DISSEMINATION POLICY**

Under California Penal Code sections 11075-8l, the Attorney General has adopted "Regulations Regarding the Security of Criminal Offender Record Information in California"--Title ll, Chapter 7, California Administrative Code.

Penal Code section 11105 delineates who has access to criminal history information and Penal Code sections 11140-11144 establishes penalties for misuse of rap sheets. Pursuant to the Attorney General's regulations, the following policies are adopted by the District Attorney's Office:

1. Definitions

For the purposes of these regulations, the following definitions shall apply whenever the terms are used:

a. "Criminal Justice Agency" means a public agency or component thereof which performs a criminal justice activity as its principal function.

b. "Authorized Person or Agency" means any person or agency authorized by court order, statute or decisional law to receive criminal offender record information. The Acting Terminal Coordinator will have a list of authorized agencies.

c. "Criminal Offender Record Information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarcerations, rehabilitation, and release. Such information shall be restricted to that which is recorded as a result of an arrest, detention or other initiation of criminal proceedings or of any consequent proceedings related thereto (CPC 11075(a)(b)).

Criminal Offender record information applicable to this department includes the following:

(1) The rap sheet produced by the Department of Justice (CII);
(2) Automated criminal history transcripts produced by the DOJ (computer printouts of the CII rap sheets);

(3) Automated criminal history summaries obtained for DOJ teletype;
(4) FBI rap sheets;
(5) Defendant Master Index Card (Reference CPC 13300).

The following are NOT criminal offender record information:
(1) Arrest or crime reports;
(2) Court dockets or calendars.

d. "Right to Know" means the right to obtain criminal offender record information pursuant to court order, statute or decisional law. Only persons with a right to know have access to criminal offender record information.

e. "Need to Know" means the necessity to obtain criminal offender record information in order to execute official responsibilities.

2. Acting Terminal Coordinator

The Acting Terminal Coordinator will maintain the list of authorized agencies and will be the department contact with the Department of Justice's Records Security Unit. The Acting Terminal Coordinator will be responsible for ensuring the departmental compliance with these regulations and for conducting training for personnel. Any questions regarding the release of criminal record information are to be directed to the Acting Terminal Coordinator for determination.

3. Release of Criminal Offender Record Information

a. Persons Authorized to Release Information

Deputy District Attorneys or Investigators and Support Staff personnel at the direction of deputies may release criminal record information. All personnel are advised that Penal Code Sections 11142 and 13302 make it a misdemeanor for authorized persons to release criminal record information to unauthorized persons or agencies.

b. Persons Authorized to Receive Information

Defense Counsel: Attorneys for defendants (both public defenders and private attorneys) may be allowed access to the criminal record information of the <u>defendant only</u>.

(1) Defendant: The defendant, if not represented by counsel, may be allowed access to his own criminal record information via local law enforcement or Department of Justice. (CPC 11122)

(2) Criminal record information may be released on a need-to-know basis only to persons or agencies authorized by court order, statute or decisional law to receive such information. The California Department of Justice (DOJ) listing of authorized agencies shall be referred to for releasing rap sheet information. Persons may obtain special authorization for the courts to receive rap sheet information. In such

instances, the burden of establishing eligibility lies with the person requesting the information. Any question regarding the release of information to any person other than those listed above shall be referred to the Acting Terminal Coordinator.

c. Release of Information of Prosecution Witnesses

Penal Code § 1054.1 requires the prosecution to disclose felony convictions of "any material witness whose credibility is likely to be critical to the outcome of the trial." *See also Brady v. Maryland* (1963) 373 U.S. 83 (regarding duty to discover materially favorable evidence including impeachment). In addition to felony convictions, the prosecution must disclose the existence of past criminal conduct involving moral turpitude. *See Peo. v. Wheeler* (1992) 4 Cal.4th 284; *Peo. v. Santos* (1994) 30 Cal.App.4th 169. Remain mindful that these duties extend to the data on the RAP sheet and not the RAP sheets themselves, which should not be provided in discovery. (See Penal Code § 11142 regarding unauthorized disclosure.)

d. Release of Information of Closed Cases

Access to criminal offender record information may only be made available on pending cases. If a defendant or other person wishes to review his record and a case is not pending, he should be referred to the California Department of Justice (CPC 11120 through 11127).

e. Procedure for Releasing Information

(1) Prior to release of information to a person or agency, a “Request for Record Information” (see Appendix #33) shall be completed by the requestor.

(2) No access will be allowed unless the requestor has been identified as attorney of record, the defendant (if unrepresented), or a representative of an agency on the “Authorized Agencies” list.

(3) No access will be allowed until the request form has been signed by a Deputy District Attorney who is authorizing the access.

(4) If the requestor is a defense counsel or defendant, neither will be permitted to make any photographic reproduction of the rap sheet or portion thereof. Any data obtained must be in the form of handwritten notes made from the rap sheets.

(5) A copy of the “Request for Criminal Offender Record Information” will be placed in the file folder from which the rap sheets data was taken.

4. Audit Trail

Investigators, Acting Terminal Coordinator, and all other personnel who have been trained and have authorized access to the Criminal Offender Record Information, shall

maintain a file of all releases of criminal record information for a period of three years.

5. Protection of Criminal Record Information

Each employee shall maintain effective security from unauthorized disclosure of all criminal offender record information in his/her assigned duties. Every person hired in this office who may have access to criminal record information must pass a background investigation.

6. Destruction of Criminal Offender Record Information

a. When criminal record information is destroyed, the destruction shall be carried out to the extent that the identity of the subject can no longer reasonably be ascertained.

b. Criminal offender record information, when contained within a case file folder, will be destroyed when the case file folder is destroyed, by shredding. Criminal offender record information not contained within a case file folder when no longer needed shall be destroyed by shredding the rap sheet. This shall be done by a reputable security business whose employees have passed a background investigation. The Acting Terminal Coordinator shall make the necessary inquires as to the business' procedures for maintaining the integrity of these files and how these files are destroyed.

7. Juvenile Records

Nothing in these regulations is intended to alter existing statutory or decisional law or court policy regarding the release of juvenile offender records. Any question regarding release of juvenile information should be referred to the deputy-in-charge, juvenile division.

8. Training

Training in the proper use and control of criminal record information will be provided to all persons authorized to release such information.

9. Penalties

a. Penal Code Sections 11142 and 13303--Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record of information is guilty of a misdemeanor.

b. Penal Code Sections 11143 and 13304-- any person who knowingly is not authorized by law to receive a record or information obtained from a record knowingly buys, receives, or possess the record of information is guilty of a misdemeanor.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 4	***RECORDS AND INFORMATION ACCESS***
SECTION 4.05	**CALIFORNIA PUBLIC RECORDS ACT REQUESTS AND SUBPOENAED RECORDS**

See Article 3, Section 3.07 which covers this subject.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 4	***RECORDS AND INFORMATION ACCESS***
SECTION 4.06	**CITIZEN REQUESTS FOR INFORMATION AND RECORDS**

Requests for case information by private citizens other than pursuant to the Public Records Act shall be referred to the Executive Administrative Assistant, who shall consult with the District Attorney or Assistant District as to the appropriate response to the inquiry. Nothing in this policy is intended to prevent the dissemination of information not generally available to the public to victims, their survivors, witnesses, or law enforcement. Additionally, nothing in this policy is intended to prevent employees from providing information that has already become part of the public record to interested persons, such as telephone calls or requests at the front desk.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 5	***ADMINISTRATIVE AND ACCOUNTING***
SECTION 5.01	**ABSENCE REPORTING POLICY**

Employees are required to request all time off (except unanticipated sick leave) in advance, using the proper form. Employees shall obtain approval before departing on leave.

If an employee is requesting leave pursuant to the Family and Medical Leave Act, and when the need is foreseeable, employees must provide 30 calendar days advance notice of the need to take FMLA/CFRA leave to his/her supervisor. When 30 calendar days notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide his/her supervisor notice of the need for leave as soon as possible under the facts and circumstances of the particular case. When planning medical treatment for the employee or family member or requesting to take leave on an intermittent or reduced schedule work basis, employees must consult with his/her supervisor or designee and make a reasonable effort to schedule treatment so as not to unduly disrupt the Department's operations. Employees must consult with their supervisor or designee prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the Department and the employee, subject to the approval of the applicable health care provider. Please see County Medical Leave policy and/or applicable MOU for more information regarding medical leaves.

Employees who call in sick shall do so as close to their expected arrival time as possible (8 a.m. for attorneys if not otherwise set through an alternative work schedule), unless they have already notified their supervisor.

Employees calling in sick shall alert their supervisor or other appropriate individual, as indicated below, to any coverage requirements caused by the employee's absence. Employees are expected to complete the appropriate absence reports when returning to work after unanticipated sick leave.

Attorneys calling in sick shall communicate with their supervisor; via phone, text or email with some sort of acknowledgement received. If the Chief Deputy cannot be reached, then the following should be contacted in this order: another Chief Deputy, the Assistant District Attorney, team leader, or another manager.

Investigations Bureau staff are required to notify their supervisor or the Chief; if they are unable to reach either person, then they are required to leave a voice mail or electronic message with both.

Victim Services staff are required to leave a message on the Victim Services main line (565-8250), as well as with their direct supervisor.

Support Staff are required to leave a message with their supervisor. If they are not sick but anticipate being more than 15 minutes late they are also required to leave a message with their supervisor.

Managers are required to call in to their supervisor, or the Executive Administrative Assistant, who will notify appropriate staff.

Reasonable medical evidence of incapacity is required for sick leave use of more than 48 work hours in duration, and may be required for sick leave use of 48 hours or less, and in accordance with Memorandum of Understanding or Salary Resolution provisions.

Employees who absent themselves from the office for an extended period during the scheduled work day outside of the normal lunch hour shall obtain approval from their supervisor.

Employees shall accurately complete their timecards to reflect any time taken as leave.

Attorneys' and Investigators' vacation requests should not conflict with established search warrant or standby duty assignments.

Employees are expected to discuss any known coverage issues with their supervisors at the time of submitting leave requests or as they arise before departing on leave.

The office will attempt to honor all vacation date requests; however, where there is an irreconcilable conflict, the business demands of this office will prevail. Vacation dates will be scheduled to avoid the absence of too many members of a team at one time.

Employees are encouraged to submit leave requests early because it may not be possible to grant leave to several people in the same unit at the same time. Employees are further encouraged to discuss their leave plans with the other employees in their work unit, to assure there are no conflicts.

SONOMA COUNTY DISTRICT ATTORNEY
POLICY AND PROCEDURE MANUAL

ARTICLE 5	***ADMINISTRATIVE AND ACCOUNTING***
SECTION 5.02	**ALTERNATE WORK SCHEDULE**

This policy is intended to provide for the consideration of Alternate Work Schedules for employees of the Sonoma County Office of the District Attorney.

An Alternate Work Schedule (AWS) is defined as any regular schedule other than the standard five weekdays and other than the standard daily work hours established by the unit. All work schedules must comply with FLSA requirements. All work schedules must include a lunch period of at least 30 minutes but no more than an hour, to be taken near the middle of the work day. Rest periods may not be taken in conjunction with the lunch period, or at the beginning or end of the work day.

AUTHORITY

A. SEIU MOU
B. Sonoma County Salary Resolution MOU
C. Sonoma County Prosecutor's MOU
D. SCLEA MOU

FORMS

Alternate Work Schedule Request

PROCEDURE

A. Program and Eligibility

1. The needs and efficient operations of the Office of the District Attorney are primary considerations in the development, review and implementation of the AWS.

2. No additional workload backlog, reduction in hours that DA services are available, or increase in processing or turn around time may result from the approval of any AWS. Should any such impact occur following approval, the approval of the AWS may be revoked.

3. AWSs are limited to weekdays, Monday through Friday. Weekend days, Saturday and Sunday, may not be used as part of any AWS, nor as a temporary substitute for a regularly scheduled weekday.

4. No AWS's which trigger Fair Labor Standards Act (FLSA) or MOU overtime may be approved. Questions on FLSA implications should be addressed to the ASO or the Payroll Clerk.

5. Each paid leave benefit defined in terms of days shall equal eight (8) hours for a full-time employee.

6. The use of AWS shall not result in greater or lesser benefits for an employee.

7. Compensatory time off, equivalent to eight (8) hours for a full-time employee, will be generated if employee's scheduled day off lands on a paid holiday.

8. Required attendance at regularly scheduled meetings shall be arranged so as to not require overtime.

9. Newly hired or promoted employees may be allowed to work an AWS, at the discretion of the supervisor/manager. In order to remain eligible for the AWS, an employee shall achieve the overall ranking of "Satisfactory" or above on their first performance evaluation, and maintain at least the "Satisfactory" ranking while on the AWS. Any performance ranking below "Satisfactory" may result in the suspension of the AWS in order to ensure more direct supervision and/or implementation of a corrective action plan to improve job performance. Anyone who would be ineligible for an AWS, based on an evaluation that is more than one (1) year old at this policy's inception may request a performance evaluation to establish current eligibility.

10. Each employee utilizing an AWS will have a designated back-up person to provide coverage during District Attorney business hours.

11. Should the AWS result in a full business day off, an alternate voice mail message indicating the day out of the office and the name of the designated back-up along with their phone number shall be used.

12. Approved AWS's will be maintained in the employee's personnel file. Any changes of the coverage and/or hours will require a new form to be filled out and signed by all parties involved.

B. Approval Process

A request for an AWS shall be submitted in writing using the attached form.

1. The immediate supervisor/manager will review AWS requests to determine if the needs of the department will be met.

2. All approved requests will be documented, implemented for a trial period as

defined by the supervisor/manager and, if found unworkable, will be modified or discontinued.

3. Approved AWS's are to be delivered to the Payroll Clerk.

C. Denial, Suspension, Revocation

1. The District Attorney or supervisor/manager may modify, suspend or revoke the approval of an AWS at their discretion. Such actions may be appealed in writing by any affected parties to the District Attorney.

2. Denial, suspension, revocation of an AWS or an appeal to the District Attorney are not subject to the grievance or arbitration process.

[Alternative Work Schedule attached.]

ALTERNATE WORK SCHEDULE REQUEST

The District Attorney's Office makes Alternate Work Schedules (AWS) available to employees, based on our AWS Policy. Not all alternate schedules will be available to all employees. Please check with your supervisor/manager, the payroll clerk, or the ASO for additional information.

All AWS's must be authorized by your supervisor/manager. AWS approvals will be subject to a trial period. All AWS approvals must be documented and be placed on file. Complete this form to request an AWS. Please type or print clearly.

Name: _____ Job Title: _____
Employee Requesting AWS

Division: _____ Section: _____

Describe proposed AWS: _____
_____
_____

In what way(s) will the proposed AWS benefit the District Attorney's Office?
_____
_____
_____

How does the proposed AWS meet the needs of the District Attorney's Office?
_____
_____
_____

The date this AWS is requested to become effective: _____

Employee requesting AWS must complete and initial as appropriate. Will the proposed AWS present a workload backlog to you? Y or N

_____ I understand that an AWS is a privilege and can be suspended or revoked by the District Attorney or supervisor/manager at their discretion.

_____ I understand the condition and agree to use an alternate voice mail message.

_____ I understand that suspended or revoked AWS's can be appealed in writing to the District Attorney, and are not subject to grievance or arbitration.

_____ _____
_____

Signature of employee requesting an AWS Date

The name(s) of the employee(s) scheduled to back you up due to an AWS is:

_____

[***Print name of back-up employee***]

Back-up employee must complete and initial as appropriate. Will the proposed AWS present a workload backlog to you? Y or N

_____ The responsibilities to successfully back-up this proposed AWS have been described and I understand those responsibilities.

_____ I understand that if the responsibilities become greater than my abilities, I will notify my Supervisor immediately.

_____ _____

Signature of back-up employee indicates acceptance of responsibilities and affirmation of statements made regarding workload backlog. Date

To be completed by Supervisor/Manager. I have conferred with the employees involved in this AWS and believe they comprehend the duties and responsibilities involved.

The proposed AWS is approved / denied for trial / long-term basis. (Circle one)

Review of this AWS will be made on _____, or sooner, if required. [*Fill in date of review.*]

To be completed by District Attorney or Designee. I have reviewed and agree with the decision regarding this request.

_____ _____

Signature of Director/Designee Date

Distribution:
Original: Employee file
Copy: Employee
Copy: Supervisor

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 5	***ADMINISTRATIVE AND ACCOUNTING***
SECTION 5.03	**EMPLOYEE JOB SHARE PROGRAM**

The Job Share Program is a temporary work arrangement that allows employees to enjoy a career while still meeting the needs of their family or personal situations. A job share position is defined as the equal sharing of the duties of one full-time position by two employees, who are each compensated at half of the salary of a full-time employee.

This arrangement is subject to change when deemed necessary or appropriate, along with the understanding that victim services are paramount.

The availability of a Job Share Program is dependent on the availability of an appropriate work assignment, satisfactory work performance by the requesting employee, and the overall business needs of the department.

Attorney positions in the office that are available for the Job Share Program generally require broad-based prosecutorial knowledge and trial experience. For these reasons, the Job Share Program is only available to attorneys who are not currently on probation, and is dependent on the breadth of experience of the individuals and the overall quality of work performed, as well as on the needs of the department. A position held by two job-share deputies shall have the same scope of duties and level of responsibility as any equivalent full-time position in the office. The schedule of the two attorneys combined will be at least 80 hours per pay period, recognizing that a deputy district attorney position is one where deputies must work the amount of time necessary to complete the work of the assignment and sometimes that may exceed 80 hours per pay period combined. Job share program participants are required to attend mandatory training programs or office meetings, even if they occur during regularly scheduled time off.

For other employees, the availability of the Job Share Program will also depend on the employee's assignment, as well as the overall quality of their work performance.

Anyone accepted into the Job Share Program may not be allowed to change assignments while participating.

The District Attorney has the sole discretion regarding the ability of the office to absorb job share positions and to accept or reject a request to participate in the Program.

Job Share Requests

The Office of the District Attorney will consider Job Share requests submitted by employees. Job sharing shall consist of two employees working 50% time; either 40 hours per pay period, or 20 hours per week, depending on the applicable MOU. Management may modify or terminate job sharing arrangements upon 30 calendar days written notice to the employee(s). Job sharing employees will receive benefits based on their part time status pursuant to the current M.O.U. and Salary Resolution.

Application Acceptance Procedure

All employees requesting to participate in the part-time Job Share Program are required to submit a written request to the District Attorney, or his/her designee. Each request will include the following:

a. Name of the employee making the request

b. Current job classification

c. Proposed assignment and location

d. Job Share partner

e. Proposed starting date

f. Proposed work schedule (days of the week, 40 hours per pay period required)

g. Expected duration

The requesting employee will be notified in writing whenever practical within 30 days of receipt of request by the District Attorney or his/her designee, as to whether or not their request for job share has been granted or denied.

Placement

If the Program position is approved, the employee will be placed in a suitable work assignment. This may require the employee to change his or her work assignment or work location. The job share schedule may be postponed until the next office assignment rotation, depending on the nature of the request and the availability of open positions.

It is the responsibility of the employee to cooperate with his or her assigned supervisor to finalize the work schedule.

All Job Share assignments will be reviewed annually to determine if it continues to be in the best interest of the department.

The employee may request at any time to return to full-time employment. The return to a full-time employment schedule is contingent on the availability of a full-time position in the current job class of the participating employee.

When in the best interest of the Office of the District Attorney, an employee may be returned to a full-time schedule by the District Attorney. Whenever practical, 30 days notice will be given.

If the renewal request is not extended or the job share employee is transferred to a different work location, the employee will be given written notice. Whenever practical, 30 days notice will be given.

In situations where one job share partner leaves or returns to full-time employment, the District Attorney will take reasonable steps to avoid the remaining job share partner from being disadvantaged. Cooperative efforts shall be made to find a replacement job share partner. If a new job share partner cannot be found, then the remaining job share partner will be required to return to full-time status when a full-time position becomes available.

Job Share Agreement

_____ 1. STATUS CHANGE: I understand and voluntarily agree to change my work status from full time to permanent part-time, which means I will occupy a part-time position rather than a full time position in order to be able to job share. I also understand and agree that once I accept a part-time position that I have no right to return to full time employment, but may be permitted to do so at the discretion of the District Attorney, which is contingent on the availability of a full time position being available. My job class and salary range shall remain unchanged.

_____ 2. SPECIAL SITUATION: I understand and agree that by my accepting part-time employment I will be sharing the duties with another part-time employee who will be my job share partner. I understand that such a job share assignment has special requirements for sharing one assignment between two employees. I am responsible for working with my job share partner in a fully cooperative and efficient manner to make the job share successful.

_____ 3. POSITION PERFORMANCE STANDARDS: I understand and agree that in addition to normal job performance standards, the additional conditions stated in paragraphs 4, 5 and 6 below will apply to my job share position.

_____ 4. DUTIES: I understand and agree that my job share partner and I will be assigned to the same position, subject to change by the District Attorney. I understand that service to the public is paramount, and that the job share can not inconvenience other employees. To ensure full coverage of the assignment, the job share employees will take telephone calls and attend meetings to assure that all the responsibilities of the assignment are being met. Job share partners will be required to communicate as necessary to ensure the fulfillment of all duties. I understand that I will be required to attend mandatory training programs or office meetings , even if they occur during regularly scheduled time off.

_____ 5. SALARY, SCHEDULE, VACATION and SICK LEAVE: I understand and agree that my job share partner and I are expected to resolve any scheduling, public service or workload issues. I understand and agree that I am to keep my supervisor fully informed as to my assignment and will be required to keep an assigned daily schedule with minimal changes. I will accrue holiday, vacation and sick leave on a prorated basis, and will accrue time towards any merit increases consistent with a part-time status pursuant to the current M.O.U. and Salary Resolution.

_____ 6. WORK HOURS: I understand and agree that it is the obligation of each job share partner to establish office hours that combined are equal to a full time salary Deputy District Attorney. This shall be a non-overlapping schedule that is subject to the approval by the District Attorney. Any schedule changes must be approved by the supervisor.

_____ 7. OFFICE and EQUIPMENT: I understand and agree that my job share partner and I will share one (1) work space with one (1) computer, one (1) telephone with one (1) voice-mail capacity (if applicable), and other supplies and books which are normally assigned to one (1) position.

_____ 8. EMPLOYEE BENEFITS: The Sonoma County Salary Resolution, and other applicable MOUs detail the benefits coverage of County employees. Some, but not all of these benefits are available to part-time employees and premiums will cost more since County contributions to the premiums are prorated. It is the responsibility of the job share employee to contact the Sonoma County Human Resources Department and/or the Sonoma County Auditor/Payroll Division to obtain details regarding compensation and benefits.

_____ 9. TERMINATION OF POSITION:

A. I understand and agree that the term of the Job Share Program is one-year. The job share employee may request at any time to return to full time employment. The return to a full time employment schedule is contingent on the availability of a full time position in the same job class and with the same salary range of the job share employee prior to job sharing.

B. It is the intent of the District Attorney to continue the job share position for the full length of the agreement. However, if in the sole discretion of the District Attorney, he/she believes it is in the best interest of the Office of the District Attorney that the job share agreement be terminated, the employee will be returned to a full time schedule. If a decision is made by the District Attorney to return the employee to a full time schedule and there is no full time position available, then county Civil Service layoff rules will apply.

C. In situations where one job share partner leaves or returns to full time employment, the District Attorney will take reasonable steps to avoid the remaining job share partner from being disadvantaged. If a new job share partner cannot be found, then the remaining job share partner will be required to return to full time status.

I agree to the above listed terms and conditions and understand that I am subject to County Civil Service Rules, Salary Resolution, applicable MOU and other County policies, as is any other permanent part-time County Employee. This agreement does not replace, supersede, or waive any County Civil Service rule.

Dated: _____ _____
Employee

Dated: _____ _____
District Attorney/Designee

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 5	***ADMINISTRATIVE AND ACCOUNTING***
SECTION 5.04	**GENERAL EXPENSE PROCEDURES**

1. General Policy

No employee shall incur an office expense without prior written authorization. To obtain such authorization, an employee shall complete an Expenditure Request Form and submit it to their supervisor.

2. Expert Witnesses Hired By D.A.

Before submitting an expenditure request to hire an expert, an employee shall obtain supervisorial approval and contact the expert and obtain the expert's fee estimate of the lowest hourly rate at which the expert would prepare, consult and testify in the case.

Thereafter, preparation and submission of the Expenditure Request Form is required. Following its approval by their supervisor, the attorney shall direct a letter to the expert setting forth the terms of the fee arrangement and requesting that the expert invoice his services directly to their supervisor.

Every effort should be made to limit the expert's billable time. If the expert is needed to testify, he/she should have a specific time in which to appear, and the court should be advised of this and that the witness may have to be taken out of order. The courts are presented with similar budget problems when court-appointed experts are required to appear, and advance discussion of the matter with the court should result in a court officer being more inclined to honor your request.

3. Court-Appointed Experts

A Deputy District Attorney should not request the court appointment of an expert without first obtaining approval from their supervisor. This is in matters in which the expense will be the responsibility of the District Attorney's Office, not the court's.

4. Homicide Scene Investigation

When a Deputy District Attorney responds to a homicide or other major crime scene and

concludes that it is necessary to promptly retain an expert or otherwise commit District Attorney funds, he/she may do so only after obtaining verbal approval from their supervising Chief Deputy or the Assistant District Attorney if that person is not available. The attorney shall, however, later fill out an Expenditure Request Form.

5. Interpreters

In order to retain the services of an interpreter during the investigation of a case prior to the filing of a complaint, an employee shall first obtain written authorization through the process of an Expenditure Request Form directed to their supervisor.
A Deputy District Attorney who needs an interpreter to prepare or present his/her case in court must follow the expert approval rules above.

6. Transcripts

An employee shall not request a transcript of proceedings without first obtaining approval from his/her supervisor.

7. Witness Travel Coordination Guidelines

The following are the guidelines for requesting travel arrangements for a witness who is traveling a substantial distance (more than 75 miles) to testify in court. The travel arrangements may require lodging, per diem expenses and mileage expenses.

The Deputy District Attorney assigned to the case shall complete the Attorney section of the Witness Travel Request Form. The Deputy District Attorney will obtain written approval from their attorney manager (Chief Deputy District Attorney or Assistant District Attorney) prior to any travel arrangements being made.

The Deputy District Attorney shall provide the approved Witness Travel Request Form to the District Attorney Investigator assigned to the case who will then be responsible for making the travel arrangements in conjunction with the Investigations Bureau secretarial staff. If no investigator is assigned to the case, the Deputy District Attorney shall contact the Chief Investigator who will assign an investigator or the Investigations Bureau secretary to facilitate the travel arrangements.

The District Attorney Investigator, and/or Investigations secretary, will determine the most appropriate and cost effective mode of travel and lodging arrangements necessary to have the witness available to testify on the dates specified. The investigator shall co-ordinate with the witness to confirm the travel arrangements. If travel costs exceed $ 250.00, management approval is required. If the witness chooses to modify the arrangements in any way, they will be responsible for the additional costs. Examples include extending their stay beyond the dates needed for testimony, lodging for non-witnesses, and meal or fuel expenses beyond the established guidelines.

The Investigations Bureau maintains information as to the primary and secondary lodging establishments that have a contract for services with the County. The Investigations Bureau will make any airline travel arrangements using the Cal Travel Store if possible. The Investigations Bureau also maintains vendor information for Airport Bus transportation and Taxi service. Arrangements with such vendors will be made in accordance with Cal Card guidelines or other established procedure.

The Investigator or secretary will provide an itinerary to the witness and facilitate per diem reimbursement with the Accounting staff. The witness may choose either actual reimbursement for meals by providing receipts, or per diem reimbursement which is a fixed amount. In either case, any costs in excess of the per diem limits will be the responsibility of the witness. If the witness uses a private vehicle for travel, mileage may be reimbursed at a rate of $0.20 per mile, one way, traveling the most direct route. The investigator or secretary will supply the witness with the witness travel reimbursement request form if a private vehicle is used.

In the event a witness completes his/her testimony earlier than anticipated, the witness is required to return the unused per diem funds.

The Investigator and/or secretary will maintain all appropriate backup documentation for travel, lodging and related expenses in order to complete their respective Cal Card expense forms prior to submitting same to the Accounting staff.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 5	***ADMINISTRATIVE AND ACCOUNTING***
SECTION 5.05 PROPOSED	**EMPLOYEE TRAVEL AUTHORIZATION, EXPENSE AND REIMBURSEMENT POLICY AND PROCEDURE**

Employees are responsible for reading and adhering to the following relevant County Administrative Policies in addition to this policy.

- Policy 3-2 "Travel and Meal Reimbursements"
- Policy 5-1 "Vehicle Use"

It is the policy of this office to ensure employees incur and are reimbursed for reasonable expenses when travelling outside the county. Employees are expected to be prudent and professional when on official business. Employees are responsible for making their own travel/training arrangements including registration, hotel reservations, airfare, etc. Transportation will be by the most practical and economical methods. If a private vehicle is used, maximum reimbursement should not exceed round-trip coach airfare.

Before any travel, an "Authorization for Travel and Expenses" (sections I & II) as well as a "Request for Time Off/Out of the Office" must be completed and submitted to the appropriate supervisor for approval. Instructions for completing the "Authorization for Travel and Expenses" form are included on page 2 of the form. If traveling with another staff member, each employee must submit separate forms. When completing the "Authorization for Travel and Expenses" form, employee must indicate how the travel and expenses are to be funded. Expenses may be funded by an employee's Staff Development Funds, the department, Grants, POST, or other means.

Depending on the funding and transportation method, other forms may be required including:

- "Staff Development Application for Taxable/Non-Taxable Reimbursement"
- "Personal Automobile Mileage Claim"

The department has developed a "Checklist for Training and Travel" to help with determining required forms and completing the forms. The checklist and all forms or links to forms can be found on the DA SharePoint site under the Travel and Training

tab.

Upon return from travel, the “Authorization for Travel and Expenses” form section III and any other required forms must be completed to include actual expenses. All forms must be approved and receipts attached prior to submitting to accounting. Forms must be submitted within 60 days of return.

MEALS & INCIDENTALS

Employees may choose to be reimbursed for the actual costs of meals and incidentals or they may use the per diem method. An employee may choose to use the actual method one day and the per diem method another day but may not use both methods within the same day.

If the actual method is chosen, all receipts are required. Employees must request a separate receipt for the purchase of any alcoholic beverages as the county will not reimburse for these expenses. In limited circumstances, if a receipt is not available or is lost, a “Replacement Receipt” form may be submitted documenting the expense.

If the per diem method is used, it is the employee’s responsibility to check the appropriate per diem rate on the GSA website: http://www.gsa.gov/perdiem. If the per diem method is chosen, receipts for meals and incidentals are not required. Any provided meals should be backed out of the daily per diem and first and last days should be calculated at 75% of the per diem. A link to the breakdown of the daily rate is available on the website.

TRANSPORTATION

Transportation expenses may include bridge tolls, parking, bus, train, taxi or plane fares. Employees must indicate on the “Authorization for Travel and Expenses” form the chosen methods of transportation. Employees shall choose and use the most economic and reasonable methods of transportation based on the determination of the District Attorney or designee.

County vehicles are available for employees’ use for County business, including travel outside of Sonoma County. Pool cars can be reserved by calling Fleet Operations at 565-2639. Information on obtaining, checking out, and returning pool cars is available on Fleet Operation’s website.

Employees who use their own vehicles on County business must carry adequate insurance, as required by state law, and possess a valid driver license. Mileage will be reimbursed at the current IRS rate. The current rate can be found on the “Personal Automobile Mileage Claim” form. Employees must complete the form and have the appropriate supervisor approve prior to submitting the form to accounting.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 5	***ADMINISTRATIVE AND ACCOUNTING***
SECTION 5.06	**VEHICLE IMPOUNDS**

This policy pertains to vehicles impounded by allied law enforcement agencies in criminal cases. If charges have been filed by our office which involve a vehicle impounded as evidence, and stored at a privately owned vehicle storage facility, this policy will become effective. Pursuant to California Attorney General Opinion #85-804, our office will assume financial responsibility over the vehicle storage fees after the filing of criminal charges as outlined in Penal Code § 806.

POLICY AND PROCEDURE

In order to reduce the costs that our office must pay for stored vehicles, the following policy and procedure is being adopted. Vehicles held for evidentiary purposes shall only be stored at a facility under contract with a law enforcement agency.

1. Upon receiving a case packet (police report and agency complaint review form) for filing, the assigned Deputy District Attorney (DDA) and/or the Charging Deputy will complete the **Vehicle Impound Form** (available on the SharePoint Site), and attach it to the front of the case packet. The case packet will then be delivered to the Complaint Desk.

2. The Complaint Desk Legal Processor will receive and process the police report along with the charging sheet or charging direction. Once the complaint has been generated, the legal processor will do the following:

    - Stamp the DA file label with the **Impound Stamp**;
    - Deliver the **Impound Form** to his/her Legal Staff Supervisor (LSS);
    - Process the case as usual;

3. The LSS will notify the impound facility (in writing) of the date (the day the case was filed) in which our office will assume responsibility for payment of the impound fees. Further, the LSS will prepare a monthly report capturing details of all impounded/stored vehicle(s) being held as evidence by the authorized storage facility. The report shall be distributed, via e-mail, to DA Management staff members for their review. A copy of the report will also be routed to the assigned DDA of any case involving impounded vehicles.

The monthly report shall include:

- DAR Number
- License Number
- Date Filed
- Rate charged per month ($/mo)
- Auto Year
- Auto Make
- Auto Model
- Name of the DA assigned to the case
- Current Balance

4. **Vehicle Release** – It will be the responsibility of the assigned DDA to notify the Legal Staff Supervisor, and the defense counsel, when the vehicle is no longer needed by the prosecution.

   Once the assigned DDA and/or Chief Deputy have determined that the vehicle has no evidentiary value (and defense counsel has been notified), the LSS shall prepare a **"Notice of Intent to Release Vehicle"** letter (as described in sub-section(s) "A" and/or "B" if applicable). However, if the vehicle was seized pursuant to a search warrant – the additional steps outlined in sub-section "C" shall also be followed

   A. **<u>Notice of Intent to Release the Defendant's Vehicle</u>**:

      The letter will include the defendant's name, the DAR number, a description of the vehicle, and the date the vehicle is to be released from impound/storage.

      - The release date of the vehicle will be scheduled at least ten (10) working days from the day notification is made to defense counsel.

      - The DDA will annotate the details of the notification (date and name of defense counsel notified) in the case file.

      - The LSS will fax the storage facility and notify them of the pending release.

      - The LSS will ensure that a copy of the release letter is delivered to the storage facility via fax or email (followed by a mailed hard copy); to defense counsel; and a copy (sent via certified mail) to the registered owner of the vehicle. The LSS may also telephone the registered owner to notify them of the release, in addition to the

mailed notification.

B. **Notice of Intent to Release Vehicle Belonging to Someone Other than the Defendant**:

If the impounded vehicle was being driven by someone other than the defendant (or the stored vehicle is registered to someone other than the defendant), it will be the responsibility of the LSS to notify that person; a family member of that person; or the persons next of kin depending upon the circumstances of the case of the pending release of the vehicle.

- The LSS will prepare and send a letter (via certified mail) to the victim and/or the registered owner, advising them of the pending release. The LSS may also notify them by telephone in addition to the mailed notification.

- The LSS will retain a copy of the letter in the impounded vehicle file.

C. **Vehicles Seized Pursuant to a Court Order/Search Warrant**:

Vehicle's seized pursuant to a court order, may only be released by virtue of another court order. In these instances, the assigned DDA will work with his/her Legal Secretary to prepare a "Stipulation and Order to Release the Vehicle." The Legal Secretary will obtain signatures on the stipulation form from the defense counsel, and from the court.

Once the stipulation is signed by all parties, and filed by the Superior Court Clerk's Office; the assigned DDA or Legal Secretary shall provide a copy of the stipulation to the LSS (for inclusion into the monthly report). When the LSS obtains a copy of the stipulation, he/she will initiate one of the aforementioned vehicle release procedures, depending upon the circumstances of the case. There will be up to a 10 day grace period between notification and release.

5. The LSS will (on a monthly basis) review the statement of account from the storage facility(s), and include the data on the aforementioned monthly report to management staff.

6. If a DDA wants the vehicle stored beyond the (pre-release) 10-day grace period, approval must be obtained (in writing) from a supervising attorney to do so. A copy of the approval will be routed to the LSS. It will be the responsibility of the LSS to notify the storage facility about the delay.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 6	***SAFETY AND HEALTH***
SECTION 6.01	**SECURITY POLICY**

All visitors to our office at the Hall of Justice must sign in at our front reception desk, after entering through the security screening stations. Visitors must wear a visitor badge, unless they are a County employee displaying a County-issued badge, or a member of Law Enforcement who is displaying either an official photo identification or badge.

Law Enforcement Officers will be given priority admittance.

Visitors must identify who they are here to see. That staff member will be contacted and must come to the front desk to escort the individual into the office. The only exceptions are Court Officers, Law Enforcement Officers, Probation Bail/S.O.R. Officers, or General Services Facility Operations Staff. However, these visitors must display their official identification to be admitted into our office without an escort.

Doctors working for Sonoma County- Doctors assigned to cases will sign in at the front desk. If they are here to review files, the DA assigned to the case will be notified that the doctor is here. (If the DA is unavailable, a supervisor or the OD will be notified.) The doctors do not need to be escorted, but must continue to display official photo identification or a visitor pass.

Under no circumstance will a person not currently employed by the District Attorney be allowed entrance to our offices at the Hall of Justice other than through our upstairs reception desk. Employees must not allow access to anyone through any of our side doors, or our downstairs entrance.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 6	***SAFETY AND HEALTH***
SECTION 6.02	**HOJ EMERGENCY EVACUATION PROCEDURES**

The Sonoma County District Attorney has organized a system of trained individuals into teams known as the Building Evacuation Team (BET). During an evacuation procedure, the distinctive orange vests, helmets, red back packs and yellow/blue flag easily identify the BET volunteer. **All employees must obey their safety and evacuation directions.** Failure to follow evacuation directions has the potential for placing members of the BET, as well as other staff, in danger.

- In the event that an Emergency Evacuation has been called, key members of the office, including the front desk staff and the Executive Legal Secretary, will receive an automated phone call announcing that we are to evacuate the building.

- Upon receiving this phone call, front desk staff is to immediately make an announcement via our overhead speaker system, directing staff to evacuate the building. Front desk staff will place an evacuation sign on the entrance door, and lock the door as they exit the building.

- Members of the BET will immediately get their emergency backpacks, and perform their assigned duties to ensure evacuation of the building.

- Staff should grab keys, purses, etc, and place his/her garbage can on the desk. If your cubicle or office partner is away, please do the same for him/her. Staff should then directly exit the building through the North security area. Look for the blue and yellow flags, and follow any directives given by the BET. Use the stairs to exit, rather than the elevator. If you need assistance in exiting the building, notify your supervisor or a member of the BET.

- Upon exiting the HOJ, staff should report to parking lot P6 (east side of Hall Of Justice), and make contact with the Assembly Area Coordinator, who will be taking roll call. Staff should remain in the assembly area until they receive further directions from the Assembly Coordinator.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.01	**OATH**

At the time of employment, each attorney and Investigator is required to take an oath of office from the District Attorney that he/she will uphold the Constitution of the United States and Constitution of the State of California. A signed copy of such oath of all Prosecutors will be filed with the County Clerk. All such oaths of office are public documents subject to public review.

Upon ceasing employment as an attorney or investigator in the Sonoma County District Attorney's Office the oath becomes null and void.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.02	**OFFICE HOURS**

As professionals and officers of the court, we are expected to devote the time to our job that is necessary to complete our work. Deputies are expected to put in a standard day as his or her minimum duty and to expend any further time necessary to meet the duties and responsibilities owed to the public. The Office operations must be covered during normal business hours.

A. Standard office hours are 8:00 a.m. to 5:00 p.m., with lunch from 12 p.m. to 1 p.m. As a general rule, all attorneys are required to be either in the office or conducting office business during these hours. A deputy must notify and seek permission from a supervisor when he or she will not be in the office during standard office hours, as well as notify all affected staff. If running late in the morning or unable to come in for the day, deputies are expected to contact their Chief Deputy, or else another attorney manager and actually speak to someone to advise of this fact and address any coverage issues by 8:15 a.m. Text messages or emails, if a responding acknowledgment from an attorney manager is received, are acceptable alternatives. Even when deputies will be out of the office on business, such as at a crime scene or law enforcement agency, supervisors should be notified and deputies should send an email notification reminder to the supervisor and any other affected staff.

B. District Attorney Management and Deputy District Attorneys are provided annually with additional hours of leave in part to compensate for the inability to earn and accrue overtime. Nonetheless, it is recognized that there will be times, such as when deputies are engaged in protracted trials, when deputies must work substantially over and above the expected number of hours and when they must postpone personal appointments or obligations because of time devoted to work. In such instances, supervisors have discretion to grant some "flex" hours. Deputies must seek permission from a supervisor before "flexing" standard office hours. The number of hours allowed as flex time will not - in most instances – be on an hour for hour basis. Generally, flex time proposals should not result in an attorney's absence for a full day.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.03	**PROFESSIONALISM**

These policies detailing the professional expectations for all attorneys are adopted in order to fulfill our obligation to serve the public with integrity, to ensure the guilty are held accountable and the innocent protected, and to minimize the risk of exposure to liability. We expect attorneys to conduct the business of the office at the highest ethical level and at the same time to use good judgment.

1. Representing the Sonoma County District Attorney

   A Sonoma County Deputy District Attorney, Chief Deputy District Attorney, or Assistant District Attorney (hereafter referred to as Prosecutor) fills several roles when he/she appears in court. In addition to representing the District Attorney, the Prosecutor is an officer of the court and a representative of the People of the State of California. As such, the highest levels of ethical behavior and professional conduct are expected.

   In 1935, United States Supreme Court Justice Sutherland commented on the obligations of the prosecuting attorney:

   "The (prosecutor) is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such he (or she) is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He (or she) may prosecute with earnest and vigor – indeed, (the prosecutor) should do so. But, while (the prosecutor) may strike hard blows, he (or she) is not at liberty to strike foul ones. It is as much (the prosecutor's) duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States (1935) 295 U.S. 78, 88.

2. A Prosecutor is expected to be a vigorous, competent advocate for the People in the pursuit of justice.

3. He/she is expected to act ethically with honor and dignity at all times, recognizing that

prosecutors have a duty to promote confidence in the law and in the administration of criminal justice.

> As concerns the enforcement of the criminal law, the Office of District Attorney is charged with grave responsibilities to the public. These responsibilities demand integrity, zeal and conscientious effort in the administration of justice under the criminal law." (Taliaferro v. Locke (1960) 182 Cal.App.2d 752, 756; Ascherman v. Bales (1969) 273 Cal. App. 2d 707, 708.)

4. Prosecutors are required to be familiar with and comply with their ethical obligations; the California Rules of Professional Conduct; the State Bar Act (Business and Professions Code sections 6000-6228); Sonoma County policies; this Policies and Procedures Manual; and A Sourcebook of Ethics and Civil Liability for Prosecutors, published by CDAA. All attorneys shall observe all ethical boundaries, avoid even the appearance of impropriety, comply with all applicable laws, and refrain from engaging in improper behavior or behavior that others might perceive to be improper. Any activity that gives the impression that District Attorney employees can be improperly influenced in the performance of his/her duties is prohibited.

5. Since Prosecutors ordinarily have sole discretion to determine whom to charge, which charges to file and pursue, and which punishment to seek, the Sonoma County District Attorney's Office is committed to setting the highest standard of excellence in the practice of law. Prosecutors must always exercise discretion in a fair and consistent manner. By doing so we help ensure that justice is served in our courts. It is also essential to maintain public confidence in our work. They must never abuse their discretionary powers and always seek to promote equal justice under the law.

6. A prosecutor' behavior in the office and in the community should serve to assure the public of the trust placed with the District Attorney. They are expected to act professionally at all times and not bring discredit on the office.

7. Prosecutors have a legal responsibility to every citizen of this state to respect and obey the law. That respect is shown by our conduct both while conducting office business and while off-duty. The prosecutor can ill afford a self-interested lapse in judgment resulting in a violation of the law s/he has sworn to obey. Business and Professions Code section 6106.

8. The duties of Prosecutors also include: (1) ensuring that the criminal justice system functions in a manner that fairly vindicates the interests of the public and the defendant; (2) maintaining personal minimal continuing legal education (MCLE); (3) reporting misconduct of other attorneys, judges and professionals; (4) improving the administration of justice; and (5) avoiding the promotion of personal interests above the law.

As with others, this policy does not attempt to define all behaviors. If you are in doubt about the appropriateness of certain conduct, do not engage in it and consult a supervisor. In general, the use of common sense and good judgment, based on high ethical principles, will guide attorneys along lines of acceptable conduct.

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.04	**CHARGING DECISIONS**

A. GENERALLY

The primary responsibility of a Prosecutor in charging is to determine whether or not there is sufficient evidence to convict the accused of the particular crime in question and to authorize the filing of appropriate charges. The Prosecutor should bear in mind at all times that they are charging a crime in the name of the elected District Attorney and that their legal authority to charge crimes is directly delegated to them by the elected District Attorney. Further, that he/she should always be aware of the tremendous authority and responsibility he/she possesses to seek justice and hold criminal offenders accountable under the law for their criminal conduct.

1. Basic Criteria for Charging

The Prosecutor shall charge only if the following four basic requirements are satisfied:

a. The Prosecutor, based upon a thorough consideration of all information readily available, is satisfied that the evidence shows the accused is guilty of the crime to be charged.

b. There is legally sufficient, admissible evidence of a corpus delicti.

c. There is legally sufficient, admissible evidence of the identity of the accused as the perpetrator of the crime charged.

d. The Prosecutor has considered the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the Prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to him/her.

The purpose of this four-step process in evaluating a case is to help avoid the improper filing of cases.

2. Improper Bases for Charging

The following factors constitute improper bases for charging:

a. The race, religion, nationality, sex, occupation, economic class, sexual orientation or political association or position of the victim, witnesses or the accused; or

b. The mere fact of a request to charge by a police agency, private citizen, or public official; or

c. Public or journalistic pressure to charge; or

d. The facilitation of an investigation.

3. Charge Level

The Prosecutor has the responsibility to select a charge or charges which accurately describes the committed offense or offenses and which provides for an adequate sentence.

4. Misuse of Charge Selection Process

The Prosecutor shall not use the charging process to obtain leverage to induce a guilty or no contest plea to a lesser charge prior to trial. Such a misuse of the charging process is both improper and unethical. The credibility of the District Attorney's Office relies on the integrity of its charging policies and processes. There should be a reasonable expectation of conviction on the designated charge.

SONOMA COUNTY DISTRICT ATTORNEY

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.05	**KNOWLEDGE OF THE LAW**

To provide the community with quality legal services, Sonoma County Prosecutors must be professionally competent in the performance of their duties and responsibilities. He/she, no matter what his or her given assignment, should have a thorough and practical knowledge of all relevant laws and procedures for that assignment. Continued self-education in the law and the exercise of sound discretion is the responsibility of the prosecutor.

California Rules of Professional Conduct, Rule 3-110 defines competence in any legal service as the application of diligence, learning, skill, and mental, emotional, and physical ability "reasonably necessary for the performance of the service." This is the minimum standard of competence and Prosecutors in this office are expected to exceed that level of competency. In order to reach and maintain that level of excellence Prosecutors are required to observe the following:

1. Prosecutors must maintain proficiency in the law and are encouraged to excel in their assignments by attending professionally sponsored seminars, conferences, meetings, and workshops. Additionally, legal publications, treatises, and digests are excellent sources for keeping current in our ever-changing profession.

2. Prosecutors should observe experienced prosecutors and defense attorneys in the courtroom. One can always benefit from watching a trial when the participants have reputations for having excellent courtroom skills.

3. Prosecutors must assist one another whenever possible. This is particularly true when a legal or practical issue needs to be resolved in a brief period of time. A spirit of cooperation and teamwork is required among deputies as well as with all district attorney support staff. The combined experience and knowledge in the office is a valuable resource.

4. Every Prosecutor is required to comply with the Minimum Continuing Legal Education (MCLE) requirements of the California State Bar. The program, as the name implies, sets out only minimum continuing legal education requirements. Prosecutors are not only required to meet the minimum standards, they are

expected to exceed them. Prosecutors are strongly encouraged to attend or participate (Webinars) in training opportunities presented by the California District Attorney Association or other appropriate prosecutorial training entities. Prosecutors are also required to attend training presented in the District Attorney's Office. It is the responsibility of the individual Prosecutor to maintain his or her own record of M.C.L.E. attendance and compliance.

If an attorney believes he or she needs further training in a particular area of the criminal law, he or she should contact his or her Chief Deputy District Attorney or the Assistant District Attorney.

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.06	**DISCOVERY**

I. General Policy

Every item that the defense is entitled to inspect under the rules of discovery shall be made available completely and promptly whether or not a formal order exists. Where the circumstances of a case make it advisable to proceed by formal motion and order, defense counsel should be so advised. All "exculpatory evidence and Brady material in accordance with the office's "Brady Policy" found in Article 11 shall be disclosed to the defense or shall be submitted by the prosecution to a court for an in camera review, unless clear authority permits nondisclosure.

II. Law Enforcement Personnel Records (Pitchess Motions)

Whenever a motion is made by opposing counsel for the discovery of confidential police records, the Prosecutor shall request the court to allow the affected agency an opportunity to appear with counsel to litigate the merits of the motion in conformance with the procedure delineated in Evidence Code section 1043.

III. Address and Telephone Numbers of Victims and Witnesses

Pursuant to Penal Code section 1054.2, standard discovery orders include an order that defense counsel not disclose to the defendant the address or telephone number of a victim or witness. The same order shall be sought whenever a discovery motion is based on a nonstandard order.

Additionally, investigative reports shall not be furnished directly to a defendant acting in propria persona without the approval of the Prosecutor assigned to the case or a supervisor. Before giving such approval, an attorney shall consider whether to decline discovery and seek court-ordered restrictions pursuant to section 1054.2(b) or 1054.7.

IV. Stipulation with the Sonoma County Public Defender and Approved by the Sonoma County Superior Court (Filed November 24, 2014):

IT IS HEREBY STIPULATED AND AGREED BETWEEN THE PARTIES, THE SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE, BY AND THROUGH JILL RAVITCH, DISTRICT ATTORNEY; THE SONOMA COUNTY PUBLIC DEFENDER'S OFFICE, BY AND THROUGH KATHLEEN POZZI, PUBLIC DEFENDER; AND THE SONOMA COUNTY SUPERIOR COURTS, BY AND THROUGH THE HONORABLE KEN GNOSS, that:

1. Reciprocal Standard Discovery is agreed to and adopted in all cases in which the parties are the People of the State of California, represented by Jill Ravitch, District Attorney, Sonoma County District Attorney's Office, and the Sonoma County Public Defender's Office, represented by Kathleen Pozzi, Public Defender, as set forth herein;

2. This Stipulation and Agreement as to each party shall be effective when the Court appoints the Sonoma County Public Defender to represent a defendant or defendants in criminal matters or juvenile delinquency matters proceeding in the Superior Courts of Sonoma County;

3. The Sonoma County District Attorney shall disclose and make available to defendant's attorney for examination, copying, viewing, hearing and/or recording, any and all of the following things, facts, or information in her possession, or which she knows to be in the possession of any agent or employee of the District Attorney, the Sheriff of Sonoma County, the Coroner of Sonoma County, any arresting officer, investigating officer, members, employees, or agents of any law enforcement or other agency having such information, as presented in the Discovery Duties of the Sonoma County District Attorney, (Below);

4. The Sonoma County Public Defender shall disclose and make available to the District Attorney for examination, copying, viewing, hearing and/or recording, any and all of the following things, facts, or information in her possession, or which she knows to be in the possession of any agent or employee of the Public Defender, as presented in the Discovery Duties of the Public Defender, (Below);

5. The Discovery Duties of each respective agency under this Stipulation and Agreement are applicable to any such items that, during the course of investigation, preparation for trial, and trial, come to the attention or into the possession of the District Attorney, her deputies, agents or employees, and/or the Public Defender, her deputies, agents or employees;

6. The parties stipulate that this informal discovery agreement constitutes the "informal

request of opposing counsel" pursuant to Penal code section 1054.5(b) for compliance by the parties with Penal Code section 1054.1 and 1054.3, and specifically for the materials detailed in the Discovery Duties of the District Attorney and the Public Defender on pages 3 through 5 of this document. Thus, the parties stipulate that if a party has not complied with discovery pursuant to Penal Code sections 1054.1 and 1054.3, and specifically for the items listed in the Discovery Duties of this document, within 30 days of trial it will constitute a failure to comply with an informal request for discovery and the opposing party may seek a court order.

7. The parties stipulate that, in the juvenile delinquency proceedings, the name(s) of any experts to be called and copies of their reports, the names of any witnesses to be called, and copies of any documents to be introduced at the hearing on the merits shall be made available to all parties no later than two court days after pre-trial confirmation.

8. This is a continuing agreement, to cover not only all requested information presently available, but all requested information which may become available at a future time.

DISCOVERY DUTIES OF SONOMA COUNTY DISTRICT ATTORNEY

This criminal discovery order applies specifically to trial-related discovery solely.

1. All statements or utterances by a defendant, oral or written, whether or not recorded or preserved, whether or not signed or acknowledged by the defendant.

2. The names and addresses of all witnesses the prosecution reasonably anticipates it is likely to call, whether in its case-in-chief or in rebuttal. No addresses or telephone numbers provided may be disclosed to a defendant except as provided in Penal Code section 1054.2.

3. All relevant oral, written or recorded statements of witnesses, or reports of the statements of witnesses who the prosecutor intents to call at trial. To the extent that information, contained in raw notes, is incorporated into a formal report, the notes need not be preserved.

4. Examination upon request of the defendant of all physical evidence obtained in the investigation of the case against defendant.

5. All reports concerning the testing and examination of said physical evidence.

6. All reports of statements of experts made in conjunction with the case, including the

results of physical or mental examinations, specific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at trial.

7. All photographs, motion pictures, or video tapes taken of the defendant at or near the time of his arrest in this case, and any and all electronic media, i.e., CDs, DVDs, etc.

8. Examination upon request of the defendant of all photographs, video tapes, motion pictures, composites, or likenesses shown to witnesses or prospective witnesses in this case for the purpose of establishing the identity of suspects in the crime charged against the defendant, and all reports concerning the above.

DISCOVERY DUTIES OF SONOMA COUNTY PUBLIC DEFENDER

Disclosure requirements applicable to prosecution are pertinent to determination of corresponding requirements applicable to the defense.

1. The names and addresses, if known or reasonably accessible, of all witnesses the defense reasonably anticipates it is likely to call at trial.

2. All relevant oral, written or recorded statements of witnesses or reports of the statements of witnesses who the defense intends to call at trial. Any information in raw notes which is incorporated into a formal report need not be preserved.

3. All reports or statements of experts made in connection with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at trial. This includes any original documentation of said examination, tests, experiments, or comparisons.

4. Any real, i.e., tangible or physical, evidence which the defendant intends to offer in evidence at the trial.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.07	**DUTY REGARDING VICTIM/WITNESS CRIMINAL HISTORY**

In order to comply with the requirements of Penal Code section 1054.1, the trial attorney shall include as a part of trial preparation a criminal history check of any prosecution witness you intend to call, who is material to the case or whose credibility is likely to be critical to the outcome of the trial. As a best practice, attorneys should routinely obtain criminal history checks of all witnesses. Facts regarding a witness' prior felony convictions, or conduct involving moral turpitude, should be given to defense counsel at least thirty days before trial.

Additionally, this requirement also applies to Preliminary Hearings. This includes providing evidence of moral turpitude in the criminal histories of lay witnesses to the defense prior to the Preliminary Hearing even if that witness' testimony is being provided by police officer pursuant to Proposition 115. See Sonoma County Brady Policy at http://sc-sharepoint/da/BradyPolicy Documents/default.aspx under the tab labeled "Brady Policy Documents".

A witness is material if his or her testimony is critical or vital to the prosecution's case, the testimony is non-cumulative, and the testimony is on a disputed issue. (See *People v. Williams* (1997) 16 Cal.4th 635, 653, *Giglio v. United States* (1972) 405 U.S. 150, 154-155 [92 S.Ct. 763, 766].)

Attorneys shall be familiar with and comply with the current informal discovery stipulation. The receipt of an informal request for standard discovery creates a "prosecution duty to disclose the felony convictions of all material prosecution witnesses if the record of conviction is 'reasonably accessible' to the prosecutor." (*People v. Little* (1997) 59 Cal.App.4th 426, 432, (Third District Court of Appeal, new trial order affirmed, rehearing denied), *In Re Littlefield* (1993) 5 Cal.4th 122, 136;, Penal Code sections 1054.1, 1054.5.)

"Since the prosecutor has reasonable access to rap sheets, and he has "possession" under *Littlefield*, we conclude that a prosecutor shall, on a standard discovery request inquire of "the existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial. (§ 1054.1, subd.(d); see *People v. Santos* (1994) 30 Cal.App.4th 169, 176 [35 Cal.Rptr.2d 719] [prosecution must disclose the record of a felony conviction, but they need not disclose the actual rap sheets]."

(*Little, supra* at p. 433, italics added.)

The prosecutor shall disclose the existence of any felony conviction suffered by a material witness to the defendant or his attorney at least thirty days prior to trial, "unless good cause is shown why a disclosure should be denied, restricted, or deferred." (*Ibid.*; see Penal Code section 1054.7.)

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.08	**REPORTING RESPONSIBILITIES FOR STATE BAR COMPLAINTS**

Any State Bar Association complaint against an attorney of the District Attorney's Office and, or, any contact by the State Bar Association regarding an attorney's practice of law must be reported promptly to their supervising Chief Deputy District Attorney or Assistant District Attorney by the individual attorney notified of the complaint or attorney contacted by the State Bar Association. The Chief Deputy District Attorney and Assistant District Attorney will consult with and make appropriate referrals to County Counsel.

This policy is not to be confused with court room claims of prosecutorial misconduct by a defense attorney. That situation is addressed in Section 7.21, "Conduct With Members of the Bar."

Additionally, prosecutors shall comply with Business and Professions Code section 6101 (b) which requires…."district attorney[s]….[to] notify the Office of the State Bar of California of the pendency of any action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts."

Prosecutors are also required to comply with Business and Professions Code section 6054, which necessitates cooperation with the State Bar Investigation.

If a prosecutor discovers that an attorney is being prosecuted by this office, they shall promptly notify their supervising Chief Deputy District Attorney of that fact and fill out the attached form which may also be filled out online at **http://www.calbar.ca.gov/Attorneys/forms.aspx** under "Reportable Actions". They shall then email it to **sbnotice.prosecutor@calbar.ca.gov** or fax it to State Bar's Intake Unit at (213)765-1168. They must then place a copy of the filled out form in the criminal file.

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.09	**CASE COORDINATION**

A Prosecutor assigned to a case is responsible for coordinating any other cases that the defendant may already have pending in our County, as well as in other jurisdictions. The attorney is responsible for reviewing, and obtaining if not already in the case file, the appropriate documentation to determine whether and where a defendant has any other pending cases. Clerical or Investigations staff can be of assistance where appropriate.

When a defendant has multiple cases pending in this office, the Prosecutor assigned the case with the most serious charges shall handle the entire prosecution (vertical units trumping general felonies, etc.), unless a supervising Chief Deputy approves another arrangement. If there is any confusion, raise the matter with a supervisor immediately.

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.10	**ADVISING POLICE OFFICER/AGENCIES**

A prosecutor is expected to advise law enforcement officers regarding applicable law. The People of the State of California and the County of Sonoma have a right to anticipate the cooperation of the District Attorney in the continuing education of law enforcement officers.

Guidance should typically be given within the area of the attorney's expertise. For instance, a member of the gang unit generally should not answer questions regarding sexual assault statutes. Instead, where there is no exigency and attorneys with the appropriate expertise are readily available, officers and detectives should be referred to the appropriate vertical prosecutor. This will ensure the best possible guidance and consistency in advice.

Attorneys who receive legal questions to which they do not know the answer should consult with their team members, team leader, supervising Chief Deputy District Attorney or Assistant District Attorney.

The manner of the referral is also important. Do not merely transfer the telephone call or refer the officer to another attorney until you personally contact an attorney qualified to answer his or her question, unless time or other necessity prohibits it. We strive to be responsible and consistent in our dealings with law enforcement. Although we realize that no two circumstances are alike, attorneys should respond to questions from law enforcement with courtesy, consistency, and professionalism.

Questions of police strategy should be left to the law enforcement agency. Questions regarding civil matters should be referred to their city attorney or County Counsel.

In the normal course of business, there is rarely a need for a prosecutor to "participate in a plan of action and to go along" on the execution of a search warrant or a raid. (See, *Hampton v. Chicago* (1973) 484 F.2d 602, 608.)(Qualified immunity function for prosecutor.) Exceptions to this rule exist and must be discussed with the Chief Deputy District Attorney or Assistant District Attorney before accompanying an officer on a raid or service of a search warrant.

POTENTIAL LIABILITY ISSUES

A prosecutor acting in his or her official capacity, which "is intimately associated with the judicial phase of the criminal process," does so with absolute prosecutorial (quasi-judicial) immunity from civil lawsuit. (*Burns v. Reed* (1991) 500 U.S. 478, 486; *Imbler v. Pachtman* (1976) 424 U.S. 409.) When doing search warrants or in advising police agencies, District Attorneys may not have absolute immunity. Attorneys responding to questions from law enforcement officers should know the law and carefully consider the response and its intended purpose. (*Burns v. Reed, supra,* 500 U.S. at 487.)

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.11	**CONDUCTING INVESTIGATIONS AND INTERVIEWS**

Interviewing witnesses is a critical component of thorough trial preparation. Interviews should be conducted in a manner to avoid suggesting answers to the witness. Ask non-leading questions. All identifying and contact information (full name, date of birth, address, telephone numbers, occupation and employer) should be obtained and confirmed at the outset from each witness. Interview the witness exhaustively about his or her personal observations and knowledge of the facts in dispute, and any bias or interest. Every effort should be made to determine exactly what the witness remembers. Care should be exercised to avoid forcing, even inadvertently, the witness's recollection to parallel that of the complainant or of any other witness. Do not show a witness, or inform them of, the statements of others unless the witness is an expert and the information is needed as a basis for his or her opinion.

The decision to share a witness' prior written or taped statement with the witness during the interview in preparation for hearing or trial is a matter of tactics. Inexperienced trial attorneys should discuss the matter with their team leader or supervisor.

A witness must always be admonished to tell the truth, respect the court, report any threats to his or her safety, and stay in contact with the attorney or investigator during the pendency of the case. If the witness is to be personally served with a subpoena, time will be saved by having an investigator or police officer serve it at the time of the trial preparation interview.

The disclosure of new evidence or inconsistencies with prior statements during the interview must be given as discovery to the defense counsel as soon as possible.

District Attorney Investigators and experienced detectives are excellent resources for attorneys in interviewing reluctant or hostile witnesses, or witnesses with sensitive issues. Observing their techniques based on many years of experience developing rapport with people in a variety of contexts can be a valuable learning tool for less experienced attorneys or attorneys newly assigned to a vertical unit.

Remember to keep the victim advocate involved in scheduling of victim interviews so that they can be present in support of the victim. Advocates are also excellent resources for assisting prosecutors and investigators with easing victims' concerns and

fears. They can absorb some of the time consuming non-legal or basic questions and emotional aspects of the process, allowing the prosecutor and investigator to efficiently use limited interviewing time.

POTENTIAL LIABILITY ISSUES

As discussed elsewhere prosecutors ordinarily should not interview prospective witnesses except in the presence of a third person to avoid the possibility of becoming a witness in a jury trial where the prosecutor is the advocate. As discussed elsewhere prosecutors shall not interview a represented party without the permission of the party's attorney.

WITNESS TIPS / INSTRUCTIONS

The prosecutor or District Attorney Investigator should run through the witness tip sheet (see attached) with each witness in preparation for testimony. Of particular importance is notifying witnesses of pertinent *in limine* instructions.

TIPS FOR WITNESSES

1. TELL THE TRUTH
2. Walk to the witness stand without hesitation.
3. Try to relax as much as possible.
4. When taking the oath, hold your head high; answer “I do,” loudly.
5. Dress neatly, but not too fancy. Wear what you would wear to an important meeting.
6. Don’t chew gum or wear sunglasses while testifying.
7. Speak up so that the jury can hear you.
8. Do not nod your head. Say “yes,” or “no.”
9. If you do not understand a question, say so.
10. Keep your hands away from your face and mouth.
11. If you do not hear a question, ask that it be repeated.
12. Address the judge by saying, “Your Honor,” and the attorneys as “Mr.” or “Ms.”
13. If you don’t know an answer, say “I don’t know.” Do not guess.
14. If you estimate time or distance, say that it is an estimate.
15. Answer questions fully, but do not volunteer information if not asked.
16. Listen to the question carefully before answering.
17. If an attorney objects, stop talking. Wait until the judge overrules or sustains an objection.
18. If an answer needs an explanation, say so, then explain.
19. If you make a mistake in an answer, say so, then correct it.
20. Do not memorize your testimony.
21. Do not be afraid to admit you discussed this case with the prosecutor or anyone else.
22. The defense attorney has a right to ask to talk to you before trial.
23. It is up to you to decide whether you want to talk to the defense attorney before trial.

24. Do not get upset with the defense attorney when you are being cross-examined.
25. If you get angry with the attorney, you may become confused, which is what he wants.
26. On cross examination, do not look at the prosecutor as if looking at him/her for answers.
27. Yes/No example - Brown/Black: Isn't it fair to say "brown"?
28. TELL THE TRUTH.

Advise the witness of any/all relevant *In Limine* Rulings/Instructions.

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.12	**THE PROSECUTOR AS A WITNESS**

A Prosecutor may not appear as a witness in a case she/he is trying before a jury without the express permission of the District Attorney. (Rules of Professional Conduct, Rule 5-210) Issues related to this possibility shall be brought forthwith to the supervising Chief Deputy District Attorney.

While the law does not preclude an attorney from being a witness, the California Rules of Professional Conduct sets the standard for the advocate as a witness in a matter before a jury.

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.13	**CONTINUANCES**

It is the policy of this office to bring all criminal cases to hearing and trial at the earliest date. All Prosecutors shall assist and cooperate with the courts whenever possible to avoid continuances and delays, to promote efficient court calendar management, and expedite trial of cases.

The welfare of the People of the State of California requires that criminal proceedings shall be set for trial, tried, and determined at the earliest possible time. It is the duty of all courts and prosecuting attorneys to expedite the proceedings to the greatest degree consistent with the ends of justice. Criminal cases have precedence over and are set for trial without regard to civil matters. (Penal Code § 1050(b).) Criminal trials may not be continued except upon affirmative proof in open court and upon reasonable notice that the ends of justice require continuance. (Penal Code § 1050(b).)

Attorneys should be familiar with the statutory provisions governing case precedence as well as the consequences and remedies when lacking good cause for a continuance, such as trailing rights, effect on custodial status, re-filing options.

When the prosecution requires a continuance, the Prosecutor should timely file the Penal Code § 1050 motion demonstrating good cause, and notify the magistrate and defense counsel as soon as possible.

The policy of the office is not to agree to continuances of preliminary hearings or trials except under the conditions provided in Penal Code § 1048 and Penal Code § 1050(b). The Prosecutor should not agree to, or request a continuance unless good cause exists. Last minute continuances by either party should be avoided. If they occur, when there is not enough time to notify victims or witnesses, the prosecutor should explain the reason for the continuance to them and schedule the next court hearing at the convenience of the victim(s) or witness(s).

In cases where the victim is a minor, elderly, dependent, or sexual assault victim as defined in Penal Code § 1048(b), prosecutors shall make every effort to be ready for trial accordingly,

and unless the interests of justice demand otherwise, oppose continuances, and require that good cause findings be entered on the record as provided by the statute.

It is the responsibility of the Prosecutor requesting or agreeing to the continuance to ensure the prompt notification of the law enforcement agency involved and the witnesses. Victims and witnesses must be notified in accordance with Marsy's Law and Penal Code § 679.02(a)(1). (See Marsy's Law policy of this office.)

When a continuance is granted to the defendant, the Prosecutor must ensure the defendant waives his/her right to a speedy trial as provided for in Penal Code §1382. When multiple defendants are charged in the same complaint, the Prosecutor shall make every effort to ensure appearance dates are the same for each defendant. (See Penal Code § 1050.1.)

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.14	**BODY ATTACHMENT POLICY**

Whenever a Prosecutor intends to seek a warrant of attachment for a material witness ("body attachment") in a criminal case, he or she will first seek the approval of their supervising Chief Deputy District Attorney, or when exigency requires and the supervising Chief Deputy District Attorney is unavailable, then another Chief Deputy District Attorney, the Assistant District Attorney or the District Attorney.

This office seeks body attachments in rare instances. While there are circumstances, such as the seriousness of the crime and dangerousness of the defendant, that may fully justify seeking this remedy, we want to be mindful of treating victims and witnesses with dignity and respect, using this tool with deliberation and as a last resort. Chief Deputy District Attorneys have the authority to authorize any warrant of attachment pursuant to this policy.

Once the order is issued, the assigned Prosecutor will take all necessary steps to ensure speedy process. In no instance is a domestic violence victim to be incarcerated on a warrant of attachment.

Before seeking a warrant of attachment for a material witness, prosecutors should be thoroughly familiar with the applicable and related code sections, and file the appropriate pleadings called for by the facts and circumstances of the case:

CCP §708.170
CCP §491.160
CCP §1209
CCP §1212
CCP §1219
CCP §1993
PC §1331

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.15	**CIVIL COMPROMISES**

It has been stated that civil compromise serves a public need for efficient administration of justice in resolving "relatively minor disputes by eliminating two proceedings - the criminal prosecution of the defendant and the victim's civil suit for financial compensation". (*People v. Tischman* (1995) 35 Cal.App.4th 174, 178.)

Public offenses may be compromised with permission of the court, (Penal Code § 1379) if the injured person appears before the court where the case is pending, at any time prior to trial, and acknowledges that she/he has received satisfaction for the injury, (Penal Code § 1378) except when it is committed as defined in Penal Code § 1377, or committed "with the intent to commit a felony".

Offenses committed by or upon a peace officer; domestic violence cases; and those cases in which an elderly person or a child is the victim as defined specifically in Penal Code § 1377, may not be the subject of a civil compromise. (See *People v. Tischman, supra,* 35 Cal.App.4th 174.) (A misdemeanor hit and run where there is only property damage was subject to civil compromise.) "Accordingly, we too believe that, so long as the civil cause of action shares a common element with the criminal offense, compromise is available, subject to the court's discretion to reject a compromise where extenuating circumstances warrant rejection." (*Id.*, at p. 181.)

The application of Penal Code §§ 1377 and 1378 should be reserved for cases involving minor altercations and minimal property damage cases. Only misdemeanors which give rise to civil remedy, such as assault, battery, theft, hit and run, and malicious mischief, are subject to civil compromise under the Penal Code.

Before any case is compromised pursuant to these sections, the prosecutor should receive in writing from the injured party, a signed statement indicating that the victim has been compensated for his injury and that he wants the case to be terminated pursuant to these sections. The statement should be included in the office file.

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.16	**CIVIL RELEASE**

As a matter of general policy, this office will not participate in negotiations that may lead to the execution of a civil release. A civil release involves an agreement, usually in writing, where a defendant promises not to bring a civil suit (or stipulates that there was probable cause for his or her arrest) against an entity associated with the prosecution of his or her criminal matter in exchange for the dismissal of that matter.

More importantly, prosecuting attorneys will not offer[1] a dismissal in return for a defendant's promise to forego a civil lawsuit.

Nor will prosecutors dismiss a Penal Code section 148 case for a stipulation to probable cause for the arrest. Underlying this policy is one that states that we will not charge or prosecute cases that cannot be proved beyond a reasonable doubt merely to protect a party, witness or victim of a crime from a civil law suit.

POTENTIAL LIABILITY

While the agreements allowing civil release have been held to be enforceable, a prosecutor who participates in a civil release agreement may jeopardize his or her license to practice law. See State Bar Formal Opinion No.1989-106 (and discussion following). See Rules of Professional Conduct, Rules 5-100 and 5-110.

An attorney who believes a certain misdemeanor case falls within the policy guidelines should discuss it with a Chief Deputy District Attorney or higher. Participation in civil release negotiations may not be done without the permission of a supervisor. See Civil Compromise Penal Code sections 1377, 1378 and 1379.

[1]Both *Newton v. Rumery* (1987) 480 U.S. 386 and *Hoines v. Barney's Club, Inc.* (1980) 28 Cal.3d 603 involved cases where the defendant offered a release from civil lawsuit in exchange for the dismissal of criminal charges.

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.17	**CLAIMS OF FACTUAL INNOCENCE**

The twofold aim of the prosecutor "is that guilt shall not escape nor innocence suffer." (Berger v.United States (1935) 295 U.S. 78, 88.) Even "after a conviction the prosecutor . . . is bound by the ethics of his office to inform the appropriate authority of . . . information that casts doubt upon the correctness of the conviction." (Imbler v. Pachtman (1976) 424 U.S. 409, 427, fn. 25; People v. Garcia (1993) 17 Cal.App.4th 1169, 1179.) Cases in which DNA evidence has exonerated convicted defendants, sometimes after they have served years in prison for crimes they did not commit, serve as important reminders that we must remain vigilant to avoid the conviction of an innocent person.

Before and during trial, claims of factual innocence shall be carefully evaluated by the assigned Prosecutor in light of all of the evidence in the case. Where dismissal is appropriate, it must be approved by his/her Chief Deputy District Attorney, the Assistant District Attorney, or the District Attorney. A Prosecutor must obtain supervisor approval before agreeing to a finding of factual innocence pursuant to Penal Code section 851.8 after a rejection of prosecution, dismissal, or acquittal.

After conviction, claims of factual innocence shall be referred to the Prosecutor who handled the case and his supervisor. The defendant shall have the initial burden to produce evidence of innocence. The request must raise a meaningful claim of factual innocence and not be merely a request for resentencing, a reweighing of conflicting evidence, or for relief from immigration consequences. An initial inquiry shall be made to determine whether further review and/or investigation are appropriate. Factors to be considered include, but are not limited to:

- The evidence of guilt,
- The plausibility of the claims,
- Whether the claims were known or reasonably should have been known to defendant prior to conviction,
- Whether the issues were previously investigated or litigated,
- Whether the defendant has consistently asserted his or her innocence, and
- Whether additional testing or investigation would be helpful in resolving the issues.

The fact that the claims have been previously rejected by a trial court or appellate court shall be considered, but does not necessarily preclude further inquiry. (See Penal Code section 1405, providing that a convicted incarcerated defendant may make a motion for DNA testing.) Dismissal or vacating a misdemeanor case after conviction based upon factual innocence shall be approved by the Chief Deputy District Attorney or Assistant District Attorney. Dismissal or vacating a felony case after conviction based upon factual innocence requires the approval of the Assistant District Attorney or District Attorney.

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.18	**CONDUCT WITH THE COURT AND JUSTICE SYSTEM**

In our profession, the reputation and integrity of an attorney is often critical in interacting positively with the courts and other members of the justice system. As public prosecutors, we must be ever vigilant in making certain that our conduct is above reproach and brings credit to the office. Therefore, a prosecutor's conduct toward the court and the court's staff should be characterized by courtesy, respect and professional integrity. The dignity and respect due the judicial officer requires that when speaking directly to the court, you address him or her as "Your Honor."

1. As an officer of the court, honesty is essential in your interaction with the court and others. The credibility of a prosecutor should never be called into question.

2. Your demeanor inside and outside of the courtroom should always be professional.

3. Deputies should be careful to avoid even the appearance of impropriety.

4. If you are aware of a conflict of interest, or the appearance of one, report it to a supervisor.

As Section 5.2 of the American Bar Association, Standards for Criminal Justice, Prosecution Function (1974), states:

> "The prosecutor should support the authority of the court and the dignity of the trial courtroom by strict adherence to the rules of decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses, defendants, jurors and others in the courtroom."
>
> "When court is in session the prosecutor should address the court, not opposing counsel, on all matters relating to the case. It is unprofessional conduct for a prosecutor to engage in behavior or tactics purposefully calculated to irritate or annoy the court or opposing counsel. A prosecutor should comply promptly with all orders and directives of the court, but he has a duty to have the record reflect adverse rulings or judicial conduct

that he considers prejudicial. He has a right to make respectful requests for reconsideration of adverse rulings."

Upon being "sworn in" after passing the bar examination and again, as a prosecutor, each attorney took an oath to obey the Constitution and the laws of the United States and California. As prosecutors, we are required to know the law and apply it in a just and honest fashion. (California Rules of Professional Conduct, Rule 3-110.) We respect the authority of the courts and seek to maintain the dignity of the courtroom. While these rules are applicable to all attorneys, prosecutors are required to set the standard for excellence, fairness, and justice in the practice of law. In court, we address the court, not opposing counsel. The prosecutor does not engage in disparaging conduct merely because the defense attorney has done so. The prosecutor is candid and truthful in all dealings with the legal community and the court. (Business and Professions Code sections 6068(b) and (d).)

Prosecutors cite controlling legal authority with precise accuracy. A prosecutor does not mislead the court or counsel, or knowingly allow a witness to testify to a falsehood. (California Rules of Professional Conduct, Rule 5-200.) The prosecutor discloses all material, exculpatory evidence in possession of the prosecution team. (*Brady v. Maryland* (1963) 373 U.S. 83, 87.)

The prosecutor's charging decision is based upon established facts following a thorough investigation; a review of evidence that is legally admissible; being assured that evidence establishing the identify of the accused is legally sufficient; and that the probability of conviction is appreciable. The prosecutor does not "overcharge" simply to exact a guilty plea to a lesser charge. A prosecutor maintains his or her objectivity in exercising the charging decision. (California Rules of Professional Conduct, Rule 5-110.)

The prosecutor uses peremptory challenges to select jurors who will decide the case in a fair and impartial manner. The prosecutor does not use challenges to exclude members of a legally protected group. Bias and discriminatory conduct on the part of the representative of the people is unconstitutional and erodes respect for the criminal justice system. (See *People v Wheeler* (1978) 22 Cal. 3d 258.)

The prosecutor treats all members of the public, victims and witnesses of crime with respect, courtesy, honesty, compassion, and dignity. The prosecutor does not try his or her case in the media, nor attempt to take any unlawful or unethical advantage in the trial of an accused.

An attorney representing this office should "not directly or indirectly give or lend anything of value to a judge, official or employee of a tribunal unless the personal or family relationship between the member and the judge, official, or employee is such that

the gifts are customarily given and exchanged." (California Rules of Professional Conduct, Rule 5-300(A).)

Attorneys must be punctual and prepared for all court appearances. The court and counsel should be notified if an attorney anticipates being detained on another matter. If an attorney has multiple appearances scheduled for the same time, he or she should make arrangements to have those appearances covered in his absence, which can be satisfied by placing a note on the calendar for another Prosecutor appearing in that courtroom. However, if there are not going to be other Prosecutors in that court room he/she should make sure that the court gives him/her permission to go to another appearance before leaving. Leaving a note with the clerk or the bailiff or some other form of the message for the court is not sufficient.

Sonoma County Prosecutors and staff members will not engage in conduct that brings disorder, disrespect, or disruption to the courtroom, or allow prosecution witnesses to engage in such conduct. The decorum of the courtroom should be explained to all witnesses before calling them to testify. Courtesy toward the court includes refraining from the use of court telephones, computers, and other resources in a manner inconsistent with court rules (inaudible electronics) or without permission of the court or staff.

Failure to adhere to court rulings, showing disrespect and generally engaging in rude, contemptuous behavior can result in contempt, admonishment in front of the jury and money sanctions pursuant to Code of Civil Procedure section 177.5, in addition to disciplinary action by this office. (See *People v. Chong* (1999) 76 Cal.App.4th 232; *Williams v. Superior Court* (1996) 46 Cal.App.4th 320, 330.)

This is merely a summary of the duties and responsibilities of the prosecutor. All Prosecutors are expected to adhere to a standard of practice that affords both the attorney and the office the highest reputation for ethical conduct.

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.19	**COMMUNICATION WITH COURT AND JURORS**

CONTACT WITH THE COURT

A Prosecutor "shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except:

1. in open court; or
2. with the consent of all other counsel…;
3. in the presence of all other counsel…;
4. in writing with a copy …furnished to such other counsel…; or
5. in ex parte matters."

(California Rules of Professional Conduct, Rule 5-300 (B).)

For purposes of this rule "the term "judge" or "judicial officer" includes law clerks, research attorneys and other court personnel who participate in the decision-making process." (California Rules of Professional Conduct, Rule 5-300(C).)

CONTACT WITH JURORS

Prosecutors should be familiar with California Rules of Professional Conduct, Rule 5-320 in its entirety, and specifically its prohibition against a member (prosecutor) "connected with a case" communicating "directly or indirectly with anyone the member knows to be a member of the venire from which the jury will be selected for trial of that case." Additionally, it prohibits, during trial, a prosecutor not "connected with a case" from communicating "directly or indirectly with a known member of a jury." Attorneys shall promptly reveal all contacts with any jurors to the court.

In and around the Hall of Justice, attorneys and employees should take reasonable care not to discuss pending cases or matters that may "indirectly" influence the juror if they are in hearing distance of any one who may be a potential juror. Generally, attorneys and staff members should avoid discussing cases any place except our offices. Courthouse hallway discussions with pending witnesses should be done in a manner to

prevent others from overhearing the conversation. Witness conference rooms are preferred locations for discussions.

Attorneys should instruct all witnesses, including police officers, that they should never communicate with jurors whether impaneled, discharged or excused. Rule 5-320(I) defines "juror" as any impaneled, discharged, or excused juror. A juror's conversation with a witness is juror misconduct. (*People v. Ryner* (1985) 164 Cal.App.3d 1075, 1081; *Turner v. Louisiana* (1965) 379 U.S. 466; Penal Code §1122.)

However, a trial Prosecutor may discuss the case with willing jurors only after the case has been resolved and the judge has discharged the jury. Any attempt to contact discharged jurors after they have returned to their homes must be in compliance with Code of Civil Procedure section 237. This section details the procedure for requesting juror identifying information held by the court. All communication with jurors should be courteous and professional. Rule 5-320 of the California Rules of Professional Conduct states, in part:

> "After discharge of the jury from further consideration of a case a member (of the State Bar) shall not ask questions or make comments to a member of that jury that are intended to harass or embarrass the juror or to influence the juror's actions in future jury service."

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.20	**CCP § 170.6 CHALLENGE**

Code of Civil Procedure § 170.6 allows a party through his or her attorney to file a "one time in each case" peremptory challenge of judge for bias or prejudice. The bias or prejudice need not be proven. The declarant need only swear under penalty of perjury to a good faith belief that he or she cannot have a fair trial before the named judge. The motion need not be noticed to opposing counsel, but it must be timely. CCP§ 170.6(2). Although CCP § 170.6(2) allows oral, sworn challenges, motions filed on behalf of the District Attorney's office shall be in writing. The form of the declaration is set out in CCP § 170.6(5).

The written challenge must be prepared and submitted to the Supervising Judge Criminal at the time of any assignment from the master trial calendar. (CCP § 170.6(2).)

Where the judge (other than a judge assigned to the case for all purposes) or court commissioner, assigned or scheduled to try the cause or hear the matter is known at least ten (10) days before the date set for trial or hearing, the motion shall be made at least five (5) days before that date. (CCP § 170.6(2).)

If the attorney intends to challenge a particular judge, he or she must not enter into pretrial discussions in that department.

However, a Deputy District Attorney shall not exercise a Code of Civil Procedure § 170.6 peremptory challenge (good-faith belief of prejudice against party, attorney, interest, etc.) of a judge without discussing the reasons for the proposed challenge with a Chief Deputy or Assistant District Attorney and obtaining his/her approval before exercising the challenge. Challenges can interrupt the orderly administration of justice and should be used sparingly.

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POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.21	**CONDUCT WITH MEMBERS OF THE BAR**

A Prosecutor's conduct with opposing counsel should be characterized by courtesy, respect, and professional integrity.

In fulfilling our duty to represent the people of the State of California and County of Sonoma, the prosecutor should always be mindful of our obligation to pursue truth, improve the administration of justice, provide exemplary public service, and treat all members of the public, which includes the defendant and opposing counsel, with respect.

Members of the Bar have a right to represent their clients in dealing with the District Attorney's Office. They have the right and the duty to advance the interest of their client by lawful and ethical means. They also have a right to expect members of the District Attorney's office to recognize this fact.

The vast majority of members of the private Bar are professionally competent and ethical. Every effort should be made to judge both the defendant and the facts of each case on the merits. A defendant has a right to expect fair and equitable treatment from every attorney in this office. Past offensive conduct by defense counsel should not influence the prosecutor's subsequent treatment of counsel's clients.

In their interaction with opposing counsel, whether in court, or otherwise, Prosecutors should abstain from disparaging personal remarks or acrimony towards other counsel nor encourage or authorize any person under his/her control to engage in such conduct. (See Business and Professions Code § 6068(f); Rules of Professional Conduct, Rule 5-200.)

On occasion a prosecutor may feel that defense counsel has engaged in unethical, or possibly criminal, conduct. For example, he/she may feel that an attorney is attempting to dissuade a witness. Immediately report any such circumstances to a supervisor. Do not take any action without consulting a supervisor. Once management staff has had an opportunity to review the facts and confer with the prosecutor, appropriate action will be taken. See Section 7.34 Protocol for Allegations of Prosecutorial Misconduct stated below in this Policy and Procedures Manual.

Additionally, there may be occasions when a prosecutor is accused of misconduct in court by a defense attorney. Prosecutors are expected to know and follow the procedures set forth in Section 7.34 Protocol for Allegations of Prosecutorial Misconduct stated below in this Policy and Procedures Manual.

As with others, this policy does not attempt to define all behaviors. If a prosecutor is in doubt about the appropriateness of certain conduct, they should not engage in it and consult a supervisor.

Employees are permitted to refer business to or otherwise recommend private attorneys or law firms, where the referral is sought on a criminal matter. However, caution should be exercised in deciding whether to make the referral or who to refer it to, especially when the case is one that will be handled by the Sonoma County District Attorney's Office. At least three names must be given to the inquiring party in the event that the employee decides to make the referral. Where no personal gain will result, or appear to result, referrals may be made in civil matters by providing a list of at least three attorneys or firms. In no event shall an employee accept compensation of any kind for a referral, whether it be criminal or civil.

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.22	**COMMUNICATION WITH REPRESENTED PARTY**

POST-CHARGING CONTACT WITH A REPRESENTED DEFENDANT

Prosecuting attorneys contacted by a represented party after charges have been filed shall not talk with the party concerning the subject of that representation without the permission of the party's attorney. (Professional Rules of Conduct, Rule 2-100) This includes contact initiated by a defendant who is represented by counsel. *United States v. Lopez* (9th Cir. 1993) 989 F.2d 1032. "The prosecutor's ethical duty to refrain from contacting represented defendants intensifies upon indictment for the same reasons that the Sixth Amendment right to counsel attaches." (*Id.* at p. 1038.)

Attorneys (and District Attorney Investigators) should not initiate contact with a "party" known to be represented by counsel in a pending case. Prosecutor or police officer (investigator) initiated contact with a represented party can result in State Bar disciplinary action, a contempt citation, suppression of evidence and dismissal of the charges. (*People v. Hayes* (1988) 200 Cal.App.3d 400, 412.)

PRE-CHARGING CONTACT WITH A DEFENDANT

For pre-charging interviews with a "party" the rules differ. (Attorney General Opinion 91-1205 (75 Ops. A.G. 223; *Kain v. Municipal Court* (1982) 130 Cal.App.3d 499; *U.S. v. Lopez, supra,* 989 F.2d 1032.)

An attorney must consult with a Chief Deputy District Attorney or the Assistant District Attorney before speaking with a represented party.

POTENTIAL LIABILITY ISSUES

Communication with a represented defendant may result in dismissal of the People's case, contempt of court, State Bar sanctions and discipline by this office. (Rules of Professional Conduct, Rule 1-100.) Attorneys are advised to review the following cases carefully: *Boulas v. Superior* (1986) 188 Cal.App.3d 422 (Interference with the attorney-client privilege); *US. v. Lopez, supra,* 989 F.2d 1032; *People v. Hayes, supra,*

200 Cal.App.3d 400, 412-413.

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.23	**COMMUNICATION WITH PROBATION OFFICER**

A Prosecutor in this office will not engage in ex parte written or oral communications with a probation officer in an attempt to alter or change the officer's recommendation. (*People v. Villarreal* (1977) 65 Cal.App.3d 938, 945, and *People v. Server* (1981) 125 Cal.App.3d 721, 727; see also Penal Code § 1204.) The proper course of action is to request a sentencing hearing and file a statement in Aggravation of Sentence pursuant to Penal Code § 1170(b).

STATEMENT IN AGGRAVATION OF SENTENCE

The Prosecutor may, and *should* in appropriate cases, prepare and file a Statement in Aggravation of Sentence. If it would further the cause of justice, the deputy may request a sentencing hearing to examine the probation officer regarding the basis for his or her recommendation. In appropriate cases, witnesses should be called in support of the People's sentencing recommendation. (See Penal Code § 1204, California Rules of Court, Rule 437 and Rule 421.)

The filing of a statement in aggravation of sentence should not delay the imposition of sentence. Penal Code § 1170(b) requires the filing of the statement in aggravation "at least four days" before the date set for imposition of judgment. The prosecutor should anticipate the need to file the statement in aggravation and do so well in advance of the date set for sentencing.

Ultimately, the sentence recommendation is that of the probation officer. (California Rules of Court, Rule 411.5(a).) "Moreover, the recommendation within the probation report is advisory only, provided in order to assist the sentencing court in determining an appropriate disposition after conviction, and may be rejected in toto." (*People v. Server, supra,* 125 Cal.App.3d at p. 728, citing, *People v. Warner* (1978) 20 Cal.3d 678, 683.)

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.24	**CONFLICT OF INTEREST / MOTIONS TO RECUSE DISTRICT ATTORNEY**

1. Recusal Motions

The court has the power to recuse the District Attorney from the trial of a matter for a personal or an institutional conflict of interest. Penal Code § 1424; People v. Eubanks (1996) 14 Cal.4th 580, 590.) Penal Code section 1424 establishes procedures for recusal of a District Attorney. It requires 10 days notice to the District Attorney and Attorney General.

"The power of recusal is necessary to assure fairness to the accused and to sustain public confidence in the integrity and impartiality of the criminal justice system."(People v. Conner (1983) 34 Cal.3d 141, 146.) Although, "the conflict must be of such gravity as to render it unlikely that defendant will receive a fair trial unless recusal is ordered." (Id. at p.147; People v. Breaux (1991) 1 Cal.4th 281.) The District Attorney or Attorney General may appeal a recusal order, and such order would be stayed pending appeal.

The manual, Recusal, published by the California District Attorney Association, is an excellent sourcebook on conflicts of interests and recusal motions. All attorneys should familiarize themselves with this resource when dealing with these issues.

A motion to recuse the Office of the District Attorney of this county shall immediately be brought to the attention of the attorney's supervising Chief Deputy District Attorney, and then reported to the Assistant District Attorney. The Chief Deputy District Attorney or Assistant District Attorney will notify the Attorney General's Office.

A Prosecutor shall not appear on a motion to recuse the District Attorney's Office without first discussing the motion with their supervising Chief Deputy District Attorney or the Assistant District Attorney.

An attorney or an investigator should avoid knowing participation in any act that might produce a conflict of interest resulting in the recusal of this office as prosecutor in a case. (See, People ex rel. Younger v. Superior Court (Rabaca) (1978), 86 Cal.App.3d 180, 204; People v. Superior Court (Greer) (1977) 19 Cal.3d 255, 261; Penal Code §1424.)

2. Identifying Conflicts Of Interest

a. A supervisor must be immediately notified of the arrest, subpoena, or other involvement in a pending case of a District Attorney employee or volunteer, or a relative or close associate of an employee or volunteer. This notification will enable them to determine whether the circumstances create a conflict of interest requiring the District Attorney's Office to disqualify itself from reviewing and/or prosecuting the matter. In such situations, employees must scrupulously adhere to confidentiality policies, i.e., refrain from attempting to obtain information about the case from any District Attorney employee or from any documents in the District Attorney's Office. The supervisor of the involved employee shall take all necessary steps to secure the involved file from access by the employee to avoid even the appearance of impropriety. The matter will immediately be referred to the Attorney General.

b. The following list identifies common possible conflict of interest situations and the propriety of recusal:

1. A member of the Management Team is the defendant or the complaining witness-- recusal is always required.

2. A District Attorney employee is the defendant -- recusal is usually required.

3. A relative or close friend of a District Attorney employee is the defendant or complaining witness or a District Attorney employee is the complaining witness -- recusal may be required but the decision should be made on a case-by-case basis.

3. The complaining witness is the defendant in another recusal case -- recusal is not usually required.

4. The District Attorney or a Prosecutor represented the defendant before joining the District Attorney's Office -- recusal is rarely required. The decision should be made on a case-by-cases basis.

5. The defendant or complaining witness is an employee of another agency which has significant contact with the District Attorney's Office, e.g., bailiff or county sheriff -- recusal is not required unless ordered by the court or other special circumstances are present.

3. Disclosure of Relationships Affecting Cases

a. Unless disclosed to the defense and a waiver obtained on the record from the defendant, a Prosecutor shall not prosecute a case which involves a participant with whom the deputy, within one (1) year prior to the filing of the case, or within one (1) year of the occurrence of the alleged crime, has had a significant relationship.

b. A “participant” within the meaning of this policy means a witness, defendant, opposing counsel, judicial officer or courtroom staff. A “significant relationship” within the meaning of this policy means involvement with another person in a dating, cohabiting, sexual or economic relationship.

c. A Prosecutor’s primary responsibility is to achieve justice. The perception that justice is being done can be distorted, when a deputy prosecutes a case involving a participant with whom he or she has had a recent significant relationship. In some instances, the appearance of unfairness may even give rise to an attack on any resulting conviction. This policy is intended to avoid any appearance of impropriety or unfairness; it is not intended to infringe on the privacy rights of deputy district attorneys.

d. Prosecutors, as other employees, must abide by the Incompatible Work Activities policy (Article 2, Section 2.12) and the reporting policies related to cases where attorneys, family members, co-habitants, or close friends may be a party (Article 2, Section 2.14). It is the intention of the District Attorney to avoid any conflict, or the appearance of any conflict, that might arise if an employee is involved in or closely connected to another person that might be involved in a case being handled by the District Attorney.

Finally, Prosecutors shall avoid any unprofessional relationship with a victim or witness of a crime.

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ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.25	**NEGOTIATED PLEA POLICY**

To ensure a fair and consistent negotiated plea policy, the Sonoma County District Attorney's Office has adopted the following guidelines. This memo does not apply to three strikes cases, which are the subject of another policy.

Each attorney shall carefully review and appropriately prepare cases before entering into any plea negotiations. Appropriate case review involves assessing the strengths and weaknesses of the case based on the facts and the applicable law. No case should be resolved without a written explanation for the disposition in the file. The attorney shall also be familiar with the range of sentencing options for each case before making a disposition.

Each attorney will discuss the case with the crime victims as required by law, and as covered in our Marsy's Law policy, and document all victim contact in the case file.

Additionally, if the case has been set for trial, the assigned attorney should make every effort to interview necessary witnesses, visit the crime scene and examine the physical evidence, including photos, as practicable, before entering into any plea negotiation. Such case preparation may also require that an attorney review reports of prior acts and order documents related to prior convictions whenever possible. The amount of preparation done in any case depends on its complexity and seriousness. The attorney is always encouraged to discuss the case with other unit or team members and a supervisor.

Attorneys are responsible for ensuring all pertinent information is entered into the case file so that any Prosecutor handling the case has all necessary reports, statements and other information. To this end, supplemental investigation reports, witness statements and email communications, with relevant information, shall be put in the appropriate location of the case file. Any offers conveyed must be reflected in the case file, including discussions requiring a plea as charged offer, as well as offers revoked and deadlines conveyed.

In the interest of public safety, plea bargaining will be restricted and should be engaged

in only after careful analysis of the case, application of the correct law, and receipt of input from victims. Obviously, where the legislature has forbidden or limited plea bargaining, it has sent a message to prosecutors throughout the State. Prior to making felony case dispositions, attorneys are expected to adhere to the following guidelines:

1. We should not enter into a plea negotiation involving a serious felony charge as specified in § 1192.7 of the Penal code unless there is: (1) insufficient evidence to prove the case; (2) the testimony of a material witness cannot be obtained; or (3) a reduction or dismissal will not result in a substantial change of sentence. If a disposition is being made on a serious felony charge, there must be detailed documentation in the file by the attorney making the disposition. If the disposition occurs following filing of the Information/ Indictment, there should be a statement on the record as well documenting the reasons for the disposition as permitted by statute. Deputies having any doubt as to whether or not a plea negotiation should be made involving a serious felony charge, should consult with a supervisor before entering into a disposition.

2. We should rarely offer a PC 1192.5 “no state prison” disposition to any defendant who is subject to Penal Code § 1203(e). That section states that probation shall not be granted in any case listed therein, except for an “unusual case” where the interests of justice would be served. For example, the probation restriction applies to anyone who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime. We should stipulate to a case being “unusual” only when supported by the facts outlined in Court rule 4.413. The reasons for such a stipulation should be documented in the file.

3. We should not offer a PC 1192.5 “no state prison” disposition to any defendant who has demonstrated that he is not amenable to probation. For example, any defendant who is already on felony probation, has a history of probation or parole violations, who has unsuccessfully completed probation, a conditional sentence or supervised O.R. is not a suitable candidate for probation.

In any case where there may be an opportunity to enter into a stipulated prison or local prison (1170(h)) term, the same previously stated guidelines should apply. Such dispositions should be done only after a careful assessment of the case with the deputy’s reasoning documented.

In every case involving a disposition where a local prison commitment is sought pursuant to Penal Code section 1170(h), we should seek some period of supervision subsequent to the period of incarceration. By advocating for a “tail” of at least 60-90 days, the offender will be supervised by the probation department and provided support in his/her reintegration into the community. The length of the “tail” will depend upon the offender, the sentence sought, and the need for supervision. The absence of any

period of supervision should be avoided unless the circumstances are unusual.

The purpose of the above guidelines is to ensure that equal justice is rendered in every case. For example, we do not wish to unnecessarily delay the resolution of a case, which we do when we enter into an 1192.5 “no state prison” agreement when it is obvious a grant of probation will not be recommended. Inevitably, the presentence report recommends a state prison commitment, at which time the judge refuses to go along with the negotiated plea and allows the defendant to withdraw his plea.

The Office of the District Attorney encourages early resolution of cases that are fair, just and within the above guidelines. With that in mind, acknowledgment of guilt at an early stage in the proceedings should be reflected in offers given. This policy ensures that we are mindful of both the defendant’s early acknowledgment of guilt and helps to ensure that victims of crime will not be continually traumatized by delays in the resolution of their cases. The best offer should be made in Early Case Resolution Court, if possible. Generally, offers made prior to a preliminary hearing should not be renewed after the preliminary hearing and offers available before trial will not be renewed after the start of jury selection. Prosecutors shall be clear, with statements made on the record and documented in the case file, regarding when offers are made and will be/have been revoked. Generally and ideally, if a defendant wishes to enter a plea on the day of trial, the defendant should plead to all charges with no promises of a proposed disposition. If a Prosecutor enters into negotiations on the day of trial for less than a full open plea, the proposed offer should be discussed with a Chief Deputy, and the reasons documented. If an attorney disagrees with a prior offer extended in a case, they should confer with the attorney who made the previous offer before changing it and note any changes in the file. Attorneys should be careful to determine what has been communicated to opposing counsel regarding the timeframe for an offer’s acceptance.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.26	**ELIGIBILITY CRITERIA FOR THE SONOMA COUNTY COMMUNITY ACCOUNTABILITY DIVERSION (CAD) PROGRAM** (Pursuant to California Penal Code §§1001 -1001.90 Chapter 2.7) **Effective October 1, 2015**

A. GENERAL PROVISIONS

1. A diversion candidate shall enroll, participate in and successfully complete a prescribed program. Diversion shall not be "deemed" completed without meeting the requirements of participation and successful fulfillment.

2. All diversion programs must be completed within twelve (12) months of the date that individual defendants are found eligible and suitable to participate in a diversion program.

B. PERSONS ELIGIBLE FOR DIVERSION

1. Persons Eligible for Diversion: Except as provided below, any person charged with the misdemeanor crimes set forth in Section C, is eligible for diversion through Chapter 2.7 and shall be referred to Community Accountability Diversion (CAD) for an Eligibility Report.

2. Timing of Diversion: Diversion is available both pre-filing and post-filing. However, diversion must be accepted by the defendant PRIOR to the setting of a TRIAL date.

C. MISDEMEANOR CRIMES ELIGIBLE FOR DIVERSION

Penal Code

- 166(c)(4) Disobeying court order
- 240/241 Assault
- 373 Public nuisance on property
- 374.3 Dumping
- 415 Fighting, noise, offensive words
- 459.5 Shoplifting
- 466 Possession of burglary tools
- 470 Forgery
- 475 Possession of forged bills/notes – only if under $400

- 476a(a) Non-sufficient Funds
- 484(a) Petty Theft
- 485 Appropriation of lost property
- 496(a) Possession/receiving stolen property
- 537 Defrauding an innkeeper
- 591 Obstruction of telephone lines
- 594 Vandalism – not if DV-related
- 601 Trespass
- 602.5 Unauthorized entry of property
- 647(b) Solicitation of Prostitution
- 647(c) Panhandling
- 647(f) Public Intoxication – Alcohol-related
- 647(h) Loitering
- 647(j) Unlawful Lodging
- 653.22 Loitering with Intent to Commit Prostitution

Health & Safety Code

- 11357(b) Possession of under an ounce of marijuana
- 11364 Paraphernalia (Marijuana connected only)

Business & Professions Codes

- 25658 Furnish a minor with alcohol
- 25661 Presenting/possessing false evidence of age
- 25662 Minor in possession

County Ordinances

- 5-40 Dog Vaccination Required
- 5-41 Dog License Required
- 5-115 Livestock at Large
- 5-119 Staking of Animals Prohibited
- 19-9 Consumption of Alcohol on Public Street
- 19-10 Public Urination
- 20-25 Camping in an Undesignated Area
- 20-40 Designated Camping Areas

CCR

- 4326 Violation of a Posted Closure Area
- 7.50(155)(b) Fishing a Closed Tributary to Russian River

D. PERSONS INELIGIBLE FOR DIVERSION

Should a person who is ineligible for diversion be referred to CAD, CAD shall report that ineligibility to the Court and not allow that person to participate in the diversion program.

The following persons are deemed ineligible for diversion, regardless of whether their current charge is diversion eligible.

1. The defendant is charged with more than one offense arising out of more than one event or transaction in one or more than one criminal complaint, even if the charged offenses are all eligible for diversion.

2. The defendant has failed to appear in the past on the case.

3. The defendant has ever been convicted of a felony or has been convicted of a misdemeanor (except one prior VC 12500) within five years prior to the filing of the accusatory pleading.

4. The defendant has other pending cases.

5. The defendant has been diverted pursuant to this chapter within five years prior to the filing of the accusatory pleading.

6. The charges have been reduced from a felony to a misdemeanor by the court pursuant to PC 17(b)(5).

7. The defendant has previously been granted probation or parole and probation or parole has been terminated unsuccessfully.

8. The defendant has been previously committed to the California Youth Authority (CYA) or the Division of Juvenile Justice (DJJ).

9. The crime is gang related, whether or not an enhancement is charged.

10. Incarceration would be mandatory upon conviction of the defendant.

11. A grant of probation would be prohibited in the case.

12. There is an outstanding amount of restitution in the case. If restitution has been fully paid, the defendant may be referred to diversion as set forth herein. However, in no case may a case be continued longer than four months for restitution to be paid.

13. The charges are for an offense in which registration pursuant to PC 290 is compulsory or discretionary.

14. The charge involves the physical abuse or neglect of a minor. (Penal Code Section 1000.12)

15. The charge involves domestic violence or is domestic violence related or involves a person defined in Family Code §6211.

16. The charge involves the physical abuse or neglect of an animal.

E. TERMINATION

In every instance wherein a person is on diversion and is performing unsatisfactorily in the program, the diversion previously granted shall immediately be referred back to the court and diversion shall be terminated and the charges reinstated. If a new offense is charged while the person is in the diversion program, diversion shall be terminated. A defendant shall not be re-referred to diversion over the prosecution's objection.

F. CRIMINAL HISTORY

No person shall be deemed eligible unless and until the District Attorney's Office has reviewed their criminal history. Only after that history has been received and reviewed and it has been determined therefrom that an applicant is eligible, may the person be deemed as eligible.

G. SUITABILITY HEARING

In all cases in which a defendant is deemed eligible to participate in diversion, the court, prior to allowing the defendant to be diverted, SHALL hold a hearing and determine if the defendant is a person who would be benefitted by diversion. If so, and if all other criteria have been met, the defendant may proceed to diversion. If not, the case shall continue as any other case.

H. WAIVER OF SPEEDY TRIAL RIGHTS

In all cases in which the defendant requests diversion, (s)he shall waive his or her rights to a speedy trial. The defendant shall enter a time waiver before being referred for a diversion eligibility report and before being referred for enrollment. If the defendant refused to enter a time waiver, the court shall summarily deny the referral.

I. DIVERSION RESTITUTION FEE (PENAL CODE SECTION 1001.90)

The court shall impose a diversion restitution fee in addition to any other administrative fee provided or imposed under the law.

The fee imposed shall be set at the discretion of the court and shall be commensurate with the seriousness of the offense, but shall not be less than One Hundred Dollars ($100) and not more than One Thousand Dollars ($1000).

The restitution fee shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fee. The court shall state on the record all reasons supporting the waiver.

If the court sets the amount of the diversion fee in excess of the One Hundred Dollar ($100) minimum, the court shall consider any relevant factors, including but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense, and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependants as well as intangible losses, such as psychological harm caused by the crime.

Considerations of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating the lack of his or her ability to pay.

Express findings by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the diversion restitution fee shall not be required.

J. DISTRICT ATTORNEY DISCRETION

With approval of the CDDA overseeing misdemeanors, the People may stipulate to participation in diversion for any ineligible offense.

The DA retains discretion to stipulate to participation for any ineligible offense.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	**VERTICAL DUI (VDUI) PROSECUTION UNIT AND CASES**
SECTION 7.27	**Intake, Review, Complaints-Charging, Calendars, Record Keeping, Administration, Training**

Recent data has shown that Sonoma County is #2 out of North Bay Counties and higher than the state-wide average for DUI arrests, and that alcohol-related deaths in Sonoma County have increased, bucking the state-wide decrease in DUI trends. It is the intent of the District Attorney's Office to reduce the number of drivers who are involved in DUIs, including felony DUI, injury DUI, DUI with an accident, and drug DUIs.

To that end, the District Attorney's Office will vertically prosecute cases involving the most serious or complex DUI and traffic charges via the new, Vertical DUI (VDUI) Prosecution Unit. The following procedure will be utilized in the prosecution of VDUI cases.

1. **Initial intake**
   a. The complaints desk will forward ALL DUIs and vehicular manslaughters while intoxicated cases to the VDUI unit, for a charging decision.

2. **Review by VDUI Prosecution Unit**
   a. All cases with the charges set forth in paragraph (b) below shall be designated a VDUI case.

   b. **VDUI Charges:**

PC 191.5(a)	Gross Veh. Manslaughter Intox	Felony
PC 191.5(b)	Veh. Manslaughter Intox	Felony
VC 23152(a)/(b)	DUI	Felony
VC 23153(a)/(b)	DUI Injury	Felony
VC 23140(a)	DUI	Under 21
VC 23152(a) only	DUI – low BA or drugs only	Misdemeanor
VC 23152(a)/(b)	DUI w/HITR (Hit and Run compliant)	Misdemeanor
VC 23153(a)/(b)	DUI with Injury	Misdemeanor
VC 23578	DUI w/BAC 0.15/refusal	Enhancement
VC 23582	DUI w/Speed Enhancement	Enhancement

   c. The VDUI prosecutors will indicate at the time of filing if the case will be a VDUI case, by marking "VDUI" on the filing sheet.

d. If a case reviewed is not designated as a DUI vertical case, it will be filed by the DUI prosecutor, but then handled in the regular course by the appropriate department trial deputies.

3. **Complaints – Charging**

a. After receiving the case for charging from the VDUI prosecutors, Complaints staff will input the complaint code "VDUI" for cases so designated. Additionally, the case file will be marked with a black colored dot, indicating that case will be handled by the VDUI Unit.

4. **Calendars**

a. A VDUI prosecutor will be assigned to DUI court to handle all arraignments.

b. A VDUI prosecutor will appear in both felony and misdemeanor departments, as needed, as the cases proceed through court.

c. Due to caseload constraints, the VDUI prosecutor may leave notes for the calendar deputy regarding a given calendar appearance.

d. Additionally, the VDUI prosecutors may not be able to try every jury trial in this caseload, so trial deputies may be assigned as needed.

5. **Record Keeping**

a. The Department Analyst will develop a data tracking spreadsheet which will track the following data points:

1. Type
   (i) DUI alcohol only
   (ii) DUI drugs only
   (iii) DUI drugs and alcohol
2. Severity (Fel/Misd status of most severe DUI charge)
3. Filed / Rejected
4. Outcome
5. Sentence

b. The spreadsheet will exist in a designated folder on the S:Drive and will be accessible by the VDUI Unit, Chief Deputy, and Legal Staff.

c. Legal staff and VDUI prosecutors will enter data points into the spreadsheet on a regular basis. At a minimum, the spreadsheet shall be updated weekly.

d. The Department Analyst will manage the spreadsheet and produce reports.

e. The Department Analyst will also track the following:
   1. Number of cases reviewed by VDUI Unit
   2. Number of cases filed by VDUI Unit (including those handled by other deputies after filing)
   3. Number/type of cases prosecuted (handled) by VDUI Unit
   4. Number of DUIs (including cases designated VDUI cases and those that are no designated VDUI cases) handled by general Misdemeanor Unit

6. Administration

a. A designated TimeSaver code will be used to record personnel time and effort attached to the Office of Traffic Safety (OTS) grant funds.
   1. VDUI prosecutors assigned full-time to the grant will have 100% of their timesheet hours automatically populated in TimeSaver to the OTS grant.
   2. If a VDUI prosecutor performs work that is not related to VDUI prosecution (e.g., providing coverage on a non-vertical prosecution case), the deputy shall record that effort in TimeSaver accordingly (i.e., deduct those hours from the OTS time).
   3. Deputies who provide part-time effort on the VDUI Unit or provide back-up/coverage duties on the VDUI cases will record their effort in TimeSaver. Deputies should address questions to the Chief Deputy or Data Analyst.
   4. Legal staff-calendaring unit will record all efforts provided to vertical DUI prosecution on TimeSaver. Questions should be addressed to the Data Analyst.

b. Materials and equipment purchased by OTS grant funds may only be used for activities specifically related to VDUI activities.

c. All DA staff who have worked on VDUI activities may be required to provide information or participate in interviews relating to an OTS audit or program monitoring activity. This may include prosecutors, supervisors, legal staff, accounting staff, and administrative staff.

7. **Training**

a. The OTS grant will provide a Traffic Safety Resource Prosecutor (TSRP) to deliver comprehensive training to the DA's Office on the prosecution of DUI alcohol cases and DUI drug cases.

b. TSRP-led trainings will be held on site at the Sonoma County DA's Office.

c. At a minimum, the following number of DA staff will attend the TSRP trainings:
   1. Comprehensive Alcohol DUI case prosecution: 6 prosecutors, 2 investigators.
   2. Introduction/Update to Comprehensive Drug DUI cases prosecution: 20 prosecutors, 2 investigators.

d. The Chief Deputy supervising this program will ensure sufficient attendance by staff at training to remain in compliance with the grant requirements.

e. The OTS grant also provides training funds for off-site trainings, including workshops and conferences co-sponsored by the California District Attorneys Association.
   1. DUI vertical prosecutors and their supervisor will be sent to trainings approved and funded by the Office of Traffic Safety grant.
   2. Where grant funds allow, other prosecutors and supervisors may be designated to attend off-site trainings.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.28	**THREE STRIKES - CASE CHARGING AND DISPOSITIONS**

CHANGES TO THREE STRIKES LAW PURSUANT TO PASSAGE OF PROPOSITION 36

On November 6, 2012, California voters passed Proposition 36, which affects sentencing of third strikers sentenced to an indeterminate term when convicted of a new non-strike (non-violent, non-serious felony) crime, with some exceptions. Generally, Proposition 36 limits life terms for third strikers to those defendants with (1) a current serious or violent felony; (2) a current specified felony; (3) a current specified enhancement; (4) a current offense committed in a specified way; or (5) a specified prior conviction. A defendant with two or more strike priors who does not meet the criteria for sentencing to a Three Strikes life term will be sentenced as a second striker (double the term).

Prosecutors shall be familiar with Proposition 36 and the training materials distributed by CDAA.

ANALYSIS IN CHARGING CURRENT/FUTURE POTENTIAL *THIRD* STRIKE CASES

Generally, a defendant with two or more prior strike convictions who is currently charged with a non-serious, non-violent felony will be treated as if he or she only has one prior strike, *regardless of the number of prior strike convictions,* with *the following exceptions:*

1. Analysis of Current Charges

Even if the current offense is not a serious or violent felony, it may still qualify for Three Strike Law penalties set forth in PC 667(e)(2)(C) and 1170.12(c)(2)(C) if it is one of the **enumerated non-strike felonies specifically excluded** from the amendment (Prop 36) to the three-strikes law.

In reviewing a potential third strikes case for filing, prosecution and/or disposition, all prosecutors shall make a determination whether, if the current offense is a non-serious, non-violent felony, it is one of the enumerated non-strike felonies permitting three strikes sentencing.

Prosecutors shall record their analysis of the facts on the Three Strikes Disposition Report.

2. Analysis of Prior Strike Convictions

Even if the current offense is non-violent, non-serious, and is not one of the enumerated felony offenses excluded from the amendment, the case may still qualify for Three Strike Law penalties IF the defendant has a **prior enumerated strike conviction** that excludes him / her from this change in the law.

In reviewing a potential three strikes case for filing, prosecution and/or disposition, all prosecutors shall make a determination whether, if the current offense is a non-serious, non-violent felony, and not one of the enumerated non-strike felonies permitting three strikes sentencing, the defendant's prior strike convictions are within the list of enumerated strike convictions nonetheless qualifying the defendant for three strikes sentencing.

CHARGING THREE STRIKES CASES GENERALLY

The Three Strikes law, Penal Code Section 1170.12(a)-(d), allows prosecutors to seek increased sentences and life sentences for certain habitual offenders. It is clear from the law and the two initiatives dealing with this topic that the intent of the legislature and the citizens is to lengthen terms of imprisonment for certain classes of recidivists. We must use our prosecutorial discretion in a manner that assures a fair, predictable and consistent application of the Three Strikes law. The recent passage of Proposition 36 has made these considerations more formulaic. Nonetheless, deputies should be mindful that the proper exercise of our remaining discretion will continue to promote confidence in and respect for the criminal justice system.

The Three Strikes law is not to be used in plea bargaining (Penal Code section 1170.12(e)). Although prosecutors are required to plead and prove all prior felony convictions (Penal Code section 1170.12(d)(1)), we also may move to dismiss or strike a prior felony conviction in the furtherance of justice pursuant to Penal Code section 1385, or if there is insufficient evidence to prove the prior conviction (Penal Code section 1170.12(d)(2)).

By way of background, all prosecutors should read and be familiar with at least the following Three Strikes cases: *People v. Clancey*, 56 Cal. 4th 562 (Cal. 2013); *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, *People v. Williams* (1998) 17 Cal. 4th 148, *Ewing v. California* (2003) 155 L. Ed. 2d 108, and *Lockyer v. Andrade* (2003) 155 L. Ed. 2d 144.

CHARGING & DISMISSING STRIKE PRIORS; COMPLETING DISPOSITION REPORT

With the passage of Proposition 36, prosecutors shall continue to charge all prior strikes on any felony case we file, regardless of whether the case is eligible for three strikes penalties. If a Prosecutor wishes to dismiss any prior strike alleged, they must confer with a supervisor.

All qualifying prior felony convictions and juvenile adjudications shall be alleged in the pleadings pursuant to Penal Code section 1170.12 (d)(1). All available strike prior documents, case files and reports shall be reviewed before a strike is dismissed. The assigned prosecutor may dismiss the alleged prior strike if proof cannot be obtained. The efforts made to obtain proof of the strike and the reasons for the dismissal shall be noted in the case file by the assigned prosecutor.

Only a supervising attorney may authorize the dismissal of a provable strike prior. A supervising attorney includes the District Attorney, Assistant District Attorney, and Chief Deputies.

A Three Strikes Disposition Report, a sample of which is attached, must be completed in every case where the defendant has a prior strike conviction, regardless of whether approval to dismiss any strike is sought. All the factors set forth on the Disposition Report shall be considered and documented accordingly. The Disposition Report shall be completed and reviewed by or with a supervisor by the time of the first readiness conference in the case or prior to obtaining authorization to dismiss a prior strike conviction, whichever comes first. The Disposition Report shall contain a notation reflecting the date of supervisorial approval for dismissing a prior strike or proceeding to trial or plea as charged. The Prosecutor shall file the Report in the case file and route a copy to the appropriate legal secretary for record keeping within two days of the disposition.

SUMMARY

1. All known qualifying strike priors shall be pled at the earliest practicable time.

2. Only a supervising attorney may authorize the dismissal of a provable prior strike conviction.

3. The decision of whether or not to seek a dismissal of a strike shall be made at the earliest practicable time and promptly conveyed to defense counsel.

4. The Three Strikes law is not to be used for plea bargaining purposes.

5. The Three Strikes Disposition Report shall be prepared in every case where a defendant has a prior strike conviction in his background.

THREE STRIKES DISPOSITION REPORT

Defendant:	
DAR No.	
Current Charges/Enhancements:	
Alleged Strike Priors:	
Recommendation:	
Final Disposition:	
Assigned Deputy District Attorney:	
Chief Deputy District Attorney:	

FACTS OF CURRENT OFFENSE

FACTS OF PRIOR STRIKE OFFENSE(S)

FACTORS FOR CONSIDERATION

The following factors shall be considered and noted before making an offer, accepting a plea or striking a prior strike, in any case where a defendant's record contains a prior strike conviction:

1. Is Current Offense serious/violent per PC 1192.7(c) or PC 667.5(c)?

   _____Yes/No_____

2. Does Current Offense involve the use / possession of a firearm / deadly weapon
   _____Yes/No_____ If Yes, explain:

3. Does Prior Strike Offense involve the use / possession of a firearm / deadly weapon?
   _____Yes/No_____ If Yes, explain:

4. Does Prior Strike Offense involve injury to a victim?
   _____Yes/No_____ If Yes, explain:

5. Does Prior Strike Offense involve the use / threat of violence?
   _____Yes/No_____ If Yes, explain:

6. Is Prior Strike Offense remote in time?
   _____Yes/No_____ Details:

7. Do Two or More Prior Strike Offenses arise from the same incident or transaction?
   _____Yes/No_____ If Yes, explain:

8. Is the Defendant's character / background commendable?
_____Yes/No_____ Explain:

9. Is the Defendant's criminal conduct between the strike prior(s) and the current offense
_____Significant/Insignificant_____ Explain:

10. The following aggravating / mitigating factors in CRC 4.421 and 4.423, specifically, apply:

11. Other considerations / comments:

QUALIFYING FOR THREE STRIKES SENTENCING

1. Is Current Offense serious/violent per PC 1192.7(c) or PC 667.5(c)?

_____Yes/No_____

If NO, go to step 2; if YES, then case is qualified for THREE STRIKES sentencing.

2. Is CURRENT offense a controlled substance charge with a true allegation of HS 11370.4 or 11379.8? [PC 667(c)(2)(C)(i) and/or 1170.12(c)(2)(C)(i)]

_____Yes/No_____

If NO, go to step 3; if YES, then case is qualified for THREE STRIKES sentencing.

3. During the CURRENT offense, did the defendant use a firearm, was he/she armed with a firearm or deadly weapon, or did he/she intend to cause GBI? [PC 667(c)(2)(C)(iii) and/or 1170.12(c)(2)(C)(iii)]

_____Yes/No_____

If NO, go to step 4; if YES, then case is qualified for THREE STRIKES sentencing.

4. Does the CURRENT offense require Mandatory 290 Registration, or is the current offense a Sex Offense per PC 261.5(d) or 262? [PC 667(c)(2)(C)(ii) and/or 1170.12(c)(2)(C)(ii)]

_____Yes/No_____

***If NO, go to step 5; if YES, is the felony sex offense a violation of PC 266, 285, 286(b)(1) or (2), 286(e), 288a(b)(1) or (2), 288a(e), 289(h), 289(i), 311.11, or 314? [PC* 667(c)(2)(C)(ii and/or 1170.12(c)(2)(C)(ii)]**

_____Yes/No_____

****If YES, go to step 5; If NO, then case is qualified for THREE STRIKES sentencing.***

5. Was one of the prior serious or violent felonies ANY of the following:

- **Sexually violent offense per WI 6600(b)**
- **Oral copulation per PC 288(a) with child under 14 and more than 10 years younger**
- **Sodomy per PC 286 with another person under 14 and more than 10 years younger**
- **Sexual penetration per PC 289 with person under 14 and more than 10 years younger**
- **Lewd or lascivious act involving and child under 14 per PC 288**
- **Any homicide offense defined in PC Sections 187 to 191.5, inclusive**
- **Solicitation to commit murder per PC 653f**
- **Assault with a machine gun on peace officer or firefighter per PC 245(d)(3)**
- **Possession of a weapon of mass destruction per PC 11418(a)(1)**
- **Any serious and/or violent offense punishable in California by life imprisonment or death [PC 667(c)(2)(C)(iv) and/or 1170.12(c)(2)(C)(iv)]**

_____Yes/No_____

****If NO, then case qualifies for TWO STRIKE sentencing only (double the term); if YES, then case is qualified for THREE STRIKES sentencing***

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.29	**THREE STRIKES PETITIONS FOR RESENTENCINGS**

On November 6, 2012, California voters passed Proposition 36, which affects sentencing of third strikers sentenced to an indeterminate term when convicted of a new non-strike (non-violent, non-serious felony) crime, with some exceptions. The language of the proposition is RETROACTIVE, which allows previously indeterminately sentenced prisoners a two-year window to petition the court and be resentenced.

Because of the intricacies of the law, and the facts that must be considered regarding each currently charged offense and each prior strike conviction, we will not immediately stipulate to any resentencings. Rather, the procedure detailed below shall be followed. It allows for a review of each case and a determination of whether an opposition to the Petition will be made.

PETITIONS FOR RESENTENCING

A. Intake of Petitions for Resentencing

1. Whenever a petition for resentencing is received, it shall immediately be forwarded to the Chief Deputy District Attorney (CDDA) who oversees the Write & Appeals Unit for initial review and assignment.

2. The CDDA will make an initial assessment as to whether the case may be eligible for resentencing. S/he will start the process of ordering necessary documents, such as requesting the case file back from storage and requesting a copy of the CDCR C-File. The Bureau of Investigations has designated a Legal Assistant to assist in this effort. S/he will order all the files and documents necessary to conduct the review of these petitions. The CDDA shall then assign the case for follow-up review, preparation and handling of the hearing. The CDDA shall also notify the Victim Services Director, who will assign an advocate to the case.

3. Simultaneously, the Court has stated that it will request a copy of the Defendant's RAP sheet from our office so that it can make an initial eligibility assessment, or "prima facie" determination. The CDDA will receive and respond to these requests for RAP sheets with the Legal Assistant's assistance.

4. The Court and/or the CDDA may be able to immediately determine that

the defendant is ineligible for resentencing based on the defendant's commitment offense or prior strike conviction. No further action may be required.

B. **Assignment of Petitions**

If the case had originally been assigned to a vertical prosecutor, it shall be reassigned to that prosecutor. If that attorney is unavailable, the case will be assigned to one of the felony deputies according to the alphabetical split. The CDDA who oversees the assigned Prosecutor will then oversee the handling of the petition. The CDDA will advise the District Attorney and Assistant DA regarding their assessment of the defendant's eligibility for resentencing at the earliest opportunity.

Upon receipt of the CDCR records, they will be thoroughly reviewed by the assigned attorney and discussed with the supervising CDDA. The CDDA will then consult with the Assistant District Attorney as well as the District Attorney regarding the determination of the defendant's dangerousness.

The Court will assign the petitions to the original sentencing judge for hearing. The Court will also send a letter to defendants to determine if they wish to have the Public Defender appointed. Currently, the Court intends to set the hearings eight weeks out, which will allow time for the parties to receive subpoenaed records and prepare for the hearing. When the Court receives the subpoenaed records, it has designated Julie Burress to copy and distribute the records to the People and defense.

C. Review of Petitions

Once an initial determination has been made regarding eligibility, the case file and prior crimes shall be reviewed immediately when received to determine whether we will agree to waive the appearance of the defendant and submit on the petition or request a hearing.

The review shall be limited to the following questions:

1. Was the Defendant sentenced to life in prison pursuant to the three strikes law?
2. Was the Defendant's commitment offense, for which he was sentenced to a life sentence, a non-violent, non-serious felony?
3. Are there any disqualifiers to the prohibition of a three strikes sentence on this particular non-violent, non-serious felony, or any prior strike, or on the defendant?

In every case reviewed on a Three Strikes Petition for Rehearing, the assigned Prosecutor shall conduct the analysis set forth in and complete a Three Strikes Petition for Rehearing form. The form, a sample of which is attached, sets forth the facts of the current and prior offenses as well as the analysis of whether the defendant is eligible for resentencing, including a determination on whether any disqualifiers apply.

If, after completing the entire analysis, no disqualifiers apply, the assigned Prosecutor, in consultation with their CDDA, may consider whether to stipulate to sentencing the

defendant as a second striker. The availability of other sentencing enhancements, previously stricken, will be considered. Otherwise, the Prosecutor shall proceed to a hearing on the petition.

D. Compliance with Marsy's Law

The assigned prosecutor will work with the assigned victim advocate to ensure that the victim on the case is contacted and updated on the current status of the case. The victim has a right to be present and speak at the resentencing. No stipulations to resentencing as a second striker shall occur until every effort is made to advise the victim.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.30	**HOMICIDE AND CRITICAL INCIDENTS; INTERNAL OFFICE PROTOCOL**

The District Attorney's internal call-out procedure for all homicides, suspicious deaths, and officer-involved shootings is as follows:

1. Law enforcement agencies will notify the on-call District Attorney Investigator in all homicides, critical incidents, suspicious deaths, and officer-involved shootings and fatalities of the call-out. The Stand By investigator list will be updated and sent to the agencies periodically by the Bureau of Investigation. If the law enforcement agency contacts the on-call prosecutor, the prosecutor shall immediately notify the on-call District Attorney investigator.

2. Upon receiving a call from the notifying agency, the responding District Attorney investigator is to immediately contact the on-call prosecutor listed on the Homicide/Critical Incident Call-Out List. The on-call prosecutor is required to respond to the scene (or other appropriate location such as police department, hospital, etc.) immediately.

3. In the event that the District Attorney Investigator is unable to contact the on-call prosecutor, he/she shall contact the Chief Deputy who supervises homicide cases and advise him/her of that fact. The Chief Deputy will either respond to the scene or find a homicide call-out prosecutor who can respond to the scene. In the event that the Chief Deputy over Homicide is not available, the District Attorney investigator is to immediately contact another Chief Deputy.

4. The on-call District Attorney investigator and prosecutor are to remain on-call, 24 hours per day during the designated week, and are required to be available to respond to all call-outs both during and after regular business hours. If a District Attorney Investigator receives a call during business hours and is unable to respond due to shift activity, the District Attorney Investigator will notify either the Chief Investigator or Senior Investigator immediately for reassignment of the detail.

5. When signing up for an on-call week, the prosecutor shall be on-call and available for the entire week. Once the list is published, the prosecutor may <u>not</u> change their call out time slot with another prosecutor <u>unless</u>: (1) there is an

extenuating circumstance; and (2) the prosecutor has received prior approval from the homicide Chief Deputy. If the Chief Deputy approves the change, the Deputy District Attorney shall inform the on-call District Attorney investigator for that week of the change and the name of the prosecutor who is substituting in. This notification should be in email, with a copy to the Senior and Chief investigators, the Chief Deputy over homicides, and the prosecutor who's agreed to substitute. Only a prosecutor who is available to answer any and all call outs may fill in for the on-call prosecutor, i.e, they must be available for call-outs during the entire time period.

6. The on-call prosecutor shall not refuse to respond to a homicide or critical incident call-out. If an emergency arises and he/she cannot respond, he/she shall immediately contact the Chief Deputy over homicide cases to discuss the situation. The Chief Deputy will make a final determination, arrange for that or some other prosecutor to respond, and notify the District Attorney Investigator of his/her decision.

7. The assigned legal secretary, under the direction of the Chief Deputy overseeing homicide cases, will publish a bi-yearly prosecutor on-call list. Only Deputy District Attorney IVs are eligible to be on the list unless an exception is made by the homicide Chief Deputy with the approval of the District Attorney.

8. The on-call District Attorney investigator shall notify the Chief Investigator of the nature and status of any call-out incident as soon as possible. The Chief Investigator will then notify the Chief Deputy supervising homicides of the call-out incident. If for any reason the Chief Deputy cannot be reached, the Chief Investigator shall notify the Assistant District Attorney. The on-call prosecutor shall also notify the Chief Deputy, as soon as is practicable, of the nature and status of the call-out. The Chief Deputy overseeing homicides will notify all members of management of the call-out the next day. In emergency situations or in the event of a high profile case, the Chief Deputy is to contact the District Attorney as soon as possible, at his/her discretion.

9. Please refer to the Sonoma County District Attorney "Call Out Information Manual" for further details regarding critical incidents (Homicides and Officer Involved Shooting Incidents, for example).

CHIEF DEPUTY OVERSEEING HOMICIDE CASES:
Diana Gomez (O) 565-2087; (C) 318-8504; (H) 778-7781

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.31	**DEATH PENALTY PROTOCOL**

The Sonoma County District Attorney's Office has implemented the following protocol to determine whether or not to seek the death penalty in any murder case with special circumstances. The sentence of death is reserved only for the worst crimes and criminals. This office takes seriously the responsibility of deciding when to seek the death penalty.

When a capital crime is charged, the Chief Deputy District Attorney ("CDDA") who oversees the homicide cases, the assigned attorney, and investigator will review the case after the investigation is completed. They will prepare a short memorandum of facts for review by the District Attorney, including a recommendation with regard to submitting the case for review by the Death Penalty Review Committee. The recommendation will be based on their determination of whether the known facts and circumstances relating to the defendant create a reasonable possibility that a jury would return a death verdict. If so, the case shall be presented to the Death Penalty Review Committee.

If the District Attorney agrees that the death penalty should not be sought, a letter to that effect will be provided to the attorney representing the individual charged. The letter will include a provision that the decision is made based upon information available at the time of the review, and that should additional information come to our attention, further review of the decision may be warranted.

The Death Penalty Review Committee may include the following members:

1. The District Attorney
2. The Assistant District Attorney
3. Two Chief Deputies, (the assigned trial prosecutor's supervisor and the CDDA overseeing homicides [if this is the same person, then another CDAA])
4. The Chief Investigator or the Senior Investigator
5. The assigned investigator
6. The assigned trial prosecutor
7. An experienced DDA IV with expertise in the area of the nature of the homicide

8. A Writs/Appeals Attorney

When a case is to be presented to the Death Penalty Review Committee, not all members need be present though attendance is preferable. Additionally, the CDDA overseeing homicide prosecutions, the assigned attorney and the case investigator will arrange a meeting with the family, if any, of the victim in the case. The District Attorney will be available for this meeting as well. Their views will be sought before bringing the case to the Death Penalty Review Committee. The assigned attorney shall notify the family of the victim of all final decisions regarding the death penalty. The family will also be offered the assistance of a victim advocate, who will be invited to all meetings with the victim's family.

The assigned attorney will first prepare a memorandum outlining the facts and any legal issues. This memorandum will be presented to the committee one week prior to the committee meeting. At the meeting, the assigned attorney will give a detailed oral presentation of the case, including his/her views on whether or not the death penalty should be sought. The District Attorney will be present for the briefing by the assigned attorney.

After the briefing, the CDDA overseeing homicide prosecutions will notify the assigned defense counsel in writing that the death penalty is being considered (Attachment A). The defense attorney will have the opportunity to respond in writing and to attend a meeting with the Death Penalty Review Committee. The defense attorney will be allowed to present any information that is relevant to the decision to seek the death penalty in a particular case.

The Death Penalty Review Committee will carefully consider the facts and circumstances of each case. The members of the Committee will be guided by Penal Code § 190.3 which sets forth eleven (11) categories of factors used by a jury to decide if the death penalty should be imposed in any given case. The nature and circumstances surrounding the case are critically important along with whether or not the defendant has previous felony convictions and/or a history of violence.

The listed mitigating circumstances include the age of the defendant, whether or not the defendant committed a murder while he/she was under the influence of extreme mental, emotional disturbance, or under the influence of alcohol; also to be considered are whether or not the defendant was under extreme duress or domination of another person, or whether the defendant was an accomplice whose participation was relatively minor to the crimes.

The Death Penalty Review Committee must also consider any other circumstances that extenuate the gravity of the crime, even if they are not a legal excuse for the crime. The committee will take into account factor(s) that may provide sympathetic aspects of the defendant's character, such as whether he/she suffered child abuse, brain damage, or mental retardation or whether he/she was normally a law-abiding person who acted out

of character. The committee will then balance the known aggravating factors with the mitigating factors and determine whether or not there is a reasonable probability that a jury would return a death verdict.

During the review mandated by this protocol, the assigned attorney and the CDDA overseeing homicide shall not inform the Death Penalty Review Committee or the District Attorney of the race of victim(s) or defendant(s) unless it is relevant to an issue in the case.

A decision to not seek the death penalty shall be irrevocable unless prior to trial or retrial the defendant escapes or attempts to escape from custody, commits a crime of violence as described in Penal Code § 1192.7, or the prosecution discovers credible evidence of the commission of a heinous or serious crime which suggests that the decision not to require the death penalty hearing should be reconsidered. If a decision is made to seek the death penalty, then defense counsel will be notified in writing as well as the supervising criminal judge. The defense attorney may at any time submit additional argument in writing regarding new mitigating evidence, and at the discretion of the committee, they may meet again to consider it.

This protocol is established to enable the District Attorney to exercise discretion in a responsible manner. The procedure, or any decision based upon its application, does not create substantive enforceable rights for others.

Letter to Attorney(s) for Defendants(s)

[Date]

[Name]
[Address]
[City, State]

Re: In the matter of _____
DAR No.: _____

Dear _____:

Currently you represent Mr./Ms. _____ in the above-entitled case. As currently charged, the defendant(s) could qualify for the death penalty under applicable California Law. Under our Death Penalty review procedure, I am the chairperson of the death penalty review committee.

In order to properly consider the issue, I invite you to state in writing your views as to why the District Attorney's Office should not seek the Death Penalty in your client's case. Also, you may make an appointment to meet with the Death Penalty Review Committee to discuss the case prior to a final decision by this Office whether or not to seek the death penalty. Please call _____ to arrange an appointment with the Death Penalty Review Committee.

Very Truly Yours,

JILL R. RAVITCH
Sonoma County District Attorney

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.32	**ADULT TRUANCY**

The Sonoma County District Attorney supports vertical prosecution of Adult Truancy cases for the parents of juveniles who are persistently truant and who have failed to comply with the School Attendance Review Board (SARB) process. The goal of this policy is not to "punish" parents, but rather, to use the court process to facilitate compliance with the compulsory education requirements of Education Code section 48263.

1. Upon referral to the District Attorney's Office by the Sonoma County Office of Education (SCOE) that a parent of a minor is in violation of Education Code section 48263 (compulsory attendance requirement), the prosecutor assigned to handle Adult Truancy cases will mail a "Notice to Appear" letter to the last known address of the parent, notifying them of the violation and directing them when and where to appear for the Adult Truancy calendar. The prosecutor will make reasonable efforts, including contact with school and SARB officials, to confirm the parent's current address prior to mailing the notice. A first offense will be filed as an infraction, unless, upon consultation with the Chief Deputy District Attorney (CDDA) assigned to adult truancy, it is determined that a misdemeanor violation is appropriate.

2. If the parent fails to appear (FTA) as directed by the "Notice to Appear," a "Second Notice" will be sent to the parent by the Prosecutor assigned to the Adult Truancy caseload.

3. If the parent FTA's on the "Second Notice," the Prosecutor will provide the parent's information to the District Attorney investigator (DAI) assigned to assist that prosecutor. The investigator will contact the parent(s) and issue a citation to the parent for violation of Education Code section 48263. The investigator will obtain a signed promise to appear from the parent for the next Adult Truancy calendar. Adult Truancy cases are currently being called on the third Thursday of each month at 4:00 p.m. in Department 14 of the Hall of Justice at 600 Administration Drive, Santa Rosa.

4. If the parent FTAs at the Adult Truancy case calendar call in accordance

with the citation, the Prosecutor assigned will ask the court to issue a bench warrant for the parent's arrest based upon the parent's FTA on the signed notice to appear. If no bench warrant is issued by the court, the prosecutor will notify the CDDA of the FTA, and provide the CDDA with a copy of the citation and promise to appear and a copy of the minutes showing the FTA. The CDDA will request a brief written report from the officer/DAI who issued the citation. The CDDA will determine whether to proceed by declaration and warrant on a complaint alleging a misdemeanor violation of Penal Code section 166(a)(5) (contempt for FTA), Education Code section 48263 (compulsory attendance requirement), or both counts.

5. All adult truancy cases, including infractions and misdemeanors, will be vertically prosecuted by the assigned prosecutor. The prosecutor will attempt to resolve the complaint, whether infraction or misdemeanor, in the following manner:

    1. The parent will plead no contest;
    2. The plea will be held in abeyance by the court;
    3. The People will request that the court order the parent to comply with the following conditions:
       a. Complete court-approved service referrals as appropriate, which may include, but are not limited to: case management, mental and physical health services, parenting classes and support, substance abuse treatment, child care and housing;
       b. Meet with local school representatives designated by the school district, which may include school psychologists, counselors, teachers, administrators, or other educational service providers deemed appropriate by the school district;
       c. Ensure the child attends school;
       d. Comply with any other appropriate conditions as determined by SARB;
       e. If appropriate, attend a court-approved diversion program; and
       f. Return to report on compliance with these conditions periodically, as directed by the court.

6. When the parent provides proof of completion of all conditions, the infraction or misdemeanor will be dismissed. If the parent continually fails to comply with the conditions ordered by the court, the People will move the court to enter a judgment and find the parent guilty and impose an appropriate sanction including a fine, appropriate jail, or both.

7. When prosecuting a parent criminally, depending upon the seriousness of the conduct underlying the child's truancy the availability of reports and other discovery, the DDA assigned to adult truancy should consider, in consultation

with the CDDA, whether to amend the complaint to allege a violation of Penal Code section 272(a)(1) prior to disposing of the case as outlined above.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.33	**ASSET FORFEITURE**

What to do when you get a call regarding asset forfeiture

Asset forfeiture actions may only be "initiated" by a District Attorney (or AG). Therefore, law enforcement has been instructed to contact the on-call warrant prosecutor to present the facts and circumstances relating to a potential seizure to determine if the District Attorney's Office will initiate the forfeiture action. If the prosecutor determines the facts support forfeiture, the officer in the field will fill out the Notice of Seizure an Intended Forfeiture and act as process server on behalf of the prosecutor. Specific requirements must be met in order for assets to be forfeitable, and specific, procedures must be followed for service and notice. This new process is the result of the recent decision in *Cuevas v. Superior Court* (2013) 221 Cal.App.4th 1312. If the on-call prosecutor receives a phone call from an officer seeking a determination if we will initiate an action, have the officer provide the factual basis for possible forfeiture, what chargeable offenses (if any) exist, and review what steps the officer has and will take regarding seizure, notice, and service. Just as with telephonic review of a warrant, if the Prosecutor finds that there is probable cause to believe that the assets are forfeitable, the officer will complete our form in the field, writing the name of the

prosecutor who is initiating the action, and then will serve the person at the scene, along with a blank claim opposing forfeiture, and a receipt for all items seized. The service initiates certain due process procedures, and timelines for action on the seizure. All information regarding the seizure (Date, Agency, Officer, Suspect, and description of what is seized) should be given to Gina Burk, Legal Staff Supervisor, at the earliest opportunity. Below are guidelines to use for reviewing the request and determining whether probable cause exists to forfeit the assets at issue.

1. <u>What are the predicate offenses for forfeiture?</u>
    a. Possession for sale (H&S §§11351, 11351.5, 11359, 11378, 11378.5)
    b. Transportation/sale (H&S §§11352, 11355, 11360, 11379, 11379.5, 11382)
    c. Manufacture (H&S §§11379.6, 11383)
    d. False compartment (H&S §§11366.8)
    e. Drug offenses involving minors (H&S §§11380)
    f. Conspiracy to commit any of the above (PC §182)
2. <u>What property can be seized? (probable cause standard)</u>
    a. Money believed to be proceeds of, or intended to be used for, narcotics transactions [H&S §11470(f)]
    b. Property (vehicles, boats, jewelry, etc.) believed to have been purchases with narcotics proceeds [H&S §11470(f)]

c. Vehicles used to transport specific amounts of narcotics (10 pounds dry weight of marijuana, peyote, or psilocybin; 28.5 grams of cocaine or methamphetamine; 14.25 grams of heroin) [H&S §11470(e)]

3. What if the individual is only in possession of a large amount of cash, but no narcotics?

    a. It can be seized if there is evidence of narcotics transportation, trafficking, or intent to purchase (odor, text messages, GPS destinations, packaging, scales, debris, etc. [see section 2.a, above]

    b. The substantive crimes of H&S §11370.6 (possession of more than $100,000) and §11370.9 (possession of more than $25,000) authorize seizure.

4. What if the individual has a large amount of cash, but not enough drugs to constitute a predicate offense?

    a. It can be seized if there is evidence of narcotics transportation or trafficking (odor, text messages, GPS destinations, packaging, scales, debris, etc. [see section 2.a, above]

    b. The property is still subject to seizure is s/he has been convicted of a predicate offense within the last 5 years.

5. What are the District Attorney's formal asset forfeiture thresholds?

    a. Cash - $1,000 or more

- Less than $1,000 should be seized as evidence [see 2.a, above], but the Notice of Seizure and Intended Forfeiture (the DA's triplicate form) is not necessary.

b. Vehicles - $5,000 equity

6. <u>What documents should be served by law enforcement? (NOTE: all agencies should be in possession of these forms.)</u>

   a. Receipt for seized property (complete and provide copy)
   b. Disclaimer (Complete only if party disclaims ownership in some or all property. Ask officer to capture some type of personal identifying information – driver's license number, thumb print, etc., on disclaimer form if/when disclaimer is signed)
   c. Notice of Seizure and Intended Forfeiture (the DA's triplicate form – complete and provide copy)
   d. Claims Opposing Forfeiture (blank)

7. <u>Who should be served?</u>

   a. Receipt – from whom the property is taken or the individual in possession of the premises where the property was seized
   b. Disclaimer – anyone who may have an interest in the seized property
   c. Notice of Seizure and Intended Forfeiture – anyone who may have an interest in the seized property and anyone who signed a disclaimer
   d. Claim Opposing Forfeiture – anyone who is served with a Notice of Seizure and Intended Forfeiture

8. Who constitutes an individual who may have an interest in the seized property?

   A. Depends on the facts:

      a. If traffic stop and money found in center console; all passengers.

      b. If search warrant and money found in master bedroom; occupants of the room (husband and wife; boyfriend and girlfriend).

      c. If search warrant and money found in common area; all residents and anyone present.

      d. If a vehicle is seized, the registered and legal owners.

9. Should law enforcement ask any specific questions regarding the property?

   B. Law enforcement should ask individuals about their employment, monthly income, monthly expenses, whether or not they have received any large cash gifts or inheritances, etc.

   Additionally, if property is seized, law enforcement should ask when the individual acquired it, from whom, how they obtained the funds to purchase it, etc.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 7	***PROSECUTORS' PERFORMANCE STANDARDS***
SECTION 7.34	**PROTOCOL FOR ALLEGATIONS OF PROSECUTORIAL MISCONDUCT**

It is the policy of the Sonoma County District Attorney's Office to never allow a false accusation of Prosecutorial Misconduct (PM) to go un-rebutted. Prosecutors should always deny false allegations on the record even if the initial accusation was made in-camera, that is, whether made at the bench or in chambers. Even frivolous, perfunctory, or repetitive defense claims of PM should be responded to on the record.

As always, we are guided by the United States Supreme Court's articulation of a prosecutor's responsibility:

> ***"The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done…He/She may prosecute with earnestness and vigor-indeed he/she should do so. But, while he/she may strike hard blows, he/she is not at liberty to strike foul ones. It is as much his/her duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."****(Berger v. United States (1935) 295 US 78, 88)*

DEFINITION OF PROSECUTORIAL MISCONDUCT

Prosecutorial Misconduct (PM) is a broad term used to describe serious incidents of professional misconduct as well as relatively insignificant, well-intentioned, or even innocent or negligent acts. While PM may be alleged in numerous contexts, the oral allegation of PM is frequently alleged during trial on the following bases:

- Comment on Defendant's refusal to testify ("*Griffin* error")
- Comment on Defendant's silence after *Miranda* admonishment ("*Doyle* error")
- Comment on Defendant's refusal to participate in police interview

- Stating personal opinions when addressing the jury or court in front of the jury
- Vouching for the credibility of a prosecution witness
- Intentional use of false testimony
- Reference to facts not in the record
- Eliciting or attempting to elicit inadmissible evidence
- Failure to correct false testimony of prosecution witness
- Coercion of a Defense witness or undue interference in a defense witness' decision to testify
- Arguing that defense counsel had an "obligation" to present evidence
- Personally attacking defense counsel when addressing the jury, e.g. "Defense Counsel lied to you."
- Misstatement of the law or evidence
- Brady or Discovery Violation per PC 1054.1
- Post-verdict revelation of inadmissible evidence to jurors

More examples of PM may be found in *California Criminal Law, Procedure and Practice*, 2015 Section2.45.

PROTOCOL

Oral Allegation of Prosecutorial Misconduct

Commonly, accusations of PM occur as short defense objections made during the People's closing argument vaguely referencing "misconduct" or "PM." Such objections may be strategic efforts calculated to interrupt the flow of argument. The Court often summarily overrules such objections and permits continued argument. In the event the Court does not immediately overrule the defense objection, use the protocol below:

1) *If the court does not immediately overrule a PM objection, immediately request a finding that the accusation is without merit:*

Upon the oral allegation of PM, request the court find no PM was committed and request that such findings are recorded on the record and in the minutes.

a. Immediate finding of meritless PM:

Upon the court finding any defense claim of PM meritless, order the transcript and route it to your supervising Chief Deputy District Attorney for banking and possible ethics referral of the defense attorney.

2) *No immediate judicial finding of wrongful PM accusation:*

In the absence of an immediate judicial finding absolving the Deputy District Attorney of all PM, request the court to conduct a formal hearing on the record using the following script:

"Your Honor, an allegation of prosecutorial misconduct has been made against the Prosecution Team. In order to properly respond, I need to know the specific nature of the allegation and any facts supporting the alleged misconduct. Additionally, I ask for a reasonable time period in which to respond. If no basis can be given by the defense, I ask for the allegation to be stricken and that defense counsel be admonished of his/her duty of candor under California Rule of Professional Conduct 5-200(a) and (b) and Business and Profession Code Section 6068(d) which state that a member shall employ such means only as are consistent with the truth and shall not seek to mislead the judge or jury by artifice or false statement of fact or law."

3) *Immediately notify your supervising Chief Deputy District Attorney:*

Your supervising Chief Deputy District Attorney will represent you at the hearing requested above. Prepare a memorandum of the facts and allegations as well as an opposition. Be prepared to testify if necessary. **Do not represent yourself at the hearing.**

4) *Obtain a ruling that no PM was committed:*

At the conclusion of the hearing, request the court find no PM was committed, that it expressly state that in the record, and that its findings be recorded in the minutes. Order the transcript (or recording) of the hearing and route in to your supervising Chief Deputy District Attorney.

Written Allegation of Prosecutorial Misconduct

Notify your supervising Chief Deputy District Attorney: Your supervising Chief Deputy District Attorney will represent you at the hearing requested above. Prepare a memorandum of the facts and allegations as well as an opposition. Be prepared to testify if necessary. **Do not represent yourself at the hearing.**

LEGAL RESOURCE GUIDE

WRONGFUL OR BAD FAITH ACCUSATIONS OF PROSECUTORIAL MISCONDUCT

An accusation of misconduct must be supported by facts. In the absence of proof that a prosecutor violated the law, rule of professional conduct, or a court order, the defense attorney him/herself has committed misconduct by making a spurious accusation either intentionally or recklessly. (See Bus. And Prof. Code Section 6068(d) and California Rule of Professional conduct 5-2000(a) and (b).) Such accusations area designed to intimidate, malign, or distract the prosecution.

When the prosecution is presented with such tactics, whether intentional or reckless, consider "going on the offensive" by requesting the court find that the *accuser* has committed misconduct. At a minimum you may ask that the accuser be admonished as to their duty of candor. If the false accusation is egregious, you may invite the court to consider sanctions or even contempt proceedings. (See generally, *Vaughn v. Muni Court* (1967) 252 Cal.App.2d 348, 358; *In re Ciraolo* (1969) 70 Cal.2d 389, 394.) While you may accuse your opponent of misconduct, contempt power belongs to the court and you may not "move" to have your opponent held in contempt. Order a transcript of any court admonishment or findings against the defense and route it to your supervising Chief Deputy District Attorney.

Caveat: Your own Duty of Candor mandates the concession of clear incidents of prosecutorial misconduct. If the prosecutor is not sure whether he/she has committed PM, immediately advise and confer with a supervising Chief Deputy District Attorney. (See Bus. And Prof. Code Section 6068(d) and California Rule of Professional conduct 5-2000(a) and (b).)

Points and Authorities

Duty to Never Mislead the Court

"An attorney has the unqualified duty to refrain from acts which mislead the court; representation to the court of facts known to be false is presumed intentional and a violation of an attorney's duties as an officer of the court under B&P Code Section 6068."(*Jackson v. State Bar* (1979) 23 Cal.3d 509, 513.)

Duty of Candor and Honesty

Consider asking the court to find that your opponent violated the duty to be candid and never mislead a judge. (See Bus. And Prof. Code Section 6068(d) and California Rule of Professional conduct 5-2000(a) and (b).) A lawyer speaking in court is virtually under

oath. (*Mosesian v. State Bar* (1972) 8 Cal.3d 60.)

Duty to Respect the Court and Maintain Just Causes

Consider asking the court to find that your opponent violated the duty to respect the court in B&P 6068(f) and the duty to maintain just causes in section 6068(e).

Personal Attacks in Front of the Jury Can Constitute Misconduct

"Personal attacks on opposing parties and their attorneys, whether outright or by insinuation, constitute misconduct. (citation) Such behavior only serves to inflame the passion and prejudice of the jury, distracting them from fulfilling their solemn oath to render a verdict based solely on the evidence admitted at trial. (citation) Lack of civility between counsel, moreover, only breeds public disrespect for the judicial process." (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1246.)

Sanctions—Only if the Accusations are Outrageous and Patently False. You Must Obtain Approval from a Supervising Chief Deputy District Attorney Before Requesting

Consider asking the court to sanction the defense attorney for deceitful conduct and for breach of the statutory and ethical duties which were violated. A minimum sanction is an order requiring the defense attorney to report a finding of misconduct to the State Bar Association as required by in Bus. And Prof. Code Section 6068(o) (3).

Gross Carelessness and Negligence can Constitute Misconduct

Even if the defense attorney's misconduct was not willful and dishonest, gross carelessness and negligence constitute a violation of an attorney's oath to faithfully discharge his or her duties and such conduct involves a breach of moral turpitude. (*Doyle v. State Bar* (1976) 15 Cal.3d 973, 978; *Jackson v. State Bar* (1979) 23 Cal.3d 509, 513.)

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.01 (Revised, May, 2013)	**Access to Inmate Telephone Recordings**

PURPOSE: To establish procedures for Sonoma County District Attorney Investigators to access inmate telephone recordings and the corresponding procedures for obtaining those recordings for use as evidence.

POLICY: District Attorney Investigators have authority to listen to inmate telephone recordings for law enforcement purposes in conjunction with a criminal investigation. District Attorney Investigators do not have authority to copy inmate telephone recordings without proper subpoena process as the physical recordings are the sole property of the Sheriff's Office, which is the custodian of records for such recordings.

PROCEDURE: District Attorney Investigators may listen to inmate telephone recordings made at the Sonoma County Jail facilities by either:

1. Contacting jail staff and arranging for a time in which the DA Investigator will physically go to the jail and listen to inmate recordings on equipment provided by the jail (Main Adult Detention Facility operated by the Sonoma County Sheriff's Office).

2. After first signing a statement of acknowledgement of this policy (attached), a DA Investigator may access inmate recordings via a computer link established at work stations located inside the secured access offices operated by the Office of the District Attorney.

   These offices include: The main office of the District Attorney, located within the Hall of Justice at 600 Administration Dr., Santa Rosa, CA, a satellite office of the District Attorney located in office space known as La Plaza B, at 2300 County Center Dr., Santa Rosa, CA, and designated office space at the Family Justice Center at 2755 Mendocino Ave., Santa Rosa, CA.

   Under no circumstances shall a DA Investigator make a copy or copies of any inmate recording as the physical recording is the property of the Sonoma County Sheriff's Office. The Sheriff's Office is the sole custodian of records of inmate recordings.

In any case in which a District Attorney Investigator deems physical copies of an inmate recording are necessary for the purposes of aiding in a criminal investigation, including trial preparation, the DA Investigator shall obtain a subpoena. The subpoena shall be delivered to the Main Adult Detention Facility of the Sheriff's office and only Sheriff's office personnel will create physical copies of the recordings.

Whenever District Attorney Investigators become aware of information while listening to inmate recordings that may compromise the security of a detention facility, information relating to threats of physical harm, or become aware that the recording is a privileged attorney-client communication, the DA Investigator shall immediately notify their supervisor. Examples of these communications include:

1. Information relative to the safety and security of the jail facility, such as planning for an escape attempt, planning for a physical altercation or other disruption, a planned attack on identified or unidentified jail personnel or other information relevant to the safe operation of the jail and the safety of jail staff.

2. Information regarding an inmate's safety such as planning of a suicide attempt or planning to cause physical harm to another inmate.

3. The discovery that the recording is a communication between attorney and client.

In these cases, the DA Investigator shall immediately notify their supervisor of the discovery of this information. Whether or not a supervisor is available, the DA Investigator shall make immediate notification to an on-duty supervisor in the jail and follow up with a written report to include the name of the jail supervisor contacted in cases in involving the disclosure of information described in sections 1 and/or 2 in the previous paragraph.

In cases in which a DA Investigator discovers a communication between attorney and client, the DA Investigator shall stop listening to the recording and take the additional step of notifying the Deputy District Attorney assigned to the case as well as making notification to a Senior Investigator or the Chief Investigator. A supplemental report shall be made describing the discovery of the communication, the names of the persons notified, and the date and time of the notification. The supplemental report will be supplied to the Deputy District Attorney assigned to the case.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

In order for District Attorney Investigators to be allowed access to inmate recordings via computer link at the main offices of the District Attorney or at satellite offices, DA Investigators shall sign the attached acknowledgement that they have read this policy and understand that under no circumstances shall DA Investigators make copies of inmate recordings.

District Attorney Investigators shall log in to their own accounts on the computer terminals with the computer links to access inmate recordings. DA Investigators shall not use another investigator's open account to access inmate recordings. DA Investigators shall not allow third parties to listen to recordings the DA Investigator has accessed on their own account.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

EMPLOYEE RECEIPT OF ACCESS TO
INMATE TELEPHONE RECORDING PROCEDURE
(For Departmental Records)

I, _____, acknowledge that I have received and have been given the opportunity to read and understand the Sonoma County District Attorney Investigators Policy and Procedure Article VIII, Section 8.01, regarding access to inmate telephone recordings. I understand that under no circumstances shall I make any copies, or allow any other employee, to make copies of inmate telephone recordings I may access remotely from computer terminals located within the main offices of the District Attorney within the Hall of Justice or from computer terminals located with the satellite office of the District Attorney. I understand the appropriate procedure to obtain physical copies of such recording are by subpoena process. I also understand that the Sonoma County Sheriff's Office is the sole custodian of records of inmate recordings and that violation of this policy will result in disciplinary action.

_____ _____
Printed Name Signature

_____ _____
Supervisor Witness Date

SONOMA COUNTY DISTRICT ATTORNEY
POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.02	**FIREARMS TRAINING AND RANGE PROCEDURES**

SUBJECT: FIREARMS TRAINING AND RANGE PROCEDURES

PURPOSE: To establish guidelines and procedures for firearms training and the use of range facilities.

POLICY: The policy of the District Attorney's Office is to ensure that all current Investigators are properly trained and are proficient in the use and handling of all firearms which they are authorized to carry.

Retired investigators and other non-sworn office personnel may participate in firearms training with the permission of the Chief Investigator and a Rangemaster. Friends, family members or any other non-employee of the District Attorney's Office shall not be permitted on any range facility during firearms training operations conducted by the District Attorney's Office.

No one under the age of 18 shall be permitted on any range facility during firearms training operations conducted by the District Attorney's Office.

Range facilities shall be used in accordance with the guidelines and procedures that promote the use in a safe manner under the direction of qualified Rangemasters/Firearm Instructor.

Only the District Attorney or the Chief Investigator may exempt personnel from the provisions mandated in this policy.

DEFINITIONS

Rangemaster:	Bureau approved firearms instructor certified by California Peace Officer Standards and Training (P.O.S.T.)
Range:	Indoor or outdoor facility where firearms training is conducted

PROCEDURES

A. RANGE SAFETY

1. All firearms training will be conducted in a manner that ensures the safety of all personnel concerned. Any such training will be supervised by a Bureau Rangemaster, who has the authority and responsibility to regulate the conduct of all participants, regardless of rank, to ensure their safety. A Rangemaster's directions will be followed.

2. All firearms and magazines will be unloaded prior to entering or exiting a range facility.

3. All firearms will be either holstered, opened and benched, or pointed downrange at all times. They will not be un-holstered or handled without the specific direction of a Rangemaster.

4. All firearms will be empty with the slide locked open or the cylinder open before handing it off to another person.

5. Horseplay of any kind will not be tolerated and may be subject to disciplinary action.

6. The following will be done only with a Rangemaster's permission:

    1. Loading
    2. Unloading
    3. Dry firing
    4. Firing
    5. Any other firearm handling
    6. Entering or exiting the range

7. All personnel must remain familiar with the operation of their firearms and use safe handling techniques at all times while in attendance at a range facility.

8. No shooting will be done without the permission, direction, or presence of a Rangemaster.

9. No person will be on the firing line, except a Rangemaster and the personnel who are actively shooting.

10. Eating and smoking is prohibited at the Los Guilicos range facility.

11. Ear and eye protection must be worn by all personnel present at the range during live fire exercises.

12. Only approved targets and training-related equipment will be permitted on the range.

13. No leaded ammunition is allowed to come into the indoor range facility at the Los Guilicos range facility.

14. No frangible ammunition is allowed to be taken out of any range facility without the permission of a Rangemaster. Personnel must also ensure that they do not mix frangible and leaded ammunition prior to exiting a range facility.

15. All personnel are to adhere to the "Alcohol, Drug and Other Intoxicants - Zero Tolerance" -- District Attorney Policy # 2.02. No one shall report for range training with any detectable presence of alcohol on their breath or person, nor any detectable impairment due to the use of drugs or other intoxicants.

16. Alcoholic beverages are prohibited at the range.

B. RANGEMASTER RESPONSIBILITIES

1. Determining the minimum qualification scores and developing courses of fire (position, number of rounds fired, timed firing, acceptable score, etc.) with the approval of the Chief Investigator.

2. Organizing and publishing the annual firearms training schedule. Training dates will be scheduled at least once per month during the calendar year. Exceptions to this scheduling practice or the cancellation of training sessions may be approved by the Chief Investigator when unforeseen circumstances make it necessary to do so.

3. Securing the appropriate range facilities for firearms training.

4. Purchasing and maintaining the necessary inventory of supplies. This includes frangible ammunition, leaded ammunition, cleaning supplies, targets, and other related products.

5. Reviewing and recording all scores. The official written record of who attended the training session and their respective scores will be maintained by the Rangemasters for periodic review by the Chief Investigator.

6. Reporting any unusual conditions observed or unusual occurrences; i.e., injuries to personnel, stray shots, defective weapons, range defects, inability of individuals to safely handle a weapon, etc., to the Chief or Senior Investigator.

7. Ensuring that the range facility is left in a clean and orderly condition.

8. Maintaining cellular phone communication while operating at the range.

9. Coordination of firearms maintenance as necessary.

C. QUALIFICATION STANDARD

1. All current Investigators must meet the minimum score requirements for each course of fire with their primary, on-duty firearm. At a minimum, they must attend training at least once each quarter of the calendar year and no less than once every 3 months, unless qualification requirements are exempted by the Chief Investigator. The Investigator is still required to qualify at least once a year. Personnel may attend more often if they so desire.

(a) First Quarter: January through March
(b) Second Quarter: April through June
(c) Third Quarter: July through September
(d) Fourth Quarter: October through December

D. FAILURE TO ATTEND

1. Failure by an Investigator to meet the Qualification Standard by not attending firearms training within the required time frame may result in progressive disciplinary action and/or decertification (loss of authorization to carry an on-duty firearm).

E. FAILURE TO QUALIFY

1. An Investigator who fails to meet the minimum score requirements on each course of fire as determined by the Rangemasters must remain at the

range and re-shoot as many times as deemed practical by a Rangemaster in an attempt to meet the minimum score.

2. An Investigator who fails to meet the minimum score requirements after a reasonable number of attempts will be directed by the Rangemaster not to use the firearm with which they failed to qualify.

3. The Investigator must contact the Chief or Senior Investigator immediately if the firearm they failed to qualify with is one mandated for their job.

4. The Rangemaster must notify the Chief Investigator, verbally and in writing, of an Investigator's failure to meet the minimum requirements.

5. A Rangemaster must arrange for remedial training as soon as practical for an Investigator who fails to meet the minimum requirements.

6. Under such circumstances, the Chief Investigator may direct an Investigator to attend firearms training more frequently than outlined in this policy.

F. FIREARMS MODIFICATION , REPAIR AND INSPECTIONS

1. Modifications or repairs to any firearm authorized for duty use must have the prior approval of a Rangemaster and Chief Investigator.

2. Authorized duty firearms in need of repair or modification must be turned into an authorized armorer.

3. Investigators who are authorized to carry personally owned firearms which are in need of repair will ensure that such repairs are performed by a factory authorized armorer. Such repairs are at the Investigator's expense.

4. Firearms authorized for duty use will not be disassembled beyond the point necessary for normal cleaning and maintenance other than by an authorized armorer.

5. Firearms shall be inspected and certified bi-annually by a certified Armorer.

G. RANGE INJURIES

1. Any injury to any person or damage to any equipment must be reported to the Chief or Senior Investigator.

2. A personal injury will be reported and documented in accordance with the County's policy regarding industrial injuries and worker's compensation procedures.

3. The Chief or Senior Investigator will be responsible for investigating any injury occurring at a range facility.

H. NON-COMPLIANCE WITH THIS POLICY

1. Failure by currently employed personnel to comply with any of the regulations and responsibilities outlined in this policy may result in disciplinary action. Such actions may include, but are not limited to, standard progressive discipline, decertification (the loss of authorization to carry a firearm), restricted use of an assigned County vehicle (not available for call-out duty) or termination of employment for failure to meet job requirements.

2. Retired employees authorized to carry a concealed and loaded firearm under Penal Code 12027.1, who fail to comply with any of the regulations and responsibilities outlined in this policy may be denied a concealed and loaded firearm permit Under the following:

> Penal Code Section 12027.1 (2) A retired peace officer may fhave his or her privilege to carry a concealed and loaded firearm revoked or denied by violating any department rule, or state or federal law that, if violated by an officer on active duty, would result in that officer's arrest, suspension or removal from the agency.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.03	**Firearms**

PURPOSE: To provide District Attorney Investigators with guidelines for the following: (1) the use and control of on-duty and off-duty, office-approved firearms; (2) the qualification requirements for approved firearms, (3) the reporting and investigative procedures governing specific discharges of approved firearms.

POLICY:

I. When Firearms May Be Discharged

A. Firearms may be discharged by an Investigator, either on or off duty, in the performance of a peace officer duty, only under the following circumstances:

1. When shooting at an approved range or unrestricted area.

2. To kill a seriously injured animal or a dangerous animal that is attacking the Investigator or another person and, which if allowed to escape, presents a danger to the public.

3. To protect the Investigator or others from what the Investigator reasonably believes to be an immediate threat of death or serious bodily injury.

4. To effect the arrest or prevent the escape of a fleeing felony suspect if the Investigator has reasonable cause to believe that:

i. The crime for which the arrest is made involved conduct including the use or threatened use of deadly force.

ii. There is a substantial risk that the person to be arrested may cause death or serious bodily harm to another person if the apprehension is delayed.

II. MOVING VEHICLE

Moving Vehicles: Shots fired at or from moving vehicles are generally discouraged.

A. Unless it reasonably appears that it would endanger the Investigator or the public, Investigators should attempt to move out of the path of any approaching vehicle.

B. This is not intended to restrict the Investigator's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the Investigator or others.

C. Investigators may not use deadly force to stop a fleeing suspect unless the Investigator has probable cause to believe that the suspect has committed or intends to commit a felony involving serious bodily injury or death. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

III. Drawing, Displaying and Handling of Firearms

A. An Investigator shall not draw or display a firearm except under the following conditions:

1. For general maintenance, storage, authorized training or education.

2. When the Investigator reasonably believes that it may be necessary to use a firearm in conformance with other provisions of this policy, such as, but not limited to, when entering a structure, area, or approaching a vehicle or situation in which there exists a possibility of death or serious bodily injury to the Investigator or other persons.

B. Investigators shall not handle a firearm in a manner that could result in an accidental discharge. In all instances, firearms shall be handled in accordance with the safety standards taught during approved firearms training programs.

IV. Possession of Firearms at Certain Facilities

A. Investigators may be called to locations where a request is made to secure firearms before entering. Investigators are encouraged to evaluate the circumstances of such requests and utilize their best judgment. No Investigator is obligated to surrender a firearm unless entering a secured facility.

1. An example of such facilities are the county jail, juvenile hall, and any similar facility where access is controlled. Absent such control, the removal of firearms before entry is at the Investigator's discretion.

V. Primary Handgun, Shotgun, and Rifles

A. All Investigators employed by the Sonoma County District Attorney's Office may carry the office-issue primary handgun or may carry an optional primary handgun, provided said handgun is approved by the Chief Investigator. No primary handgun smaller than a .38 caliber will be authorized for use. Investigators may carry a shotgun or a rifle pursuant to section 6 below. While on duty, all investigators will have their weapon on them, not in briefcases, fanny packs or in their purses.

1. All optional primary handguns are to be provided at the expense of the individual Investigator. Other equipment relating to the said handgun (leather gear, magazines, etc.) will also be provided by the individual Investigator.

2. Ammunition for firearms of a caliber other than 9mm, .40 caliber, 12 gauge shotgun, and .223 Rifle will be provided at the expense of the individual Investigator.

3. The Office of the District Attorney shall not be responsible for the loss or damage to an Investigator's personal handgun. This applies to both on and off duty.

4. All handguns carried on an optional basis are subject to inspection and approval by the Chief Investigator and Rangemaster.

5. The Chief Investigator or Rangemaster have the right to refuse permission to carry a weapon which has been deemed to be unsafe, inoperative, inaccurate or unreliable.

6. Investigators are authorized to carry the office issued shotgun or a shotgun approved by the Chief Investigator if they have successfully completed shotgun training provided by this office.

7. Investigators are authorized to carry the office issued rifle or rifle approved by the Chief Investigator, if they have successfully completed rifle training provided by this office.

VI. Secondary Handgun

Investigators are authorized to carry a secondary “back-up” handgun under the following conditions:

A. The handgun and ammunition must be inspected and approved by the Chief Investigator and Rangemaster.

B. The Investigator shall qualify and maintain proficiency using his/her own ammunition at least once a year.

C. The handgun must be registered with the office.

D. The handgun shall be concealed.

E. No more than one secondary handgun will be carried.

F. Carrying a secondary handgun is optional.

G. The handgun must be .380 ACP caliber or larger, and may be a semi-automatic or revolver.

VII. Off Duty Handgun

A. The Office of the District Attorney does not mandate the carrying of an off duty handgun.

B. Those Investigators exercising the option to carry an off duty handgun shall make certain of the following:

1. The handgun is concealed from public view.

2. They are in possession of their official identification.

3. The handgun is used in accordance with the provisions of this policy.

4. The investigator is in compliance with qualification requirements.

VIII. Training and Qualification

A. Investigators who wish to carry a shotgun or rifle must attend and successfully pass the office shotgun/ rifle training.

B. Investigators must qualify with any authorized firearm that they carry on or off duty as listed below:

1. Primary handgun once every three months.

2. Off duty or secondary handgun once a year.

3. Shotgun once a year.

4. Rifle once a year.

C. Investigators must supply the office with the manufacturer's name, model number, serial number and caliber of any handgun that they carry on duty or off duty.

IX. Ammunition

A. Investigators shall use commercial factory ammunition for firearms carried on or off duty.

1. On duty ammunition will be provided by the Rangemaster for county issued firearms and optional handguns of the same caliber. Ammunition for optional handguns of a different caliber shall be provided by the Investigator.

2. Off duty ammunition will be provided at the Investigator's expense.

X. Specialized Duties

A. Certain specialized duties may at times necessitate the carrying of a different type of weapon for particular situations or assignments. This must be authorized by the Chief Investigator.

XI. Reporting and Investigative Procedure

The following procedures shall be followed when an investigator of this office discharges a firearm, whether on or off duty, except at an approved range or unrestricted area:

A. When an Investigator of this office discharges a firearm, he/she shall verbally notify the Chief Investigator or a Senior Investigator as soon as possible. In the event of their absence, the Investigator shall notify the District Attorney or the Assistant District Attorney.

B. The Chief Investigator or the Senior Investigator shall respond (if possible) and investigate the firearms discharge. They shall notify the District Attorney or the Assistant District Attorney without unreasonable delay.

C. The Chief Investigator or the Senior Investigator shall review all reports and make a written report of his investigation and forward it without unreasonable delay to the District Attorney or the Assistant District Attorney.

XII. Board of Review

A Board of Review shall be convened to examine the circumstances surrounding an on duty, off duty, or accidental discharge of a firearm by an Investigator of this office.

A. Membership of the Board

1. An Assistant District Attorney, who shall act as Chairman of the Board.

2. The Chief Investigator and/or a Senior Investigator.

3. Any other management member designated by the District Attorney.

B. Authority of the Board

1. The Board is authorized to review the circumstances and to make recommendations for further action to the District Attorney.

C. Meetings of the Board

1. A meeting of the Board shall be called by the Chairman within a reasonable time after the report of a firearm discharge comes to his/her attention. The meetings will be conducted in a formal manner similar to any fact finding review board.

XIII. Accidental Discharge of Firearms

In cases of accidental discharge, the Board of Review will determine if the Investigator was negligent, violated office rules or violated existing law. If the finding of the Board is affirmative, the Board should recommend further action.

XIV. Flying while Armed

A. The Transportation Security Administration (TSA) has imposed rules governing law enforcement Investigators flying armed on commercial aircraft. Below are the guidelines that will directly affect Investigators.

1. Investigators wishing to fly while armed must be flying in an official capacity, not for vacation or pleasure purposes; and

2. Investigators must carry their bureau identification card and California drivers license. Additionally, Investigator(s) when requested must present their identification to airline officials; and

3. An official letter signed by the Chief Investigator or his designee, authorizing armed travel must accompany the Investigator(s). The letter must outline the Investigator's necessity to fly armed, must detail his/ her itinerary, and should include that the Investigator(s) has completed the mandatory TSA training for law enforcement Investigator(s) flying while armed. Investigators flying while armed shall also have their NLET Number from TSA: and

4. Investigator(s) must have completed the now mandated TSA security training, covering Investigators flying while armed.

The training shall be given by the Bureau appointed instructor; and

5. It is the Investigator's responsibility to notify that air carrier in advance of the intended armed travel. This notification can be accomplished by early check- in at the carrier's check-in counter; and

6. Discretion must be used to avoid alarming passengers or crew by displaying a firearm. The firearm must be kept on the Investigator's person concealed at all times; and may not be stored in an overhead compartment; and

7. Investigators shall never surrender their firearm to anyone. Resolve any problems with a management representative of the air carrier, which may include the flight Captain and/or ground security manager; and

8. No armed Investigator may consume any alcoholic beverage while aboard an aircraft, or eight hours prior to boarding an aircraft.

9. This section does not apply to members who choose to include an unloaded firearm in the checked baggage. All applicable regulations shall be followed.

XV. Alterations to Firearms

A. No alterations shall be made to any firearm that changes it from factory- standard condition without the prior approval of the Chief Investigator or his/her designee. The Chief Investigator shall consider each request for alteration on a case-by-case basis.

B. After receipt of approval to alter a firearm, an Investigator may alter the firearm according to the approved specifications.

C. No altered firearm shall be used on duty unless and until a Bureau approved Armorer has inspected and approved the firearm, evidence of which shall be maintained by that Armorer in writing for as long as the altered firearm is in use.

D. Optical Sights for Rifles: Specific non-magnifying sights are approved for Bureau rifles. The Rangemaster shall maintain a list of approved non-magnifying optical sights. The Rangemaster or

his/her designee, will consider low power magnifying optical sight on a case-by-case basis. A Bureau approved Armorer shall inspect the installation of all optical sight to ensure they are properly mounted. The inspection shall be recorded in that Armorer' records and maintained while the firearm is in use. Investigators shall qualify with optical sights prior to on duty use.

XVI. Storage of Bureau-issued Firearms while Off Duty

A. Storage of Handguns-While Investigators are off duty, they shall store their Bureau- issued firearm in the following manner:

a. Handguns shall be stored as required by the law; and
b. Investigators shall take all reasonable and prudent steps to ensure that their handguns are secure from unauthorized persons at all times.

B. Storage of Rifles and Shotguns-While Investigators are off duty, they shall store their Bureau-issued rifles and shotguns in the following manner:

a. Rifles and Shotguns shall be stored as required by law; and

b. Investigators shall take all reasonable and prudent steps to ensure that rifles and shotguns are secure from unauthorized persons at all times.

XVII. Carrying Firearms out of State

Pursuant to 18USC 926B, full time sworn Investigators are authorized to carry concealed firearms in all other states subject to the following conditions:

a. The Investigator shall carry his/ her Bureau identification whenever carrying such weapon.

b. The Investigator will remain subject to this and all other Bureau policies (including qualifying and training) and may not be the subject of any current disciplinary action.

c. The Investigator may not be under the influence of alcohol or any other intoxicating or hallucinatory drug.

d. Investigators are cautioned that individual states may still restrict or prohibit carrying firearms in certain areas such as government buildings, property and parks. States may also restrict specific ammunition (e.g. hollow point bullets).

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.04	**Use of Force**

PURPOSE: To provide District Attorney Investigators with guidelines on the use of force. This policy has been adopted as a County-wide policy by the Sonoma County Law Enforcement Chief's Association.

POLICY: District Attorney Investigators shall use only the amount of force that appears reasonable to effectively bring an incident under control while protecting themselves, other law enforcement officers and members of the public.

I. DEFINITIONS:

A. California Penal Code Section 835a states:

1. "Any Peace Officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance."

2. "A Peace Officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."

B. Under Federal case law (Graham v. Conner):

1. The right to make an arrest carries with it the right to use objectively reasonable force. In determining whether force used by an officer is objectively reasonable, all of the facts and circumstances with which the officer was confronted are considered, including:

i. The information available to the officer at the time of the incident;

ii. The acts of the suspect;

iii. Whether the suspect reasonably appeared to be a threat to the officer or to other persons; and

iv. The severity of the crime of which the individual was suspected.

II. PROCEDURE:

A. The use of force is limited to what is reasonably known or perceived by the Investigator at the time the force was used. Investigators may use force in the performance of their duties consistent with the California Penal Code:

1. To prevent the commission of a public offense;

2. To prevent a person from injury;

3. To effect the lawful arrest of persons resisting or attempting to evade the
arrest or detention;

4. In self-defense or in the defense of another person.

B. Justification for the use of force is limited to what is reasonably known or perceived by the Investigator at the time the force was used.

C. It is recognized that Investigators are expected to make split-second decisions and that the amount of time available to evaluate and respond to changing circumstances may impact an Investigator's decision.

D. While various levels of force exist, each Investigator is expected to respond with only that level of force, which reasonably appears appropriate under the circumstances at the time, to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

E. Investigators shall assess the incident in order to determine the best option to de-escalate the incident and bring it under control in a safe manner.

III. REPORTING THE USE OF FORCE:

A. In the performance of any law enforcement duty, Investigators shall report the use and type of any physical force within a detailed report.

B. Actions not considered physical use of force are handcuffing and grip or directional control without the use of pain compliance.

C. Supervisory notification shall be made as soon as practical following the application of physical force which, at the time, appears likely to have caused physical injury.

D. Medical assistance or evaluation shall be obtained for subjects who have sustained injury, express a complaint of injury, or who have been rendered unconscious.

E. In the event that an involved Investigator is injured to the extent that he/she is unable to complete the required report, the Investigator's supervisor will assume the reporting responsibility.

IV. SUMMARY

A. The decision to use force rests solely with each Investigator. While there is no way to specify the exact amount or type of reasonable force to be applied in any given situation, each Investigator is expected to use these guidelines to make such decisions in a professional, impartial and safe manner.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.05	**Oleoresin Capsicum Spray**

PURPOSE: To provide guidelines and procedures for the proper use of Oleoresin Capsicum ("O.C.") spray.

POLICY: Oleoresin Capsicum spray is the only chemical agent authorized to be issued by this office and may be carried by Investigators as optional equipment. It shall be utilized in accordance with the Use of Force policy and only when necessary and appropriate to the circumstances.

I. PROCEDURE:

A. Reporting

1. Whenever the use of O.C. is necessary in effecting the arrest or control of a person, the use and the surrounding circumstances shall be noted in the narrative of a crime or incident report. Such report shall be forwarded to the Chief Investigator.

2. The Chief or Senior Investigator shall be notified of such an incident as soon as practical.

B. Decontamination

1. Whenever O.C. is used to effect an arrest or to control a person it is the Investigator's responsibility to:

i. Take decontamination measures appropriate to the location and conditions;

ii. Inform medical and/or booking personnel that the person has been subjected to O.C.

2. As soon as practical after exposure, the affected person's eyes should be liberally flushed with plain water until the discomfort is relieved and then exposed to fresh air.

C. Medical Aid

1. If the person sustains additional physical injuries during exposure to O.C., they should be taken to a hospital emergency room for medical clearance prior to any booking procedure. If it is known prior to the use of O.C. that the person has asthma or a medical condition that might result in a life-threatening reaction to O.C., all other methods of appropriate restraint under the circumstances should first be considered before using O.C.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.06 **(Revised 01/05/2012)**	**TASER GUIDELINES**

PURPOSE: To establish guidelines and procedures for Taser training and the use of the Taser —26 (referred to as Taser in this policy).

POLICY: The policy of the District Attorney's Office is to ensure that all current Investigators are properly trained and are proficient in the use and handling of the Taser.

When properly applied in accordance with this policy, the Taser is considered a less than lethal control device, which is intended to temporarily incapacitate a violent or potentially violent individual without causing serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

I. PROCEDURE:

A. Carrying The Taser

1. Personnel who have completed Bureau approved training may be issued a Taser for use during their current assignment. Investigators shall only use Tasers and cartridges that have been issued by the Bureau. The Taser should be carried in an approved holster or secured in the driver's compartment of the investigator's vehicle so that it is readily accessible at all times.

2. If the Taser is carried on the investigator's person, the Taser shall not be carried on the same side as the investigator's duty weapon.

3. All Taser devices shall be clearly and distinctly marked to differentiate them from the investigator's duty weapon and any other device.

4. Whenever possible, investigators shall carry a total of two or more Taser cartridges on their person at all times.

5. While carrying a Taser, Investigators shall be responsible for insuring that their issued Taser is properly maintained and in good working order at all times.

6. Investigators should never hold both a firearm and a Taser at the same time unless lethal force is justified.

B. Verbal and Visual Warnings

1. Unless it would otherwise endanger officer safety or is impractical due to circumstances, a verbal announcement of the intended use of the Taser shall precede the application of the Taser device in order to:

i. Provide the individual with a reasonable opportunity to voluntarily comply;

ii. Provide other investigators and individuals with warning that a Taser device may be deployed. If, after a verbal warning, an individual continues to express an unwillingness to voluntarily comply with an investigator's lawful order, and it appears both reasonable and practical under the circumstances, an investigator may, but is not required to display the electric arc (provided that there is not a cartridge loaded into the Taser) or laser in a further attempt to gain compliance prior to the application of the Taser device. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair their vision.

iii. The fact that a verbal and/or other warning was given, or reasons it was not given, shall be documented in any related reports.

C. Use of the Taser

1. As with any law enforcement equipment, the Taser has limitations and restrictions requiring consideration before its use. The Taser should only be used when it's operator can safely approach the subject within the operational range of the Taser. Although the Taser device rarely fails, and is generally effective in subduing most individuals, the officer should be aware of this potential and be prepared with other

options in the unlikely event of such a failure. The deployment of the Taser is considered a use of force and may be applied at the same level as OC spray.

2. Authorized personnel may use the Taser device when circumstances, known to the individual officer at the time, indicate that the application of the Taser is reasonable to subdue or control:

   i. A violent or physically resisting subject.

   ii. A potentially violent or physically resisting subject if the subject has verbally or physically demonstrated an intention to resist, and the investigator has given the subject a verbal warning of the intended use of the Taser followed by a reasonable opportunity to voluntarily comply; and other available options reasonably appear ineffective or would present a greater danger to the investigator or subject.

   iii. Although not absolutely prohibited, investigators should give additional consideration to the unique circumstances involved prior to applying the Taser to any of the following individuals:
   - Pregnant females;
   - Elderly individuals or obvious juveniles;
   - Individuals who are handcuffed or otherwise restrained;
   - Individuals who have been recently sprayed with alcohol based Pepper Spray or who are otherwise in close proximity to any combustible material; and
   - Individuals whose position or activity may result in collateral injury (e.g. falls from height, operation of vehicles, etc.)

   iv. The Taser shall not be aimed at the eyes or face of an individual. The Taser device shall not be used to torture, psychologically torment or inflict undue pain on any individual.

D. Multiple Applications of the Taser

1. If, after a single application of the Taser, an investigator is still unable to gain compliance from an individual, and circumstances allow, the investigator should consider whether or not the Taser device is making proper contact, the use of the Taser is limiting the ability of the individual to comply, or if other options or tactics may be more appropriate. However, this shall not preclude any investigator from multiple, reasonable applications of the Taser on an individual.

E. Report of Use

1. All Taser discharges shall be documented by completing a written report. Photograph any visible injuries caused by Taser or sustained while under the influence of the Taser. Accidental discharges of a Taser cartridge will also be documented. Any report documenting the discharge of the Taser cartridge will include the cartridge's serial number and an explanation of the circumstances surrounding the discharge.

2. The on-board Taser memory will be downloaded through the dataport, and saved with the related crime report. Collect the ID tags and book into evidence.

F. Medical Treatment

1. Any person who has been subjected to the electric discharge of the Taser and/or struck by Taser darts shall be medically cleared prior to being booked. Individuals who have been subjected to the electric discharge of a Taser and/or struck by Taser darts and who are also suspected of being under the influence of controlled substances and/or alcohol should also be examined by qualified medical personnel as soon as practicable.

2. Further, any person struck with Taser darts or injured by a probe shall be treated by medical personnel as soon as practical after the incident with only qualified medical personnel removing the Taser darts from a person's body. Used Taser darts shall be considered a sharp biohazard, similar to a used hypodermic needle, and disposed of accordingly.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.07	**EMERGENCY VEHICLE OPERATIONS**

PURPOSE:

To provide District Attorney Investigators with guidelines on the emergency operation (use of emergency lights and siren) of their assigned county vehicles during non-pursuit emergency responses and enforcement stops.

POLICY:

The vehicles assigned to District Attorney Investigators are authorized emergency vehicles pursuant to section 165 of the California Vehicle Code.

The emergency equipment (red/blue lights and siren) on such vehicles will be activated and displayed only for a legitimate law enforcement purpose. The safety of the Investigator and the public must be a primary concern when driving under emergency conditions or when conducting enforcement stops.

Investigators are authorized to display the red and blue lights and activate the siren for the following purposes:

- To stop a vehicle or pedestrian for a lawful purpose within the scope of employment and duties.
- To expedite a response to a request for emergency assistance by other peace officers or another law enforcement agency.
- To expedite a response to an emergency call or rescue operation involving law enforcement or the public.

“Emergency” as it applies to the Code Three operation of an emergency vehicle cannot be defined in exact terms. The circumstances surrounding each event must be evaluated individually. Sound judgment and prudent discretion must be exercised in evaluating those circumstances in order to determine if it is an emergency. Official

police radio messages, personal observation, or information received by an Investigator from other sources may be
sufficient to justify a conclusion that a situation exists requiring immediate law enforcement intervention for the protection of persons or property.

The Bureau of Investigation issues citation books as standard equipment to Investigators for a variety of enforcement purposes (i.e. B&P code violations, citable juvenile warrants, etc.). Enforcement of the California Vehicle Code, however, is not considered a primary function, therefore, "routine" traffic enforcement by Investigators is highly discouraged.

During Code Three vehicle operations, Investigators are required to comply with California Vehicle Code sections 21055, which provides exemptions from "rules of the road" only if a red light is being displayed and a siren is being sounded, and 21056, which imposes a duty to always drive with due regard for the safety of the public.

Any Bureau of Investigation member who is not a peace officer is prohibited from displaying or activating a red light or siren while driving a Bureau emergency vehicle.

PROCEDURE:

Any Investigator intending to stop a vehicle or a pedestrian will advise the appropriate dispatch center of the location of the stop, license number of the vehicle, or a description of the vehicle or person being stopped. At the conclusion of the stop the Investigator will provide the dispatch center with a disposition of the outcome.

Any Investigator who responds using red light and siren to either a request for emergency assistance from a law enforcement officer or agency, a rescue operation, or any other emergency situation, will make every effort to notify the appropriate dispatch center that he or she is responding "Code Three" (it is recognized that excessive radio traffic during these situations may hinder such notification). The Investigator will notify the dispatch center upon arriving at the scene and make the necessary notification upon clearing the scene.

This policy does not prohibit Investigators from occasionally testing their vehicle's emergency equipment to insure it is functioning properly. This testing, however, should be done at the facility operations area, the gas pump area, or some other remote location away from public roadways.

SUMMARY:

The decision of whether or not to respond Code Three rests solely with the individual Investigator, who must critically weigh the need for such action against the resulting safety hazards. This is based upon the conditions present at the time, the need for the

urgency in responding, and the safety of other persons on the roadways. Final responsibility rests with the Investigator for the consequences of such a decision.

PURSUIT POLICY:

Generally, Investigators should avoid becoming involved in a vehicle pursuit. In cases in which an Investigator does become involved in a pursuit, the Investigator shall abide by and be accountable for the County-Wide Pursuit Policy adopted by the Sonoma County Chief's Association, Policy # 93-4, revised 11/2007.

Policy and Procedure Manual revision: 03/2012

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.08	

This section left open for future use.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURES MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.09	**Parental Child Abductions & Custody Disputes**

PURPOSE: To provide general guidelines and procedures for the investigation and documentation of domestic and international parental child abduction cases as well as child custody disputes.

POLICY: It is the policy of this office to assist the courts pursuant to the mandates stated in the California Family Law Code sections, 3130 and 3131. When necessary, this office will pursue prosecution in certain cases for the appropriate criminal violations.

I. FAMILY CODE DEFINITIONS:

A. 3130 If a petition to determine custody of a child has been filed in a court of competent jurisdiction, or if a temporary order pending determination of custody has been entered in accordance with Chapter 3 (commencing with Section 3060), and the whereabouts of a party in possession of the child are not known, or there is reason to believe that the party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 3411, the district attorney shall take all actions necessary to locate the party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.

B. 3131 If a custody or visitation order has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the order, the district attorney shall take all actions necessary to locate and return the child and the person who violated the order and to assist in the enforcement of the custody or visitation order or other order of the court by use of an appropriate civil or criminal proceeding.

II. PENAL CODE DEFINITIONS:

A. 278 Taking, Enticing Away, Keeping, Withholding, or Concealing Child by Person Without Right of Custody

1. Every person, not having a right to custody, who maliciously takes, entices away, keeps, withholds, or conceals any child with the intent to detain or conceal that child from a lawful custodian shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

B. 278.5 Taking, Enticing Away, Keeping, Withholding, or Concealing Child In Order to Deprive Lawful Custodian of Custody or Visitation Rights

(a) Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

(b) Nothing contained in this section limits the court's contempt power.

(c) A custody order obtained after the taking, enticing away, keeping, withholding, or concealing of a child does not constitute a defense to a crime charged under this section.

C. 278.7 Exception for Custodian Having Reasonable Belief That Child Will Suffer injury or Harm; Reporting Requirements

(a) Section 278.5 does not apply to a person with a right to custody of a child who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child.

(b) Section 278.5 does not apply to a person with a right to custody of a child who has been a victim of domestic violence who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child. "Emotional harm" includes having a parent who has committed domestic

violence against the parent who is taking, enticing away, keeping, withholding, or concealing the child.

(c) The person who takes, entices away, keeps, withholds, or conceals a child shall do all of the following:

(1) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, make a report to the office of the district attorney of the county where the child resided before the action. The report shall include the name of the person, the current address and telephone number of the child and the person, and the reasons the child was taken, enticed away, kept, withheld, or concealed.

(2) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, commence a custody proceeding in a court of competent jurisdiction consistent with the federal Parental Kidnapping Prevention Act (Section 1738A, Title 28, United States Code) or the Uniform Child Custody Jurisdiction Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code).

(3) Inform the district attorney's office of any change of address or telephone number of the person and the child.

(d) For the purposes of this article, a reasonable time within which to make a report to the district attorney's office is at least 10 days and a reasonable time to commence a custody proceeding is at least 30 days. This section shall not preclude a person from making a report to the district attorney's office or commencing a custody proceeding earlier than those specified times.

(e) The address and telephone number of the person and the child provided pursuant to this section shall remain confidential unless released pursuant to state law or by a court order that contains appropriate safeguards to ensure the safety of the person and the child.

D. 279.6 Circumstances for Protective Custody; Return to Lawful Custodian

(a) A law enforcement officer may take a child into protective custody under any of the following circumstances:

(1) It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child, or, by flight or concealment, evade the authority of the court.

(2) There is no lawful custodian available to take custody of the child.

(3) There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.

(4) The child is an abducted child.

(b) When a law enforcement officer takes a child into protective custody pursuant to this section, the officer shall do one of the following:

(1) Release the child to the lawful custodian of the child, unless it reasonably appears that the release would cause the child to be endangered, abducted, or removed from the jurisdiction.

(2) Obtain an emergency protective order pursuant to Part 3 (commencing with Section 6240) of Division 10 of the Family Code ordering placement of the child with an interim custodian who agrees in writing to accept interim custody.

(3) Release the child to the social services agency responsible for arranging shelter or foster care.

(4) Return the child as ordered by a court of competent jurisdiction.

(c) Upon the arrest of a person for a violation of Section 278 or 278.5, a law enforcement officer shall take possession of an abducted child who is found in the company of, or under the control of, the arrested person and deliver the child as directed in subdivision (b).

E. 784.5 Jurisdiction for Prosecution of Child Concealment or Detention in Violation of Custody Order: The jurisdiction of a criminal action for a violation of Section 277, 278, or 278.5 shall be in any one of the following jurisdictional territories:

(a) Any jurisdictional territory in which the victimized person resides, or where the agency deprived of custody is located, at the time of the taking or deprivation.

(b) The jurisdictional territory in which the minor child was taken, detained, or concealed.

(c) The jurisdictional territory in which the minor child is found. When the jurisdiction lies in more than one jurisdictional territory, the district attorneys concerned may agree which of them will prosecute the case.

III. PROCEDURE:

A. CASE INTAKE CRITERIA

1. Sufficient facts exist to establish that Sonoma County is the residence of the complainant at the time of the taking or deprivation pursuant to Penal Code §784.5(a); and

i. The complainant has a current valid, enforceable custody order. (If the order is not sufficiently clear regarding custody and visitation, or the parties have agreed to custody or visitation arrangements which are not in compliance with the order, the complaining witness must obtain a modification which clarifies custody and visitation); or

ii. No custody order exists and the complainant and the abductor are the parents of the child; or

iii. The complainant has a valid right to physical custody and the abductor does not.

2. Sufficient facts exist to establish that the minor child was taken to, detained, concealed, or found in Sonoma County pursuant to Penal Code §784.5(b) or (c); and

(i) The complainant has a currently valid, enforceable custody order. [If the order is not sufficiently clear regarding custody and visitation, or the parties have agreed to custody or visitation arrangements which are not in compliance with the order, the complaining witness must obtain a modification which clarifies custody and visitation.]; or

(ii) No custody order exists and the complainant and the abductor are the parents of the child; or

(iii) The complainant has a valid right to physical custody and the abductor does not; or

(iv) The jurisdictional authority where the complainant resides declines to take the case.

2. Any case assigned to this office by the California Attorney General acting as the California Central Authority for incoming cases pursuant to the Hague Convention on the Civil Aspects of International Child Abduction.

3. Any case determined by this office to meet the intake criteria as defined in section I.A., and where the child is located outside the United States.

B. EMERGENCY ASSISTANCE

1. Emergency assistance to victim parents or local law enforcement agencies will be provided as necessary by the Child Abduction Unit during regular office hours, or after regular business hours when authorized by a supervisor, in situations including, but not limited to:

i. Actual threat of imminent injury to the child

ii. Imminent health risk to the child

iii. Separation of an unweaned child from the mother

iv. Actual, imminent risk of molest to the child

v. Suicide threats by the abductor

vi. Threat of an immediate abduction or an in-progress abduction of a child out of the county, state, or country

2. Additional Resources: Agencies and Organizations

vii. National Center for Missing and Exploited Children (NCMEC), 1-800-THE-LOST (1-800-843-5678)

viii. Critical Reach Alert System

ix.

x. California Highway Patrol - AMBER ALERT

- Guidelines:

  1) May be activated only by law enforcement agencies

  2) Is intended only for the most serious, time-critical child abduction cases

  3) Is not intended for cases involving runaways or parental abduction, except in life-threatening situations

- Criteria for activating an AMBER ALERT:

  1) The investigating law enforcement agency confirms an abduction has occurred

  2) The victim is 17 years of age or younger, or has a proven mental or physical disability

  3) The victim is in imminent danger of serious injury or death

  4) There is information available that, if provided to the public, could assist in the child's safe recovery

C. OUTSIDE AGENCY ASSISTS

1. Assists to agencies outside of the county or state regarding recoveries and/or arrests **may** be provided based upon the receipt from such agencies of all relative and necessary warrants, custody

orders, or other documentation that provides a sufficient legal basis for action and is in compliance with the State of California Family Law Code and the Federal laws under the Uniform Child Custody Jurisdiction and Enforcement Act governing out of state registration requirements.

D. REPORTING REQUIREMENTS - PENAL CODE SECTION 278.7 "GOOD CAUSE"

4. Bureau investigators will accept information from parties who are taking, enticing away, keeping, withholding, or concealing a child and are reporting such actions in accordance with the provisions of Penal Code §278.7, (belief of bodily injury or emotional harm; domestic violence; report by person taking or concealing).

5. Such documentation will be recorded on an "Exception to 278.5 PC" report form.

6. The reporting party will be advised of their obligations pursuant to Penal Code §278.7 and that the reporting requirements do not necessarily absolve them from criminal or civil charges.

7. The Child Abduction Unit will maintain the "Exception" reports and keep them confidential, unless released pursuant to state law or by a court order that contains appropriate safeguard to ensure the safety of the reporting party and the child.

E. VISITATION DISPUTES

1. The Child Abduction Unit will not routinely intercede in visitation disputes which do not involve an abduction. Parties with disputes regarding failures to comply with visitation orders will be advised to do the following:

i. File an Order to Show Cause or a Motion in Family Law Court and ask for appropriate modification and/or sanctions.

ii. Seek assistance from a private Family Law Attorney, the county's Family Law Facilitator, or Sonoma County Legal Aid.

2. The Child Abduction Unit will not routinely seek criminal sanctions for minor violations of custody and visitation orders as the remedies for these problems exist in the Family Law Courts and through the mediation process.

3. A person who has obtained an adjudication of contempt against a person who is violating a visitation order may seek assistance of the Unit if the violations continue despite the contempt adjudication, or if a particularly egregious violation has occurred.

4. Visitation violations that come to the attention of the unit through a local law enforcement agency will be evaluated using the aforementioned criteria. Records will be maintained of such cases for present and future reference.

F. RECORD KEEPING OF MANDATED FUNCTIONS

1. The Child Abduction Unit will maintain records of all investigator and prosecutor work hours associated with recovering and prosecuting individuals charged with child abduction for eventual inclusion in the office reimbursement claims procedure for mandated functions, pursuant to California Senate Bill 90.

G. NOTIFICATION OF THE VICTIM ASSISTANCE CENTER

1. In cases where the deprivation of custody has endured for more than 30 calendar days, the abducted child may be eligible for compensation from the California Victim Compensation Program, pursuant to California Government Code §13955(f)(3)(D). Eligible children may receive assistance with psychotherapy, medical expenses and other financial losses.

2. In such eligible cases, the Child Abduction Unit will ensure that the proper notification and/or referral is made to the Sonoma County Victim Services Office at 565-8250.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.10	**Public Complaints**

POLICY: The openness of the District Attorney's Office to the acceptance of a complaint is a principle element of law enforcement professionalism. Complaints by the public of District Attorney Investigators or the Bureau of Investigation's policies and procedures will be accurately, impartially, and thoroughly investigated. When necessary, allegations against Investigators made in lawsuits and claims against the county will be reviewed and investigated.

DEFINITION OF A PUBLIC COMPLAINT: A public complaint can come from any source and is an allegation from a member of the public against an Investigator, which if proven to be true, would amount to misconduct.

DEFINITION OF MISCONDUCT: Misconduct is an act or omission by an Investigator, which if proven to be true, would result in some form of discipline or sanction. This would include:

Commission of a criminal act

Neglect of duty

Violation of an office or county policy, procedure, rule or regulation

Unbecoming conduct

SOURCES OF COMPLAINTS: A complaint of Investigator misconduct will be accepted from any source, including, but not limited to the following:

Involved party

Third party

Government agency

Internally generated

Anonymously

Such a complaint will not be logged, tracked, or associated with an individual personnel file unless after review, information is established that would result in a formal investigation.

Notice of civil claim

Such a claim may give justification for an internal investigation to occur. Such an investigation based on the same facts as a civil complaint will nevertheless be distinctly separate from the Risk Management investigation to ensure attorney-client privilege. Notice of a Civil Claim will not be reported as a public complaint due to its statistical capture elsewhere.

TYPES OF COMPLAINTS:

FORMAL
A formal complaint is defined as one which cannot be resolved within a reasonable time period and requires extensive investigation involving interviews of witnesses or other involved parties, whether or not discipline is likely to occur.

INFORMAL
An informal complaint is defined as one which can be resolved between a supervisor and the complainant within a reasonable period of time. Under such circumstances, documentation and additional investigation is not required.

PROCEDURE:

I. ACCEPTANCE OF A COMPLAINT

A. A public complaint may be made in person, by telephone, by mail, by utilizing the Public Commendation and Complaint Procedure brochure, or by any other method.

B. A public complaint will be directed to the Chief Investigator for processing, tracking, and assignment for investigation.

1. If the Chief Investigator is not immediately available for an in- person or telephone complaint, the complainant will be directed to a Senior Investigator. If a Senior is unavailable, the complainant will be directed to an on-duty Chief Deputy, who will record as much

information as possible on a Complaint Investigation form and forward it to the Chief as soon as possible.

C. The Chief or a Senior Investigator will not accept a complaint when they are the subject of the complaint. A complaint about the Chief Investigator will be referred to the District Attorney. A complaint about a Senior Investigator will be referred to the Chief Investigator.

1. This does not preclude the Chief or a Senior from accepting a complaint of an act to which they were a witness.

D. A complaint from a person under the influence of a controlled substance or an alcoholic beverage will not be accepted until such time as they are sober.

E. The complainant will fill out the Complaint Investigation form and provide a written statement. An exception to this can be made when the complainant provides a signed, written statement containing the same detailed information as requested on the Complaint Investigation form. In the event the complainant cannot, or will not, fill out or sign the statement form, their statement will be taken verbally and reduced to writing. This written statement will be shown to the complainant. Their refusal to write or sign the statement will be noted on the signature line.

F. The complainant will be provided with a copy of their statement at the time the complaint is filed (832.7(b) P.C.). If the complainant submits the complaint through the mail or over the telephone, two copies will be mailed to the complainant, along with a request that they sign one of the copies and return it to the Chief Investigator.

G. A complaint submitted in a foreign language will be handled in the same manner as a complaint submitted in English. An appropriate certified interpreter will be contacted in order to assist in the translation of the document.

H. The complainant will be advised that their complaint will be brought to the attention of the District Attorney.

I. The complainant will be advised that he or she may be re-contacted for additional information and that he or she will be advised of the disposition of the complaint.

J. If immediate action is deemed necessary to protect the Investigator, the office, or the general public, the division regulation regarding an emergency suspension may be applied.

II. TRACKING OF A COMPLAINT

A. All formal and frivolous complaints will be reviewed and assigned a tracking number by the Chief Investigator.

B. Each complaint investigated will receive a sequential number proceeded by the year the complaint was filed.

1. A formal public complaint will be assigned a number as follows: PC, year, number (ie., PC 96-01).

2. A frivolous public complaint will be assigned a number as follows: FC, year, number (ie., FC 96-01).

III. METHOD OF INVESTIGATION

A. The Chief Investigator will notify the complainant and the Investigator in writing that the complaint is being officially investigated. The letter will include the date the complaint was received and the tracking number. A follow-up letter regarding the status of the complaint investigation will be sent every 30 days until the matter is concluded.

B. The Investigator(s) will not be notified of such an investigation if such information might compromise the investigation.

C. Normal investigative and factual reporting procedures will apply in these investigations. Any supporting material such as crime reports, memorandums, photographs, or other independent information will be included.

D. Every effort should be made to obtain a tape-recorded statement from the complainant and any non peace officer witnesses. If the complainant or a witness refuses to have their statement recorded, it will be taken verbally and reduced to writing. Such statements will supplement any written statements previously submitted by a complainant or witness.

E. Any perishable evidence relevant to the complaint will be collected and stored in a confidential manner by the Chief or Senior Investigator.

F. If a complainant wishes to recant or retract their statement after having submitted a formal complaint, they will be asked to submit such a request in

writing. If they refuse to do so, their refusal will be noted in the investigative report.

G. Any Investigator subject to such an investigation will be afforded all the rights and protections pursuant to Government Code sections 3300 to 3311 (Peace Officer's Bill of Rights).

H. A complaint will be investigated within 30 days of receipt unless an exception is granted for extension by the District Attorney or other proper authority.

IV. COMPLAINT REVIEW

A. The completed investigation will be reviewed by the Chief Investigator. The standard of proof used to reach a finding will be a preponderance of evidence.

B. The Chief Investigator, after reviewing the investigation, will arrive at one of the following dispositions:

1. Unfounded - The investigation clearly establishes that the allegation is not true.

2. Exonerated - The investigation clearly establishes that the action of the Investigator that formed the basis for the complaint is not a violation of law or an office policy.

3. Sustained - There is sufficient evidence to clearly prove the allegation made in the complaint.

4. Not sustained - There was insufficient evidence to prove or disprove the allegation. In any finding of not sustained, there must be a sound showing of investigative effort prior to this determination being made.

5. No finding - The complainant failed to disclose promised information; the investigation revealed that another agency was involved and the complaint was referred to that agency; the complainant withdrew the complaint; the complainant is no longer available for clarification.

6. Frivolous - Totally and completely without merit, as defined in the Code of Civil Procedure, Section 128.5(b)(2)(A).

C. If the complaint is sustained the Chief Investigator will recommend one or more of the following disciplinary actions to the District Attorney:

1. Oral counseling
2. Counseling memorandum
3. Retraining
4. Oral reprimand
5. Written reprimand
6. Suspension
7. Reduction in Salary
8. Demotion to lower job class
9. Dismissal
10. Prosecution

V. FORMAL COMPLAINT DISPOSITION

A. The Investigator will be informed in writing by the District Attorney or her/his designee of the final disposition.

B. The complainant will be informed in writing of the disposition by the District Attorney or her/his designee within 30 days (832.7(e) P.C.). "Disposition" is limited to a finding of sustained, not sustained, unfounded, exonerated, or, no finding.

C. Both the Investigator and the complainant will be informed of all avenues of appeal should either disagree with the final disposition.

VI. RETENTION

A. A sustained formal complaint will be retained for at least five years and become part of the Investigator's personnel file. Such a record maintained pursuant to 832.5 P.C., or information obtained from such a record, is confidential and will not be disclosed by this office in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.

B. A complaint determined to be frivolous (section 128.5, Code of Civil Procedure), unfounded, not sustained, or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, not sustained, or exonerated, will not be maintained in the Investigator's personnel file (832.5(c) P.C.). This also applies to a disposition of "No finding." Such a complaint will be maintained in another file deemed to be a personnel record for the purpose of the California Public Records Act and Section 1043 of the Evidence Code.

VII. WRITTEN PROCEDURE

A. A written summary of the public complaint procedure will be provided in the Public Commendation and Complaint Procedure brochure, copies of which will be located in the reception area of the main office. A complaint that is made without this form will be accepted.

VIII. COMPLAINT REPORTING CRITERIA

A. The Department of Justice (D.O.J.) requires reporting of those complaints alleging criminal conduct which are either a felony or a misdemeanor. On the reporting form, D.O.J. requires the number reported, unfounded and sustained.

1. The D.O.J. reporting form also lists a non-criminal reporting category, but fails to define what it is. The District Attorney's Office will report all formal complaints as defined in this policy.

B. Statistical information regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) against investigators may be disseminated on a form which does not identify the individuals involved (832.7(c) P.C.)

IX. COMPLAINT AGAINST AN EMPLOYEE OF ANOTHER AGENCY

A. A complaint which alleges misconduct by a peace officer from another law enforcement agency will be referred to the administration of the other law enforcement agency.

X. REPORT FORMATS

A. Attachment 'A' is an example of the Public Complaint Investigation report form.

B. Attachment 'B' is an example of the required format for completing the investigative report.

PUBLIC COMPLAINT INVESTIGATION

Today's Date: _____ Public Complaint Case #: _____
Tape Recorded: Yes ( ) No ( )
Date/Time of Incident: _____Location: _____
Complainant's Name: _____ Phone #:_____
Complainant's Address: _____
Email Address: _____ Cell #:_____
Complainant Information: Date of Birth: _____ Occupation: _____
Employer: _____Sonoma County Resident:_____ How Long:_____
Regarding Investigator(s): _____
Summary of Complaint: (use additional pages if necessary)

_____
_____
_____
_____
_____
_____
_____I have reviewed this summary of complaint, and to the best of my knowledge, I find it to be true and accurate.

_____ _____
Signature of Complainant Signature of I/A Investigator

ATTACHMENT 'A'
MEMORANDUM

INVESTIGATIVE REPORT FORMAT

DATE:

TO:

FROM:

SUBJECT: PUBLIC COMPLAINT

COMPLAINANTS(S)

DATE OF COMPLAINT

DATE OF INCIDENT

NATURE OF COMPLAINT

ALLEGED INVESTIGATOR(S) INVOLVED

SUMMARY OF ALLEGATIONS

INVESTIGATION

SIGNATURE LINE

ATTACHMENT 'B'

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURES MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.11	**EVIDENCE / PROPERTY STORAGE AND PROCESSING**

POLICY: The Bureau of Investigations will maintain a secure facility for all evidence/property held by the District Attorney's Office. Evidence and property seized or otherwise obtained by investigators will be stored as soon as practical in the District Attorney's Office evidence room or other approved storage facility. Investigators will not store evidence in their offices, desks, or file cabinets.

DEFINITIONS

Evidence - Any item which is collected at the scene of a crime or may assist in the prosecution of a criminal matter.

Recovered Property - Stolen property that has been found and is available for release to the rightful owner.

Found Property - Any item which comes into the custody of this office that has no apparent evidentiary value.

Safekeeping - Property which is surrendered or held temporarily to prevent danger to the community or the possessor.

PROCEDURES

ACCESS/AUTHORIZED PERSONNEL

Access to the evidence storage room will be limited to Investigative personnel only.

The Investigators will serve as evidence personnel and will be entrusted with keys to the evidence room and the storage cabinets inside the evidence room.

The duties of the evidence personnel will be as follows:

- Oversee the operation and maintenance of the evidence room

- Receive and release evidence

- Act as advisor to the Chief Investigator or Senior Investigators on matters relating to evidence storage

EVIDENCE/PROPERTY RECORD

The Evidence/Property Record is a triplicate form which shall be completed by the investigator. The white copy shall be presented with the evidence/property. The yellow copy shall be submitted with the investigative report. The pink copy may be used as a field receipt for the person from whom the property was taken (ie., items seized pursuant to service of a search warrant).

Information required on a Evidence/Property Record includes the DAR number, date and time submitted, type of crime, type of property, locker number, detailed evidence description, name of the submitting investigator or legal assistant, the name of the person receiving the evidence, and when applicable, an accurate recording of the section entitled, “Physical Evidence Chain of Custody.”

RECORD KEEPING

The white copy of the Evidence/Property Record will be placed in a folder which will be marked with the DAR number and either the defendant’s or victim’s name. The folder will be kept in a filing cabinet in the evidence room and filed in numerical order under the DAR number.

An Evidence/Property Room Access Log will be maintained in order to document all instances where persons other than designated personnel are allowed entry, including the purpose for the entry.

Evidence removed from the evidence room on a temporary basis will be signed out on an evidence log by the investigator. Evidence will be signed back in the same manner in which it was signed out. The evidence log will be kept in the folder with the original copy of the property report.

STANDARD PACKAGING REQUIREMENTS

- Each item should be packaged individually in a paper bag, plastic bag, or box. If the item is too large to package within a container then an evidence tag must be securely affixed.
- Seal the container with evidence tape.
- Write the DAR # and item # on the container.
- Put your initials and the date on the evidence tape, overlapping onto the container.

SPECIAL PACKAGING CONSIDERATIONS

1. Audio and Video Tapes

a. Air, heat, moisture and magnetism may deteriorate these items in a 5-6 year period, and they may be completely ruined in 10-12 years.
b. If such items are to be stored longer than 5 years (especially homicides), the items are to be stored in non-static bags.
c. Package in a paper or plastic bag, seal, and if possible, store each video tape in a cardboard box.
d. Package video/audio tapes separately from other evidence items.
e. Segregate these items from magnetic sources (magnets, electronic equipment, etc.) and remove the write-protect tab on the edge of the audio or video cassette in order to prevent accidental erasure.
f. Storage of Audio and Video Tapes which are evidence will be kept at the District Attorney's Office Evidence room. This evidence will be placed into an 6"x9" envelope with the DAR#, Investigator's name and date placed into evidence storage cabinet marked **Audio/Video Tapes.**

2. CD/DVD/Memory Sticks/Flash Drives

a. Multiple CD/Memory Stick/Flash Drives may be packaged in the same bag/envelope, but each CD/ Memory Stick/Flash Drive must have its' own item number.
b. Package CD/Memory Stick/Flash Drives separately from other evidence items.

c. Storage of CD/DVD/Memory Sticks/Flash Drives which are evidence will be kept at the District Attorney's Office Evidence Room. This evidence will be placed into a 6"x9" envelope with the DAR#, Investigators name and date placed into evidence storage cabinet marked "CD-R".

3. Currency

a. The "two-person" rule is required for processing currency that is to be stored in the evidence room.
b. Currency is to be carefully counted in the presence of one other investigator or legal assistant and packaged in a clear plastic bag.
c. A Currency Inventory Sheet is to be completed.
d. The Inventory Sheet is to be placed inside the plastic bag with the currency and should be readable through the bag. Photocopy and attach to the investigative report. Seal and initial the bag.
e. Currency is to be stored in a secure locker.

4. Film and Photographs (keep all film products away from heat sources, direct sunlight and moisture)

a. 35mm photos taken by an Investigator

1. Write the DAR#, Investigator ID#, and items # on each roll of film.
2. Each roll of film must have a separate item number.

b. Film from other sources (roll of film from a suspect's camera)

1. Package the film in an evidence envelope.

c. Polaroids (photos of suspects, tagging, vandalism, etc.)

1. Package in clear plastic bags.
2. Multiple Polaroids of the same subject can receive one item #. Include the number of Polaroids on the Property/Evidence Record.

d. Digital Camera CD/DVD/Memory Sticks/Flash Drives

1. Refer to section on "CD/DVD/Memory Sticks/Flash Drives".

5. Firearms

a. Firearms will be unloaded and rendered safe (chamber clear) and the ammunition magazine removed prior to storage.
b. Semi-autos: lock the slide open and secure with a flex-cuff; bolt action: lock the bolt open with a flex-cuff; pump/lever action: secure in the open position with a flex-cuff; revolvers: secure the cylinder in the open position with a flex-cuff.
c. Complete an evidence tag and attach to the firearm.
d. Package magazines, live cartridges and expended casings separate from the firearm.
e. When possible, package firearms in appropriately sized rifle or handgun evidence boxes.
f. Package firearms and gun cases separately, assigning separate item numbers to each on the Evidence/Property Record.
g. Firearms are to stored in a secure locker or , separate from other evidence/property items.

6. Knives/Sharp Instruments

a. Knives and sharp instruments will be stored in a sealed knife box.
b. Folding knives will be stored with the blade closed.
c. Fixed-blade knives and other sharp instruments will have the sharp points or edges covered with heavy paper or cardboard.
d. Switchblade/gravity knives will have a flex tie or tape placed around the blade to prevent accidental activation.

7. Jewelry

a. Package separately from other types of evidence.
b. Use clear plastic bags for packaging.
c. Jewelry is to be stored in a secure locker.
d. Each piece of jewelry is to be identified and described.

8. Written Statements

a. Attach a photocopy of the statement form to the investigative report.
b. Package the original statement form in a clear plastic bag.
c. Seal the bag with evidence tape and place your initials and DAR# on the outside of the bag.

When final disposition of any evidence is in order, it will be the responsibility of the case investigator, in consultation with the case attorney, to ensure that it is properly returned to the originating law enforcement agency or otherwise disposed of. The property report will be completed to reflect the disposition of the evidence. A copy of the property report, identifying the disposition of the evidence, will be placed in the case file.

As an additional means of tracking cases and evidence, an evidence status sheet listing those cases in which evidence has been submitted will be kept in the evidence room. This status sheet will reflect a chronological listing of cases in which evidence has been submitted and will include the DAR number, type of crime, date submitted, case status, evidence status and a six month interval status[1] check.

[1] C

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8I	***BUREAU OF INVESTIGATIONS***
SECTION 8.12	**BUREAU WORK SCHEDULES**

POLICY: Various work schedules will be available to Investigators and Legal Assistants as long as such schedules benefit the public, the administration of office business and the morale of the bureau as a whole. The needs of the office and the public will govern the longevity of these schedules and how they are maintained.

A work schedule that does not conform to the District Attorney's Office public hours of operation (Monday through Friday, 8:00 a.m. to 5:00 p.m.) is a privilege, not a right, and may be revoked as necessary with proper notice. No permanent entitlement to an alternative schedule will develop as a result of this policy.

The three available work schedules will be identified as follows:

1. 5-8
2. 9-8
3. 9-4

It is the responsibility of the Chief Investigator, or the Senior Investigator to prepare, maintain and monitor the bureau work schedules.

PROCEDURE

Hours of Operation

The District Attorney's public business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

The hours of operation for the District Attorney's Bureau of Investigation are 7:00 a.m. to 5:30 p.m., Monday through Thursday, and 8:00 a.m. to 5:00 p.m. on Friday.

Work Schedule Guidelines

The 9-8-1, the 9-4, and the 5-8 work schedules are subject to the following guidelines:

1) The needs of the office and commitment to the public are of primary importance for scheduling considerations.

2) The approval of a work schedule that varies from the public business hours of the District Attorney's Office is contingent upon such considerations, approval of the Chief Investigator, and any additional qualifying criteria detailed below.

5-8 Work Schedule

The traditional 5-8 work schedule (Monday - Friday, 8:00 a.m. to 5:00 p.m.) will be available to all full-time Investigators and Legal Assistants working under the direct supervision of the District Attorney's Office.

9-8-1 and 9-4 Work Schedules

The 9-8-1 work schedule will be available only to full-time Investigators working under the direct supervision of the District Attorney's Office, subject to the qualifying criteria and guidelines detailed below. Investigators assigned to units not directly supervised by this office (I.E., the computer crime task force and the gang task force) will not be eligible to work this schedule. Those Investigators will work the hours required by the supervisors of those particular units.

The 9-4 work schedule will be available to full-time Legal Assistants or full-time Investigators working under the direct supervision of the District Attorney's Office, subject to the qualifying criteria and guidelines detailed below.

1) Hours and Days for the 9-8-1: The 9-8-1 schedule is based upon 80 hours of work in a two-week pay period. For the first week, an Investigator will work Monday through Thursday for 9 hours each day and Friday for 8 hours. (44 hours). The second week, the Investigator will work Monday through Thursday for 9 hours each day (36 hours) and have Friday off. This totals 80 hours for the two-week period. Friday will be the only day off due to court and work considerations.

2) Hours and Days for the 9-4: The 9-4 schedule is based upon 40 hours of work in a one-week period. Each week a Legal Assistant or Investigator would work Monday through Thursday for 9 hours each day and Friday for 4 hours (40 hours).

3) Coverage: It will be the responsibility of each Investigator and Legal Assistant to notify their assigned attorney of any planned absences (vacation or comp. time off) and arrange for temporary coverage of their assignments.

The Chief and the Senior Investigator will work opposite schedules to ensure supervisory coverage on Fridays. If for some reason neither of them is available, an experienced Investigator may be assigned as a "lead" in their absence.

4) Schedule Options: The scheduled work hours for Investigators and Legal Assistants on the 9-hour day will be one of the following options: 7:00 a.m. to 5:00 p.m.; 7:30 a.m. to 5:30 p.m. This includes a standard one hour lunch break. Investigators and Legal Assistants may vary the work times on different days of the week but must commit to a specific weekly schedule (IE., Monday, Tuesday, Wednesday, 7:00 a.m. to 5:00 p.m., and Thursday, 8:00 a.m. to 6:00 p.m.) for the duration of a quarterly schedule.

The scheduled work hours for all Investigators on the 8-hour day (Friday) are as follows:
8:00 a.m. to 5:00 p.m.

The schedule options for Legal Assistants or Investigators on the 4-hour day (Friday) are as follows: 7:00 a.m. to 11a.m.; 7:30 a.m. to 11:30 a.m.; 8:00 a.m. to 12:00 p.m.

5) Holidays:

a) Holiday Coincides with 9-8-1 or 9-4 Work Day: When the office is closed for a holiday, county employees are released from 8 hours of work with pay. Those on the 9-8-1 and 9-4 schedules, however, are released from 9 hours of work (except when working Fridays) and must compensate the county for 1 additional hour off. In this situation, Investigators and Legal Assistants would complete a leave slip designating 1 hour comp, vacation, or leave without pay time to cover the holiday, or they can flex the one hour off. If an Investigator or Legal Assistant does not have the one hour of comp or vacation time required to compensate the county that person would be required to take the hour as leave without pay.

b) Holiday Coincides With 9-8-1 or 9-4 Day Off: As per the current MOU (SCSOEA, Article 20.5; SEIU, Article 13.5.1), if the holiday falls on an Investigator's or a Legal Assistant's day off, they will receive 8 hours of comp time.

6) Conferences, Seminars and Training:

a) Conference, Seminar, Training Coincides with a 9-8-1 or 9-4 Work Day: When professional development seminars, conferences or training courses occur during a 9-8-1 or 9-4 work day, Investigators or Legal Assistants will be required to combine on-site work time with the start and/or end of the seminar in order to meet their 9-hour work day requirement. If this is impractical, they may use comp or vacation time to cover the start or end of the day.

b) Conference, Seminar, Training Coincides with a 9-8-1 or 9-4 Day Off: When a work-related seminar/conference falls on a day off (Friday), the Investigator or Legal Assistant may adjust their scheduled training week (in a 36 or 40-hour training week) to reflect fewer daily hours (8) and be compensated with 4 hours of comp or overtime pay for the Friday they attended the training.

Schedules Are Formal

Investigators and Legal Assistants must commit to one of the three available work schedules for the duration of a payroll quarter (approximately three months) and may not vary the duration of their lunch hour, their start or departure times, or their day off.

Flex-Time

Flex-time is available to Investigators or Legal Assistants working any of the available schedules, with the approval of the Chief Investigator or Senior Investigator. If investigators or legal assistants arrive late, leave early, or extend their scheduled lunch breaks, they will be required to use comp, vacation, sick leave, or flex time at the approval of the Chief or Senior Investigator.

Schedule Changes

Investigators or Legal Assistants may request a schedule change every three months at the beginning of a payroll quarter. Approval of these requests is discretionary pursuant to the criteria and guidelines discussed above.

The Chief Investigator has the authority to change Investigator and Legal Assistant work schedules at any time, with proper notice (See MOU), when the workload or commitment to the public necessitates such a change.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.13	**OFFICER OF THE DAY**

PURPOSE: To provide guidelines and responsibilities for the staffing and function of the Officer of the Day.

POLICY: It is the policy of the District Attorney to provide security for the main office personnel and services to the general public during regular business hours by an "Officer of the Day" (O.D.), a position that will be staffed by a District Attorney Investigator.

PROCEDURE

Badge and Safety Equipment

The O.D. is required to wear his/her on-duty firearm, the clip-on peace officer badge for identification purposes, and to carry or have readily available, handcuffs. The O.D. has the option of whether or not to carry OC spray. A Taser is available in a locked storage safe in the O. D. office.

Duty Hours

The O.D.'s hours of responsibility are 8:00 a.m. to 5:00 p.m., Monday through Friday, at the main office of the District Attorney. The O.D. office shall be staffed during the lunch hour.

Scheduling

The duty schedule for the O.D. assignment will include all Investigators, with the exception of the Chief Investigator, the Senior Investigator(s), and Investigators assigned to off-site task forces.

A monthly master schedule will be maintained in both the main office and the La Plaza satellite office. The monthly schedule shall be prepared by a Senior Investigator or his/her designee.

When an Investigator has planned time off and it conflicts with their assigned day, it is their responsibility to make arrangements with another Investigator to cover the assignment and make the appropriate changes to the master schedule. The same procedure applies to day trades. In all cases, a Senior Investigator will be apprised of any changes and retains authority for final approval.

If an Investigator calls in sick on his or her assigned day, the Chief or a Senior Investigator will be responsible for making arrangements to cover the assignment.

The O.D.'s lunch break should be taken as close as practicable to the noon hour between 1200 and 1300 hours. The O.D.'s lunch break must be covered by a relief Investigator, normally the Investigator who staffed the O.D. assignment on the previous workday.

If unavoidable circumstances require the O.D. to be away from his/her post for a significant period of time (i.e., courtroom testimony, training, etc.), arrangements must be made by the O.D. to cover the assignment during the absence. If there is a coverage problem, the Senior Investigator(s) or Chief Investigator shall be notified.

General Duties

The O.D. will provide security for the main office and its personnel, responding to all calls for assistance from the receptionists in the main lobby, or, from personnel in any other area within the physical confines of the office. The O.D. will make every effort to be in a position within the office to hear and respond to the "panic" alarm located at the main reception area. The O.D. should maintain a close liaison with Court Security personnel and use them as back-up in unusual situations.

The O.D. will provide investigative services to the attorneys and the support staff unless another investigative staff member is already assigned to the matter.

The O.D. will take telephone calls from the public that are referred by the main office receptionists, the division secretary, or the District Attorney's Administrative Assistant. Such calls would normally be beyond the scope of duties of the receptionists or secretaries and should be handled expeditiously by answering the inquiry or referring the matter to the appropriate agency.

The O.D. will contact members of the public who come into the main office seeking information or assistance on matters that are beyond the scope of duties performed by the receptionists.

The O.D. will not provide “legal opinions” to public inquiries of a legal nature.

Individuals seeking to make complaints against outside agency law enforcement officers or employees are to be referred to the administration of the agency that employs the officer or employee.

Citizen complaints concerning a member of the attorney or support staff are to be forwarded to that member’s supervisor.

Citizen complaints against members of the Bureau of Investigation are to be forwarded to the Chief or Senior Investigator(s).

The O.D. may be requested to provide limited security to witnesses or employees by escorting them into or out of the Hall of Justice. Further security measures should be coordinated with other DA Investigators and/or court security deputies.

The O.D. may also be requested to provide limited security to members of the office, including the District Attorney. The O.D. shall notify a Senior Investigator or Chief Investigator as soon as practical in those instances.

During evacuation procedures, the O.D. is to assist the on-site managers and supervisors in ensuring that all employees leave the office. Once that is completed, the O.D. is to post evacuation signs at the main entrance/exit doors before vacating the premises.

Attire

Standard attire for the O.D. will be court attire (long or short-sleeved sport shirt, tie, and slacks for a male; long or short-sleeved sport shirt or blouse, slacks for a female as examples).

Optional attire is business casual with any of the following shirts (no tie required) as long as they have the Sonoma County District Attorney logo embroidered on the front:

1. Long or short sleeved knit sport shirt; any available color.

2. Polo shirt with Sonoma County District Attorney's logo on the front.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE VIII	***BUREAU OF INVESTIGATIONS***
SECTION 8.14 (Revised, May, 2013)	***STANDBY DUTY FOR INVESTIGATORS***

POLICY

It is the policy of the District Attorney's Office to have a prosecutor and an investigator respond to the scenes of homicides, suspicious deaths, vehicular homicides and law enforcement employee-related fatal incidents in order to provide legal advice and investigative assistance to the county law enforcement agency in charge of such an investigation. This is a duty assignment.

PROCEDURE

I. ASSIGNMENT/EQUIPMENT/CALL-OUTS

A. Those subject to standby duty may include Senior Investigator(s) and will include DA Investigator IIs (hereafter referred to generically as "Investigator(s)").

B. Each day of the year there will be an Investigator assigned to standby duty status in order to respond at any time to homicides, suspicious deaths, vehicular homicides and law enforcement employee-related fatal incidents.

1. The DAI will remain on-call, twenty-four hours a day during the designated week, and is required to be available to respond to all call-outs both during and after regular business hours.

2. This assignment will be divided into one week increments, beginning each Tuesday at 0700 hours and concluding the following Tuesday at 0700 hrs.

3. One Investigator at a time will cover this week assignment. Investigators on limited or light duty status may not be included depending upon their individual circumstances.

C. The standby schedule will be prepared and maintained by aSenior Investigator, or his/her designee. Copies will be made available to the District Attorney, the Assistant District Attorneys, the Chief Deputy Attorneys, the Deputy District Attorneys on standby duty, all investigators, and all county law enforcement agencies.

D. Investigators on standby duty are required to be available at all times by home phone or cellular phone in order to facilitate a prompt response to a call-out.

E. Investigators on standby duty may use their county vehicles outside normally assigned work hours in order to facilitate a prompt response to a call-out. The county's vehicle use policy shall be adhered to.

Investigators may wear casual clothing on call-outs, including the approved knit shirt and baseball cap with the embroidered D.A. logo or patch. Investigators are encouraged to wear their "D.A. Investigator" raid jacket or load-bearing vest unless officer safety issues at the scene dictate otherwise. Investigators are required to carry their on-duty handgun, badge, and identification.

II. CALL-OUT CRITERIA

A. Law Enforcement agencies will notify a DAI in all homicides, suspicious deaths, vehicular homicides, and officer involved shooting and fatalities from the list developed and maintained by a Senior Investigator or his/her designee. This list will be updated and sent to the local law enforcement agencies periodically.

B. The following criteria has been established as a guideline for calling out Investigators on standby duty:

1. Any real or suspected homicide (including vehicular homicides);

2. Any officer-involved shooting;

3. Any officer-involved critical incident where a fatal injury occurs to a person as a result of a police action;

4. Any law enforcement-involved critical incident as outlined in the Sonoma County Law Enforcement Chief's Association critical incident protocol;

5. Any other major case involving a crime against a person where a call-out is deemed necessary by the District Attorney or his/her designee.

III. STANDBY INVESTIGATOR RESPONSIBILITIES

A. Upon being notified of a call-out, the Investigator will provide an estimated arrival time and respond without unnecessary delay.

B. Upon receiving a call from the notifying agency, the responding DAI is to immediately contact the on-call prosecutor listed on the Homicide/Critical Incident Call-Out List. In the event that the DAI is unable to contact the on-call prosecutor, he/she shall contact the Chief Deputy District Attorney who supervises homicide cases and advise him/her of that fact. The Chief Deputy will either respond to the scene or find a homicide call-out prosecutor who can respond to the scene. In the event that the Chief Deputy District Attorney over homicide cases is not available, the DAI will immediately contact the Assistant District Attorney.

C. Once at the scene, the Investigator will meet with the assigned Call-out prosecutor to assess the situation and provide liaison or investigative assistance to that prosecutor and/or the law enforcement agency that has responsibility for the crime scene. The Investigator will gather substantial information regarding the incident so as the brief the Bureau Chief and/or the Senior Investigator at a later time.

D. Homicides: The Investigator will assess the situation at the scene to determine whether or not the services of additional Investigators are necessary. If so, notification will be made to the Chief Investigator and/or a Senior Investigator, who will be responsible for arranging the response of additional Investigators to the scene. If the Chief Investigator and/or a Senior Investigator are unavailable, the responsibility will fall to the responding Investigator to notify and request assistance from additional Bureau personnel.

E. Officer-Involved Shootings: When notified of such an incident, the Investigator will notify the Chief Investigator and/or a Senior Investigator so as to arrange the response of additional Investigators if necessary. If either the Chief Investigator or a Senior Investigator is not available, the Investigator has the authority to notify and request additional investigative assistance.

F. Other Law Enforcement Employee-Related Critical Incidents: The Investigator will assess the situation to determine whether or not services

of additional Investigators are necessary. If so, notification will be made as stated in section III E above.

G. If a call-out does not necessitate the immediate notification of the Chief Investigator or a Senior Investigator, the responding Investigator will take steps to contact and advise the Chief Investigator or a Senor Investigator of the circumstances as soon as practical.

H. If the Investigator is too ill to respond to a call-out, is taking prescribed medications that could adversely affect a response, or experiences a compelling personal emergency that could adversely affect a response, he/she is to notify the Chief Investigator or a Senior Investigator immediately. The Chief Investigator or a Senior Investigator will make the determination as to modifying the standby schedule or assigning another investigator to respond to the situation. If the Chief Investigator or a Senior Investigator are unavailable, it will be the responsibility of the on-call Investigator to make every attempt to locate another Investigator to respond in his/her place.

IV STANDBY DUTY SCHEDULE AND COMPENSATION

A. Weekly standby duty will commence on Tuesday at 0700 hours and end the following Tuesday at 0700 hours. The Investigator will remain on-call during the normal one hour lunch break, which will be included in calculating the weekly compensation. The weekly standby schedule, minus paid holidays, will be as follows:

1.	Tuesday	0700 - 0700	Wednesday	15 hours
2.	Wednesday	0700 - 0700	Thursday	15 hours
3.	Thursday	0700 - 0800	Friday	15 hours
4.	Friday	0700 - 0700	Monday	63 hours
5.	Monday	0700 - 0700	Tuesday	15 hours
			Total:	124 hours

This total will increase when the standby week includes a paid holiday. In those instances, the additional holiday time will be added to the 124 hours.

Additionally, every effort will be made scheduling wise to accommodate the on-call Investigators having their 9/80 Friday off, free of being on call. Due to seniority in the on-call sign up, that might not always be a result.

B. Standby duty hours will be compensated pursuant to the applicable provisions in the current Sonoma County Law Enforcement Association MOU.

V. REPORTING REQUIREMENTS

A. The responding prosecutor is required to notify the Chief Deputy District Attorney who oversees homicide assignments of the nature and status of any call-out incident as soon as practicable. If the Chief Deputy District Attorney cannot be reached, the prosecutor is to notify the Assistant District Attorney during normal business hours the following day. In emergency situations or to notify management of significant or high profile cases, the Chief Deputy or the Assistant District Attorney is to be contacted regardless of the hour of the day or night.

B. In the event of significant or high profile cases, the DAI shall notify a Senior DA Investigator or the Chief Investigator who will ensure the District Attorney has been notified.

C. Any DAI who responds to a call-out is required to complete a "Call-out Report Form", by 0900 hours on his or her next regular work day and route it via e-mail to the Chief Investigator and the Senior Investigator for review.

VI. AUTHORITY FOR MODIFICATION

A. With exception to areas controlled by the MOU, the District Attorney retains full authority to modify this policy as needed.

Related Policy:

7.02: Homicide and Critical Incidents; Internal Office Protocol

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 8	***BUREAU OF INVESTIGATIONS***
SECTION 8.15	**RETIRED INVESTIGATOR IDENTIFICATION CARD AND CCW ENDORSEMENT**

PURPOSE: To provide guidelines for the issuance of retired District Attorney Investigator identification cards.

POLICY: Pursuant to Penal Code Sections 12027 and 12027.1, all honorably retired investigators who were authorized to carry firearms while employed by the District Attorney's Office shall be issued an identification card. Absent good cause for not authorizing the retired investigator to carry a concealed firearm, the identification card will display a *"CCW APPROVED"* endorsement. Such endorsements are valid for a period of five years unless not issued, revoked, or not renewed for good cause as described in Penal Code Section 12027.l.

Identification cards issued without a CCW endorsement will not require an expiration date.

The term "honorably retired" includes all investigators who have qualified for, and have accepted, a service or disability retirement. This does not include an investigator who has agreed to a service retirement in lieu of termination.

"Good cause" for revoking or denying a retired investigator's privilege to carry a concealed and loaded firearm includes, but is not limited to, the following:

- A violation of any departmental rule, or state or federal law that, if violated by any peace officer on active duty, would result in that officer's arrest, suspension, or removal from the agency;
- Failure to pass a firearms proficiency testing process;
- Any other good cause as determined by the results of a hearing held pursuant to Penal Code section 12027.1(d).

No investigator who retired after January1, 1989, because of a psychological disability shall be issued an endorsement to carry a concealed and loaded firearm.

PROCEDURE:

At or near the time of expiration of a CCW endorsed identification card, a retired investigator may apply for a new identification card and renewal of the CCW endorsement by obtaining an *Application for Renewal of Retired Investigator Identification* and a *Retired Investigator Firearms Proficiency* form. These forms may be obtained through the Chief Investigator.

The firearms proficiency form must be completed by a certified firearms instructor. A certified firearms instructor includes our office rangemaster or any instructor approved by our office rangemaster.

The completed application and firearms proficiency forms must be submitted to the Chief Investigator for review and approval.

The retired investigator is required to provide the photo for the identification card.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 9	***ENSURING VICTIMS' RIGHTS***
SECTION 9.01	**INTRODUCTION**

The Sonoma County District Attorney's Office represents the People of California in court. Our office's guiding principles set forth our commitment to ensuring victims' rights are upheld with dedication to treating victims with dignity, respect and compassion.

In 1982 voters approved the Victims' Bill of Rights (Proposition 8) which codifies many of the rights afforded to crime victims and witnesses. In 2008 California voters approved the "Victims' Bill of Rights Act of 2008: Marsy's Law," a state constitutional amendment which sets forth seventeen specific mandated rights for victims of crime.

Each member of this office will work to ensure that all crime victims are provided with prompt notice concerning the status of their case, that they are treated with fairness, and that their privacy and dignity is guarded and respected. You will work to ensure that crime victims are free from intimidation, harassment, and abuse throughout the criminal justice or juvenile court process. A failure to abide by these terms may result in discipline, up to and including termination.

This policy states the general principles we will adhere to, however, recognizing that time and resources are not unlimited, you are expected to use your common sense and best judgment in carrying out this policy. Common sense should dictate how you exercise your professional discretion and which cases require concerted efforts. The case file notations you are expected to make will assist in recording your contact efforts and rationale for future information. If you have any questions concerning the application of this policy in any instance, please speak to your supervisor for assistance.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 9	***ENSURING VICTIMS' RIGHTS***
SECTION 9.02	**VICTIM, DEFINED**

A 'victim' is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim." (Cal. Const., art. I, 28 § (e).)

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 9	***ENSURING VICTIMS' RIGHTS***
SECTION 9.03	**CRIME VICTIMS' CONSTITUTIONAL RIGHTS**

The seventeen mandated rights of Marsy's Law are detailed and explained below, as well as the proposition's provision for the enforcement of those rights. Pertinent policy or other relevant legal provisions are cited following each right. Pre-existing related statutes are cited for reference purposes.

Members of this office are required to adhere to the following rights of all crime victims, as enacted in Marsy's Law (Proposition 9):

1. **To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process. Cal. Const., art. I, §28(b) (1)**

2. **To be reasonably protected from the defendant and persons acting on behalf of the defendant. Cal. Const., art. I, §28(b) (2)**

   The following statutes and practices, in effect prior to the passage of Proposition 9, are relevant legal tools available to assist in protecting crime victims under this provision:

   • Courts' issuance of no contact orders as a condition of bail or own recognizance (OR) release.

   • PC 136.2(a)(4) – The Court may issue an order prohibiting contact with victim or witness. Violation of the order is a crime.

   • PC 136.2(a)(6) – The Court may order a law enforcement agency to provide protection for a victim and their immediate family.

   • PC 136.2(a)(7) – The Court may issue an order protecting victims of violent crime from contact with a defendant and that order is transmitted to law enforcement agencies.

• PC 1054.8 - Attorneys and Investigators must identify themselves when asking for interviews from victims and witnesses.

• W&I 213.5 – The Court may issue a protective order enjoining a minor from contacting or threatening any person.

• W&I 213.7 - An enjoined party is prohibited from obtaining address or location of protected party.

• Law enforcement agencies often request emergency protective orders (EPOs) when it appears the safety of a victim so dictates.

• The Bureau of Investigations manages our participation in the State's victim relocation
program (CALWRAP), which is reserved for the very highest threats.

3. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant. Cal. Const., art. I, §28(b)(3)

In addition to invoking this provision, previously existing statutes and practices are available to request the Court consider the safety of the victim and victim's family in fixing bail and release conditions:

• PC 1270.1 - Requires the Court to hold a hearing before release on bail above or below schedule amount for a serious or violent felony. Section (c) directs the Court to consider the potential danger to other persons if release is granted.

• PC 1275 - Requires the Court to consider "the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged…."

• The law enforcement officer's *Affidavit re Probable Cause and Bail Setting*, reviewed by a magistrate before setting bail, includes a portion for the arresting officer to address threats to victims or witnesses, or other information that would cause an officer to believe the subject poses a threat of injury to victims or witnesses, and risk of flight.

Deputy District Attorneys should diligently scrutinize the crime reports, the defendant's record, any bail report provided in writing or verbally by the probation department, and any other relevant statements or records available at the time of presenting an argument to the court regarding bail amount or release conditions so as to adequately reflect any risk to the victim's or victim's family's safety. Changed circumstances should be brought to the court's attention, and a request

for remand made if a defendant poses a renewed threat to a victim or victim's family.

4. To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law. Cal. Const., art. I, §28(b) (4)

Members of this office shall strive to maintain victims' rights to privacy, while balancing those rights with our statutory and federal constitutional obligations to provide discovery. Prosecutors are required to provide discovery of witnesses' names and addresses under PC 1054.1. Our general policy will be to continue to abide by the discovery statutes, using legal tools to protect witnesses' identifying information as appropriate (see tools existing prior to Proposition 9's passage below). If additional facts cause concerns that a victim may be harassed or endangered, it may be appropriate to litigate the issue of whether Proposition 9 limits discovery, and to what extent. Outside of discovery requirements and processes in place, all District Attorney staff shall abide by our confidentiality obligations and policies.

• PC 964 - Confidential personal information regarding witnesses or victims contained in investigative reports shall be protected.

• PC 1054.2 - Defense attorney may not disclose address/phone number of victim or witness to defendant/defendant's family.

• PC 1054.7 - Disclosure of identifying information may be denied, restricted or deferred.

• PC 841.5 - Law enforcement agencies may not disclose victim address/phone to defendant or arrestee.

• GC 6254(f) - Victim's name may be withheld from crime reports (sex assault, domestic violence and child abuse victims).

• W&I 6603.3 - Disclosure of victim's address to sexually violent predator (SVP) prohibited but not to the SVP's attorney.

• CCP 1985.3 - If a defense attorney serves a subpoena for victim's private records (such as medical, school or financial), the victim must be given notice and an opportunity to quash the subpoena.

• Considering and advising law enforcement agencies to seek a sealing order pursuant to *People v. Hobbs* (1994) 7 Cal. 4th 948, when appropriate where a document would risk the safety of a nonmaterial witness or his/her immediate family. This procedure allows the identifying information of the informant to be kept confidential.

5. To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents. Cal. Const., art. I, §28(b) (5)

This provision was consistent with the state of the law as follows:

• PC 1054.5 - The exclusive means of discovery is through the prosecutor.

• Depositions are not available in criminal cases. (*Clark v. Superior Court* (1961) 190 Cal. App. 2d 739.)

• Victims and witness have the right to refuse to be interviewed. (*Walker v. Superior Court* (1957) 155 Cal. App. 2d 134, 140.

• Victims and witness have a duty to respond to Court subpoenas. Prosecutors must exercise caution to *not* advise victims or witnesses to refuse to be interviewed by the defense. Such advice from the police or prosecution may violate the defendant's Sixth Amendment right to prepare for trial. (*Walker v. Superior Court, supra; People v. Hannon* (1977) 19 Cal.3d 588, 601.) Consistent with previous guidance and this admonition, therefore, prosecutors, investigators, and law enforcement agents should advise victims who are approached for interviews *outside of court* as follows:

> "As the victim of a criminal case you are an important witness, however you have the right to agree or not agree to an interview outside of court by the defendant or his/her representative, as you see fit."

6. To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case. Cal. Const., art. I, §28(b) (6)

The assigned prosecutor will ensure that a member of the prosecution team provides the victim with reasonable notice of, and an opportunity to confer with a member of this office, upon request, regarding the arrest of the defendant if

known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

The assigned prosecutor will ensure that a member of the prosecution team makes every reasonable effort to contact the victim at the earliest stage in the proceedings. These contacts and attempted contacts with the victim are to be documented in the case file.

The assigned prosecutor will ensure that a member of the prosecution team provides the victim with reasonable notice of all public proceedings, including delinquency proceedings, parole, or other post conviction proceedings. The victim is also to be advised of their right to be heard, upon request, at any proceeding, including any delinquency proceeding, post-arrest release decision, plea, sentencing, or any proceeding in which a right of the victim is at issue. **Unless impracticable, no case will be resolved until the victim has been made aware of the circumstances and the proposed disposition**.

Any case involving the death of an individual will be reported to the chief deputy district attorney supervising the assigned prosecutor. The chief deputy is required to immediately inform the district attorney of the case. If the family so desires, an appointment will be arranged to discuss the matter with the district attorney at the earliest available time.

Victim notification letters will be mailed out in all cases where a victim is identified in the crime reports. The Victim Assistance Center contact information is provided. *Marsy's Rights* cards are included.

Be aware of the following pre-existing statutes, which are related to this new provision:

• PC 679.02(a)(12)(A) and PC 1191.1 - Victims can request notice of felony pretrial disposition.

• PC 679.02(a)(12) - Victim or next-of-kin have right to notice of violent felony pretrial disposition **without making a request**.

7. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings. Cal. Const., art. I, §28(b) (7)

The following statutes and practices are additionally relevant to ensuring these rights:

• PC 679.02(a)(3) - Victims have a right to be at sentencing hearing.

• PC 679.02(a)(4) - Victims have a right to be at felony sentencing of juvenile.

• PC 1102.6(a) - Victims are entitled to be present at all hearings at which the general public is entitled to be present.

• W&I 656.2 and W&I 707 cases - A prosecutor shall inform the victim, upon request of the dates of fitness and dispositional hearings.

• PC 13835.5(a)(11) – The Victim Assistance Center monitors appropriate cases to keep victims and witnesses apprised of the case progress and outcome.

• Attorneys, investigators and victim advocates may all play a role in attempting to notify victims, by telephone or other contact information provided, of felony sentencing dates. The Probation Department additionally notifies all victims in felony cases of sentencing dates.

• The Sonoma County Sheriff's Department began operating an automated victim notification system (Victim Information and Notification Everyday known as VINE), that allows victims to receive telephone alerts regarding the release or escape of a designated inmate. VINE registrations are confidential.

• Victims and Witnesses may obtain court dates online at our website with the case number information.

8. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue. Cal. Const., art. I, §28(b) (8)

Proposition 9 expands the hearings at which victims may make statements, to include at the time of entry of pleas, or any proceeding at which a right of a victim is at issue. When a prosecutor is aware that a victim or other qualifying person wishes to make a statement at a hearing, the prosecutor shall advise the court of that fact, and shall advocate for their right to be heard. Other staff, including investigators or advocates, shall ensure the assigned prosecutor is made aware of any such requests made to them by victims.

Relevant pre-existing statutes:

• PC 679.02(a)(3) and PC1191.1-1191.16 - Victims have a right to be heard at sentencing.

• PC 1191.15 - Victim or next of kin may file written or taped statement in lieu of appearance.

• W&I 656.2 - Victims have the right to present impact statements in juvenile court.

9. To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings. Cal. Const., art. I, §28(b) (9)

California law recognizes the importance of a speedy disposition for the People. Cal. Const., art. I, § 29. These rights are balanced by the Defendant's rights to adequate representation, including the necessary time to prepare a defense against criminal allegations. Because Proposition 9 lifts victims' rights to a speedy trial to a constitutional dimension, courts should accord greater deference to these rights than may have previously been the case. Prosecutors should cite this provision in opposing unwarranted requests for continuance.

Existing statutory provisions regarding speedy trial rights of the People are as follows:

• PC 679.02(a)(10) and Penal 1050(a) - Recognize the People's and a victim's right to an expeditious disposition of a criminal case.

• PC 1048 - Provides the rank and priority of criminal cases over civil cases, and cases involving designated vulnerable or aged victims over others.

10. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant. Cal. Const., art. I, §28(b) (10)

While this provision addresses probation officials, District Attorney staff have routinely advised victims of the victims' rights to provide input at sentencing and they should continue to do so, assisting and facilitating in this process where appropriate.

Note the following relevant pre-existing statutes:

• PC 1203(h) - In the case of a felony, the probation officer may obtain the statement of the victim.

• Rule of Court 4.411.5(a) (5) - Probation officer's pre-sentence report must include the victim statement.

11. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law. Cal. Const., art. I, §28(b) (11)

This section expands PC 1203d which previously required a probation report be available to the court, defendant and prosecutor at least two days before sentencing. Previously existing law, PC 1203.05, provides that probation reports are available for public inspection from the time of sentencing for 60 days. To facilitate a victim's request under Proposition 9, District Attorney staff will provide the victim upon request a copy of the requested report if we have already obtained our copy, or ensure that the Probation Department provides the victim with a copy. Care should be taken regarding any sections of the report that may be deemed confidential by law and should therefore not be provided. Additional legal research and guidance may be necessary as circumstances dictate.

12. To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody. Cal. Const., art. I, §28(b) (12)

The assigned prosecutor will ensure that a member of the prosecution team make appropriate notification of the conviction and sentencing. Notification of custodial release, escape, transfer and death is made by the Sheriff or CDCR.

Related pre-existing statutes and practices included:

• PC 679.02(a)(2) and PC 11116.10 - Mandates notice of the final disposition of the case.

• PC 679.02(a)(3) - Requires notice of sentencing.

• PC 679.02(a)(4) - Requires notice of juvenile sentencing.

• PC 679.02(a)(6) and PC 11155 - Requires notice of escape, upon request.

• PC 679.02(a)(11) - Requires notice of placement on parole.

• PC 679.02(a)(13) & (14) - Requires notice of jail release, upon request.

• PC 3058.6 et seq. - Requires special notices of prison release.

• PC 646.92 - Requires special notices of release, upon request.

• PC 3058.8 - Requires notification of prison release, upon request.

• W&I 1767 - Requires notice of release from parole from the Youth Authority.

• The Sonoma County Sheriff's Department's implementation of a victim notification system (Victim Information and Notification Everyday known as VINE) allows victims, who register, to receive telephone and e-mail alerts regarding the release, transfer or escape of a designated inmate.

13. T**o restitution. Cal. Const., art. I, §28(b) (13)**

(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

(B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

Article I, section 28 of the California Constitution previously required the court to order restitution in every case in which a crime victim suffered a loss, unless compelling and extraordinary reasons existed to the contrary. Proposition 9 amended this provision to eliminate the exception for compelling and extraordinary reasons. It further requires that all monetary payments from the defendant shall first be applied to victim restitution.

The Victim Assistance Center Victim Advocates, Claims Specialists and Restitution Specialist assist in ensuring victims receive restitution and that prosecutors obtain appropriate court orders. Attorneys continue to be responsible for ensuring that appropriate court orders are obtained to require restitution.

Related pre-existing statutes and practices have included:

• PC 1191.2 - Requires a probation officer to provide a victim with information concerning the victim's right to civil recovery against the defendant, the requirement that a court order restitution for the victim and the victim's right to receive a copy of a restitution order in order to enforce a civil judgment.

• PC 1191.21 - Requires victims be notified that they may be eligible for compensation from the State Restitution Fund.

• PC 1202.4 and W&I 730.6 - Restitution should be ordered in every case in which there is an economic loss to the victim.

• PC 1203.1d (b)(1) - Restitution to the victim takes priority over fines and fees**.**

14. To the prompt return of property when no longer needed as evidence. Cal. Const., art. I, §28(b) (14)

The policy of this office regarding requests for release and destruction of evidence is consistent with ensuring victims' rights to prompt return of their property when no longer needed as evidence.

Related pre-existing statutes include:

• PC 679.02(a)(9) requires the expeditious return of stolen or embezzled property when no longer needed as evidence.

• PC 13835.5(a)(6) requires that local assistance centers for victims and witnesses provide assistance in obtaining the return of a victim's property held as evidence by law enforcement agencies, if requested.

15. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority, and to be notified, upon request, of the parole or other release of an offender. Cal. Const., art. I, §28(b) (15)

Existing PC §3043, which was amended by Proposition 9, sets forth detailed procedures for notice of, and involvement in, the parole hearing process. Generally, this provision increases the advance notice for a parole hearing from 30 to 90 days. It expands the number and relationship of persons who may attend parole hearings with or on behalf of the victim, and permits them to obtain

a copy of the proceeding's transcript. It allows appearance and statements by victims of the commitment offense, including determinate term crimes for which the prisoner has been paroled, as well as victims of any other felony crimes or crimes against the person for which the prisoner has been convicted. It lengthens the time between parole hearings to 3, 5, 7, 10 or 15 years. It allows the prisoner to request an earlier parole hearing date, and requires the Board of Parole Hearings to consider the views and interests of the victim to determine whether to grant an earlier hearing. It requires the parole authority to extend the right to be heard at parole hearings to any person harmed by the defendant.

The initiative also changed deadlines for parole revocation hearings and limits the procedural rights of prisoners related to those hearings. (PC § 3044.)

16. To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made. Cal. Const., art. I, §28(b) (16)

Prosecutors will ensure that the victim's and public's safety are considered in any parole or other post-judgment release hearing, invoking this provision as appropriate in argument.

17. To be informed of the rights enumerated in paragraphs (1) through (16). Cal. Const., art. I, §28(b) (17)

This section provides that law enforcement agencies investigating crimes and prosecuting agencies shall, at the time of initial contact with the crime victim, during follow-up investigation, or as soon thereafter as appropriate, provide each victim without charge a "*Marsy's Rights*" card, to be designed by the Attorney General. Additionally, law enforcement agencies investigating crimes shall provide every crime victim with a "Victims' Survival and Resource Guide" pamphlet and/or video, if provided the pamphlet or video without cost by a nonprofit organization and if approved by the Attorney General.

Consequently, the District Attorney's Office and other Sonoma County law enforcement agencies, in cooperation with the California Attorney General's Office, have improved our method of informing victims of their rights. The District Attorney's Office Website displays *Marsy's Rights.* Pursuant to PC 679.026 the California Attorney General's Office developed a *Marsy's Rights Card*. That same provision requires the development of a state funded website display *Marsy's Rights* to the public.

Our Victim Assistance Center distributes *Marsy's Rights* cards. *Marsy's Rights* cards shall also be available at our various office locations, for display and distribution.

Finally, Proposition 9 provides for the Enforcement of Rights: The victim, victim's attorney or representative or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the cases as a matter of right. The court shall act promptly on such a request. Cal. Const., art. I, §28(c)(1)

The rights enumerated in the initiative are "personally held and enforceable" by the victim. The initiative does not, however, create a cause of action for damages against government entities, government employees, or the court.

Section 7 of Proposition 9 provides that if any of its provisions conflict with an existing law that provides greater rights to crime victims, the latter provision shall apply.

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POLICY AND PROCEDURE MANUAL

ARTICLE 9	***ENSURING VICTIMS' RIGHTS***
SECTION 9.04	**OFFICE IMPLEMENTATION POLICY**

The victim contact set forth in this policy pertains to all victims personally named in a criminal complaint, or in the case of homicides, whether vehicular or otherwise, their survivors. Corporate victims involving crimes against property, such as petty theft or vandalism, need not be personally contacted as detailed below except as it may relate to a request for restitution. If a family or group of victims has designated a single victim as "spokesperson", whether it be an attorney or otherwise, for the entire group, contact with that single spokesperson is sufficient and the remaining victims need not be contacted, except upon request.

1. No contact should be initiated by either a prosecutor or a victim advocate prior to the case being submitted for review to the office. If, however, a victim or survivor of a homicide victim makes contact with the District Attorney's Office seeking information prior to that time, then they shall be referred to a victim advocate designated by the Victim Services Director, for information on the process. If the victim or survivor wants to speak further with a prosecutor then the supervising Chief Deputy District Attorney should be informed before the contact occurs.

2. All filing prosecutors shall make every effort to independently contact the victim on the date a filing decision is made, whether the case is filed, rejected, or referred back to the agency for further investigation. Information shall include advisement of rights under Marcy's Law. Follow up shall be by a member of the prosecution team at the direction of the assigned prosecutor to communicate regarding offers, plea bargains, restitution, and sentencing. It is the responsibility of the assigned prosecutor to ensure this contact has occurred.

3. It is the responsibility of the prosecutor to make sure that specific and accurate victim contact notes are memorialized in the file. Any and all attempts to contact the victim shall be memorialized in the file as well as all actual victim contact. Contact notes should include but are not limited to: date and time, name of the victim, subject matter of the contact, who initiated the contact, any victim concerns, and any/all victim requests. Notes should specifically state

whether the victim has invoked their rights under Marsy's Law, particularly their right to receive reasonable notice of proceedings and/or offers and dispositions.

4. If personal contact with the victim is not possible due to lack of information, the assigned prosecutor will ask that a District Attorney investigator be assigned to collect the necessary contact information, if possible. Upon receiving any updated contact information the prosecutor will make every effort to make contact with the victim.

5. Additionally, at the time of filing charges, the office shall mail letters to all named victims providing them notice of their rights under Marsy's Law, including a Victim Services Division brochure that includes the Marsy's Law Bill of Rights, as well as contact information for the Victim Services Division. It asks victims to provide updated contact information. The letter is two-sided and is written in English and Spanish.

6. The assigned prosecutor will ensure that victims are notified of an offer prior to the offer being conveyed to the defense. If this is not possible, the prosecutor will ensure that the victim is notified immediately after it is conveyed, on the same day if possible.

7. The assigned prosecutor will ensure that victims are notified of all dispositions prior to a change of plea. When this is not possible, the prosecutor will ensure that victims are notified immediately after the change of plea, on the same day as the change of plea if possible.

8. The assigned prosecutor will ensure that victims are notified of the date of sentencing prior to the sentencing date.

9. If a prosecutor who responds to a homicide call-out, including a vehicular homicide is approached for information by a victim or survivor, they shall provide the person(s) with information regarding the process of investigation and review as well as contact information for the District Attorney's Victim Services Division.

10. In the event a victim or survivor is a minor, or housed in a medical or detention facility, any prosecutor, victim advocate, or District Attorney investigator should consult with their supervisor before making contact with them. Additionally, any prosecutor, victim advocate, or District Attorney investigator desiring in-person contact with victims or survivors outside of Sonoma County must comply with Article 5, Section 5.05 of this Policy and Procedures Manual, making sure to discuss the request with their direct supervisor and obtaining their approval, prior to going.

SONOMA COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

ARTICLE 10	***TRIBAL EVIDENCE***
SECTION 10.01	**Subpoenas, Search Warrants, Evidence Needed, and Interviews Related to Tribal Entities**

Tribal Subpoenas for Witnesses / Victims

If a tribal-related subpoena is required for someone to testify in court, whether they are a Tribal member or employee at the casino, the Prosecutor shall prepare a request for subpoena, and note on the subpoena sheet that it is “personal service” through the District Attorney Investigator who is the designated tribal liaison.

Evidence Needed from the Casino or Tribe

For any evidence needed from the casino (i.e. surveillance video, player tracking info, documents), the Prosecutor shall note it on the subpoena sheet or investigator work-up with reference to the designated District Attorney Investigator who is the tribal liaison. **(DO NOT SEND A SUBPOENA DUCES TECUM)**.

Most evidence can be obtained through the Tribal Liaison Investigator making a phone call to the tribal contact at the casino. The tribe has manifested an intention to cooperate in providing someone to testify to the records/evidence.

Some evidence will require a "Request Letter" being prepared by the District Attorney Investigator and submitted to the Tribe. This procedure can take some time, so it is best to give as much lead time notification as you can. A sample letter (Appendix A), sample return cover sheet (Appendix B), and sample custodian of records declaration (Appendix C) are attached.

Interviews of Trial Members, Casino Personnel or Tribal Police

The Tribes have stated a general intent to be cooperative when interviews need to be conducted on their land. Prosecutors should first contact our District Attorney Investigator, who is the tribal liaison, before attempting contact themselves. Any questions about this should be directed to the District Attorney Investigator or the Chief Deputy District Attorney assigned to tribal issues.

Search Warrants on Indian Reservations

When a search warrant needs to be served on an Indian reservation, either at a residence, casino, or other tribal business, Prosecutors must first discuss the issue with with the Chief Deputy District Attorney assigned to tribal issues. The Chief Deputy District Attorney must review and approve the warrant and the District Attorney Investigator assigned to tribal issues must be notified prior to **execution** of the warrant. The District Attorney or the Assistant District Attorney **must be notified** prior to the **service** of any warrant on reservation land.

[Date]

(Tribal Contact)

RE: DAR #
Defendant Name/DOB:
Evidence Requested (i.e., surveillance tape from battery incident on August 22, 2012)

Dear _____:

Our office is requesting assistance from you in obtaining _____ (i.e., surveillance tape on defendant John Doe). Doe has been charged with _____ (i.e., battery against Dry Creek Rancheria security employees).

I am hoping to obtain these documents with this informal request while respecting your Tribal Sovereignty. Your assistance in this matter is appreciated and we recognize that any future requests will be handled on a case-by-case basis.

[It is also requested that the "Custodian of Records" complete the attached declaration concerning the records released and sign in the designated location. In the event the documents are needed for court proceedings, the "Custodian of Records" who provided the documents, or a qualified substitute, may be needed to testify. We will provide as much advance notice as possible if this situation arises.

We are grateful for the spirit of mutual cooperation between the xxx and the Sonoma County District Attorney's Office, which we believe will prove beneficial in serving the members of our communities. Thank you for your cooperation in this important matter.

When the evidence is compiled, please feel free to contact me to facilitate the records transfer. Additionally, you may contact me at (707)565-____ with any questions or concerns. You may also contact DDA _____, at (707)565-____, who is the prosecutor assigned to this case.

Sincerely,

_____
District Attorney Investigator
Tribal Liaison D.A. Investigator
Sonoma County District Attorney's Office

DECLARATION OF CUSTODIAN

I, (print name) _____, declare that I am a duly authorized custodian of the records described above and I have the authority to certify those records. In that capacity, I certify that the documents are true copies of the records requested. The originals of these records were prepared in the ordinary course of the business by or at the direction of personnel of the _____ Casino and/or the _____ Tribal Government at or near the time of the act, condition, or event recorded therein. I am familiar with such documents from my employment with the named business and certify that these business records are relied upon in the conduct of said business as accurate representation of the information contained therein. I declare under penalty of perjury the foregoing is true and correct. This declaration is executed at _____, California, on (date) _____, 2013.

_____
(SIGNATURE OF DECLARANT)

Records Release Return Cover Letter

[Date]

Sonoma County District Attorney
Attn: _____, D.A. Investigator
600 Administration Drive, #212J
Santa Rosa, California 95403

RE: Information request

This letter is in response to your request of __(date)_____to (**the Tribal Contact – custodian of records)** for the following information contained in the tribe's business records: (evidence requested, defendants, DOB, dates concerned, etc.)

The _____ (tribal governing body), a federally recognized Indian tribe that retains its sovereign immunity, has authorized the release of the information to you pursuant to its records release policy for the purposes of your request, on the conditions stated below.

The release of the accompanying records is not intended, nor shall be construed to be a waiver of the _____ (Tribe) immunity from unconsented suit and legal process, consent to the jurisdiction of any federal court or administrative body, or that of any tribe, state or political subdivision thereof. This release of information does not constitute consent to _____'s (the tribe) further participation in this or any other matter. _____ (tribe) reserves the right to refuse to release information contained in its business records at any time, for any reason. The accompanying records may only be used for the purpose stated in your request and for no other purpose. You agree to maintain the confidentiality of these records to the fullest extent possible.

I have read the information contained in this letter, accept the terms set forth herein.

_____ _____
NAME, AGENCY Date

I have received the records described above.

_____ _____
NAME, AGENCY Date

SONOMA COUNTY DISTRICT ATTORNEY
POLICY AND PROCEDURE MANUAL

ARTICLE 11	***BRADY POLICY***
SECTION 11.01	**External and Internal *Brady* Policy**

I.

"BRADY MATERIAL" DEFINED

THE BASIC "BRADY RULE": The prosecutor has a due process affirmative duty to disclose to the defendant all evidence that is:

1. "Favorable" to the defendant; includes (1) evidence that may impeach a witness's testimony; (2) evidence directly opposing guilt; (3) evidence "indirectly" opposing guilt (such as third party culpability); (4) evidence that negates an element of the charged offense; (5) evidence supporting defense testimony; (6) evidence supporting an affirmative defense; (6) evidence supporting a defense motion that would help a defendant avoid punishment.

2. "Possessed" by the "prosecution team": includes (1) members of the prosecutor's office (including prosecutors, investigators, victim advocates, and support staff); (2) the investigating agency; (3) persons or agencies assisting in the prosecution of the case (allied agencies involved in the investigation, government or retained expert witnesses).

3. "Material" to Guilt or Punishment: evidence is "material" for Brady purposes if "nondisclosure was so serious that there is a reasonable probability [not "possibility"] that the suppressed evidence would have produced a different result.

Information that is purely rumor, suspicion, speculation, theory, or prosecutor work product is not Brady material.

The Brady rule applies to all evidentiary hearings that are reasonably likely to affect the outcome of the case including motions, preliminary hearings, court trials and jury trials. For further information on the application of this rule, click on the tabs labeled "Brady Training" and "Brady Policy Documents" found at the District Attorney's Sharepoint site.

II.

"EXTERNAL" *BRADY* POLICY

A. This External policy addresses the existence of information which is external to the District Attorney's Office and physically in the possession of law enforcement agencies and which may be relevant to the credibility of law enforcement officers and other agency employees. The purpose of this policy is to ensure compliance with the mandatory discovery obligations imposed by the United States Supreme Court in *Brady v. Maryland* (1963) 373 U.S. 83. The Sonoma County Law Enforcement Chiefs Association (SCLECA) has been consulted in the formulation of this policy and each law enforcement agency in the county has been provided with a copy.

B. The District Attorney will not examine law enforcement personnel files under Penal Code section 832.7(a) in order to achieve compliance with *Brady* obligations. The District Attorney will instead rely upon law enforcement agencies to review their own personnel files and advise the District Attorney of potential *Brady* information *contained* therein. The District Attorney reserves the right to examine law enforcement personnel files under section 832.7(a) when a peace officer is the subject of a criminal investigation.

C. Law enforcement agencies are requested to provide the District Attorney with a list of the names of each of their sworn peace officers as well as all other employees who *are* likely to testify in criminal cases (including correctional officers, criminologists, evidence technicians, dispatchers, and others whose job duties include handling evidence or documenting criminal cases). Each agency is charged with continually advising the District Attorney of newly hired officers and other potential witnesses in order to maintain compliance under *Brady*.

D. When an employee name is received from the law enforcement agency, the District Attorney will send a written notice requesting that the agency complete a review of personnel records for that employee for possible *Brady* information. The *agency* will be asked to search personnel and any other records in its possession relating to that employee for possible impeachment evidence, including but not limited to the following:

1. A sustained finding of misconduct based on a lack of truthfulness. (*United States v. Bagley* (1985); 473 U.S. 667, 676; *People v. Morris* (1988) 46 Cal.3d 1, 30.)

2. A sustained finding of misconduct based on a bias or prejudice relating to race, ethnicity, sex, sexual orientation, age, or religion. (*In re Anthony P.* (1985) 167 Cal.App.3d 502, 507-510.)

3. A sustained finding by the agency for any crime of "moral turpitude such as theft, domestic violence, excessive use of force, or false statements (regardless of whether there was an arrest or criminal conviction for the offense). (*People v. Wheeler* (1992) 4 Cal.4th 284, 295-297.)

4. Evidence that the employee committed a crime of moral turpitude such as theft, domestic violence, excessive use of force, or false statements, regardless of whether the employee was arrested or convicted of a criminal offense). (*People v. Wheeler* (1992) 4 Cal.4th 284, 295-297; *People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244.)

5. Evidence that the employee suffered a criminal conviction for any felony. (*People v. Castro* (1985) 38 Cal.3d 314; *People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244.)

6. Evidence that the employee is currently on probation to any court for any law violation. (*People v. Hayes* (1992) 3 Cal.App.4th 1238, 1243-45.)

7. Evidence that the employee has a pending criminal prosecution for any misdemeanor or felony, in any jurisdiction (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 379; *People v. Martinez* (2003) 103 Cal. App.4th 1071, 1080-1082; *People v. Coyer* (1983) 142 Cal.App.3d 839, 842.);

8. Evidence that an employee is currently under suspension within the department for conduct relating to their truthfulness. (*People v. Price* (1991) 1 Cal.4th 324, 486; *Davis v. Alaska* (1974) 415 U.S. 308, 319.);

9. Factual statements of an employee about an incident which contradict the same employee's prior factual statements on the same incident. This includes substantial evidence of false or contradictory statements on the same subject, knowingly and intentionally made by the employee. It does not refer to statements that are based on preliminary, speculative, or incomplete information, statements that are hypothetical in nature, or that are the result of mere inadvertence or typographical error. (*People v. Boyd* (1990) 222 Cal.App.3d 541, 568-569.)

10. Evidence that an employee has a reputation for being untruthful. (3 Witkin, California *Evidence* (4th Ed. 2000); *Carriger v. Stewart* (9th Cir. 1997) 132 F.3d 463.)

11. Evidence undermining an employee's expertise when the employee is being proffered by the agency or the prosecution as an expert. This evidence relates to gangs, narcotics, accident reconstruction, or any other subject where the employee has provided an "expert opinion." Required disclosures include evidence of false or inconsistent statements about an individual case which are NOT the result of having

received new or additional evidence; intentionally false statements as to the expert's prior training, experience and education; and evidence that the expert does not personally believe in the veracity of the expert opinion he or she has offered in this or any prior case. (*People v. Salazar* (2005) 35 Cal.4th 1031, 1047 - 1048*; People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179-1181.)

12. Evidence of promises of leniency, inducements, or immunity to an employee or any witness. (This includes witnesses who are or have previously worked as a paid informant for the agency, an agreement not to arrest or prosecute in exchange for information in the current or any other investigation, or an offer to talk with the District Attorney's Office on the witness' behalf (*United States v. Bagley* (1985) 473 U.S. 667, 676-677.).

E. WHAT IS NOT *BRADY* MATERIAL: allegations that have been determined by the law enforcement agency to be unsubstantiated, not credible, based only on rumor or *speculation*, or have been determined by the law enforcement agency to be unfounded, shall not be used as a basis to inform the District Attorney of potential *Brady* material contained in the employee's personnel file.

F. After completing a review of the employee's records the law enforcement agency is requested to advise the District Attorney, by marking a line on a form provided by the District Attorney, that either (1) No *Brady* documents exists for the above named employee; or (2) Possible *Brady* documents exist. The agency is to indicate on the *same* form the date of the earliest conduct reviewed by the agency, on the line indicated. No further information is to be provided at this point to the District Attorney by the agency.

G. If the agency determines that possible *Brady* documents exist, the District Attorney's Office will add the name of the agency's employee to the District Attorney's *Brady* Index. The index does not contain copies of actual *Brady* material. *The* index contains only the names of witnesses with known or potential *Brady* material. The index is accessible only to deputy district attorneys, managing attorneys, and select support staff. The index is managed by the Chief Deputy District Attorney (CDDA) supervising the felony trial departments, in consultation with other members of the District Attorney's *Brady* Review Committee.

H. The *Brady* Review Committee consists of all Chief Deputy District Attorneys. The committee reviews and analyzes all potential *Brady* materials as they are received. If necessary, it obtains additional documents or requests additional witness interviews (not including employees of employing law enforcement agency). Any two members of the committee (two CDDAs) is sufficient to decide whether information constitutes *Brady* material. When any committee member who is consulted disagrees with other members about whether information falls under *Brady*, the Brady Review Committee will consult with the Assistant District Attorney, who will make a final determination. If the

trial DDA disagrees with the final decision concerning discovery of the materials at issue, he or she shall inform the Assistant District Attorney of the basis for the disagreement, along with supporting legal authority, and request permission to opt out of the prosecution.

I. If the incident is more than 5 years old and the name is on the Brady List but the District Attorney has no information as to what the incident is, the *Brady* Review Committee will take the officer/deputy off the *Brady* Index and advise the agency of the removal. Names can otherwise be removed from the index by the committee if/when the *Brady* material is determined to no longer meet either the exculpatory or materiality requirements. In such cases, all *Brady* materials will be destroyed.

J. When it appears that the law enforcement employee is likely to be a witness, the deputy district attorney will make a motion for an in camera review pursuant to *Pitchess* and/or *Brady*. If disclosure is ordered, the deputy district attorney will provide the protected packet to the secretary of the CDDA, then discover it to the defense *attorney* in compliance with the order, and seek a protective order limiting use of information to that case.

K. The *Brady* Review Committee will NOT create a secondary "personnel file" on law enforcement agency witnesses. The only information received exclusively from an employee's personnel file that is to be maintained by the District Attorney as *Brady* material includes: (1) information received pursuant to a *Pitchess* and/or *Brady* motion which has been ordered released to the parties *without* a protective order prohibiting dissemination; (2) information obtained pursuant to a criminal investigation pursuant to Penal Code section 832.7(a).

L. PENDING INVESTIGATIONS: Pending administrative investigations are considered preliminary in nature. (*People v. Agurs* (1976) 427 U.S. 97, 109.) As a general rule, information obtained in the course of a pending administrative investigation *should* not be used as a basis to advise the District Attorney regarding the existence of potential *Brady* material. Therefore, in most "pending internal investigations the line on the District Attorney form indicating "possible Brady material should NOT be marked, due to the preliminary nature of the investigation. However, an exception to this general rule arises when: (1) the law enforcement agency or the District Attorney's *Brady* Review Committee determines that the allegations of employee misconduct contain substantial, credible information bearing on the employee's credibility; and (2) the administrative investigation will not be completed prior to the start of trial in which the employee will necessarily be called to testify. If, while a matter is under administrative investigation, the District Attorney's *Brady* Review Committee determines that it is necessary to present such evidence to a court (e.g., when trial is about to commence), the CDDA will direct the trial deputy to file a *Pitchess and/or Brady* motion and request an in camera hearing pursuant to the process described above. If the judge rules that there is *Brady* material contained within the personnel file and orders disclosure, the

District Attorney will comply with the order and request a protective order limiting disclosure to that case. Sustained complaints that are overturned by an arbitrator, civil service commission, or a court for insufficient evidence will not be considered *Brady* material.

II.

"INTERNAL" *BRADY* POLICY

A. This Internal policy does not apply to information in law enforcement personnel files. It governs information already in the possession of the District Attorney's Office, or a member of the prosecution team, excluding personnel files. This information is typically received by the District Attorney in the ordinary course of criminal prosecutions (i.e., crime reports submitted for review, misstatements in reports or on the witness stand, verbal statements provided by witnesses or law enforcement employees, etc.) and will be governed by the process outlined below.

B. If a Prosecutor or District Attorney Investigator (DAI) learns of facially credible information regarding a law enforcement employee that may be *Brady* material that information is to be forwarded to the Chief Deputy District Attorney (CDDA) over felony prosecutions.

1. Such allegations must be substantial and may not be limited to a simple conflict in testimony about an event.

2. The Prosecutor or DAI is to avoid carelessness in wording or premature conclusions regarding potential "*Brady*" materials. Memos, correspondence, and conversations should not refer to a statement or other information as *Brady* material until after a review and legal determination has been made by the Brady review committee and the name is listed in the "Brady Index." (Preliminary information is correctly described as "potential or possible *Brady* material). Internal office discussions regarding potential *Brady* material are confidential in nature and are subject to the attorney work product privilege (CCP 2018.030). Casual mention of "potential" (i.e. not yet finalized) *Brady* material involving law enforcement employees may unfairly damage the employee's reputation or result in a violation of the District Attorney's work product privilege. Therefore, employees of the District Attorney are directed to not discuss preliminary or "potential" *Brady* material except as required by this policy, ordered by a court or required by law.

3. If the District Attorney's Office comes into possession of potential "*Brady*" material regarding a law enforcement employee through "external" (i.e., non-*Pitchess*) means, upon notice from the agency or employee that an internal investigation is being conducted, the *Brady* Review committee will consider any information provided by the agency or the employee prior to reaching its conclusion. In cases where the committee has concluded that the materials already in its possession constitute *Brady* material, the committee will nevertheless reconsider its conclusion in light of any new materials or subsequent finding by the employing agency that the allegation of wrong-doing was NOT sustained.

C. Prosecutors and DAIs shall advise the CDDA of:

1. Disclosures made pursuant to a *Pitchess* motion, and the existence of any protective order limiting dissemination. (See Evid. Code Sections 1045 (d) & (e).)

2. Crime reports, complaint review requests, current prosecutions, past convictions, and any current criminal probationary status of any law enforcement witness.

3. Any administrative discipline imposed against a law enforcement employee that may have a bearing on credibility.

D. After receiving potential *Brady* material, the CDDA will forward it to the *Brady* Review Committee. This committee consists of all CDAAs.

E. Substantial information is the standard of proof for disclosure, i.e., facially credible information that might reasonably be deemed to impeach a witness' credibility, or to have undermined confidence in a later conviction in which the law enforcement employee is a material witness. Information is not *Brady* material if is based entirely on mere rumor, unverifiable hearsay, or speculation.

F. With regard to potential *Brady* material, the *Brady* Review Committee will draw one of three conclusions:

1. Materials do not constitute *Brady* material. The matter is closed and the materials are destroyed.

2. Materials appear to constitute *Brady* material. The officer's/deputy's name will be immediately added to the *Brady* Index. The CDDA supervising the felony trial departments will issue a written notice to the officer and the head of the agency. The officer will be given an opportunity to comment in person or in writing before a final decision is made by the *Brady* Review Committee. If, after a decision is made, the officer or agency disagrees with the committee's decision, they may appeal in writing to

the Assistant District Attorney for review and reconsideration. If the trial Prosecutor disagrees with the final decision concerning discovery of the materials at issue, he or she shall inform the Assistant District Attorney of the basis for the disagreement, along with supporting legal authority, and request permission to opt out of the prosecution.

3. Materials may constitute *Brady* material, but further information is necessary pursuant to *Pitchess* in order to make a proper determination. In such cases, the assigned Prosecutor will file a *Pitchess/Brady* motion with the court and pursue the normal *Pitchess* process.

G. If the officer/deputy or other employees of employing agency need to be interviewed in order to determine if *Brady* conduct has occurred, the District Attorney's office will refer it to the employing agency for further investigation. If the agency concludes the complaint is either unfounded or not sustained, or if the employee is exonerated, then it is not *Brady* material. If the complaint is sustained, the agency will notify the District Attorney's Office. The witness's name will be added to the index and a motion for in camera examination under *Brady* and/or *Pitchess* will be made whenever the employee is likely to become a witness, pursuant to the District Attorney's External *Brady* policy.

H. Immediate disclosure without the procedure described above is appropriate if required in order to comply with *Brady* by time of trial. To do this the deputy district attorney needs the express consent of a CDDA, the ADA, or the District Attorney. If none of these supervisors can be contacted in time, the trial deputy is to submit the information to the trial judge in camera. The officer/deputy should be given an abbreviated opportunity to be heard by the court if feasible and the law enforcement agency's *Brady* liaison should be notified.

I. An *in camera* review shall be used if the potential *Brady* material includes: (1) personnel records; (2) pending internal investigation; (3) material that is both remote in time and has questionable relevance; (4) the potential for a claim of privilege exists; (5) it is unclear whether *Brady* requires disclosure. *In camera* review of personnel records is authorized by law. (*U.S. v. Agurs* (1976) 427 U.S. 97, 106; *U.S. v. Dupuy* (9th Cir. 1985) 760 F.2d 1492, 1502*; People v. Jackson* (2003) 110 Cal.App.4th 280.)

J. The *Brady* Index for both the Internal and External policies is to be maintained in the same manner and contains the same information. Names in the *Brady* Index are accessible to all DDAs and management attorneys, as well as select support staff, but shall not be edited or made printable except by the District Attorney, Assistant District Attorney, members of the *Brady* Review Committee, or the office Information Technology specialist. The *Brady* Review Committee will conduct a periodic review to purge names and documents that no longer qualify as *Brady* material. If an officer/deputy receives new information concerning his/her *Brady* material, the

officer/deputy may petition the *Brady* Review Committee for review and possible removal from the *Brady* Index based on that new information.

K. Copies of all *Brady* packets are to be maintained by 1) the ADA; 2) the CDDA; 3) the legal secretary assigned to the CDDA. Access to prosecutors is for case-related purposes only, available through the legal secretary. The legal secretary will maintain a record of discovery provided including the case name and number. DDAs providing *Brady* discovery to defense shall maintain a copy of the signed discovery receipt in their case files and must supply the original signed discovery receipt to the CDAAs' secretary for placement in the office's master *Brady* files.

L. *Brady* discovery ensures a defendant's right to a fair trial. Whether a prosecutor makes *Brady* material available to the defense prior to a preliminary hearing or motion to suppress depends on the facts and circumstances of each individual case. In all cases, *Brady* material in the possession of the prosecution team, including law enforcement agencies investigating the pending criminal case, shall be made available to the defense prior to a material witness' testimony at trial.

RESOURCES

CDAA, Professionalism: A Sourcebook of Ethics and Civil Liability Principles of Prosecutors, Chpt. V (Discovery Rules for Prosecutors), revised 3/9/04.

CEB, Calif. Criminal Law Procedure & Practice (2009 ed.), including Chpt. 11 (discovery) and Section 24.45-24.47 (use of priors to impeach witnesses, list of moral turpitude offenses).

Pipes & Gagen, Calif. Criminal Discovery (4th ed. 2007).

CDAA, Discovery Seminar Manual (March 26-28, 2008).

District Attorney *Brady* policies: Ventura, Los Angeles, Alameda, San Diego (in consultation with District Attorney officials from Ventura, Alameda, San Francisco, Sacramento, Santa Clara, San Bernardino, Placer, and Orange Counties).