Inyo County District Attorney Policy and Procedure Manual

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INTRODUCTION

Preliminary Comment

The contents of this manual are intended to guide and direct the employees of the Inyo County District Attorney in the performance of their duties. No policy manual can address all possible issues or situations that may arise in a case, and employees at all levels are expected to use their own common-sense and experience in working with the citizens of Inyo County and all of our partners in the criminal justice system.

All employees, including attorneys, investigators, support staff, and victim advocates shall act with integrity and professionalism in all matters. All employees shall bear in mind the words of the United States Supreme Court in the case of *Berger v. United States* (1935) 295 U.S. 78, 88: *The prosecutor "is the representative not of any 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 two-fold aim of which is that guilt shall not escape or innocence suffer."*

All rules and policies in this manual shall be construed so that "justice shall be done."

Given that the Inyo County District Attorney's office is relatively small and that detailed office practices are constantly evolving, this manual is intended to provide broad policy guidance to employees. It shall be supplemented by all policy and procedural memos that may be in effect which describe detailed office practices.

Authority and Duties of the District Attorney

Article 11, section 1(b) of the California State Constitution declares that the legislature may provide for County officers. Government Code section 24000(a) provides that the district attorney is an officer of the county and Government Code section 24009 provides that the district attorney shall be elected by the people for a four year term of office.

Deputy district attorneys receive their power to act through Government Code section 1194, which provides that each deputy district attorney possesses the powers of and may perform the duties attached by law to the office of the district attorney.

"The district attorney is the public prosecutor. The district attorney shall attend the courts and conduct, on behalf of the people, all prosecutions for public offenses." Government

Code section 26500. "The district attorney shall institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed. For that purpose, when not engaged in criminal proceeding in the superior court or in civil cases on behalf of the people, he shall attend upon the magistrates in cases of arrest when required by them and shall attend before and give advice to the grand jury whenever cases are presented to it for its consideration. Government Code section 26501.

"The district attorney shall draw all indictments and informations." Government Code section 26502. Criminal complaints must be approved, authorized or concurred in by the district attorney before they are effective in instituting criminal proceedings against an individual.

In the County of Inyo, the district attorney prosecutes all violations of state law, both misdemeanor and felony. The district attorney also prosecutes County ordinance violations, especially those related to public safety.

The policies and actions of District Attorney's office shall in all circumstances be controlled by Constitution of the United States and the Constitution of the State of California, and the decisional law interpreting those documents, then by the California Codes and Rule of Court, and the decisional law interpreting those Codes and Rules.

Organizational Principles

The office of the District Attorney in Inyo County is relatively small—at this time, four attorneys, two investigators, an investigative assistant, an administrative assistant, three legal secretaries, and a victim-witness coordinator. This small size allows the office the luxury of functioning in a collegial, cooperative way and does not require rigid adherence to an organizational chart and levels of hierarchy. Nevertheless, it is important to clearly state the following:

The District Attorney is responsible to the voters of Inyo County and is the final authority as to all matters concerning the operation of the office.

The Assistant District Attorney reports directly only to the District Attorney, and is "second in command" as to all aspects of the office. In the event that District Attorney is out of the county and unable to act in his or her official capacity, the Assistant District Attorney will act in his or her stead. Given advances in global communications technology, the Assistant District Attorney, when acting as the District Attorney, shall make reasonable efforts to

communicate with the District Attorney in any unusual or unanticipated situations; especially in situations involving a highly public or controversial exercise of discretion.

The Deputy District Attorneys shall report directly to the District Attorney. The Assistant District Attorney shall work closely with Deputy District Attorneys and shall provide immediate supervision as to matters regarding discretionary case functioning and shall report to the District Attorney any situations that require his or her direct attention. In the absence of both the District Attorney and the Assistant District Attorney, a Deputy District Attorney shall be designated as acting District Attorney.

The Chief Investigator shall exercise day-to-day supervision of District Attorney Criminal Investigators; however, all Criminal Investigators shall take their direction in case-specific assignments from the office attorney assigned to a particular matter. Criminal Investigators are agents of the attorneys and shall comply with all laws, rules, and regulations pertaining to sworn California peace officers and employees of members of the State Bar of California.

The investigative assistant is a non-sworn position whose duty is to support the Investigators in case-specific assignments, and to assist Investigators and Attorneys with clerical and support services related to investigative and trial preparation functions.

The Administrative Assistant to the District Attorney shall exercise administrative day-to-day supervision and scheduling of all Legal Secretaries and the Victim Witness coordinator. The Administrative Assistant to the District Attorney shall also serve as the chief or primary fiscal officer for the District Attorney and shall serve as his or her chief assistant in fiscal and budgetary matters.

Legal Secretaries shall report to the attorneys assigning them tasks. Secretaries should work cooperatively to achieve an even distribution of work and prompt processing of all office documents.

The Victim Witness Coordinator enjoys an independent responsibility, subject to the rules and regulations of grant funding creating the position, to represent the interests of crime victims, to ensure that their rights are protected and to see that they are aware of and apply for all applicable government benefits. The Victim Witness Coordinator shall work closely with attorneys and investigators to provide required information and to facilitate the communication of case-related information to victims.

The District Attorney's office, to the extent feasible, shall assign cases to attorneys on a "vertical prosecution" model. Attorneys shall handle all aspects of the cases from investigation to charging and settlement or trial. To the extent feasible, one attorney will handle all cases involving a particular defendant. The goal of vertical prosecution is to ensure that the attorney

handling the case is familiar with all aspects of a defendant's pending case or cases so that prompt, just resolutions of cases are obtained.

General Personnel Rules and Regulations

Employees of the District Attorney are employees of the County of Inyo and, and the District Attorney adopts and incorporates the County of Inyo Personnel Rules and Regulations in their entirety, as well as the various memoranda of understanding of applicable bargaining units.

Special Personnel Rules and Regulations—Support Staff

Support Staff (Legal Secretaries, the Administrative Assistant, and any other clerical employees) shall comply with all rules and regulations regarding the use and dissemination of information obtained via the California Law Enforcement Telecommunications System (CLETS). This information is considered highly confidential, and any intentional misuse of any information received from CLETS can be grounds for immediate termination.

The District Attorney maintains offices in both Independence and Bishop. While efforts will always be made to fairly schedule work at the two locations, support staff may be required to work at either location at the sole discretion of the District Attorney and the Administrative Assistant to the District Attorney.

Specific, administrative procedures are beyond the scope of this policy manual, and are constantly evolving. It is expected that support staff will adhere to all currently articulated administrative procedures. Support staff is strongly encouraged to constantly review administrative procedures and to communicate ideas for efficiencies and improvements to the Administrative Assistant to the District Attorney and to the District Attorney.

Special Personnel Rules and Regulations—Assistant and Deputy District Attorneys

Professionalism

The Inyo County District Attorney's office shall always maintain the highest standards of professional conduct. It is our duty to follow the law in all respects and to uphold the rule of law. Behavior in contravention of the California Rules of Professional Conduct and the California Business and Professions Code will not be tolerated and can be a basis for discipline, including termination.

All attorneys employed by the Inyo County District Attorney's office shall be provided with a copy of the most recent edition of the California District Attorneys Association's manual: *Professionalism: A Sourcebook of Ethics and Civil Liability Principles for Prosecutors*. This manual should be reviewed with care and used as a resource when confronting any ethical or professional dilemmas.

Vertical Prosecution Model

As set forth in the Organizational Principles section, the Inyo County District Attorney adopts a "vertical prosecution" model. The basis of this model is attorneys employed by this office, absent unusual circumstances, will be responsible for handling a matter from the time of review and charging to disposition. Further, absent unusual circumstances, one attorney shall handle all cases involving a particular defendant or suspect.

It is anticipated that from time to time an assigned attorney may not be able to handle particular appearances or events in a case because of illness, vacation, training, or other factors. In that event, it is the assigned attorney's responsibility to communicate with his or her colleagues to ensure that the appearance or event is covered and that neither the People nor the defendant is prejudiced in any way by the absence of the assigned attorney. It is always critical for the assigned attorney to adequately document in each file the status of the case so that any attorney may be able to cover in the case of an emergency.

In the event of a legal conflict of interest prohibiting an attorney from prosecuting a particular individual, that attorney shall not be allowed access to any portion of the case files and shall not be allowed to participate in any discussions regarding the conflicted individuals. While such conflicts are rare, they may arise if an Assistant or Deputy District Attorney represented a defendant in the same matter as is now before the court, or if they become a material witness in a matter. Any conflicts involving the elected District Attorney shall be referred to the California Attorney General or, with the permission of the Attorney General, to a neighboring District Attorney's office, and the entire office shall be disqualified.

Allegations of Prosecutorial Misconduct

The courtroom can often be a battlefield of contention, and emotions can run high. Defense counsel and other participants in the criminal justice system will always question the motivation and judgment of attorneys in the District Attorney's office. Not every point raised in debate is that of prosecutorial misconduct, but it is critical that any attorney employed by the District Attorney respond immediately to any allegations of prosecutorial misconduct. If an attorney is not sure that such an allegation is being leveled at him or her, then specifically ask the individual making the claim whether they are making an accusation of prosecutorial misconduct.

If an oral allegation of prosecutorial misconduct is made then:

1. Immediately request a finding on the record that the accusation is without merit. Ask that the finding also be reflected in a minute order of the court. However, if an Assistant or Deputy District Attorney has made a mistake, even an unintentional, good faith error can still result in misconduct if the defendant is prejudiced. Take every step to eliminate any prejudice to the opposing side.
2. If the court does not immediately make a finding absolving an Assistant or Deputy District Attorney, ask 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 (DA/Prosecution Team/Office). 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 to respond. If no basis for the allegation can be given I ask for the allegation to be stricken and defense counsel reminded of the duty of candor under California Rule of Professional Conduct 5-200(A) & (B) and Business and Professions 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. NOTIFY THE DISTRICT ATTORNEY so that he or she may appoint another prosecutor to represent you at the hearing. Prepare a written memorandum of the facts and allegations. Obtain relevant transcripts. Assist your representative in preparing opposition and be prepared to testify if necessary. DO NOT REPRESENT YOURSELF AT THE HEARING.
4. Obtain the finding that you did not commit misconduct and ask to include the findings in the minute order.

If a written motion alleging misconduct is received:

1. Notify the District Attorney immediately and assist the colleague appointed to represent you in the preparing for a hearing on the motion. DO NOT REPRESENT YOURSELF AT THE HEARING.

If an accusation of prosecutorial misconduct is spurious, remain professional. You may consider going on the offensive by asking the court to find the accuser has committed misconduct, but such requests should only be rarely used. At a minimum you may ask that the accuser be admonished. If the false accusation is egregious you may invite the court to consider sanctions or even contempt. While you may accuse your opponent of misconduct, contempt power belongs solely to the court and you may not "move" to have your opponent held in contempt.

When dealing with an accusation of prosecutorial misconduct, remember that YOU always have duties to: never mislead the court; to be candid and honest at all time; to respect the court and to maintain just causes; that personal attacks in front of a jury ***can*** constitute misconduct; and that gross carelessness and negligence ***can also*** constitute misconduct, even if not willful or dishonest.

Special Personnel Rules and Regulations—Investigators

District Attorney Criminal Investigators are sworn California Peace Officers and shall exercise all powers and responsibilities as set forth in California Penal Code Chapter 4.5, "Peace Officers". Penal Code section 830.1 specifically defines "any inspector or investigator employed in that capacity in the office of a district attorney."

The District Attorney shall designate a Chief Investigator who shall, subject to direction from the District Attorney, provide immediate supervision of such other Criminal Investigators as may be employed by the office.

The primary responsibility of the Inyo County District Attorney Criminal Investigators is to assist the District Attorney, the Assistant District Attorney, and Deputy District Attorneys in the preparation of cases for prosecution and trial. Notwithstanding this primary responsibility, Criminal Investigators shall make every effort to cooperate with all law enforcement agencies operating in Inyo County, including State and Federal agencies, and to provide cooperative investigative services to the extent possible. Criminal Investigators are not first responders, but, with the permission of the District Attorney, they shall make themselves available to assist first responding emergency agencies in times of crisis or other need.

The District Attorney hereby adopts and incorporates the following Inyo County Sheriff's Department Policies as they relate to the law enforcement function of the Criminal Investigators:

Policy 300-304 regarding the use of force and less lethal weapons.

Policy 306 regarding firearms use.

Policy 307 regarding pursuits.

Policy 320 regarding standards of conduct.

Policy 427 regarding foot pursuits.

Policy 702 regarding vehicle use and maintenance.

All references in Inyo County Sheriff's Department policies discussing exceptions or approval shall be reviewed by the District Attorney or, as may be appropriate, the Chief Investigator, if necessary. A full copy of the Inyo County Sheriff's Department Policy Manual is available to all Criminal Investigators as a PDF document.

The District Attorney shall compile all data required by AB 953 (2015) regarding Citizens' Complaints Against peace Officers. This includes conduct on the part of Criminal Investigators alleged to have committed crimes, non-criminal complaints, and complaints of racial or identity profiling and report as required to the California Department of Justice.

Special Personnel Rules and Regulations-- Victim Services

The Victim/Witness assistance branch of the District Attorney's office is overseen by a Coordinator. On an administrative level, the Coordinator is overseen by the Administrative Assistant to the District Attorney. However, the Coordinator exercises her or his independent authority to provide services to the victims of crimes, and witnesses to crime pursuant to all of the rules and regulations of the California Office of Emergency Services Victim Witness Assistance program.

Pursuant to the rules and regulations of the grant, the Coordinator will make her or his best efforts to recruit and utilize volunteers to assist in the provision of services.

The Coordinator shall obtain sufficient training to assist crime victims in obtaining financial compensation from the California Victims of Crime program, as administered by the State of California, and will also assist victims in obtaining restitution orders in all criminal cases.

While based in the District Attorney's office, the Coordinator serves an independent function to represent the interests and desires of victims of crime. These interests can be in conflict with the strict interests of an attorney prosecuting a case in court. However, in all cases, the Coordinator's first duty of loyalty is to the victim.

The Coordinator provides comprehensive services to victims of all types of crime, but should concentrate on serving victims of the most serious cases likely to result in trauma to the victim or the victim's family. The Coordinator's mission is to encourage and support victims of crime, and witnesses to crime, to overcome the effects of crime, and to empower them as they move through the criminal justice process.

The Coordinator will work closely with all state, local, and tribal entities (whether governmental or not) to provide available services to crime victims and witnesses, and to avoid duplication of effort and resources. Currently, Wild Iris Family and Crisis Counseling is a private, non-profit agency providing a wide variety of services to victims (especially of domestic violence and sexual assault), and the Bishop Paiute Tribe operates the "RAVE" program, Relief Against Violent Encounters, offering similar services to members of the Bishop Paiute Tribe and their families.

The Coordinator will make her or his best efforts to participate in collaborative groups and teams including, without limitation, the Domestic Violence Prevention Council, the Sexual Assault Response Team, and death review teams.

In applicable cases, the Coordinator will assist office attorneys and investigators in maintaining contact with victims and witness, service and recall of subpoenas, transportation of victims and witnesses to and from court proceedings, supervision and care of victim and witnesses while waiting to participate in court proceedings, and such other services as may from time to time be assigned to assist in the smooth functioning of the criminal justice process.

All of the rules, regulation, and requirements of the currently existing California Governor's Office of Emergency Services Grant Award are adopted and incorporated herein as though fully set forth.

Crime Charging Standards

As stated in *People v. Gephart* (1979) 93 Cal.App.3d 989, 999:

> "The public prosecutor is vested with discretion in deciding whether to prosecute. This discretion is broad and quasi-judicial in nature."

This discretion is the core of the prosecutor's power and genesis of the prosecutor's greatest responsibility. Its appropriate exercise in every case, adult or juvenile, serious or minor, is of utmost importance. The basis for its application cannot and should not be a checklist or a formula; neither should it be a knee-jerk reaction.

Specific Standards

The primary responsibility of a prosecutor in charging a defendant 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 charge only if the following four basic requirements are satisfied:

1. Based on a complete investigation and a thorough consideration of all pertinent data readily available, the prosecutor is satisfied that the evidence shows the accused is guilty of the crime to be charged.
2. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime.
3. There is legally sufficient, admissible evidence of corpus delicti.
4. 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 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 the prosecutor.

Factors for Consideration

In all cases where the basic criteria are met, it is proper to include the following factors when making charging decisions:

1. The probability of conviction;
2. The nature of the offense;
3. The characteristics and criminal history of the offender;

4. The possible deterrent value of prosecution to the offender in particular and society in general;
5. The likelihood of prosecution by another criminal justice authority or jurisdiction;
6. The willingness of the offender to cooperate with law enforcement;
7. The impact of prosecution or non-prosecution on other criminal justice goals;
8. The interests and desires of the victim;
9. Possible improper motives if the victim or witnesses;
10. The availability of adequate civil remedies;
11. The age of the offense;
12. Undue hardships caused to the accused;
13. A history or practice of non-enforcement of the alleged crime;
14. Excessive costs to prosecute in relation to the seriousness of the offense;
15. Recommendations of the investigating law enforcement agency;
16. Mitigating circumstances not amounting to a legal defense;
17. Aggravating factors as set forth in the California Rules of Court;
18. Legally available sentencing enhancements and grounds for denial of probation.

The above list, while comprehensive, is not exclusive. Prosecutors in the Inyo County District Attorney's office are encouraged to consider any relevant aspect of the case in determining whether charges should be filed, what those charges may be, and what type of settlement of the case may be appropriate. The decisions made in any particular case represent factors to consider in future cases; as such, said decisions provide guidance, not limitations, for future decisions.

Prosecutors are encouraged to "staff" difficult cases with the District Attorney and fellow prosecutors.

In cases involving driving under the influence, the District Attorney's office primary focus is whether the facts of the case are such as to warrant a probability of conviction. The standardized practices of the Superior Court insure fairness in any such convictions. Only if the prosecutor doubts the probability of conviction will our office consider a filing or settlement decision involving something less than a driving under the influence charge and conviction.

Improper Basis for Charging

The following factors constitute improper bases for charging:

1. The race, religion, nationality, gender, sexual orientation, occupation, economic class or political association or position of the accused, victim, or witness;
2. The simple fact that a law enforcement agency, private citizen, or a public official has requested a charge;

3. Public or media pressure or passion to charge;
4. Threatening criminal prosecution to obtain an advantage in another case;
5. Helping or impeding, purposefully or intentionally, the efforts of any public official, candidate, or prospective candidate for elective office or appointed public office.

Office Citation Policy

An office citation is a written notification to a person to meet with an attorney in the District Attorney's office. This meeting is to discuss a matter referred to the District Attorney's office for action, and, if possible, to avoid the filing of a formal criminal complaint in court. The office citation is the lowest level of active involvement in a case by the DA's office. Most cases should either be filed or rejected based on the merits of the case presented. Persons cited may bring persons to assist them at the citation meeting, including attorneys.

An office citation will normally be used in one of two situations:

1. Where an initial decision has been made not to file, the attorney may wish to meet with the suspect and explain why a case has not been filed. Also, the attorney may want to warn that similar, future conduct could result in a criminal complaint and the reconsideration of the filing of the current case. The merits of the case in such a situation do not warrant expenditure of resources for a trial of the case, and/or there is a lack of meaningful sentencing options. The meeting will result in a warning to the suspect, the creation of a file, and an entry into the case management system for possible future reference.
2. Where a final decision has not been made regarding the filing of the matter involving a relatively minor violation, and the attorney reviewing the case wishes to obtain input from the suspect on the facts of the case. The attorney may also want to assess the attitude of the suspect and/or likelihood of a resolution of the matter without the necessity of a formal court filing. In this situation, an Investigator should be included in the meeting.

In either case, the purpose is to resolve relatively minor criminal violations by voluntary compliance and/or to deter future conduct without the need to file a formal criminal complaint in the courts.

The office citation procedure should only be used in misdemeanor or infraction cases. It may be used in felony cases with the express permission of the District Attorney.

The office citation procedure is often most effective in situations where the parties have a past, present, or on-going relationship, such as family, neighbors, employers/employees etc.

The office citation procedure should not be used as an investigative tool. If additional investigation is needed to make a charging decision, the matter should be re-referred to the original investigating agency or to the District Attorney Investigators.

Case Settlement Policies

It is a fact of the modern criminal justice system that most cases are resolved not by trial, but by settlements (sometimes referred to as "agreed dispositions" or "plea bargains").

The District Attorney's office will comply with all relevant Penal Code sections regarding plea bargaining including, without limitation, Penal Code section 1192.7 and Penal Code section 667(g).

To the extent that the Superior Court of California, County of Inyo occasionally adopts "standard" sentences for certain offenses (i.e. driving under the influence (Vehicle Code section 23152, et seq.). Historically, these standard sentences are arrived at in consultation with the District Attorney's office, the criminal defense bar, and other stakeholders in the criminal justice system. The District Attorney's office will fashion settlement offers conforming to those standard sentences. If the District Attorney determines that such sentences are inappropriate, then attorneys for the office should not make any settlement offer other than an "open" plea and respectfully argue for what he or she determines to be an appropriate sentence.

From time to time the District Attorney may adopt in writing specific settlement direction in specific cases, which shall be followed by the Assistant and Deputy District Attorneys. These policies are usually driven by observations in the frequency and severity of certain types of crimes in Inyo County, and public policy factors calling for heightened or more lenient enforcement of certain types of crimes.

In all other cases, the District Attorney's office shall attempt to settle cases as equitably as possible. The basic principle of "equity" is that similarly situated individuals should be similarly treated. Unfortunately, in our small, rural county is often difficult or impossible to find truly comparable cases. In all settlement discussions and agreements, the District Attorney's office will bear in mind its duty to do justice and to enforce the laws as given to us by the People and their legislature and shall not be influenced by personal or public passion or opinion.

Alternatives to Custody in Adult Criminal Cases

The Inyo County Sheriff's Department administers a "WRAP"—Work Release Alternative Program—which allows convicted defendants to avoid actual custodial time by participation in a supervised release program. WRAP is entirely administered by the Sheriff's Department. The

District Attorney's office cannot and will not make settlement offers "guaranteeing" or promising participation in WRAP. The District Attorney's office, in its discretion, may agree to settlements which would make a defendant eligible for WRAP, but the final decision as to participation in the program rests with the Inyo County Sheriff.

The Inyo County Probation Department administers an electronic monitoring program which may also be used by eligible defendants to avoid actual custodial time. As is the case with WRAP, the District Attorney's office cannot and will not make settlement offers "guaranteeing" or promising participation in the Electronic Monitoring program. The District Attorney's office, in its discretion, may agree to settlements which could make a defendant eligible for Electronic Monitoring, but the final decision as to participation rests with the Inyo County Probation Department. Unlike WRAP, the District Attorney's office may agree to settlements calling for a Judicial order pursuant to Penal Code section 1203.016(e) restricting or denying a defendant's participation in the Electronic Monitoring program.

Drug Court and Other Collaborative Justice Courts

The District Attorney's Office is a partner in the Inyo County Drug Program and the Reentry Court program. The District Attorney subscribes to the principle that prevention of future wrong-doing by defendants is a vital part of our mission to do justice. While difficult to measure, the crime that is prevented harms no others and requires no governmental response.

In that regards, the current Inyo County Drug Court Manual and any policies and procedures adopted regarding the operation of Re-entry Court and/or other collaborative justice courts are adopted as policies of the office and incorporated herein.

Discovery Policies

The Inyo County District Attorney's office recognizes that providing full and complete discovery in criminal cases is vital to its role in ensuring that justice is done.

1. Discovery shall be provided to the Defendant's attorney (or to pro per Defendants) at arraignment or as soon thereafter that discovery is requested.
2. After arraignment, any supplemental or additional reports shall be provided to the Defendant's attorney as soon as possible after the assigned attorney has reviewed the report for relevancy and materiality.
3. Attorneys employed by the District Attorney's office shall be mindful of all Penal and Evidence Code sections pertaining to the identity of victims who wish to remain confidential as well as confidential informants. While the first duty of the office is to follow the law, all reasonable efforts shall be made to preserve requested confidentiality.

4. In general, the District Attorney's office adopts an "open file" discovery policy. Unless disclosure is otherwise prohibited by law, factual and evidentiary information shall be provided to the defense. District Attorney work product is specifically *not* included in this policy.

***Brady* Policy (Peace Officer Personnel Record Disclosure)**

I. External Policy (*Pitchess/Brady* Procedure for Disclosure of Material from Law Enforcement Personnel Records).

Introduction and Statement of Policy

Law enforcement personnel records are protected from disclosure by the statutory procedure for *Pitchess* motions. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531; Evidence Code sections 1043-1047; Penal Code section 832.7) Additional important protections regarding personnel records are contained in the Public Safety Officers Procedural Bill of Rights Act (Government Code section 3300 et seq.) and in the right to privacy under the California Constitution (Article I, section I). At the same time, the District Attorney has a constitutional obligation under *Brady v. Maryland* (1963) 373 U.S. 83, to provide criminal defendants with exculpatory evidence, including substantial evidence bearing on the credibility of prosecuting witnesses. In several respects under current law, the scope of the prosecution's obligations under *Brady* exceeds information available under *Pitchess*.

The prosecution's duty of disclosure extends to evidence in possession of the "prosecution team" which includes the investigating law enforcement agency (*People v. Superior Court (Barrett*)(2000) 80 Cal.App.4th 1305; *City of Los Angeles v. Superior Court (Bandon*)(2002) 29 Cal.4th 1). In addition, there is federal authority that police have a due process obligation to disclose exculpatory evidence to the prosecution. In 2015, the California Supreme Court revisited the obligations of the prosecutor to disclose law enforcement personnel records and the acceptable procedure for doing so in *People v. Superior Court (Johnson)* (2015) 61 Cal.4th696. This policy is adopted to comply with the authorities listed in this introduction.

The District Attorney and Inyo County law enforcement agencies are committed to full compliance with the rights of criminal defendants to a fair trial and due process of law. We recognize that effective enforcement and prosecution of crime are jeopardized by failure to comply with discovery law and that such violations may result in reversal of convictions, sometimes years after the trial is concluded. More importantly, we recognize that the honesty of law enforcement personnel is a cornerstone of our criminal justice system. On those rare occasions when a law enforcement employee has engaged in conduct that has a negative

bearing upon his or her credibility, we are obligated to disclose this information as required by law.

Because of the small number of officers in Inyo County who may have *Brady* material in their personnel files, repetitive requests to check personnel files each time subpoenas are sent out in a case would create unnecessary paperwork and personnel costs upon law enforcement agencies and the District Attorney. Further, prosecutorial inspection of peace officer personnel files for purpose of *Brady* compliance would be unnecessarily intrusive upon the privacy rights of officers in their personnel files. Instead, we have adopted a procedure in which the law enforcement agencies advise the District Attorney's office of the names of officers who have information in their personnel files that may require disclosure under *Brady*. The District Attorney shall then, in cases wherein disclosure may be required, notify counsel for the defendant (or a *pro per* defendant) of the existence of such material. The defendant, through counsel, may then bring an appropriate *Pitchess* or Evidence Code section 1043 motion. In appropriate cases, the District Attorney may bring its own motion, and/or may join in a defense motion. This procedure was specifically approved in *People v. Superior Court (Johnson), supra*. This procedure shall also apply to personnel records of peace officers employed by the District Attorney's office.

<u>Brady Material Defined</u>

"*Brady*" material is defined as exculpatory evidence that is material to either guilt or punishment. "Material" evidence has been defined as follows: " . . . evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *People v. Roberts* (1992) 2 Cal.4th 271. "Exculpatory" means favorable to the accused. This includes "substantial material evidence bearing on the credibility of a key prosecution witness. People v. Ballard (1991) 1 Cal.App.4th 752. Such impeachment evidence must disclose more than "minor inaccuracies". The government has no *Brady* obligation to "communicate preliminary, challenged, or speculative information. However, "the prudent prosecutor will resolve doubtful questions in favor of disclosure." *United States v. Agurs* (1976) 427 U.S. 97.

Impeachment evidence is defined in Evidence Code section 780 and CALCRIM 105. Examples of impeachment evidence that may come within *Brady* are as follows (this list is not exhaustive):

1. The character of the witness for honesty or veracity or their opposites.
2. A bias, interest, or other motive.
3. A statement by the witness that is inconsistent with the witness's testimony.

4. Felony conviction involving moral turpitude. Discovery of all felony convictions is required regarding any material witness whose credibility is likely to be critical to the outcome of the trial.
5. Facts establishing criminal conduct involving moral turpitude, including misdemeanor convictions.
6. False reports by a prosecution witness.
7. Pending criminal charges against a prosecution witness.
8. Parole or probation status of a witness.
9. Evidence undermining an expert witness's expertise.
10. Evidence that a witness has a racial, religious or personal bias against the defendant individually or as a member of a group.

For purposes of this policy, "Brady material" in personnel files of law enforcement agency employees is defined to include:

(a) Any sustained finding of misconduct within the preceding 5 years that reflects upon the truthfulness or bias of a witness. A complaint is considered sustained for purposes of this policy when it has been approved by the agency head after a hearing pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, if applicable, or when discipline has been imposed, whichever occurs first. If a sustained complaint has already been overturned by a reviewing body or court based on lack of evidence of misconduct, the incident will not be considered Brady material and need not be reported to the District Attorney's office. If a sustained complaint has been overturned based only on the degree of discipline imposed, it shall still be considered a sustained complaint and shall be reported to the District Attorney's office. If the law enforcement agency has notified the District Attorney's office of Brady information and the officer later successfully appeals the sustained complaint to a reviewing body or court, the officer should provide the District Attorney's office with a copy of the decision on appeal so that the District Attorney may reevaluate the matter.

(b) Any past conviction or pending criminal charge for a felony or moral turpitude offense.

Because of this procedure's delegation of part of the prosecutor's affirmative duty to seek out evidence of impeachment material subject to the *Brady* rule, it is essential that the responsibility be carried out by a qualified representative of the law enforcement agency. All parties may best be served when the representative conducting the initial screening process is an attorney employed by County Counsel, the City Attorney, or other qualified counsel with legal training in this specialized area.

Procedure for Judicial Review

1. In order to meet constitutional *Brady* obligations and to ensure that law enforcement's statutory right to confidentiality is upheld, the District Attorney requests that each law enforcement agency search its records concerning employees of that agency. A personnel file review is requested for all peace officer employees, as well as for all crime scene investigators, Police Services officers (regardless of actual title) , criminologists, evidence technicians, dispatchers, and other employees whose job duties may include handling evidence, documenting incidents relating to criminal cases, or who are likely to testify in criminal cases.
2. To the extent that it may exist, the District Attorney will not assert a right under Penal Code section 832.7(a) to inspect personnel records, due to the delegation to the police agency of the initial determination of substantiveness.
3. The law enforcement agency will designate a records custodian or other representative of the agency who will review the personnel records of the employees described above for sustained allegations of misconduct, or convictions or pending criminal charges for felony or moral turpitude offenses, that might require disclosure.

    a. If potential *Brady* material exists, the agency representative will contact the District Attorney or in his or her absence, the Assistant District Attorney, and inform him or her of the existence of the materials. The response in writing to the District Attorney will state only that there may be *Brady* material regarding the employee (or that a sustained complaint was made against the employee) and the date the information was entered in the record. No actual materials from the file will be provided to the District Attorney.
    b. The law enforcement agency shall provide the same written notification of its findings to the involved employee.
    c. After a notification has been made, the law enforcement agency shall notify the District Attorney of any additional potential *Brady* material regarding an employee.

4. The District Attorney shall maintain a list of law enforcement employees for whom law enforcement agencies have given notification that possible *Brady* material may exist, as described above. The list will be accessible only to attorneys employed by the District Attorney using the District Attorney's case management system. Attorneys in the District Attorney's office must review the list during trial preparation to determine whether a law enforcement employee who is subpoenaed by or who will testify on behalf of the prosecution is on the list. Upon the request of any employee or former employee of a law enforcement agency, the District Attorney shall immediately advise the employee whether he or she is included on the list.

5. When the District Attorney's office subpoenas or intends to call a law enforcement employee for whom notification of possible *Brady* material has been given, the District Attorney shall notify counsel for the defendant, or the defendant him or herself if *in pro per*, of the existence of such material, and the defendant may bring such motion as he or she deems proper. In the event that an attorney employed by the District Attorney wishes to review the material, he or she shall bring the appropriate motion pursuant to Evidence Code section 1043, et seq. (in the case of sworn peace officers) and pursuant to Evidence Code section 1040 and 915(b) (in the case of non-sworn employees).
6. If the court orders disclosure, the District Attorney shall request that the court issue a protective order against disclosure of the material in other cases pursuant to Evidence Code section 1045 (d) and (e).
7. The District Attorney's office shall not maintain a depository of information obtained from personnel files pursuant to an in-camera hearing. Instead, *Brady/Pitchess* disclosure shall be made in each future case in which the officer is a material witness.

Investigations Not Covered by this Procedure

1. California Penal Code section 832.7(a) provides that investigations or proceedings concerning the conduct of police officers or a police agency conducted by a Grand Jury or District Attorney's office of the Attorney General's office are not subject to the Evidence Code disclosure procedures. The Inyo County District Attorney's office will not seek access to peace officer personnel records pursuant to section 832.7(a) except: (a) when the peace officer is a suspect in an investigation and is not merely a witness in a criminal case, or (b) as ordered by the court pursuant to the *Pitchess*/Evidence Code 1043 procedure.
2. The Inyo County District Attorney sometimes learns of potential law enforcement employee misconduct outside of the procedure described in this policy. For example, evidence of untruthfulness may come to light during a criminal trial, or from credible reports of other law enforcement employees based on sources other than personnel records. The procedure in such cases is described in the following section ("Internal Policy").

II. *Brady* Discovery of Law Enforcement Employee Misconduct (Internal Policy)

The District Attorney's office may come into the actual possession of *Brady* material as to law enforcement agency employees not contained in personnel files and records. In order to comply with our discovery obligations, procedures are necessary (1) to ensure that instances of

law enforcement employee and expert witness misconduct and credibility issues that come to the attention of the District Attorney's office are reviewed to determine if disclosure is required; (2) to maintain a depository of such information; and, (3) to ensure that assistant and deputy district attorneys know of the existence of such information regarding potential witnesses so that disclosure can be provided to the defense.

1. Procedure for Review of Potential Brady Information.

   Upon learning of any apparently credible allegation involving law enforcement employee or expert witness misconduct or credibility that may be subject to disclosure under *Brady*, District Attorney office attorneys and/or investigators shall timely report this information to the District Attorney or, in his or her absence, the Assistant District Attorney. For example, evidence of untruthfulness may come to light during a criminal trial, or from credible reports of other law enforcement employees based on sources other than personnel records. Such allegations must be substantial and may not be limited to a simple conflict in testimony about an event. The notification itself ultimately might be examined in camera and/or be discovered so carelessness in wording or premature conclusions are to be avoided. If and when such information is obtained, the District Attorney will conduct a thorough analysis pursuant to the procedures outlined herein to determine if it is required to disclose information pursuant to *Brady*.

2. Attorneys and Investigators shall also advise the District Attorney if they become aware of any of the following information regarding a law enforcement employee or expert witness:
   a. Any information available to the attorney regarding disclosures made pursuant to a *Pitchess* motion, and the existence of any protective or limited order regarding future dissemination of the information.
   b. Criminal convictions of law enforcement employees.
   c. Prosecution initiated against law enforcement employees.
   d. Rejections of requests for initiation of prosecution against law enforcement employees.
   e. Any administrative discipline imposed against a law enforcement employee that may have a bearing on credibility.
3. Following receipt of such a report, the District Attorney shall obtain all available information concerning the alleged misconduct including the transcript of any testimony provided and relevant law enforcement report. The District Attorney shall review and analyze the materials in light of applicable law. In some cases, it may be necessary and appropriate for the District Attorney to obtain copies of additional court documents, law enforcement reports, and/or interview witnesses. However, absent unusual

circumstances the District Attorney will not seek to interview the officer in question or other employees of the employing law enforcement agency.

4. The standard of proof for disclosure of information shall be the "substantial information" standard. Substantial information is defined as facially credible information that might reasonably be deemed to have undermined confidence in a later conviction in which the law enforcement employee is a material witness, and is not based on mere rumor, unverifiable hearsay, or a simple and irresolvable conflict in testimony about an event.
5. Following the review and analysis, the District Attorney shall decide which of the following conclusions is appropriate: (1) the materials do not constitute *Brady* material; (2) it appears that disclosure may be required under *Brady*; or (3) further investigation, including interview of the officer in question or other employees of the employing law enforcement agency, should be undertaken by the employing law enforcement agency.
6. If the District Attorney concludes that the materials do not constitute *Brady* material, the matter shall be closed.
7. If it appears that disclosure may be required under *Brady*, the employee in question and the head of the employing agency will be invited to provide written comments, objections, and/or other additional information that may bear on the decision of what information, if any shall be provided. Given the need to provide prompt discovery to the defense in criminal cases, the opportunity to comment, object or provide information may of necessity be brief.
    a. The District Attorney shall evaluate all information received, and then take one of the following decisions:
        1. No further action based upon the conclusion that no *Brady* material exists.
        2. Discovery of the materials is required in a specific case only.
        3. Discovery must be provided in additional cases in which the law enforcement employee is or was a material witness. In appropriate cases, a computer search of pending and/or past cases may be conducted and counsel notified.
        4. In some cases, presenting the material to a judge for an in camera review in the individual case.
        5. In some cases, blanket notification to representatives of persons holding Inyo County Public Defender contracts and the Inyo County Bar Association may be appropriate as a back-up form of notification in situations in which the District Attorney cannot be confident that all affected parties have been notified. Such a blanket notification shall be limited to a statement that *Brady* material may exist, with defense counsel to either contact the District Attorney for specific information or to make a motion for disclosure.

b. If the decision taken by the District Attorney pertains to the credibility of a peace officer, the District Attorney shall send written notification to the officer and the head of the employing agency and shall provide a copy of the materials regarding the officer to the defense.
c. The peace officer shall then have thirty (30) days to respond in writing or request a meeting with the District Attorney to discuss the allegation and supporting materials. An attorney or representative may accompany the officer to the meeting. In the event that the officer requests further time and no urgency exists to complete the evaluation, the District Attorney may extend the time for a written response or meeting.

8. In some cases, after the initial review, the District Attorney may conclude that he or she is not in possession of sufficient information to conclude that conduct coming within *Brady* has occurred, but that further investigation is appropriate. In such cases, and absent extraordinary circumstances, the District Attorney will refer such cases to the employing law enforcement agency to conduct an investigation in accordance with the Public Safety Officers Procedural Bill of Rights. If, after conducting this investigation, the employing law enforcement agency concludes that the complaint is unfounded, exonerated or not sustained, then disclosure is not warranted because the information is "preliminary, challenged, or speculative." If the employing law enforcement agency sustains the complaint, the District Attorney's office shall, when the officer is a material witness in a case, proceed pursuant to the "External" Brady policy described above. Nothing in this paragraph or policy shall limit the authority of the District Attorney's office to conduct criminal investigations.
9. *In Camera* Review. Nothing contained in this policy shall limit the ability of the District Attorney's office to request an *in camera* review of material which, in the opinion of the District Attorney and pursuant to existing law, may constitute *Brady* material and which may not be covered by specific provisions of this policy. The purpose of such *in camera* review is to protect the rights of defendants while balancing the privacy rights of law enforcement agency employees and agents. The District Attorney's office shall comply with all orders made *in camera* regarding the disclosure of information as well as all protective orders fashioned by the court.
10. All materials reviewed and memoranda of conclusions reached by the District Attorney shall be maintained in separate *Brady* administrative file(s) that will be maintained in a secure location. In those cases where the review determined the misconduct allegations are subject to discovery, a discovery *Brady* packet shall be made and included in cases where discovery is required. The information in these administrative files shall only be accessed for case-related purposes and a record shall be maintained

as to the name of each employee who accesses the information and the case for which access was obtained.

a. Upon written request, the District Attorney's office shall inform any law enforcement employee and/or the employing law enforcement agency whether or not a *Brady* administrative file exists regarding that employee. The employing law enforcement agency, and the affected law enforcement employee and/or his or her attorney or other representative, shall have the right to inspect the officer's *Brady* administrative file at a time mutually convenient to the parties or within 15 days of receipt of a written request for inspection. The District Attorney's office retains the right to exclude from inspection materials protected by the attorney-client, deliberative process, or official information privileges.
b. The District Attorney's office should not retain confidential personnel records from other agencies, and shall not provide such records to the defense absent an in-camera review and a court order. The employing law enforcement agency is the appropriate custodian of these records.

11. Providing Brady Discovery to the Defense.
    a. The District Attorney shall maintain a list of law enforcement employees and expert witnesses for whom administrative files have been created on possible Brady material. The "Brady list" shall only be disclosed and known to attorneys employed by the District Attorney and such support staff as may "need to know" to assist attorneys.
    b. Disclosure of law enforcement employee misconduct is not required in a particular case if the evidence would not impact the employee's credibility in that case. For example, if the misconduct relates to a bias against a particular racial group, discovery may not be required in cases that do involve members of that group. The District Attorney shall be consulted on all *Brady* issues regarding the credibility of law enforcement employees. If the assigned attorney in a particular case is of the opinion that notification of the existence of the *Brady* packet shall not be provided in a particular case, after consultation with the District Attorney, the decision shall be documented in the administrative file for that officer. If it is not clear whether disclosure is required in a particular case, the matter shall be submitted to the court for in-camera review.
    c. Initially, disclosure to the defense shall be in the form of a letter or other writing that the District Attorney's office maintains information that may relate to the credibility of a law enforcement employee. Disclosure of the actual packet shall be made only on request of the defense in a particular case. Any disclosure of the actual packet to the defense shall be noted in the administrative file for the law enforcement agency employee.

d. Attorneys employed by the District Attorney shall be mindful of the *Brady* list when reviewing declarations in support of arrest warrants and affidavits in support of search warrants to determine if the declarant or affiant is an employee for whom the office has determined that *Brady* material must be provided. The attorney shall not approve the arrest warrant or search warrant unless it discloses a summary of the *Brady* material so that the magistrate may consider it in assessing the credibility of the individual.
e. The nature of the constitutional obligation created by the *Brady* doctrine and the statutory time limits for trial and for providing discovery in criminal cases will, in certain instances, require immediate disclosure to the defense of information in the possession of or known to the District Attorney's office. In such instances, it may not be possible or feasible before information is provided to the defense to conduct the full review procedure described in this policy. In such cases, the District Attorney shall be immediately consulted and immediate disclosure made to the defense.

12. Admissibility of Evidence. DISCOVERY AND ADMISSIBILITY ARE DIFFERENT. The assigned attorney shall always consider and decide if admissibility of matters discovered pursuant to this policy is to be challenged.

Officer Involved Shooting Policy

Officer involved shootings involve several types of investigations. The investigations may include:

a. A criminal investigation of the incident by the agency having jurisdiction where the incident occurred. This agency may relinquish its criminal investigation to an outside agency with approval of the Chief of Police or Sheriff.
b. A criminal investigation of the involved officer(s) conducted by an outside agency.
c. A civil investigation to determine potential liability conducted by the involved officer's agency.
d. An administrative investigation conducted by the involved officer's agency to determine if there were any violations of department policy.

Jurisdiction is determine by the location of the shooting and the agency employing the involved officer(s). The following scenarios outline the jurisdictional responsibilities for investigating officer involved shootings in Inyo County:

a. Bishop Police Officer with City of Bishop boundaries: The Bishop Police Department will be responsible for the criminal investigation of the suspect's actions, the civil investigation, and the administrative investigation. The Inyo County District Attorney's office will be responsible for the criminal investigation of the officer(s) involved.
b. Another Agency's Officer within the City of Bishop Boundaries: The Bishop Police Department will be responsible for the criminal investigation of the suspect's actions. The Inyo County District Attorney's Office will be responsible for the criminal investigation of the officer(s). The officer's employing agency will be responsible for the civil and administrative investigations.
c. Inyo County Sheriff's Deputy within Inyo County boundaries: The Inyo County Sheriff's Department will be responsible for the criminal investigation of the suspect's actions, the civil investigation, and the administrative investigation. The Inyo County District Attorney's office will be responsible for the criminal investigation of the deputy(ies) involved.
d. Another Agency's Officer within Inyo County boundaries: The Inyo County Sheriff's Department will be responsible for the criminal investigation of the suspect's actions. The Inyo County District Attorney's office will be responsible for the criminal investigation of the officer(s). The officer(s) employing agency will be responsible for the civil and administrative investigations.

Criminal Investigation of Officers

It shall be the policy of the Inyo County District Attorney's Office to conduct an independent criminal investigation into the circumstances of any peace officer involved shooting involving injury or death in the County of Inyo.

If available, District Attorney Investigators may partner with investigators from other involved agencies so as to facilitate the collection and processing of evidence and witness statements. District Attorney Investigators shall prepare their own reports setting forth the information gathered and any conclusions reached by them, independence of any partner agencies.

District Attorney Investigators, shall, to the extent applicable, comply with the dictates of the Peace Officer's Bill of Rights (POBAR). Once safety issues have been addressed, District Attorney Investigators should be given the opportunity to interview involved officer(s) in order to provide the officer(s) with an opportunity to give a voluntary statement. If requested, any involved officer(s) will be afforded the opportunity to consult with a representative or an attorney prior to speaking with District Attorney Investigators.

Any statements provided by the officer(s) will be made available to the appropriate agency for inclusion in the administrative and civil investigations.

General Assistance to Allied Law Enforcement Agencies

A. Search Warrants

An attorney employed by the District Attorney's Office shall review all search warrants requested by allied law enforcement agencies, including the warrant itself and the associated statement of probable cause (affidavit). To the extent feasible pursuant to the office's vertical prosecution model, search warrants and statements of probable cause should be reviewed by the attorney assigned to the prosecution of the case. In the event of an after-hours call out, the District Attorney shall be called first, or in his or her absence the Assistant District Attorney.

The purpose of the review is to ensure that the proposed search warrants meet legal requirements for specificity of search location, timeliness (i.e., lack of staleness) and sufficient probable cause to justify the issuance of the warrant. The search warrant will be approved only if the reviewing attorney is satisfied that there is a legal basis for issuance of the warrant.

If a peace officer employed by an allied agency disagrees with an Inyo County District Attorney's office attorney's refusal to approve a search warrant, he or she may still present the search warrant to a magistrate, but only with the notation by the attorney that it was "not approved".

The District Attorney's office shall, absent unusual or extraordinary circumstances, maintain at least one attorney in the County and available for search warrant review at all times.

B. Ramey Warrants

An attorney employed by the District Attorney's Office may, but is not required, to review requests by allied law enforcement agencies for probable cause arrest warrants (i.e., Ramey warrants). While officers and deputies of allied agencies are urged to contact an attorney to review declarations in support of Ramey warrants, the exigencies of particular situations often makes such review difficult.

C. Confidential Informants

The District Attorney maintains the sole discretion to approve the use of confidential informants if the allied law enforcement agency is seeking a reduction in criminal charges or any consideration in sentencing for the confidential informant. The District Attorney's authority shall not be delegated, but the Assistant District Attorney may act in the place of the

District Attorney if the District Attorney is unavailable and cannot be reached by standard means of communication. Approval to offer consideration to a confidential informant shall be obtained prior to any the confidential informant taking any action on behalf of an allied agency (except, in controlled substance cases, “good faith” buys to establish reliability and access to targets.

The District Attorney understands and acknowledges that allied law enforcement agencies often-times rely on the use of confidential informants to develop leads and otherwise advance investigations. Approval for such use is only required in cases where consideration in charging and/or case disposition is being sought, as the District Attorney’s office is the sole entity empowered to make charging and dispositional arrangements.

All understandings and agreements with confidential informants which may result in charging or case disposition agreements shall be reduce to writing and signed by the confidential informant, representatives of the District Attorney’s office and the allied law enforcement agency. Such writings shall specify the required information or performance of the confidential informant and the consideration given in exchange. To the extent required by law, information regarding the use of confidential informants and consideration for their cooperation shall be disclosed to the defendant in any prosecutions arising out of the confidential informant’s work. Notwithstanding the preceding sentence, the District Attorney and allied law enforcement agencies shall take all reasonable and lawful steps to protect the identity of confidential informants and shall disclose to any potential confidential informants the risk(s) inherent in serving as a confidential informant.

D. Pre-submission case review

Attorneys employed by the District Attorney’s office shall be available during regular business hours, and subject to court calendars, to consult with officer(s) of allied agencies for the purposes of reviewing cases prior to formal submission to the office for prosecution. While the advice or direction of an attorney is not controlling on an allied agency, the District Attorney encourages cooperative evaluation of cases, and preparation of investigations in a fashion mostly likely to lead to outcomes that promote justice.

E. Legal Advice to Officers and Agencies

Attorneys in the District Attorney’s office are often asked for legal advice regarding the personal or professional affairs of individual officers, and occasionally regarding the operations of other governmental and non-governmental agencies. Attorneys are reminded that, except in very rare cases, the District Attorney represents only the People of the State of California in prosecuting alleged criminal offenses, and does not and cannot function as an individual legal

advisor for officers, and does not and cannot function as a civil legal advisor for other government agencies.

Individual officers should be referred to private counsel or, if appropriate, to the legal counsel provided for them by professional organizations (i.e. Union counsel and representatives).

Questions regarding the operations of other agencies should be referred to the office of the Inyo County Counsel, the City of Bishop attorney, and/or the Attorney General of the State of California, as may be appropriate. While it may be appropriate to participate in discussions with the agency and its civil legal counsel, any attorney employed by the District Attorney must make it clear that they are participating only in their role as counsel for the People of the State of California, and not as representative for the agency.

There may also be rare occasions in which the office of the District Attorney is called upon to represent an agency of County Government in the case of a conflict of interest or other conflict with the County Counsel. In those occasions, the scope and duty of the District Attorney shall be clearly specified with the represented agency.

District Attorney's Role as Advisor to Inyo County Grand Jury

Pursuant to Penal Code section 934, the District Attorney is a statutory legal advisor to the Inyo County Grand Jury, and shall attend upon the grand jury as requested by the Foreperson of that body. While the Grand Jury is allowed to choose which legal advisor to consult as to any particular issue (among the Superior Court Judge(s), County Counsel, and the Attorney General), local practice is that the District Attorney is the first advisor consulted.

California Penal Code section 939.2 authorizes the District Attorney to issue subpoenas to compel the attendance of witnesses before the Grand Jury.

The District Attorney may, at his or her discretion, make District Attorney Investigators available to the Grand Jury to assist it in its investigations.

The District Attorney shall be primarily responsible for providing legal services to the Grand Jury. The Assistant District Attorney and/or a Deputy District Attorney shall appear before the Grand Jury only in the event of the unavailability of the District Attorney, and as directed by the District Attorney.

Innocence Review

The Inyo County District Attorney recognizes that the criminal justice system is a creation of human beings and as such may, from time to time, fail in its fundamental goal of convicting the guilty while protecting the innocent. Further, the criminal justice system is constantly advancing and improving with the creation and implementation of new technologies and such advances can call into question previous adjudications. As such, the District Attorney will, on a case-by-case basis, independently review criminal convictions meeting the criteria set forth below. A request for review may be brought by the defendant him or herself or a member of the public on behalf of a Defendant. The elected District Attorney shall be personally responsible for the review of cases, although he or she may delegate review as he or she deems appropriate.

To be eligible for an Innocence Review, the following criteria must be met:

(1) The conviction must have occurred in Inyo County Superior Court (or its predecessor courts);
(2) The applicant or person subject to the application must be in custody or on probation or other court-ordered supervision, or otherwise subject to a sanction or disability arising out of the conviction;
(3) The applicant or person subject to the application must have maintained a plea of "not guilty" and been convicted after a trial by court or jury;
(4) The application for review must be based on credible and verifiable evidence of innocence; and
(5) The applicant and/or person subject to the application must agree to fully cooperate with the District Attorney's office, which includes providing disclosure or all relevant information during the review process.

No particular form is required to request review, but the request must be in writing directed to the Inyo County District Attorney, P.O. Drawer D, Independence, CA 93526; must satisfy the criteria set forth above; and must contain sufficient detail to allow for review of the case (for example, case number, conviction date, sentence imposed, etc.)

The elected District Attorney, in his or her sole discretion, shall determine whether the application for review merits an investigation. If the District Attorney upon investigation determines that the claim of innocence is meritorious, he or she shall commence appropriate proceedings in the Superior Court for relief as may be appropriate.

Nothing contained in this policy is in any way intended to limit the right or ability of convicted persons to independently seek any other relief as may be provided for by law. This policy is

internal to the Inyo County District Attorney and is intended as an additional or supplemental avenue for relief in the limited circumstances described herein.

Media and Press Relations

Given the relatively small size of the Inyo County District Attorney's office, the District Attorney shall personally prepare and/or approve all press and media releases and answers to media inquiries. Any inquiries should be directed to the District Attorney for response.

Notwithstanding the above, if the District Attorney is not readily available, any attorney employed by the District Attorney's office *may* provide information which would otherwise be publicly available information contained in court files to legitimate media representatives. Such information may include dates and times of publicly scheduled hearings, copies of, or summaries of, documents filed with the court (i.e., criminal complaints, Informations, copies of motions, etc.) Attorneys shall otherwise refrain from any additional comments or analysis, and should not discuss the underlying facts of any case in which a conviction is not final or a defendant acquitted of all pending charges.

While the general policy of the Inyo County District Attorney is to respond to press and media promptly and accurately, all District Attorney employees are reminded that protecting the reputation of the innocent is equally as important as disclosing relevant information to the media. In that regard, no member of the District Attorney's office will comment on any ongoing investigation, nor will confirm or deny the existence of an investigation, unless and until formal charges are filed in an appropriate court. The only exception would be situations in which an investigation is disclosed by another agency and then only to the extent that may be required to confirm that a case has been referred to the District Attorney.

The District Attorney shall otherwise comply with all applicable provisions of the California Public Records Act.

California Rules of Professional Conduct 5-120 and 5-110 are incorporated herein and adopted regarding the content of media communications in pending cases.

Restitution Collection

Pursuant to the Constitution of the State of California, victims of crime who have sustained economic loss as a result of a crime is entitled to restitution from the defendant. While the District Attorney does not represent the victim in a criminal case, the District

Attorney's office will make its best efforts to establish a restitution order in every case involving claimed economic loss.

Attempts to collection restitution are assigned as follows:

1. In any case where a defendant is placed on formal probation or is otherwise supervised by the Probation Department, the Probation Department is the agency primarily responsible for collecting restitution.
2. In any case where a defendant is place on summary or informal probation, the District Attorney's office is the agency primarily responsible for collecting restitution.
3. In juvenile cases, the Inyo County Probation Department, Juvenile Division, is the agency primarily responsible for collecting restitution.

Regardless of the agency primarily responsible for collection, the District Attorney's office will prosecute allegations of violations of probation related to the willful non-payment of restitution. The District Attorney's office shall, to the extent allowed by law, provide general information and guidance to victims of crime that may assist them in private collection efforts. However, at no time will the District Attorney's office represent in court, nor provide formal legal advice to, a crime victim.

Non-Sworn Personnel Firearms and Weapons Policy

A. DEFINITIONS

1. As used herein, "District Attorney's Office firearm" means a firearm owned and maintained by the Inyo County District Attorney. The Chief Investigator is responsible for maintaining a true and accurate list of all District Attorney's Office firearms as well as a log or records reflecting the assignment of any District Attorney's Office firearms to employees of the office. Any District Attorney's firearms not assigned to an employee shall be stored and secured by the Chief Investigator.

2. As used herein, "personal firearm" means a firearm owned and maintained by an employee of the Inyo County District Attorney. Any personal firearm possessed or carried pursuant to this policy shall comply with all applicable California and federal law.

3. "Sworn" employee or personnel means an employee of the Inyo County District Attorney who is a sworn California Peace Officer pursuant to Penal Code section 830.1.

4. "Non-Sworn" employee or personnel means an employee of the Inyo County District Attorney who is not a sworn California Peace Officer pursuant to Penal Code Section 830.1.

B. STATEMENT OF POLICY

1. This policy is adopted to explain and regulate the possession and issuance of firearms by and to both Sworn and Non-Sworn Personnel. Nothing contained herein shall supersede this office's adopted Use of Force Policy for District Attorney Investigators. A Sworn employee's use of force shall be governed by the Use of Force Policy for District Attorney Investigators.

2. The District Attorney acknowledges that given the frequent interaction of non-sworn personnel with individuals charged with and convicted of criminal behavior, that it can be appropriate for non-sworn personnel to possess and carry firearms. Firearms shall only be displayed or discharged by a non-sworn employee when an employee believes his or her life, or the life of an innocent third party is in imminent danger, or in imminent danger of great bodily harm, as set forth further herein.

C. PROCEDURES

1. Employee Conduct – General

(a) Employees shall adhere to all firearms and weapons policies.

(b) Sworn and Non-Sworn employees shall exercise good judgment in the handling and carrying of any weapons/firearms with due consideration for all safety factors, and shall comply with all applicable California law relating to the possession and storage of firearms.

2. Non-Sworn employees shall not carry any weapons or firearms while performing their duties of employment unless authorized to do so by the District Attorney.

3. Non-sworn employees authorized to carry District Attorney's Office firearms shall exercise great care and discretion if carrying said firearms if they are using alcohol and/or prescribed drugs. Carrying of District Attorney's Office firearms is not "per se" prohibited if a non-sworn employee has consumed prescribed drugs, but if non-sworn employees believe that they are impaired by the consumption of drugs, or likely to become impaired, they should securely store any firearm and not carry it on their person. Non-sworn employees shall comply with all rules, requirements, and terms of California law and any concealed carry weapon permit or license issued to them by the appropriate jurisdiction.

4. Inappropriate conduct with firearms/weapons is prohibited. The pointing or careless display of weapons or any other careless conduct while on or off the job or in any department facility or court may result in disciplinary action and/or termination.

5. Reporting the Use of Force/Firearms/Weapons by Non-Sworn Employees

(a) Non–Sworn employees must immediately report the use (non-discharge) or discharge (shooting) of any firearm carried by them in the course of their employment to the District Attorney. The District Attorney, at his or her discretion, may require a non-sworn employee to prepare a written use of force report for such incidents.

D. ISSUANCE OF DISTRICT ATTORNEY'S OFFICE FIREARMS

1. All Sworn personnel shall be issued District Attorney's Office firearms and ammunition for use in the performance of their duties. Sworn personnel may only carry personal firearms on duty with the approval of the District Attorney.

2. Non-Sworn personnel may, at the sole discretion of the District Attorney, be issued District Attorney's Office firearms. Prior to being issued a District Attorney's Office Firearm, non-sworn personnel must complete a course of training pursuant to Penal Code sections 26150 and 26165. Non-sworn personnel may be issued a District Attorney's Office firearm for the purpose of completing the training program required by this policy, upon proof of enrollment in such training program.

E. NON-SWORN EMPLOYEES CARRYING FIREARMS

1. On-duty

a) Non-Sworn personnel may be armed with a District Attorney's Office issued firearm or a personal firearm while performing their duties of employment. For purposes of this section "armed" shall mean carrying their firearm either on the person or within reach, i.e., desk, briefcase. Non-Sworn personnel who carry their firearm on their person must first obtain a concealed carry license pursuant to California Penal Code section 26150, et seq. in their county of residence, and must comply with all provisions of the California Penal Code related to the possession of concealed weapons. Further, non-sworn personnel who elect to be armed while performing their duties of employment must qualify pursuant to Section G, below.

b) Non-sworn personnel are prohibited from carrying a firearm in court unless permitted by the District Attorney and the Presiding Judge of the court in which they are appearing.

2. Off-duty. The carrying of a District Attorney's Office firearm for off-duty Non-Sworn personnel is prohibited unless authorized to do so by the District Attorney. Non-sworn personnel may carry a personal firearm off-duty as otherwise allowed by law.

3. Storage of Firearms. All employees issued a District Attorney's Office firearm are responsible for storing firearms pursuant to California law, and in such a fashion as to

reasonably prevent its possession by any unauthorized persons. Attention is specifically directed to California Penal Code section 25100 (“Criminal Storage of a Firearm”).

F. USE OF FIREARMS BY NON-SWORN PERSONNEL

1. Drawing firearms On-Duty

a) Non-sworn personnel shall draw their firearm only if he or she or an innocent third party is facing an imminent threat of death or great bodily injury.

b) Non-sworn personnel understand that the security within court buildings is the responsibility of the Sheriff’s Department/Court Security/Bailiff and that any threat to persons including DA personnel will be handled by the Court Security team. Non-sworn personnel will not intervene or interfere with those responsibilities unless their assistance is specifically requested or required.

c) Non-sworn personnel shall not draw their firearm in the court building unless they are facing an imminent threat of death or great bodily injury and Court Security is unable to assist. Drawing of one’s firearm should only be considered when it is absolutely necessary to preserve one’s life or the life of another and when it does not jeopardize or endanger other people in the court building.

d) Non-sworn personnel shall follow the direction and command of sworn DA personnel or other sworn peace officers in any life-threatening situation where sworn personnel are present.

e) The drawing of firearms during supervised training shall be in accordance with the procedures established by the range master or designee for that purpose.

2. Discharging of Firearms On-Duty

a) Non-Sworn personnel are prohibited from discharging a firearm except when absolutely necessary to preserve one’s life or the life of another and when it does not jeopardize or endanger other innocent individuals.

b) Non-Sworn personnel shall not fire a warning shot; unless reasonably justified.

3. Use of Firearms Off-Duty. Non-Sworn personnel shall be governed by the laws of the State of California in the use of firearms while off-duty. Non-sworn personnel are reminded that they are not peace officers and they are entitled to neither greater nor lesser protection under the law than any other citizen when using deadly force.

G. QUALIFICATION

1. Non-Sworn employees who are issued a District Attorney's Office firearm or who are authorized to carry a personal firearm on-duty must be currently qualified with the firearm and hold a Concealed Weapons Permit from his or her county of residence. For on-duty weapons, "currently qualified" means that the employee has met one of the two following criteria:

a. The employee qualified with the department issued or approved firearm when undergoing initial training and orientation by the Chief Investigator and/or his or her designee.

b. The employee qualified with the firearm at a minimum of bi-annually. This requirement may be satisfied by completing a qualification course approved and administered by the Chief Investigator, or by qualifying with the Inyo County Sheriff's Department or the Inyo County Probation Department.

2. If a non-sworn employee fails to qualify with the weapon the employee is no longer qualified with the firearm and may not carry it on-duty until such time as he or she re-qualifies.

3. The District Attorney and the Chief Investigator must be notified immediately of failures to qualify.

4. Any exceptions must be approved by the District Attorney or designee.

5. The Chief Investigator or the range master of any other agency shall have complete control over all activities at or during a qualification shoot, and all employees shall comply with all rules, regulations, and direction of the range master.

H. LOSS OF FIREARM

All personnel have the responsibility to immediately notify the District Attorney and the Chief Investigator in the event that his/her department issued firearm is lost or stolen. Employees must also immediately make a report to the local jurisdiction in which the firearm was lost or stolen and then obtain a copy of the report to be retained with the department and the County.

File Retention and Destruction Policy

Pursuant to Resolution 2017-__ of the Inyo County Board of Supervisors, adopted on March __, 2017, the Inyo County District Attorney hereby adopts the following file retention and destruction policy.

CASE FILES

Unless otherwise specified by law to be destroyed earlier or retained longer than as set forth below:

1. For all cases initiated on or after November 1, 2016:

A. Cases initiated on or after November 1, 2016 shall be maintained in the District Attorney's "Prosecutor by Karpel" (PbK) cloud-based case management system, or any successor system. All case documents shall be uploaded into PbK and shall be maintained by that system. Any physical paper files may be destroyed any time after the expiration of the appeal period for any case, except as set forth in paragraph B.

B. In any case where a defendant is sentenced to death, life imprisonment without the possibility of parole, or an indeterminate life sentence, or found not guilty by reason of insanity, adjudicated a Mentally Disordered Offender (MDO) or committed as a sexually violent predator (SVP), all physical paper case records created in the case will be maintained in perpetuity.

2. For all case initiated before November 1, 2016:

A. Physical case files involving cases in which a defendant was charged with or convicted of one or more misdemeanor offenses may be destroyed five years after the date of conviction or other final disposition of the case.

B. Physical case files involving cases in which a defendant was convicted of one or more felony offense may be destroyed seven years after the date of conviction or other final disposition of the case PROVIDED, however, that the District Attorney or one of his or her Deputies or Assistant shall review all felony files prior to destruction to determine if the case file should be uploaded and preserved on PbK. In particular, the reviewing attorney will review the case file to determine if:

i. The case was resolved by trial and verdicts or findings of guilty. Records should be preserved in the case of future claims of factual innocence by the defendant that may need to be adjudicated due to advances in technology or newly discovered evidence.

ii. The convictions are for an offense that could give rise to initiation of a civil Sexually Violent Predator (SVP) petition by the District Attorney.

iii. The case presented unusual or unique questions of law.

iv. The case appears to be of likely historical significance.

C. In any case where the defendant was sentenced to death, life imprisonment without the possibility of parole, or an indeterminate life sentence or found not guilty by reason of insanity, adjudicated a Mentally Disordered Offender (MDO) or committed as a sexually violent predator (SVP), any physical paper case records will be maintained in perpetuity.

D. Physical case files for any traffic or infraction cases may be destroyed two years after conviction or other final disposition of the case.

E. The District Attorney may elect, in his or her sole discretion, to preserve any physical paper case file, except as otherwise required by law or ordered by a court of competent jurisdiction.

SPECIAL PROVISIONS REGARDING HEALTH AND SAFETY CODE SECTION

11361.5

The District Attorney shall comply with Health and Safety Code section 11361.5, requiring him or her to destroy any records relating to the arrest or conviction of any person under the age of 18 for a violation of Health and Safety Code section 11357 and 11360 two years from the date of conviction or from the date of the arrest if there was no conviction.

SPECIAL PROVISIONS FOR ALL OTHER JUVENILE COURT FILES

Unless otherwise ordered by a court of competent jurisdiction, all juvenile files may be destroyed five years from the date on which juvenile court jurisdiction over a minor is terminated (see, Welfare and Institutions Code section 826). In any case in which a minor is committed to the Department of Juvenile Justice (or its predecessor or any successor agency) all files and records pertaining to the minor shall be uploaded into PbK prior to destruction of any physical files.

All juvenile court files maintained in PbK shall, upon being ordered sealed by the juvenile court, be “authorized” in PbK so that they are accessible only by the elected District Attorney and shall be reviewed by him or her only if authorized by law or a court of competent jurisdiction.

NON-CASE FILES

A. General files containing booking sheets and reports where no action was taken by the District Attorney may be destroyed two years after the date of receipt.

B. Papers constituting miscellaneous correspondence and which has no relevance to current activities, investigations, or prosecutions by the District Attorney may be destroyed two years after date of receipt.

C. Budget, fiscal, and records of financial accounts of the District Attorney may be destroyed seven years after the conclusion of the budget year for which the records were adopted, created, or received.

D. Personnel files for employees who have been separated from service in the District Attorney's office may be destroyed seven years from the date the employee separates from service (Note: this policy applies only to records maintained internally by the District Attorney and not to any personnel records maintained by any other office of Inyo County government.)

Line Up Procedures Pursuant to Penal Code Section 859.7

A. Penal Code section 859.7, adopted in the 2018 Legislative Session and officially effective January 1, 2020 requires law enforcement and prosecutorial agencies to adopt regulations to ensure reliability and accuracy of suspect identifications.
B. Effective immediately, any photographic or live lineups conducted at the request of the Inyo County District Attorney's Office, or by an Inyo County District Attorney Investigator at any time, shall comply with the requirements of Penal Code Section 859.7; specifically:

1) Prior to conducting the identification procedure, and as close in time to the incident as possible, the eyewitness shall provide the description of the perpetrator of the offense.

(2) The investigator conducting the identification procedure shall use blind administration or blinded administration during the identification procedure.

(3) The investigator shall state in writing the reason that the presentation of the lineup was not conducted using blind administration, if applicable.

(4) An eyewitness shall be instructed of the following, prior to any identification procedure:

(A) The perpetrator may or may not be among the persons in the identification procedure.

(B) The eyewitness should not feel compelled to make an identification.

(C) An identification or failure to make an identification will not end the investigation.

(5) An identification procedure shall be composed so that the fillers generally fit the eyewitness' description of the perpetrator. In the case of a photo lineup, the photograph of the person suspected as the perpetrator should, if practicable, resemble his or her appearance at the time of the offense and not unduly stand out.

(6) In a photo lineup, writings or information concerning any previous arrest of the person suspected as the perpetrator shall not be visible to the eyewitness.

(7) Only one suspected perpetrator shall be included in any identification procedure.

(8) All eyewitnesses shall be separated when viewing an identification procedure.

(9) Nothing shall be said to the eyewitness that might influence the eyewitness' identification of the person suspected as the perpetrator.

(10) If the eyewitness identifies a person he or she believes to be the perpetrator, all of the following shall apply:

(A) The investigator shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing, verbatim, what the eyewitness says.

(B) Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness' statement of confidence level and documenting the exact words of the eyewitness.

(C) The officer shall not validate or invalidate the eyewitness' identification.

(11) An electronic recording shall be made that includes both audio and visual representations of the identification procedures. Whether it is feasible to make a recording with both audio and visual representations shall be determined on a case-by-case basis. When it is not feasible to make a recording with both audio and visual representations, audio recording may be used. When audio recording without video recording is used, the investigator shall state in writing the reason that video recording was not feasible.

C. Nothing in this policy or regulation is intended to affect policies for field show up procedures.

D. For purposes of these regulations and policies, the following terms have the following meanings:

(1) “Blind administration” means the administrator of an eyewitness identification procedure does not know the identity of the suspect.

(2) “Blinded administration” means the administrator of an eyewitness identification procedure may know who the suspect is, but does not know where the suspect, or his or her photo, as applicable, has been placed or positioned in the identification procedure through the use of any of the following:

(A) An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the identification procedure is completed.

(B) The folder shuffle method, which refers to a system for conducting a photo lineup by placing photographs in folders, randomly numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.

(C) Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing where the suspect or his or her photo, as applicable, has been placed or positioned in the identification procedure.

(3) “Eyewitness” means a person whose identification of another person may be relevant in a criminal investigation.

(4) “Field show up” means a procedure in which a suspect is detained shortly after the commission of a crime and who, based on his or her appearance, his or her distance from the crime scene, or other circumstantial evidence, is suspected of having just committed a crime. In these situations, the victim or an eyewitness is brought to the scene of the detention and is asked if the detainee was the perpetrator.

(5) “Filler” means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

(6) “Identification procedure” means either a photo lineup or a live lineup.

(7) “Investigator” means the person conducting the identification procedure.

(8) “Live lineup” means a procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

(9) “Photo lineup” means a procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

E. In evaluating cases for filing, attorneys shall consider the extent to which the investigating agency complied with the standards of Penal Code section 859.7 in conducting any photographic or live lineup. While failure to comply with the standards of Penal Code section 859.7 in cases where identification is an issue should be closely examined, such failure shall not necessarily result in an “automatic” rejection of charges. Attorneys should evaluate the totality of all available evidence, including all other admissible evidence supporting the identification. Attorneys are reminded that Penal Code section 859.7 explicitly states that nothing contained therein is intended to preclude the admissibility of any relevant evidence or to affect the standards governing the admissibility of evidence under the United States Constitution.

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