THE LOS ANGELES COUNTY DISTRICT ATTORNEY POLICY CHANGES ON RESENTENCING, PAROLE, AND ENHANCEMENTS: WHAT DO THEY MEAN FOR ME OR MY LOVED ONE?

On December 7, 2020, the newly elected Los Angeles County District Attorney (DA) George Gascón issued a series of policy changes, effective immediately. These changes included two Special Directives: Special Directive 20-08: Sentencing Enhancements/Allegations (See Attachment A) and Special Directive 20-14: Resentencing (See Attachment B). While these Special Directives signal an important culture shift towards reducing incarceration, we know a lot of questions remain about how these changes will look in practice. Below, we have done our best to answer some questions about the potential impact of these Special Directives, and we hope that more will become clear as these changes continue to take effect.

I. I have a pending case where sentencing enhancements were alleged. How will these Special Directives impact my case?

If you have an open case and you have been charged with certain enhancements (more details below), the district attorney on your case has been ordered to file a motion to withdraw those enhancements. For any future cases, prosecutors are no longer permitted to seek certain enhancements.

II. Can prosecutors still file sentence enhancements?

Yes. On December 18, 2020, DA Gascón wrote a letter to the community (Attachment C) updating his Special Directives on Sentencing Enhancements. Enhancements may still be pursued in the following contexts:

- Hate Crimes (Pen. Code §§ 422.7 and 422.75)
- Elder and Dependent Adult Abuse (Pen. Code §§ 667.9, 368(b)(2)/12022.7(c))
- Child Physical Abuse (Pen. Code §§ 12022.7(d), 12022.9, and 12022.95)
- Child and Adult Sexual Abuse (Pen. Code §§ 667.61, 667.8(b), 667.9, 667.10, 667.15, 674, 675, 12022.7(d), 12022.8(b), and 12022.85(b)(2))
- Human Sex Trafficking (Pen. Code §§ 236.4(b) and 236.4(c))
- Financial crimes where “the amount of financial loss or impact to the victim is significant, the conduct impacts a vulnerable victim population” or for certain white collar enhancements (Pen. Code § 186.11)
- Additionally, enhancements may be filed in the following “extraordinary circumstances”:
Where the physical injury personally inflicted upon the victim is extensive; or
Where the type of weapon or manner in which a deadly or dangerous weapon including firearms is used exhibited an extreme and immediate threat to human life

Evidence of these “extraordinary circumstances” must be beyond what is required to meet the legal definitions of “great bodily injury” or “use of a deadly or dangerous weapon.” Additionally, enhancements filed in these “extraordinary circumstances” categories must be first get the approval of two additional district attorneys.

On December 30, 2020, prosecutors from DA Gascón’s office sued to prevent the Special Directives from taking effect. On February 8, 2021, the judge presiding over the lawsuit granted a preliminary injunction that blocked some of the changes DA Gascón sought to implement (Attachment D). Specifically:

- District Attorneys are no longer required to withdraw special circumstance enhancements if they have already been found true or admitted. Motions to dismiss or withdraw special circumstance enhancements in pending cases will be based on individual case review.¹
- In pending and future cases that involve enhancements under the Three Strikes Law, district attorneys must still plead and prove strike priors where there is proof beyond a reasonable doubt that this enhancement applies. Any motions to dismiss a strike prior will now be subject to individualized review.
- In pending cases that involve status and conduct enhancements, such as gang enhancements, district attorneys shall still make motions to dismiss the enhancements, unless, after individualized review of the case, filing the enhancement is approved.

III. What kinds of enhancements will be withdrawn or will no longer be pursued?

Other than the enhancements listed above, the DA has created a policy of no longer pursuing sentencing enhancements in new cases involving “status and conduct” enhancements. This includes, but is not limited to:

¹ The factors that judges are guided to consider when reviewing whether or not to approve dismissal of an enhancement include, but are not limited to: (1) The current offense is nonviolent (2) The current offense is connected to mental health issues. (3) The enhancement is based on a prior conviction that is over five years old. (4) The current offense is connected to prior victimization or childhood trauma. (5) The defendant was a juvenile when he/she committed the current offense or prior offenses. (6) Multiple enhancements are alleged in a single case or the total sentence is over 20 years. (7) A gun was used but it was inoperable or unloaded. (8) Application of the enhancement would result in disparate racial impact. (Pen. Code § 1385.)
● Enhancements due to prior prison terms
● "Gang Enhancements"
● Violations of bail or pre-trial release conditions

In pending cases, prosecutors may still file motions to withdraw filed enhancements, and these motions will be subject to individual case review.

IV. I am in the middle of plea negotiations. How will these changes impact my plea deal?

While this will be very case specific, the DA has stated that absent “extraordinary circumstances,” if the charged offense is probation-eligible, probation will be the default offer. The DA did not define “extraordinary circumstances.” Additionally, if, prior to these Special Directives, a prosecutor could have charged an enhancement that would have made you ineligible for probation, the prosecutor may still request a prison sentence. If the charged offense is not probation eligible, the recommended sentence will be the low term.

V. I have heard that certain cases are automatically getting reviewed for resentencing. Which cases are eligible for review?

The DA formed a Resentencing Unit so that these sentencing changes can take effect retroactively as well. This Resentencing Unit is responsible for reviewing more than 20,000 cases that are currently out of compliance with the DA’s current sentencing policies (e.g. time is being served for an eligible enhancement). The DA has highlighted several priority categories of people who will receive “expedited review,” meaning their cases will be reviewed first (Attachment E):

Adults:

a) Age 50 and older; AND
b) Sentenced to 20 years or more; AND
c) Served a minimum of 10 years in custody; AND
d) Serving a sentence for a non-serious or nonviolent felony [Serious and violent felonies are defined in Penal Code section 1192.7(c) and Penal Code section 667.5(c)]; AND
e) Has not suffered a prior conviction for a “super strike,” as defined in Penal Code section 667(e)(2)(C)(IV); AND
f) Is not on the sex offense registry.

Minors Tried as Adults:

a) Sentenced for a crime that was committed at age 14 or 15; AND
b) Not serving time for a homicide offense; AND
c) Has served a minimum of 10 years in custody; AND

d) Is not on the sex offense registry.

Once the Resentencing Unit reviews a case that qualifies for resentencing, they will exercise their power under Penal Code § 1170.03 to recommend resentencing to the court.

VI. I am in one of the “expedited review” categories above. When can I expect to be considered for resentencing?

If your case meets the criteria listed above and you have not been contacted yet, you, a family member or your attorney may contact the Resentencing Unit at RU@da.lacounty.gov or 320 West Temple Street, Los Angeles, CA 90012 to inquire regarding the status of your case. When contacting the Resentencing Unit, please provide the following identifying information regarding the incarcerated individual: full name, date of birth, criminal court case number (if known), and CDCR number.

VII. I am not in an “expedited review” category, but I am eligible for resentencing under these new Special Directives. For example, I was sentenced under an eligible enhancement. When can I expect to be considered for resentencing?

Unfortunately, there is no clarity at this time about how long it will take to review cases once review of the expedited categories has been completed. However, the DA has made it clear in its FAQs (Attachment E) that they will not accept recommendations, calls, emails, letters, or other submissions regarding individual cases that do not fall within the “expedited review” categories. Instead, they encourage people who are not yet having their cases reviewed for resentencing to participate in programming and related correspondence courses. They also suggest gathering letters of support from institutional staff, family, community members, and re-entry providers also may be helpful. They recommend that people retain this information for use in the event that a resentencing hearing is scheduled. However, they ask that you not send any documents to the DA’s Office.

VIII. What sort of information will the Resentencing Unit consider in their recommendation for a new sentence?

The DA has said that they will present evidence of post-conviction factors supporting resentencing to the court. This includes, but is not limited to:

- Mitigation evidence
- CDCR disciplinary records and records of rehabilitation and positive programming while incarcerated
- Evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the risk for future violence
• Evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice
• Post-release reentry plans, demonstrating any family or community support that is available upon release

IX. Will any of these changes impact my upcoming parole hearing?

The DA announced that from now on, their office will no longer attend parole hearings and will support in writing the grant of parole for a person who has already served their mandatory minimum period of incarceration. The exception to this is if the Comprehensive Risk Assessment (CRA) finding is “high risk.” In those cases, the prosecutor may, in their letter to the Board, take a neutral position.

X. Do these changes impact Senate Bill 1437?

Yes, for those who are seeking resentencing under SB 1437, there are changes that could apply to you. For context, SB 1437 made it so that people could not be convicted of murder if they were 1) not the actual killer, 2) did not have intent to kill, and 3) were not found to have acted with “reckless indifference” or as “major participants.” For people whose cases originated in Los Angeles, there may now be even broader eligibility for resentencing under SB 1437, and people will be appointed attorneys on eligible petitions once they file for SB 1437 relief.

We will be doing our best to keep track of these policy changes as they continue to unfold. Please do not hesitate to contact us if you have any more questions. Root & Rebound also operates a free, reentry legal hotline on Fridays from 9am-5pm (PST) at 510-279-4662. They may be able to assist you. We also encourage you to reach out to the Los Angeles County Public Defender at 210 West Temple Street, 19-513 CSF, Los Angeles, CA 90012.
Attachment A
SPECIAL DIRECTIVE 20-08

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: SENTENCING ENHANCEMENTS/ALLEGATIONS

DATE: DECEMBER 7, 2020

This Special Directive addresses the following chapters in the Legal Policies Manual:

- Chapter 2 Crime Charging - Generally
- Chapter 3 Crime Charging - Special Policies
- Chapter 7 Special Circumstances
- Chapter 12 Felony Case Settlement Policy
- Chapter 13 Probation and Sentencing Hearings

Effective December 8, 2020, the policies outlined below supersede the relevant sections of the abovementioned chapters of the Legal Policies Manual. Additionally, the following sections of the Legal Policies Manual are removed in their entirety. Chapter 2.10 - Charging Special Allegations, Chapter 3.02 - Three Strikes, Chapter 7 - Special Circumstances, Chapter 12.05 - Three Strikes, Chapter 12.06 - Controlled Substances.

INTRODUCTION

Sentencing enhancements are a legacy of California’s “tough on crime” era. (See Appendix.) It shall be the policy of the Los Angeles County District Attorney’s Office that the current statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold people accountable and also to protect public safety. While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit.\(^1\) Therefore, sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters.

This policy does not affect the decision to charge crimes where a prior conviction is an element of the offense [i.e., felon in possession of a firearm (Penal Code § 29800(a)(1)), driving under the influence with a prior (Vehicle Code § 23152), domestic violence with a prior (Penal Code §

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The specified allegations/enhancements identified in this policy directive are not an exhaustive list of all allegations/enhancements that will no longer be pursued by this office; however, these are the most commonly used allegations/enhancements.

**POLICY**

- Any prior-strike enhancements (Penal Code § 667(d), 667(e); 1170.12(a) and 1170.12 (c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5 year prior” enhancements (Penal Code §667(a)(1)) and “3 year prior” enhancements (Penal Code §667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code § 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special Circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. release (PC § 12022.1) shall not be filed as part of any new offense;
- If the charged offense is probation-eligible, probation shall be the presumptive offer absent extraordinary circumstances warranting a state prison commitment. If the charged offense is not probation eligible, the presumptive sentence will be the low term. Extraordinary circumstances must be approved by the appropriate bureau director.

**II. PENDING CASES**

At the first court hearing after this policy takes effect, DDAs are instructed to orally amend the charging document to dismiss or withdraw any enhancement or allegation outlined in this document.

**III. SENTENCED CASES**

Pursuant to PC § 1170(d)(1), if a defendant was sentenced within 120 days of December 8, 2020 they shall be eligible for resentencing under these provisions. DDAs are instructed to not oppose defense counsel’s request for resentencing in accordance with these guidelines.
APPENDIX

California has enacted over 100 sentencing enhancements, many of which are outdated, incoherent, and applied unfairly. There is no compelling evidence that their enforcement improves public safety. In fact, the opposite may be true. State law gives District Attorneys broad authority over when and whether to charge enhancements. The overriding concern is interests of justice and public safety.


As noted in the study:

“During the 1980s and 90s, enhancements became more numerous and severe. Dozens of new enhancement laws were passed in a way that critics alleged was haphazard—in “reaction to the ‘crime of the month.’”

California’s massive rates of incarceration can be tied directly to the extreme sentencing laws passed by voters in the 1990’s, including the 1994 Three Strikes Law. In 1980, California had a prison population of 23,264. In 1990, it was 94,122. In 1999, five years after the passage of Three Strikes, California had increased its population to a remarkable 160,000. By 2006, the prison population had ballooned to 174,000 prisoners. California now has 130,000 people in state prison and 70,000 people in local jails.

The Stanford study found that the use of sentencing enhancements in San Francisco accounted for about 1 out of 4 years served in jail and prison. This study found that the use of sentencing enhancements -- mostly Prop. 8 priors and Three Strikes enhancements -- accounted for half of the time served for enhancements. The study concluded that we could substantially reduce incarceration by ceasing to use enhancements. These enhancements also exacerbate racial disparities in the justice system: 45% of people serving life sentences in CDCR under the Three Strikes law are black.

Gang enhancements have been widely criticized as unfairly targeting young men of color. Recent analyses by the LA Times suggest that the CALGANG database is outdated, inaccurate and rife with abuse. According to California Department of Corrections and Rehabilitation data from 2019, more than 90 percent of adults with a gang enhancement in state prison were either black or Latinx.

According to Fordham Law Prof. John Pfaff, “There is strong empirical support for declining to charge these status enhancements. Long sentences imposed by strike laws and gang enhancements provide little additional deterrence, often incapacitate long past what is required by public safety, impose serious and avoidable financial and public health costs in the process, and may even lead to greater rates of reoffending in the long run.”

According to Pfaff, a growing body of evidence-based studies have suggested that policing deters; long sentences do little. What deters most effectively is the risk of detection and apprehension in the first place. Other studies increasingly indicate that spending more time in prison can cause the
risk of later reoffending; as the harms and traumas experienced in prison grow, the ability to reintegrate after release falls.

That prison may actually increase the risk of reoffending while imposing serious costs on communities starkly illuminates the need to invest in alternatives. Such options do exist. One striking example: by expanding access to (non-criminal justice based) drug treatment, the expansion of Medicaid yielded billions in reduced crime in states that participated in the expansion.

By avoiding harsh sentencing and investing in rehabilitation programs for the incarcerated, we can reduce crime and help people improve their lives.

*The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.*

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Attachment B
SPECIAL DIRECTIVE 20-14

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: RESENTENCING

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of the Bureau of Prosecution Support Operations in Chapter 1.07.03 and Probation and Sentencing Hearings in Chapter 13 and Postconviction Proceedings in Chapter 17 of the Legal Policies Manual. Effective December 8, 2020, the policies outlined below supersede the relevant sections of Chapter 13 and Chapter 17 of the Legal Policies Manual.

INTRODUCTION

Today, California prisons are filled with human beings charged, convicted and sentenced under prior District Attorneys’ policies. Effective today, District Attorney George Gascón has adopted new charging and sentencing policies.

Justice demands that the thousands of people currently serving prison terms imposed in Los Angeles County under earlier, outdated policies, are also entitled to the benefit of these new policies. Many of these people have been incarcerated for decades or are serving a “virtual life sentence” designed to imprison them for life. The vast majority of incarcerated people are members of groups long disadvantaged under earlier systems of justice: Black people, people of color, young people, people who suffer from mental illness, and people who are poor. While resentencing alone cannot correct all inequities inherent in our system of justice, it should at least be consistent with policies designed to remedy those inequities.

The new Resentencing Policy is effective immediately and shall apply to all offices, units and attorneys in the Los Angeles County District Attorney’s Office (hereinafter “Office”). While particular attention will be paid to certain people as discussed herein, every aspect of existing sentencing or resentencing policy will be subject to examination. The intent of this Resentencing Policy is that it will evolve with time to ensure that it reflects the values of the District Attorney, and by extension, the people of Los Angeles County.

1 We will seek to avoid using dehumanizing language such as “inmate,” “prisoner,” “criminal,” or “offender” when referencing incarcerated people.
LENGTH OF SENTENCE

The sentences we impose in this country, in this state, and in Los Angeles County are far too long. Researchers have long noted the high cost, ineffectiveness, and harm to people and communities caused by lengthy prison sentences; sentences that are longer than those of any comparable nation. DA-elect Gascón campaigned on stopping the practice of imposing excessive sentences.

With regard to resentencing, the Model Penal Code recommends judicial resentencing hearings after 15 years of imprisonment for all convicted people:

The legislature shall authorize a judicial panel or other judicial decision maker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.


National parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz have endorsed this recommendation, adding: “We would have no argument with a shorter period such as 10 years.” … These time frames correspond with criminological research showing that people age out of crime, with most “criminal careers” typically lasting less than ten years.” (Rhine, E. E., Petersilia, J., & Reitz, R. 2017. “The Future of Parole Release,” pp. 279-338 in Tonry, M. (Ed.) Crime and Justice, Vol, 46, p. 294.)

Accordingly, this Office will reevaluate and consider for resentencing people who have already served 15 years in prison. Experts on post-conviction justice recommend that resentencing be allowed for all people (not just those convicted as children or as emerging adults) and some experts recommend an earlier date for reevaluating continued imprisonment.

APPLICATION OF SENTENCE ENHANCEMENT POLICY FOR OPEN/PENDING CASES

For any case that is currently pending, meaning that judgment has not yet been entered, or where the case is pending for resentencing, or on remand from another court, the Deputy District Attorney in charge of the case shall inform the Court at the next hearing of the following:

“At the direction of the Los Angeles County District Attorney, in accordance with Special Directive 20-08 concerning enhancements and allegations, and in the interest of justice, the People hereby

1. join in the Defendant’s motion to strike all alleged sentence enhancement(s); or
2. move to dismiss all alleged sentence enhancement(s) named in the information for all counts.
FURTHER DIRECTIVES FOR OPEN/PENDING CASES

The following rules apply to any case where a defendant or petitioner is legally eligible for resentencing or recall of sentence, including but not limited to:

- Habeas corpus cases.
- Cases remanded to Superior Court by the Court of Appeal or Supreme Court.
- Cases referred to the Superior Court under Penal Code section 1170(d)(1).
- Cases pending under Penal Code section 1170(d)(2).
- All cases where the defendant was a minor at the time of the offense.
- Any other case that may be the subject of resentencing not specified here.

Any Deputy District Attorney assigned to a case pending resentencing or sentence recall consideration under any valid statute shall comply with the following directives until further notice.

1) If the defendant or petitioner is serving a sentence that is higher than what he/she would receive today, due to operation of law or by operation of the District Attorney’s new Sentencing Policy, the deputy in charge of the case shall withdraw any opposition to resentencing or sentence recall and request a new sentence that complies with current law and/or the District Attorney’s new Sentencing Policy. This policy applies even where enhancements were found true in a prior proceeding. This policy shall be liberally construed to achieve its purposes.

2) If the defendant or petitioner is seeking relief under Penal Code section 1170.95, the DDA may concede that the petitioner qualifies for relief. If the assigned DDA does not believe that the petitioner qualifies for relief, the DDA must request a 30 day continuance, during which time the assigned DDA shall review the case in light of the Office’s specific Penal Code 1170.95 Policy, see below. If the DDA continues to oppose relief, the DDA shall submit the reasons in writing to the Head Deputy. The Head Deputy shall then seek approval from the District Attorney or his designee in order to determine whether the Office will continue to oppose relief.

3) If a defendant or petitioner would not qualify for a reduced sentence by operation of law if convicted today or under the Office’s new Sentencing Policy, then the DDA in charge of the case may seek a 30-day continuance. During that time, the deputy shall evaluate whether to support or oppose the resentencing (or sentence recall) request. If the deputy believes that compelling and imminent public safety concerns justify opposition to revisiting the sentence, then the deputy must submit those concerns in writing to her Head Deputy who shall then seek approval from the District Attorney or his designee.

4) All laws concerning victim notification and support shall be honored.
1. We start with a position of respect for our co-equal branch of government, the legislature. Like the courts, we presume that laws passed by the legislature are constitutional. “[U]nder long-established principles, a statute, once enacted, is presumed to be constitutional.” (Lockyer v. City and County of San Francisco (2004) 33 Cal.4th 1055, 1119.) We will no longer seek to delay implementation of laws by making arguments that laws that provide retroactive relief are unconstitutional.

2. The Office’s position is that defense counsel should be appointed when the petition is filed and there should be no summary denials by the court. (People v. Cooper (2020) 54 Cal.App.5th 106; People v. Tarkington (2020) 49 Cal.App.5th 892, 917, review granted Aug. 12, 2020, S263219 [dis. opn. of Lavin, J.].)

3. Many people accepted plea offers to manslaughter, made by this Office in order to avoid a conviction for murder. It is this Office’s policy that where a person took a plea to manslaughter or another charge in lieu of a trial at which the petitioner could have been convicted of felony murder, murder under the natural and probable consequences doctrine, attempted murder under the natural and probable consequences doctrine, or another theory covered by Senate Bill 1437, that person is eligible for relief under section 1170.95. Such a position avoids disparate results whereby a person who this Office has already determined to be less culpable -- as evidenced by allowing a plea for manslaughter -- serves a longer sentence than a similarly situated person who is now eligible for relief under section 1170.95.

4. Section 1170.95 (d)(2) states, “[I]f there was a prior finding by a court or jury that the defendant did not act with reckless indifference to human life or was not a major participant in the felony, the defendant is entitled to have his or her murder conviction vacated.” This prior finding includes cases where a magistrate found that there was insufficient evidence of major participation in a felony or reckless indifference to human life following a preliminary hearing, or at any stage in the proceedings.

5. The Office’s position is that, consistent with the definition of “prima facie,” the court must not engage in fact finding at the prima facie stage. (People v. Drayton (2020) 47 Cal. App. 5th 965.)

6. The Office’s position is that if the person was an accomplice to the underlying felony, and had a special circumstance finding that was decided before People v. Banks (2015) 61 Cal 4th 788 or People v. Clark (2016) 63 Cal. 4th 522, then the filing of a Penal Code section 1170.95 petition is adequate to trigger the section 1170.95 process. There is no requirement that the petitioner file a separate habeas petition first. (People v. York (2020) 54 Cal. App. 5th 250, 258.) The next stage is an evidentiary hearing.

7. The Office’s position is that if allegations pursuant to Penal Code section 190.2 (a) (17) were dismissed as part of plea negotiations and the petitioner was not the actual killer, this Office will not attempt to prove the individual is ineligible for resentencing. This Office will stipulate to eligibility per section 1170.95(d)(2).
8. The Office’s position is that, consistent with *People v. Medrano* (2019) 42 Cal. App. 5th 1001, 1008, rev. granted, that a person who was convicted of attempted murder under the natural and probable consequences doctrine is eligible for resentencing under section 1170.95. Among other reasons, this avoids the great disparity that arises when one who was convicted of murder under the now abolished natural and probable consequences doctrine is able to be resentenced but one who was convicted of attempted murder is not.

9. If the client has previously won relief under *People v. Chiu* (2014) 59 Cal. 4th 155, the Office will not attempt to argue that the petitioner is ineligible for resentencing, or could be convicted as a direct aider and abettor.

10. If the jury was never instructed on direct aiding and abetting, implied malice murder, or any other intent-to-kill theory, or if the trial prosecutor never argued one of these theories, this Office will not argue that the petitioner can now be convicted under one of these theories during 1170.95 proceedings. Theories must remain consistent.

11. Relatedly, if a jury was not even instructed on implied malice murder or some other theory of homicide not covered by section 1170.95, the prosecution cannot now meet our burden of proof beyond a reasonable doubt that the petitioner is ineligible for resentencing.

12. If the petitioner was convicted of murder and the petitioner’s jury was instructed on the natural and probable consequences theory doctrine and/or a first or second degree felony murder instruction at trial, then it may have been possible that petitioner was convicted under one of these theories and this Office will not seek to rebut petitioner’s prima facie showing. The case must proceed to the evidentiary hearing.

13. Because jury deliberations are secret, in the absence of special findings, it is not possible to determine the actual basis of a jury verdict when multiple theories were before the jury. Therefore, at an evidentiary hearing, if the petitioner was convicted of murder and the petitioner’s jury was instructed with a felony murder or a natural and probable consequences doctrine instruction along with other theories, there is a reasonable doubt that the jury convicted petitioner under the old felony murder rule or the now abolished doctrine of natural and probable consequences. Because the statute allows for the introduction of “new or additional evidence,” the deputy district attorney may introduce evidence to show, for example, that the petitioner was the actual killer, or acted as a major participant with reckless indifference to human life, or was convicted under a still-valid theory on which the jury was instructed. See below for this Office’s position on evidence that we will and will not seek to admit.

14. At an evidentiary hearing pursuant to section 1170.95 (d)(3), the prosecution must prove beyond a reasonable doubt that the petitioner is ineligible for resentencing. A deputy district attorney may not argue that the standard for the court to determine whether a petitioner is ineligible for resentencing is whether there is “sufficient evidence” to uphold the conviction. This is a standard of proof for an appellate court affirming a conviction. It is not the standard of proof for a trial court in a section 1170.95 proceeding. (*People v. Lopez* (2020) 56 Cal.App. 5th 936, 949-950.)
15. It is this Office’s position that the Evidence Code applies to any evidentiary hearing pursuant to section 1170.95. Statements made after promises of leniency or threats of punishment (express or implied) are unreliable. A parole hearing is a coercive environment and therefore statements made in them are unreliable and involuntary. This Office will not seek to introduce statements by a petitioner made in parole hearing transcripts into court for any purpose.

16. As a matter of due process, it is this Office’s policy that a petitioner has a right to confrontation at a hearing under section 1170.95. Accordingly, this Office will not seek to admit statements of a declarant when the petitioner did not have an opportunity to cross-examine the declarant or when a purported expert’s opinion is based on inadmissible hearsay. (See People v. Sanchez (2016) 63 Cal.4th 665.)

17. The Office will comply with all of our obligations under Brady v. Maryland and its progeny during resentencing procedures.

18. The Office’s position is that any defendant who was under the age of 25 when the crime occurred is entitled to present mitigation documents pursuant to People v. Franklin and Penal Code section 3051.

19. The Office’s position is that a person’s age and the “diminished culpability of youth,” a person’s mental illness, or cognitive impairment, or a person’s intoxication is relevant to the determination whether a petitioner meets the standard of “reckless indifference to human life.”

20. On resentencing, this Office will dismiss enhancements consistent with our current enhancement policies and otherwise not seek a sentence that is inconsistent with this Office’s current sentencing policies.

**RESENTENCING UNIT**

This Office declares that new Sentencing, Enhancement and Juvenile policies must apply with equal force to sentences where the judgment is final. Accordingly, this Office commits to a comprehensive review of cases where the defendant received a sentence that was inconsistent with the charging and sentencing policies in force after Tuesday, December 8, 2020, at 12:01 AM.

In such cases, this Office shall use its powers under Penal Code section 1170(d)(1) to recommend recall and resentencing. While priority shall be given to the cases enumerated below, the ultimate goal shall be to review and remediate every sentence that does not comport with the new Sentencing, Enhancement and Juvenile Policies.

Specifically, this Office commits to an expedited review of the following categories of cases, which are themselves a subset of a universe of 20,000-30,000 cases with out-of-policy sentences:

- People who have already served 15 years or more;
- People who are currently 60 years of age or older;
- People who are at enhanced risk of COVID-19 infection;
- People who have been recommended for resentencing by CDCR;
- People who are criminalized survivors;
- People who were 17 years of age or younger at the time of the offense and were prosecuted as an adult.

In formulating this policy, we rely on current statistical data from the California Department of Corrections and Rehabilitation (CDCR). (See Appendix.) Over time, the data may be subject to change; the urgency of our mission will not be. In seeking resentencing under 1170(d)(1), this Office shall argue that resentencing is necessary to eliminate disparity of sentences and to promote uniformity of sentencing.

At all types of resentencing hearings, filing deputies shall assist the Resentencing Court by setting forth any and all postconviction factors that support resentencing, including, but not limited to: mitigation evidence; CDCR disciplinary records and record of rehabilitation and positive programming while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the risk for future violence; evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice; and post-release reentry plans, demonstrating any family or community support that is available upon release. (See e.g. Assembly Bill 1812, Pen. Code § 1170, subd. (d).)

**LIFER PAROLE HEARINGS**

This Office recognizes that parole is an effective process to reduce recidivism, ensure public safety, and assist people in successfully rejoining society. The CDCR’s own statistics show that people paroled from life terms have a recidivism rate of less than four percent.

We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, (see *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal. 4th 1241, 1255), the value of a prosecutor’s input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive. (See *In re Palmer* (2019) 33 Cal.App.5th 1199.)

This Office’s default policy is that we will not attend parole hearings and will support in writing the grant of parole for a person who has already served their mandatory minimum period of incarceration, defined as their MEPD, YEPD or EPD. However, if the CDCR has determined in their Comprehensive Risk Assessment that a person represents a “high” risk for recidivism, the DDA may, in their letter, take a neutral position on the grant of parole.

This Office will continue to meet its obligation to notify and advise victims under California law, and is committed to a process of healing and restorative justice for all victims.
Currently, there are thousands of people from Los Angeles County serving sentences in the CDCR for crimes they committed as children. As recent developments in adolescent brain science teach us, young people are uniquely capable of rehabilitation and can lead productive lives as contributing members of society without serving long sentences.

Under new Juvenile Directives, available here, people who are 17 or younger at the time of their offense, will not be transferred to adult court and will remain committed to the youth system until they are mature enough to reenter society. Accordingly, any person who was a minor at the time of the offense and meets the eligibility requirements for recall and/or resentencing in adult court, including but not limited to actions pursuant to Penal Code sections 1170(d)(2), or 1170(d)(1), falls within this Office’s policy to oppose transfer of minors to adult court. In such cases, DDAs shall join in any defense motion seeking to transfer the person to juvenile court for further proceedings, and the deputy on the case shall state the reasons for supporting such transfer, consistent with this Office’s policies, on the record.

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2 We will refer to “youth,” “child,” or “children” instead of “juvenile(s).” The word “juvenile” is used almost exclusively as a way to describe children who are in the criminal legal system or as police descriptors. As a result, it has become a way to mark certain children as “other.” To the extent possible, we will refer to the children in the criminal legal system as we would to all children, as “young person(s)” or “children.” In accordance with Penal Code § 3051, we will refer to persons age 18 to 25 as “youths.”
## APPENDIX

### A. Current CDCR Population from Los Angeles County

*Table A.1: Descriptive Statistics for Demographic and Other Data*

<table>
<thead>
<tr>
<th>Variable</th>
<th>Level</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total CDCR Prison Population Originating in Los Angeles County = 29,556</strong>* (*excluding LWOP and condemned cases)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Gender</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>1,078</td>
<td></td>
<td>3.65%</td>
</tr>
<tr>
<td>Male</td>
<td>28,478</td>
<td></td>
<td>96.35%</td>
</tr>
<tr>
<td><strong>Race/Ethnicity</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>11,139</td>
<td></td>
<td>37.69%</td>
</tr>
<tr>
<td>Latinx/Hispanic</td>
<td>14,683</td>
<td></td>
<td>49.68%</td>
</tr>
<tr>
<td>White</td>
<td>2,263</td>
<td></td>
<td>7.66%</td>
</tr>
<tr>
<td>Other</td>
<td>1,471</td>
<td></td>
<td>4.98%</td>
</tr>
<tr>
<td><strong>Age Group</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 20</td>
<td>31</td>
<td></td>
<td>0.10%</td>
</tr>
<tr>
<td>20-29</td>
<td>5,945</td>
<td></td>
<td>20.11%</td>
</tr>
<tr>
<td>30-39</td>
<td>9,098</td>
<td></td>
<td>30.78%</td>
</tr>
<tr>
<td>40-49</td>
<td>6,489</td>
<td></td>
<td>21.95%</td>
</tr>
<tr>
<td>50-59</td>
<td>5,043</td>
<td></td>
<td>17.06%</td>
</tr>
<tr>
<td>60+</td>
<td>2,950</td>
<td></td>
<td>9.98%</td>
</tr>
<tr>
<td><strong>Offense Category</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crimes Against Persons</td>
<td>25,391</td>
<td></td>
<td>85.91%</td>
</tr>
<tr>
<td>Drug Crimes</td>
<td>461</td>
<td></td>
<td>1.56%</td>
</tr>
<tr>
<td>Property Crimes</td>
<td>2,230</td>
<td></td>
<td>7.54%</td>
</tr>
<tr>
<td>Other Crimes</td>
<td>1,474</td>
<td></td>
<td>4.99%</td>
</tr>
<tr>
<td><strong>Time Served</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 5</td>
<td>8,307</td>
<td></td>
<td>28.11%</td>
</tr>
<tr>
<td>5 to less than 10</td>
<td>6,762</td>
<td></td>
<td>22.88%</td>
</tr>
<tr>
<td>10 to less than 15</td>
<td>5,123</td>
<td></td>
<td>17.33%</td>
</tr>
<tr>
<td>15 to less than 20</td>
<td>3,446</td>
<td></td>
<td>11.66%</td>
</tr>
</tbody>
</table>
### Table A.1: Time Served, Age at Time of Offense, Current Age, Classification Scores, and Serious Rules Violation Reports (RVRs) Received in Past 3 Years

<table>
<thead>
<tr>
<th>Sentence Type</th>
<th>Count/ Percentage of Total LAC Prison Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>20+</td>
<td>5,918 (20.02%)</td>
</tr>
<tr>
<td>2nd Strike</td>
<td>8,106 (27.43%)</td>
</tr>
<tr>
<td>3rd Strike</td>
<td>2,395 (8.10%)</td>
</tr>
<tr>
<td>Determinate Sentence</td>
<td>9,841 (33.30%)</td>
</tr>
<tr>
<td>Life with Parole</td>
<td>9,214 (31.17%)</td>
</tr>
</tbody>
</table>

| Served 20 Years or More                | 5,918 (20.02%)                                  |
| Served 15 Years or More                | 9,364 (31.68%)                                  |
| Served 10 Years or More                | 14,487 (49.02%)                                 |
| Served 7 Years or More                 | 18,206 (61.60%)                                 |
| Currently 60 Years or Older            | 2,950 (9.98%)                                   |
| Currently 65 Years or Older            | 1,367 (4.62%)                                   |
| Age 25 or Younger at Time of Offense   | 13,410 (45.37%)                                 |
| Age 18 or Younger at Time of Offense   | 3,291 (11.13%)                                  |
| Age 17 or Younger (Under 18) at Time of Offense | 1,557 (5.27%) |
| Age 16 or Younger at Time of Offense | 778 (2.63%) |
| Age 15 or Younger at Time of Offense | 255 (0.86%) |
| Classification Score of 25 or Below | 12,297 (41.61%) |
| Classification Score of 19 or Below | 10,700 (36.20%) |
| No Serious RVRs in Past 3 Years | 25,501 (86.28%) |
| CS of 25 or Below with No Serious RVRs in Past 3 Years | 12,016 (40.66%) |
| CS of 19 or Below with No Serious RVRs in Past 3 Years | 10,490 (35.49%) |

**Table A.3: Eligibility by Offense Type and Time Served (mix of lower-level offenses)**

<table>
<thead>
<tr>
<th>Offense Type</th>
<th>Served 10 Years or More</th>
<th></th>
<th>Served 7 Years or More</th>
<th></th>
<th>All</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td></td>
<td>Frequency</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drug Offenses</td>
<td>132</td>
<td>0.45%</td>
<td>158</td>
<td>0.53%</td>
<td>461</td>
<td>1.56%</td>
</tr>
<tr>
<td>Residential Burglaries</td>
<td>476</td>
<td>1.61%</td>
<td>688</td>
<td>2.33%</td>
<td>1,643</td>
<td>5.56%</td>
</tr>
<tr>
<td>Robberies</td>
<td>2,045</td>
<td>6.92%</td>
<td>2,828</td>
<td>9.57%</td>
<td>5,297</td>
<td>17.92%</td>
</tr>
<tr>
<td>Residential Burglaries &amp; Robberies</td>
<td>2,521</td>
<td>8.53%</td>
<td>3,516</td>
<td>11.90%</td>
<td>6,940</td>
<td>23.48%</td>
</tr>
<tr>
<td>Non-Sex Offenses</td>
<td>12,393</td>
<td>41.93%</td>
<td>15,618</td>
<td>52.84%</td>
<td>26,029</td>
<td>88.07%</td>
</tr>
<tr>
<td>Non-Murder &amp; Non-Sex Offenses</td>
<td>5,731</td>
<td>19.39%</td>
<td>7,937</td>
<td>26.85%</td>
<td>17,048</td>
<td>57.68%</td>
</tr>
<tr>
<td>All Non-Violent, Non-Serious, Non-Sex Crimes</td>
<td>527</td>
<td>1.78%</td>
<td>644</td>
<td>2.18%</td>
<td>2,236</td>
<td>7.57%</td>
</tr>
<tr>
<td>All Non-Non-Non Crimes (with Residential Burglaries)</td>
<td>1,003</td>
<td>3.39%</td>
<td>1,332</td>
<td>4.51%</td>
<td>3,879</td>
<td>13.12%</td>
</tr>
<tr>
<td>All Non-Non-Non Crimes (with Res. Burglaries &amp; Robberies)</td>
<td>3,048</td>
<td>10.31%</td>
<td>4,160</td>
<td>14.07%</td>
<td>9,176</td>
<td>31.05%</td>
</tr>
<tr>
<td>All Incarcerated*</td>
<td>14,463</td>
<td>48.93%</td>
<td>18,167</td>
<td>61.47%</td>
<td>29,556</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

*The total prison population originating in LAC in this table excludes all LWOP and condemned cases.*
B. **Background on Our Incarceration Crisis**

Our ballooning prison population did not result from an increase in crime. In fact, our crime rate has declined dramatically since the early 1990’s. Rather, harsher sentencing laws like Life Without the Possibility of Parole, an increase in mandatory minimum sentences for indeterminate sentences, Three Strikes sentencing, and requirements that that restrict people to complete 85% of their imposed time now keep people in prison for longer than ever before, long after they pose any safety risk to their community.

There are currently more people serving life sentences in America than were locked up in prison at all during the 1970s. One in seven people behind bars is serving a life sentence.

California has led the way in this explosion. We had 23,000 people incarcerated in 1980. By 2000, we had over 160,000 people. By 2010 we had 164,000. In the last 10 years, spurred by a United States Supreme Court decision holding that California’s overcrowded prisons constituted cruel and unusual punishment, as well as by a growing public awareness that we are incarcerating too many people for too long, we have moved to reduce our prison population. However, we have five times as many people incarcerated as we had in 1980.

California spent a shocking $15.7 billion on prisons in 2019-2020. This represents 7.4% of all state funds. This is occurring while people are sleeping in our streets, our parks are trash-ridden, our schools are in need of repair, our once-free public universities are underfunded and tuition rises, people are hungry, and we need major infrastructure repair to even do things like provide clean water to the people of California.

In Los Angeles County alone we currently have almost 30,000 people in CDCR.

Nationally, our criminal justice policies have disproportionately impacted minority populations. 60% of people in prison are Black, despite making up just 13% of the population. One out of every five Black persons behind bars has a life sentence.

Almost 93% of people sent to prison from Los Angeles County are Black people and people of color. Black people are approximately 9% of Los Angeles’s population. They constitute 38% of Los Angeles’s state prison population. We can no longer deny that our system of hyper-criminalization and incarceration is anything other than racist.

The incarceration rate of women is also on the rise. In 1980, there were 13,206 women in prison; in 2017, there were 111,360.

Harsh sentencing laws have also meant that the prison population is old. If we continue at current rates, one in three people behind bars in state prisons will be over 50 by 2030. In 1993, there were 45,000 people over 50 in U.S. state prisons. Twenty years later, there were 243,800. The growth in the aging prison population has continued. Since 1999, New York has decreased its prison population by 30 percent but during that same time span saw a doubling of its over 50 population. Between 2001 and 2014, 29,500 people over 55 died in federal and state prisons.
Current estimates show that the U.S. spends upwards of $16 billion a year to care for its elderly population. In 2013 in Virginia, nearly half of the Department of Corrections budget for prisoner health care went to caring for the elderly.

**Recidivism and the Age-Crime Curve**

Research consistently shows that individuals age out of crime, even those convicted of the most serious offenses. By the time individuals reach their thirties, their odds of committing future crimes drop dramatically. Much of this is due to neurological changes, which take place in profound ways up until an individual turns 26. The prefrontal cortex, which is highly involved in executive functioning and behavior control, continues to develop until age 26, making it harder for young people to make what adults consider logical and appropriate decisions.

![Growth in Over-50 Population in U.S. State Prisons](image)

Given these changes, it makes little sense to sentence children and adolescents to lengthy terms of incarceration without any meaningful opportunity for review, as the odds are extremely high that those children can be rehabilitated and reenter society.

Likewise, incarcerating an aging population makes little penological sense. Those aged 50-64 have far lower recidivism rates than the national average: seven percent compared to 43.3 percent. And those over 54 have just a four percent recidivism rate. In other words, we are spending billions to lock up people, 96% of whom will not even commit a technical violation once released.

**Jurisdictions that allow for a “second look” or increased parole opportunities**

“Look back” provisions allow sentenced individuals to petition for a reduced sentence after they have shown meaningful signs of rehabilitation that indicate an ability to return to society. While several jurisdictions have parole eligibility, only California has enacted a robust “look back” Act thus far. Delaware has implemented one to address those sentenced under habitual offender laws.
Federal: Los Angeles Congresswoman Karen Bass and United States Senator Cory Booker introduced a bill for people serving in federal prison to reevaluate cases involving people over 50 years old and for those who have served at least ten years of a sentence, creating a rebuttable presumption of release for those over 50.

District of Columbia: Recently, the District of Columbia passed Second Look Sentencing for youths. This month, the Council is poised to expand this second look resentencing to all who were under the age of 25 at the time of the crime.

Oregon: in January 2020, Oregon’s Second Look Resentencing, for minors SB 1008 goes into effect.

Florida: Florida allows a second look for children who were sentenced as adults for offenses committed before their 18th birthday.

Delaware: People convicted before their 18th birthday of a first-degree murder may petition for modification after 30 years, and after 20 years for any other offense.

Colorado: Senate Bill 16-180 requires the Department of Corrections (DOC) to create a program for kids sentenced as adults for a felony and presumes release upon participation after 3 years.

California: has made many of its recent changes retroactive, including resentencing for those convicted of a third strike, Proposition 47, SB 1437, Penal Code section 1170, subsection (d), among others. California also provides automatic parole review when a person commits the crime before the age of 26 and has served 15, 20, or 25 years, depending on the controlling offense. California has also expanded elderly parole this year with AB 3234 so that people who are 50 and have served at least 20 years are eligible for parole consideration.

The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.
Attachment C
TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: AMENDMENT TO SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 18, 2020

This Office is committed to eliminating mass incarceration and fostering rehabilitation for those charged with crimes. As such, this Office will not pursue prior strike enhancements, gang enhancements, special circumstances enhancements, out on bail/O.R. enhancements, or Penal Code section 12022.53 enhancements. After listening to the community, victims, and my deputy district attorneys, I have reevaluated Special Directive 20-08 and hereby amend it to allow enhanced sentences in cases involving the most vulnerable victims and in specified extraordinary circumstances. These exceptions shall be narrowly construed.

Effective immediately, Special Directive 20-08 is amended as follows:

The following sentence enhancements and allegations shall not be pursued in any case and shall be withdrawn in pending matters:

- Any prior-strike enhancements (Penal Code section 667(d), 667(e), 1170.12(a) and 1170.12(c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5-year prior” enhancements (Penal Code section 667(a)(1)) and “three-year prior” enhancements (Penal Code section 667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code section 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. release (Penal Code section 12022.1) shall not be filed as part of any new offense;
- Firearm allegations pursuant to Penal Code section 12022.53 shall not be filed, will not be used for sentencing, and will be dismissed or withdrawn from the charging document.
However, where appropriate, the following allegations, enhancements and alternative sentencing schemes may be pursued:

- Hate Crime allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 422.7 and 422.75;
- Elder and Dependent Adult Abuse allegations, enhancements, or alternative sentencing schemes pursuant to Penal Code sections 667.9, 368(b)(2)/12022.7(c);
- Child Physical Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 12022.7(d), 12022.9, and 12022.95;
- Child and Adult Sexual Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 667.61, 667.8(b), 667.9, 667.10, 667.15, 674, 675, 12022.7(d), 12022.8(b), and 12022.85(b)(2);
- Human Sex Trafficking allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 236.4(b) and 236.4(c);
- Financial crime allegations, enhancements or alternative sentencing schemes where the amount of financial loss or impact to the victim is significant, the conduct impacts a vulnerable victim population or to effectuate Penal Code section 186.11;
- Other than the enhancement or allegation prohibitions previously listed, enhancements or allegations may be filed in cases involving the following extraordinary circumstances with written Bureau Director approval upon written recommendation by the Head Deputy:
  - Where the physical injury personally inflicted upon the victim is extensive; or
  - Where the type of weapon or manner in which a deadly or dangerous weapon including firearms is used exhibited an extreme and immediate threat to human life;

Facts or circumstances that are sufficient to meet the legal definition of great bodily injury or use of a deadly or dangerous weapon alone are insufficient to warrant extraordinary circumstances. The written request and approval must be placed in the case file.

**CASE SETTLEMENT**

The following directives cover case settlement.

1. If the charged offense(s) is probation-eligible, probation shall be the presumptive offer.
   
a. Appropriate deviations from this presumption are as follows:
   
i. If the charged offense(s) is probation-eligible, and extraordinary circumstances exist, the Deputy District Attorney may file the basis and recommendation for a deviation in writing to their Head Deputy and the appropriate Bureau Director. Upon written approval from the Bureau Director, the Deputy District Attorney may offer a state prison sentence in accordance with this policy. The written basis for the deviation, recommendation, and approval shall be kept in the case file.
   
ii. If, but for the terms of this directive, the People could have reasonably alleged an enhancement, and defendant’s conduct would have therefore been ineligible for probation, Deputy District Attorneys may file a
recommendation for a deviation in writing to their Head Deputy. Upon written approval from the Head Deputy, the Deputy District Attorney may offer a state prison sentence pursuant to the sentencing triad of the substantive offense(s). The written basis for the deviation, recommendation, and approval shall be kept in the case file.

2. If the charged offense(s) is not probation eligible, the presumptive sentence shall be the low term.

   a. When deviating from the low term the deputy shall document the supporting reasons in the case file.

   gg
Attachment D
TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: REVISED POLICIES PURSUANT TO PRELIMINARY INJUNCTION

DATE: FEBRUARY 10, 2021

On February 8, 2021, Judge James C. Chalfant issued a preliminary injunction in the case *The Association of Deputy District Attorneys for Los Angeles County v. George Gascón, et al.* (20STCP04250). While Judge Chalfant’s ruling does not impact the vast majority of the directives instituted on December 8, 2020, the court did rule specifically on the Three Strikes policy, and other enhancements relating to pending cases. The Office will be filing a notice of appeal. However, until the appeal is decided, we will adjust the policies to be consistent with this ruling.

This Special Directive supersedes Special Directives 20-08, 20-08.1, 20-08.2, and 20-14 to the extent they are inconsistent with these revisions. In all other respects, those Directives are still in full force and effect.

It should be noted that, except for the mandatory provisions of the Three Strikes law mentioned below, the preliminary injunction does not affect office policy restricting the filing of sentence enhancements in new cases. Thus, deputies are still prohibited from filing any other sentence enhancements, except as provided in Special Directive 20-08.2.

The following revised policies are effective immediately:

**Special Circumstance Allegations**

1. Deputies are prohibited from filing special circumstance allegations.

2. Pursuant to the Superior Court’s interpretation of Penal Code section 1385.1, if a special circumstance has already been found true or admitted, deputies are not required to move to dismiss the enhancement.

3. In pending cases with alleged special circumstance allegations, motions to dismiss or withdraw pursuant to Penal Code section 1385 will be based on individual case review, including but not limited to the extent of the defendant’s participation in the murder, the defendant’s prior violent record, and any other factor bearing on the defendant’s mental state.
4. Deputies shall not move to reinstate special circumstance allegations that were previously dismissed by a court, even if the dismissal was pursuant to a deputy’s motion.

Strike Priors

These policies apply to pending cases and future cases.

1. Pursuant to the Superior Court’s interpretation of the Three Strikes Law, deputies shall plead and prove strike priors pursuant to Penal Code sections 667, subdivision (f)(1) and 1170.12, subdivision (d)(1) where there is sufficient evidence to prove the prior beyond a reasonable doubt.

2. Deputies shall not move to reinstate strike priors that were previously dismissed by a court, even if the dismissal was pursuant to a deputy’s motion.

3. Pursuant to the preliminary injunction, Special Directive 20-08.1 is rescinded.

4. Motions to dismiss alleged strike priors pursuant to Penal Code section 1385 will be based on individual case review pursuant to the considerations set forth by The Committee on Revision of the Penal Code, hereafter “The Committee.” The presumption will be in favor of dismissal or withdrawal when any one of the factors apply. Head Deputy approval is not required.

Other Conduct and Status Enhancements

Except as to strike priors and special circumstance allegations, these policies apply to pending and future cases for all other conduct and status enhancements.

1. Deputies are prohibited from filing conduct and status enhancements, unless approval is obtained pursuant to SD 20-08.2.

2. In any pending case, deputies shall not move to reinstate any allegations or conduct enhancements that were previously dismissed by a court, even if the dismissal was pursuant to a deputy’s motion.

3. Pursuant to the preliminary injunction, in any pending case, deputies shall make motions to dismiss or withdraw pursuant to Penal Code section 1385 any enhancements/allegations, unless approval is obtained pursuant to SD 20-08.2, based on individual case review pursuant to the considerations set forth by The Committee. The presumption will be in favor of dismissal or withdrawal when any one of the factors apply.

The Committee’s Recommendation

With respect to motions to dismiss or withdraw allegations, deputies shall be guided by the best available research and science on the topic. Guidance can be found within The Committee’s recommendations for evaluating requests to dismiss enhancements in the interest of justice. The presumption will be in favor of dismissal or withdrawal when any one of the factors apply.
The Committee’s recommendations follow a year of studying California’s criminal punishments. The Committee’s recommendations were developed after testimony from 56 expert witnesses, staff research, and over 50 hours of public hearings and Committee deliberation. The recommendations represent broad consensus among a wide array of stakeholders, including law enforcement, crime victims, civil rights leaders, and people directly impacted by the legal system. The report contains extensive support for each recommendation, including empirical research, experiences from other jurisdictions, and available data on California’s current approach to these issues. The Committee is comprised of judges, academics, and legislators. The work done by the Committee is the most comprehensive, timely evaluation available in the state, ensuring that our policies continue to be guided by the best available research and science.

The Committee’s inaugural report\(^1\) contains ten recommendations. Following the Committee’s guidance, we hereby incorporate Recommendation 5, which establishes proposed guidelines for judges when evaluating a request to dismiss enhancements in the “interests of justice” pursuant to Penal Code section 1385.

Factors to consider when seeking dismissal or withdrawal are when:

- The current offense is nonviolent.
- The current offense is connected to mental health issues.
- The enhancement is based on a prior conviction that is over five years old.
- The current offense is connected to prior victimization or childhood trauma.
- The defendant was a juvenile when he/she committed the current offense or prior offenses.
- Multiple enhancements are alleged in a single case or the total sentence is over 20 years.
- A gun was used but it was inoperable or unloaded.
- Application of the enhancement would result in disparate racial impact.

This list is not exhaustive as there may be factors beyond those listed above where it would be in the interest of justice to dismiss or withdraw an enhancement.

Deputies shall consider the “interests of justice” broadly in determining whether an enhancement is appropriate in their case. In determining whether there is sufficient evidence of the existence of a factor to consider, deputies should rely on all available credible evidence. If the existence of a factor is in dispute, a deputy may consult with their Head Deputy and the Head Deputy will determine whether there is sufficient credible evidence to consider the factor.

The presumption can be overcome if there is clear and convincing evidence that dismissal of the enhancement would endanger public safety. If a deputy wishes to pursue an enhancement in a

case where dismissal or withdrawal is presumed pursuant to The Committee’s recommendations, the deputy must seek permission from their Head Deputy in writing. If the Head Deputy agrees with the deputy’s request, the written request with the articulated basis for approval shall be sent to their respective Director who will make the final determination on whether it is appropriate to pursue the enhancement.

ab:pa
Attachment E
Resentencing Policy FAQs

What is the District Attorney's resentencing policy?
District Attorney George Gascón is committed to reviewing sentences of people who are incarcerated and serving punishments that are no longer appropriate under current law and/or office policies and practices.

Penal Code Section 1170(d) authorizes the District Attorney to request that an individual's sentence be recalled and reconsidered if "continued incarceration is no longer in the interest of justice."

The District Attorney's Office is currently in the process of establishing a Resentencing Unit that will eventually process and review cases for resentencing consideration pursuant to Penal Code section 1170(d). The Resentencing Unit will prioritize cases for resentencing based on governing law, careful review of available data, individual case files, public safety, and policy priorities specified by the District Attorney.

Additional details concerning the District Attorney's resentencing policy are contained in Special Directive 20-14.

Why are certain cases prioritized over others?
It is estimated that thousands of cases may qualify for resentencing consideration pursuant to the District Attorney's resentencing policy as specified in Special Directive 20-14. To ensure a fair, orderly and efficient review process, the District Attorney has adopted a prioritized, tiered approach to identify and evaluate the cases being considered for resentencing pursuant to Penal Code 1170(d).

Once the review of the current tier of cases has been completed, the website will be updated to identify the new tier of cases that will be reviewed for possible resentencing consideration. While we are committed to reviewing all cases with sentences that conflict with existing laws and/or policies, there is no guarantee that all cases reviewed will be recommended for resentencing. Additional factors such as in-prison rehabilitation; disciplinary history; re-entry plans; evidence that reflects whether age, time served, or diminished physical condition, if any, have reduced the risk for future violence; and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice will also be taken into consideration.

Please note that although the District Attorney is authorized to request and recommend resentencing in certain cases, a judge makes the ultimate decision whether to grant or deny such a request.

How does the District Attorney's Office identify and locate the cases that are contained within the tier of cases being reviewed?
The office has a protocol set up with the California Department of Corrections whereby they provide us with the list of all individuals incarcerated from Los Angeles County. They also provide us with additional data such as, but not limited to, age, time in custody, conviction offense and original sentence. We sort the data to determine which individuals fall within our tier of cases being reviewed and then work with defense counsel to contact them and get additional prison records, as needed.

Can I request that the District Attorney consider a case for resentencing?
No. The District Attorney's Office cannot accept calls, emails, letters, or other submissions regarding individual cases.
The District Attorney's Office cannot respond to requests or concerns regarding individual cases. We appreciate that many cases involve extenuating circumstances deserving special attention, and we will do our best to address them. However, in order to maintain a fair and orderly process, requests for resentencing consideration made by incarcerated individuals, family members, attorneys, and/or other representatives and advocates will not be considered at this time.

The best way to support individuals seeking resentencing is to encourage them to participate in rehabilitative programming and avoid disciplinary actions while incarcerated. We understand that the pandemic has limited the number of programs available in prison, so we encourage those who are able to participate in related correspondence courses. Gathering letters of support from institutional staff, family, community members, and re-entry providers also may be helpful. Retain this information for use in the event that a resentencing hearing is scheduled. Do not send any documents to the District Attorney's Office.

Neither individuals, family members nor attorneys are permitted to request resentencing under Penal Code Section 1170(d). The resentencing request must be made by the District Attorney, the Secretary of the Department of Corrections and Rehabilitation, the Sheriff, or the Board of Parole Hearings.

**Will I know if a case is being considered for resentencing?**

Yes. You will be notified by the District Attorney's Office, your attorney, or a nonprofit organization with whom we are collaborating that your case is under consideration for resentencing.

When there is a determination that your case is being considered, you will be notified in writing.

**Will victims be notified if a case is being considered for resentencing?**

Yes. The District Attorney's Office will notify crime victims and provide an opportunity for them to be heard.

In conformity with state law and as part of its evaluation process, the District Attorney's Office will endeavor to contact impacted crime victims and provide notice of any upcoming court proceeding. Crime victims in any case being considered for resentencing will have an opportunity to address the District Attorney's Office and the court as part of any resentencing proceeding. If you are a victim of a crime and want to ensure that your voice is heard in any case that may be considered for resentencing, you should confirm your contact information by calling the Bureau of Victim Services or emailing the Bureau at victimservices@da.lacounty.gov. Be prepared to provide your telephone number and email address, the name of the victim, the full name of the defendant, and the court case number if available.

**Will cases recommended for resentencing return to court?**

Yes. When the District Attorney files a resentencing request, a court date may be set to hear evidence and argument on whether to reduce an individual's sentence.

Under Penal Code Section 1170(d), a consideration for resentencing proceeding begins upon the request of the District Attorney or other law enforcement agency specified by statute. When a resentencing request is properly filed, a court date may be set. Because the decision whether to grant or deny such a request is made by a judge, the incarcerated individuals and/or their legal representatives should present evidence as to why continued incarceration is, or is no longer in the interest of justice, including evidence of rehabilitation and adequate re-entry support.

**Does the District Attorney decide whether or not a person will be resentenced?**

No. Decisions to reduce sentences are made by judges, not by the District Attorney.

Although the District Attorney may request that an individual's sentence be reduced, the decision whether to grant or deny such a request is made by either the original judge in the case or a judge appointed by the presiding judge.

In deciding whether to resentence an individual upon the recommendation of the District Attorney, judges generally consider the following factors: an individual's rehabilitative programming and disciplinary record while incarcerated, age, amount of time served, any diminished physical condition or medical issue, future risk to public safety, re-entry plans, and other circumstances that may have changed over time.
Do I need a lawyer for resentencing consideration?

The District Attorney does not accept recommendations for resentencing and cannot give legal advice.

The District Attorney’s Office is not considering recommendations for resentencing by outside counsel. Therefore, a lawyer cannot initiate or accelerate the review process for an individual case.

When a case is identified by the Resentencing Unit of the District Attorney’s Office as eligible for resentencing consideration, incarcerated individuals and their last known counsel will be notified because legal representation may be helpful at that point in time.

Once a case is identified for resentencing consideration, the District Attorney’s Office plans to work closely with public defenders and nonprofit organizations to ensure that every person recommended for resentencing has access to free legal services, although individuals are always free to hire their own lawyer.

Will the District Attorney’s Office provide additional information about its resentencing process?

Yes. Updates to the policy and procedures regarding resentencing will be posted to this web page.

The District Attorney’s Office will post additional information concerning the progress of its resentencing policy. This is an unprecedented effort in the nation. It will take some time and we urge your patience. Updates will be posted to this web page.