SAN BENITO COUNTY DISTRICT ATTORNEY

POLICY AND PROCEDURE MANUAL

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INTRODUCTION

The mission of the San Benito County District Attorney's Office is to do justice, by protecting the innocent, holding the guilty accountable, securing the rights of victims, maintaining due process for defendants, and caring for the needs of the community through a devotion to truth.

"Iustitia in Veritate Condita est."

In support of this mission, ***ALL*** employees shall act with integrity and professionalism in all matters at all times, on duty, off duty, while associated with the District Attorney's Office.[1] The choices one makes while employed with the District Attorney's Office can have great impact. They can positively and negatively impact the community's trust in law enforcement, the court system, and ultimately civil government in general.

No policy manual can address all the issues that are present in the operation of the District Attorney's Office. As a result, all members of the office are encouraged to use good judgment and wisdom at all times. All policies should be construed so as to do justice, love mercy, and proceed with humility.

The policy manual, nor the policies contained therein does not bind the future conduct of the elected District Attorney. The elected District Attorney retains the flexibility to make exceptions to policy and the policy manual given the wide variety of circumstances that can exist, and that may justify a deviation from policy.

This policy manual is not intended to conflict with any policy manuals or directives issued by the County, its Board of Supervisors, or the County Administration. It is intended to guide the operations of the District Attorney's Office and its staff. Additionally, it is not intended to conflict with any MOU as negotiated with any bargaining units of the County employed within the District Attorney's Office, but instead, is to be understood as operating within the rights of management under Article 5 of the SEIU MOU, and Article IV of the DSA MOU.

Authority of the District Attorney

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

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[1] A member of the District Attorney's office who is off duty has wide latitude in any legal behavior; however, if an off-duty member of the District Attorney's Office chooses to associate themselves with the office while off-duty (e.g. wearing DA insignias on clothing, engaging as a public speaker where his/her employment is referenced, etc.) they shall hold themselves to the level of professionalism as while on-duty. Because an individual's employment is searchable when their own name is used, off-duty social media comments must be professional and can form a basis for discipline if they display racist/sexist or any other prejudice that would bring disrepute to the office.

§26500. A deputy district attorney's power is by representation on behalf of the elected district attorney. Cal. Govt. Code §1194. The sovereign power of the People of the State of California is vested in each District Attorney. The office is one of the very few offices that can legally ask the community to execute a human being. See Cal. Penal Code §190.1, 190.2, 190.3, 190.4.

ORGANIZATION STRUCTURE AND PRINCIPLES

The District Attorney's Office currently consists of 6 attorneys, 3 investigators, 4 Victim/Witness personnel, a discovery/investigative technician, an administrative assistant and 3 legal office personnel.

The District Attorney is accountable and responsible to the voters of San Benito County. All authority flows from the people. Cal. Const. Art. II §1. As such, the District Attorney is the final authority as to all matters concerning the operation of the office.

The Assistant District Attorney reports directly to the District Attorney, and is authorized to act in the District Attorney's place in the District Attorney's absence. Additionally, the ADA is empowered to make certain decisions regarding case dispositions and may, without consulting the District Attorney, authorize certain dispositions by Deputy District Attorneys to provide for the smooth administration of the office. Deputy District Attorneys report to the District Attorney and Deputy District Attorney performance reviews will generally be completed by the 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 / Technician / Discovery Clerk is a non-sworn position whose duty is to support the investigators and attorneys in assuring that all discovery is obtained from investigative agencies and supports the attorneys by ensuring that it is appropriately provided to Defense Counsel. The investigative technician shall comply with all the requirements to have access to CLETS and will comply with the rules and regulations to access CLETS and be the primary interface with the office and CLETS.

The Legal Office Supervisor shall exercise administrative supervision and scheduling of all Legal Office Assistants. The Legal Office Supervisor shall be capable of handling all legal paperwork and filings and be available as a reference for the Legal Office Assistants in how to complete their tasks if any questions arise.

The Administrative Services Specialist shall report directly to the District Attorney and 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.

The Victim Witness Program 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 ensure that Victim-Witness Advocates work closely with attorneys and investigators to provide required information, and to facilitate the communication of case-related information to victims. The Victim Witness Coordinator is responsible to supervise the Victim-Witness Advocates, and may in high-profile or sensitive cases be tasked to act as a victim-witness advocate.

Cases will be prosecuted and assigned based upon the most efficient operation of the office. All attorneys when in the office will be available to issue in-custody cases on a rotating basis. Cases will then most likely be assigned based upon department assignments. For cases of sensitive nature, including but not limited to homicides and sex cases, every effort will be made to handle cases vertically. When a defendant has multiple cases, to the extent feasible, one attorney will handle all cases involving that defendant. After a defendant is held to answer the case will be routed to the District Attorney to ensure that in the Superior Court stage of a Felony Case that caseloads are reasonably and appropriately balanced among the attorneys, and to match the professional abilities and attorney development goals of the department.

PERSONNEL RULES AND REGULATIONS

General Personnel Rules and Regulations

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

Time Off

a. VACATION POLICY

At the beginning of the year a Vacation Schedule will be routed amongst the office staff. The vacation schedule will start with the Department Head and then to the Supervisory staff then the line staff by seniority. On the first round an employee may

request up to two weeks of vacation on the schedule. Once everyone has had an opportunity to schedule their first two weeks of vacation the schedule will be routed through the office again to request additional weeks of vacation.

The office supports taking of longer than two weeks at a time off in a row, and so if an employee is looking to take more than 2 weeks off in time, efforts will be made to accommodate such a request, the purpose of the 2 week initial request is to give all employees an opportunity to take vacation during certain times of the year (like summers, or the two weeks at the end of December) where there may be high demand for vacation time.

For any vacation time off requests outside of the Vacation Schedule, employees should request the time off in writing (e-mail acceptable) at least two weeks in advance or as soon as feasibly possible. Depending on the operational needs of the department; the time off may or may not be approved. Employees are highly encouraged to seek approval before any flight or hotel accommodations are booked, outside of the Vacation Schedule. Approvals may be made by immediate supervisors.

b. EXTENDED WEEKEND POLICY

For single or double days off extending a holiday weekend, care shall be taken to ensure that all employees have a reasonable opportunity to extend a long weekend if so desired. Extended weekend time off may be denied in the event of a conflict with multiple employees wishing to extend the same long weekend with a perspective to how many holiday weekends an employee has already extended during the calendar year.

Dress Code

General Office Dress Code may be described as Modified Professional (e.g. for individuals with a male gender identity, button-up shirt without tie or jacket.) All employees are expected to dress in attire that is appropriate to a legal office.

Attorneys - For days where an attorney does not have court appearances the attorney should wear a dress shirt (or woman's equivalent) and does not have to wear a tie, but should have a tie and sport coat available in case a court appearance arises. For days when an employee is making court appearances the dress code is Business Professional. Fridays may generally be described as Business Casual when the attorney has no court appearances scheduled.

Investigators – Generally modified professional with a logo wear exception (e.g. for individuals with a male gender identity, button up shirt without tie or jacket or collared polos with DA Insignia.)

Support Staff – Business Casual

Examples of Business Casual:

- Slacks or business dress pants, khakis, chinos, knee-length skirts, dark jeans without holes
- Button-down shirts, sweaters, blouses, henleys or polo shirts
- Knee-length or maxi dresses
- Optional cardigans, blazers or sport coats (especially for the colder months)
- Shoes; loafers, Oxfords, boots, pumps, flats, sandals with a back strap
- Simple, professional accessories such as scarves, belts or jewelry

Examples of attire NOT acceptable for Business Casual:

- Well-worn athletic sneakers or tennis shoes
- Flip-flops
- Stained or wrinkled clothing
- Clothing with holes, such as distressed jeans
- Clothing that is too tight or short
- Clothing that is oversized or too loose
- Shorts; bathing suit attire
- Tank tops or strapless shirts unless paired with a blazer, jacket or cardigan
- Backless or low-cut tops
- Crop tops
- Clothing with inappropriate logos or text

Jeans Days – On occasion, days may be decided to be "Blue Jeans Days" in which all employees (if no court appearances) may wear blue jeans, these days may be associated with a three day weekend, office "work" days (i.e. moving equipment, file shredding, etc.). The Assistant District Attorney or District Attorney may authorize a "Blue Jeans Day."

Firearms - Concealed Carry

Sworn Peace Officer Staff – Sworn Peace Officer Staff are permitted to carry their firearms at all times in the office.

Non Peace Officer Staff – Individuals who possess a current concealed carry permit are permitted to carry a firearm, that has been permitted for concealed carry by the San Benito County Sheriff, from their vehicle to their personal workspace. In order to exercise this privilege however, an individual must provide a personal lockbox for their firearm and the personal lockbox must itself be in a concealed or inconspicuous place (i.e. desk drawer/cabinet, underneath desk). The firearm may not be generally worn in the office but instead must be locked in the lockbox while in the office. The firearm may only be worn, concealed, when walking to/from the individual's vehicle during arrival to the office and departure from the office. It may not be worn when coming to or from court, or generally when in the office. This privilege may be circumscribed if there is a pattern of anger or inappropriate outbursts at the discretion of either the Assistant District Attorney or the District Attorney.

Work Environment

The Office of the District Attorney can be a high-stress environment for all its employees. We can be dealing with victims who are expressing their gratitude or frustration with our performance, we can be dealing with hostile attorneys who are intentionally pressing the buttons of staff to frustrate and get a rise out of staff. The goal of the District Attorney's Office is to be a positive and professional place of employment; however it part of human weakness that at times people under pressure will communicate in less than perfect ways.

In the event that any communication, symbol, sign, or any other media which communicates brings irritation to a member of the office, staff is encouraged to speak with the offending party to see that the unappreciated communication is corrected quickly and as gently as possible. However, it is the policy of the District Attorney's Office that if any communication, symbol, sign, or other media which brings irritation to a member of the office is made and/or displayed, the offended member is absolutely permitted and encouraged to bring such concern to either the elected District Attorney or the Assistant District Attorney to obtain assistance in correcting the offending behavior. In the event that the offending party is the elected District Attorney or the Assistant District Attorney, the concern should be communicated to the non-offending member of management. In the event that such concern regards the conduct of the elected or Assistant District Attorney, the concerned party may not and shall not be retaliated against by the potential offending party. The goal of this policy is to ensure that the work environment is not a hostile one, and that all members of the office are supported in working in an environment that maximizes their productivity and does not demean them in any way.

<u>Special Personnel Rules and Regulations</u>

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.

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.

Attorneys

The San Benito 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.

Amplification and Perspective - All attorney staff should carry themselves with the level of gravity of being employed by one of a very few agencies that can legally ask the community to take the life of another member of the community.

All attorneys employed by the San Benito 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.

Note-taking and file notation are a critical component of attorney employee responsibility. **I**n order for the office to function, files must be notated so that another attorney can step in and quickly understand what is happening in a particular case and why a case is on calendar. For a vertically assigned case, file notation need not be as extensive, but if other attorneys are going to be appearing on a particular case for the assigned attorney, file notes or annotations need to be clear enough that the appearing attorney can quickly understand his or her expectations in appearing on behalf of the assigned attorney.

Files should be notated with a case offer, and if a change in the offer what is the current offer. If the indicated offer is particularly "stiff or harsh" or "generous" reasons for the offer should be reasonably articulated in the file. Length of notes is not significant as much as comprehensibility of notes for a particularly firm offer "extensive prior record" either in the case summary or notes is more than sufficient to justify a "stiff or harsh" offer. If an offer may

appear overly generous to a reviewing attorney, notes should be present in the file so that the reviewing attorney can at least understand the thought process behind the offer.

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. For scheduled vacations it is the District Attorney's Responsibility to ensure coverage during an employee's time off. However, it remains the "covered" attorney's responsibility to leave adequate notes so that another prosecutor may appear on their behalf.

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.

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 San Benito 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. 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. At the direction of the District Attorney, Investigators may be tasked to attend community events to provide a police presence.

The ability of a peace officer to effectuate a contact, detention, and, or arrest with a minimal use of force is directly related to their command presence. Command presence is

facilitated by a number of different factors. One of those factors that human weakness has shown to be relevant on the compliance of potential subjects is the physical fitness of the peace officer contacting the subject. In support of a physically fit peace officer presence, District Attorney Investigators are permitted to use Sheriff Office facilities as DSA members to work out for up to an hour during their work day as long as it does not interfere with other responsibilities and one other Investigator is present in the office.

As a general policy, investigators may execute warrants that have been confirmed present. Investigators may exercise powers of arrest for legal violations observed in their presence; however, investigators should not pursue fleeing subjects as the District Attorney's Office does not have any marked units. Investigators may at most follow a vehicle and hand the situation off to the appropriate local law enforcement agency.

Specific law enforcement policies will be developed in consultation with the Chief Investigator and shall be in force upon their adoption.

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. To that end, Investigators are tasked to comply with RIPA for any stops/detentions that occur.

Victim-Witness

The Victim-Witness branch of the District Attorney's office is overseen by a Coordinator. On an administrative level, the Coordinator reports 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. The Coordinator is responsible for the supervision of the victim-witness advocates supported by the program.

The Coordinator and advocates 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, Victim/Witness services 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, Victim-Witness' first duty of loyalty is to the victim. Victim/Witness 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.

Victim-Witness 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. Victim-Witness 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. Victim-Witness 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. In the event of an attorney being unresponsive or slow to respond to the coordinators or advocates, the coordinator or advocate should address the issue directly with the Assistant District Attorney or the District Attorney, in the best judgment of the advocate or coordinator.

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.

DISTRICT ATTORNEY OPERATIONS POLICIES

Crime Charging Standards

Sufficiency for Charging

The public prosecutor is vested with discretion in deciding whether to prosecute. This discretion is broad and quasi-judicial in nature. *People v. Gephart* (1979) 93 Cal.App.3d 989, 999

This discretion is the core of the prosecutor's power and greatest responsibility. Its appropriate exercise in every case is of the highest importance. Nothing can substitute for wisdom, fairness, and the exercise of good judgment. Crime charging cannot be reduced to a checklist or a formula. In general, in charging any offense a substantial weight should be placed upon the ideal of "How would I explain my decision to the public," understanding that the public wants fair treatment, a strong sense of justice, a degree of mercy, and absolutely no sense of personal vindictiveness, pettiness, or personal favors.

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 file the appropriate charges.

The threshold requirement for charges to be filed are:

1. 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 that may be taken into consideration after the threshold requirement is met

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 of the victim or witnesses

10. The availability of adequate civil remedies

11. The age of the offense

12. Undue hardships caused to the accused (including those referenced in PC §1016.5)

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 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 roundtable difficult cases with the District Attorney and fellow prosecutors, and discuss during office meetings.

Improper Basis for Charging

All of the following are improper considerations in the charging decision:

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.

Time For Charging

Extended delays in charging decisions causes negative impacts to victims, the criminal justice system, and undermines the punitive and rehabilitative goals of the criminal justice system. Victims feel that the system is indifferent to their concerns and that it is apathetic towards the negative conduct directed against them. They lose faith in the system and become less likely to report victimization and participate with the criminal justice system. This injustice can become further amplified when they see other cases being handled more expeditiously causing them to wonder why their case has set while other cases have been charged.

Victims are not the only ones impacted by the failure to charge or decline cases in a timely fashion, when the charging for an offense is delayed extensively the defendant is less likely to associate the punitive consequence with the negative behavior. Instead, a defendant is likely to see the system as random or haphazard, plucking them out of their behavior for conduct that occurred many months or year prior. Oftentimes this can work contrary to the goals of the criminal justice system.

In general, cases should be filed or turned down within six (6) months of referral to the office. Certainly, in cases of complexity or seriousness this is a goal but not a policy imperative. In cases of less seriousness or complexity a case that has been unreviewed for six months, the reasons for a delay in decision should be included in the notes of the file so that an explanation may be given for the reasons that a decision has not been made.

Extradition PC §1551

In general, the District Attorney's office will support all efforts of sister states to ensure that their laws are complied with and that people are not permitted to flee to California to avoid prosecution. Regardless, the District Attorney's Office will follow and comply with AB 1242 preventing the District Attorney's Office from assisting in extraditions related to abortion services in other states. It is clear that policy relating to abortion is sensitive however, it is not the place of the District Attorney's Office to set policy in this area, but it is to follow the directives of the legislature. To that end the directives of AB 1242 will be followed and the District Attorney's Office will notify the Attorney General's Office within 24 hours when a fugitive complaint is filed, and prior to filing, depending on the charge, confirm that the underlying charge is not related to abortion. (I.e. A murder or child abuse charge may require a description of the factual basis, depending on the totality of the circumstances, while a receiving stolen property charge would not.)

Case Settlement Policies

In general most cases will resolve by way of settlement and plea by the defendant. In the vast majority of cases deputies are empowered to make offers and accept offers by defense without prior approval of the Assistant District Attorney or the District Attorney. In the event that recommended dispositions are consistently too generous or consistently too harsh deputies may be counselled regarding appropriate offers to manage their calendar as well as ensure justice. These are not intended to be "disciplinary" but instead to encourage uniformity and equal treatment of charged persons by the District Attorney's Office.

If there are crime trends observed by the District Attorney that cause the District Attorney to create a policy memo regarding case dispositions that memo is expected to be followed by all individuals making offers on such cases.

All homicide case disposition and offers must have been discussed with the District Attorney. A disposition of a case charged as a §192(c)(2) may be approved after discussion with the Assistant District Attorney. All cases charged with a felony and that or any other charge in the case would result in PC §290 registration must be discussed with the District Attorney prior to disposition. Cases charged with misdemeanors solely that would result in registration under §290 may be disposed after discussion with the Assistant District Attorney.

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 ensure fairness in any such convictions. In the absence of a BAC of <.10, reduction to a §23103(a)/23103.5 (Wet Reckless) requires a detailed explanation in the file. Reduction of a 23152/23153 to a non-priorable offense requires Assistant or District Attorney approval.

DA Probation / Diversion

With the passage of PC §1001.95, any sort of diversion program should proceed through the courts, if DA Diversion/Probation was appropriate PC §1001.95 diversion should be applied instead. In general, given that the diversionary period of PC §1001.95 is generally a year to 18 months, in order to ensure that the People are not prejudiced by a delay in the case, any agreement for PC §1001.95 diversion should include a waiver of jury trial by the defendant. If the defendant then fails PC §1001.95, the case can proceed expeditiously in front of a magistrate instead of jury. Of course, PC §1001.95 does not require our agreement and so the court may yet grant PC §1001.95 over our objection and the court may determine the conditions of PC §1001.95 diversion. Generally, an offer or agreement for diversion, that is outside of office standards should be discussed with the Assistant District Attorney before being offered. PC §1001.95 Diversion shall not be agreed to in any DUI case, nor in any DV case. Additionally, no devices should be used (i.e. dismissing a DV charge and adding a non-DV battery) to circumvent the legislature's prohibition of PC §1001.95 diversion in DV cases. As it relates to traffic offenses, care should be taken so that the defendant does not benefit from having committed a misdemeanor as opposed to an infraction (i.e. a person with a traffic ticket would have gotten a point and paid a fine, the diverted misdemeanant has a period of obey all laws, no point, and no out of pocket costs/fine). One possible way to avoid this is to ensure that the defendant pleads to an infraction related to their law violation and accepts misdemeanor diversion on their misdemeanor charge. This may require a waiver of any Kellett issue related to the infraction plea.

As to PC §1001.36 Mental Health Diversion as well as Veterans Diversion, in misdemeanor cases where there is no victim, and the case does not involve violence or a violation of §23152/23153 a Deputy District Attorney may evaluate a request for Mental Health Diversion. Any plan should be structured and have sufficient metrics so as to ensure that a Diversion approach would adequately assist the defendant through the current mental health situation. Deputy District Attorneys are strongly encouraged to consult with the Assistant District Attorney or District Attorney before agreeing to a Diversion plan.

Alternatives to Custody in Adult Criminal Cases

San Benito County Sheriff's Department administers a "CAP"—Custody Alternative Program—which allows convicted defendants to avoid actual custodial time by participation in a supervised release program. CAP 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 CAP. The District Attorney's office, in its discretion, may agree to settlements which would make a defendant eligible for CAP, but the final decision as to participation in the program rests with the San Benito County Sheriff. In the event of any defendant convicted of a 3rd DUI or more, CAP eligibility should be opposed.

San Benito 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 CAP, 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 San Benito County Probation. With electronic monitoring 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. These restrictions/denials should be sought in any 3rd DUI (or more serious) case.

Collaborative Courts

The District Attorney's Office supports drug and behavioral health courts. In conjunction with the Superior Court, if case numbers support it the District Attorney's Office is also supportive of Veteran's and other Collaborative Courts. Collaborative Courts are designed for those cases when the harms and risks posed by a defendant can be effectively managed within the Collaborative Court setting. If a particular defendant presents a substantial danger to the community the People will seek to address the risks posed by the defendant outside of a Collaborative Court setting.

When a defendant is participating in a Collaborative Court and the goal is to get the defendant into an inpatient residential treatment program, the People will at a minimum seek a term of jail that exceeds the defendant's current credit, with a term that the defendant may be released early to the custody of behavioral health or probation. This way, the defendant should be taken directly from the jail by probation or behavioral health court with less of a risk of an early release on the defendant's own recognizance.

Restitution Policies

Victims of crime who have sustained economic loss as a result of a crime are entitled to restitution from the defendant by the California Constitution. This entitlement cannot be waived by the District Attorney's Office and any agreement which waives or eliminates or sets restitution without agreement of the economic victim is not enforceable. It is the responsibility of the District Attorney's Office to ensure that victim's constitutional rights to restitution are safeguarded and enforced.

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.

Responsibility 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, San Benito 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.

Payments in restitution to victims oftentimes comes in partial amounts. It is the policy of the District Attorney's Office that regardless of the fact that a balance is owed, after six months of payments the amount of restitution collected by a defendant for a victim shall be paid to the victim. Victims should not have to wait until the full amount of restitution is paid before receiving the portion that the defendant has paid. Such Bi-Annual payments shall continue as long as the defendant continues to pay and the victim is owed a balance of restitution.

The District Attorney's Office does not take restitution payments whether by check or cash in court. Instead all payments must be made at the office so that the payment can be properly accounted for and appropriately processed.

Discovery Policies

Full and complete discovery in criminal cases is vital to its role in ensuring that justice is done. To that end:

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. If Defense Counsel provides a Letter of Representation on Firm Letterhead, initial discovery may be provided prior to arraignment, but after a complaint has been generated and filed. As our systems are or are going paperless, electronic discovery will likely be the exclusive means of obtaining discovery.

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.

Officer Involved Shooting Policy

Pursuant to AB 1506 (2019-2020), as of July 1, 2021 the primary investigator of Officer Involved Shootings is the California Dept. of Justice and the Attorney General of California. It is the policy of the District Attorney's Office to be responsive to requests from the Attorney General for resources and manpower.

According to Department of Justice Policy a Supervising Deputy Attorney General will coordinate with the local District Attorney's Office involving the incident and any related matters. The District Attorney's Office is to be highly responsive and attentive to the needs of the Department of Justice in such investigations.

Wrongful/Erroneous Conviction Review Policy

Wrongful and/or Erroneous convictions have a dual impact in causing injustice. First, and of greatest concern, the innocent suffer wrongfully. Second, the guilty often go completely free as the case is closed in the minds of those responsible to see justice done. At its core, the criminal justice system is a creation of human beings and as such may, from time to time, fail in its fundamental goal of protecting the innocent and holding the guilty accountable. Errors do occur, but it is better to admit error and endeavor to do better than to persist in error when it occurs. Any system made up of human beings is subject to error.

The criminal justice system is constantly advancing and improving. 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. Requests should adequately and reasonably state the nature of the error in conviction. Failure to adequately state the nature of the erroneous conviction and what evidence was erroneous (and not just disagreed with) may result in a summary denial.

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

(1) The conviction must have occurred in San Benito Superior Court

(2) The application for review must be based on credible and verifiable evidence of innocence; OR must be based upon a showing that evidence that was a substantial component of the determination of a person's guilt was faulty, erroneous, or otherwise calls into substantial question the reliability of the determination of the person's guilt.

and

(3) 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 San Benito County District Attorney, 419 Fourth St., Hollister, CA 95023; 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 San Benito County District Attorney and is intended as an additional or supplemental avenue for relief in the limited circumstances described herein.

RELATIONSHIP w/OUTSIDE AGENCIES AND ASSOCIATED POLICIES

Brown Act Policies

As stated in Art. II Sec. 1 of the California Constitution, "***ALL*** political power is inherent in the people. Government is instituted for their protection, security, and benefit…" to that end, the interplay between the right of the People to choose for themselves who shall represent them at local agencies is fundamental. The District Attorney's Office and its decisions can have a huge impact on these local agency elections if the District Attorney announces that someone has violated the law, is counseled regarding a violation of the law, or is charged with a criminal offense.

Commensurate with the understanding that it is the People who should choose their elected representatives, and not other elected officials who should be impacting their choice, it

is the policy of the District Attorney's Office to refrain from any opinion or comment regarding a Brown Act violation during the six months preceding an election for an elected office nearing election. Ultimately, the question of a Brown Act violation within 6 months of an election is first to be handled by the candidates for that position and brought to light for consideration by the electorate. If a Brown Act violation has occurred within the 6 months preceding an election the District Attorney's Office may yet render an opinion on the violation, issue a letter regarding the violation or prosecute regarding the violation but such a decision will be made public after the public has voted regarding the office in question. This is not to immunize conduct that violates the Brown Act, but instead, to scrupulously guarantee that the political process in not affected by the District Attorney's Office.

Furthermore, it is the policy of the District Attorney's Office to recognize that the Brown Act is fundamentally about guaranteeing to the People the means to effectuating their First Amendments rights, first regarding Free Speech, but second the right the Petition for a Redress of Grievances. These rights are fundamental to our people. At the same time, most local agency elected officials are part-time positions and not often occupied by lawyers but instead by decent people trying their best to represent their community and to have an effective meeting. Oftentimes these meetings can be contentious and run quite long, and even in the best of circumstances human frailties and weaknesses can be exposed as people's patience runs thin.

With both of those perspectives in mind, in the event of a Brown Act violation, it is the policy of the District Attorney's Office to begin with an informal reminder, then to escalate to a formal letter. If, within a year after a formal letter another Brown Act violation occurs the matter may proceed through the court process but first only seeking a misdemeanor diversion under PC§1001.95. If no violation has occurred of the Brown Act within the year of the formal letter and a new violation occurs the District Attorney's Office will issue another formal letter reminding parties of the importance of the Brown Act and the necessity that it be followed.

It is the position of the District Attorney's Office that the Brown Act should in general not be handled criminally. These policies are established with that perspective in mind. Parties are reminded that Brown Act violations may be litigated by affected parties and prevailing parties in Brown Act litigation can be awarded attorney's fees.

Media Relations

The District Attorney's office represents the interest of the People of the State of California. In order to properly serve our client, it is necessary that the office be reasonably available to questions from the media and the Press. In general, the District Attorney shall personally prepare and/or approve all formal and press and media releases.

Status inquiries on cases may be answered by the Deputy District Attorney assigned to the case. Information provided by any attorney employed by the District Attorney's office should be information which would otherwise be publicly available information contained in court files. 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. The policy of the San Benito County District Attorney is to respond to press and media promptly and accurately. At the same time, 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.

The Victim-Witness Coordinator or his/her designee, the District Attorney, the Assistant District Attorney and the Chief Investigator shall have access to the District Attorney's Social Media accounts and may post relevant and appropriate content regarding the activities of the office.

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 San Benito County District Attorney's Office, or by a San Benito 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.

BRADY POLICY REGARDING PEACE OFFICER RECORDS

Brady Material Defined

"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 or procedural grounds, 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.

Statement of Policy and Procedure

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. 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 prosecuteon.

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.4th 696. The California Supreme Court further clarified policies and procedures for disclosure of *Brady* information in *Association for Los Angeles Deputy Sheriffs v. Superior Court* (2019) 8 Cal. 5th 28 harmonizing the obligations for police officer privacy and obligations of disclosure pursuant to *Brady*. The court made clear that while the District Attorney's Office is responsible for the ultimate disclosure of *Brady*

information, Law Enforcement personnel are required to affirmatively share *Brady* information with the prosecution. *Id.* at 52.

Generally, 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). However, given the California Supreme Court's instruction, clear policies and procedure are necessary to ensure that both Law Enforcement and the District Attorney's Office comply with their respective obligation under *Brady.*

This policy is adopted to assist both the District Attorney's Office and Law Enforcement. The District Attorney and San Benito 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.

In *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696, the Supreme Court referenced a procedure that it thought modeled a "laudable" approach to both Law Enforcement and the District Attorney's *Brady* obligation. Consistent with *Johnson*, the District Attorney's perspective is that 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, annually the District Attorney's office will send a letter on letterhead to local law enforcement agencies reminding them of their respective *Brady* obligation and their affirmative obligation to disclose such information in their possession. The letter will both serve as a confirmation that such request has been made and that such *Brady* information has been disclosed. In the event that any new items of *Brady* relevance occur throughout the year the agencies are required to disclose those events if they occur during the year. Law enforcement agencies shall 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.

Law Enforcement Agency Procedure

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. 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.

3. 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. A notation shall be made in the Case Management System will be made for a witness with *Brady* information. Upon a witness with *Brady* information being added to a particular case, the deputy district attorney will be notified on the presence of *Brady* information regarding that particular witness. 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.

4. 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).

5. 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).

Brady Determinations Not Covered by the Above Procedure

The District Attorney's Office can learn about alleged law enforcement misconduct through direct complaints, through the office's own internal investigations, or through the office's own observations (i.e. an individual lying on the witness stand). In these circumstances the District Attorney's meets it *Brady* obligation in the following way:

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 cases where the information has a material affect on the reliability of past convictions, blanket notification to representatives of persons holding San Benito County Public Defender contracts and the San Benito 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 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. If the complaint is not sustained the materiality of the information shall be considered in light of all the information provided to the District Attorney, and a final determination shall be made on the total of materials provided to the District Attorney for review and evaluation.

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 not 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.

FILE CREATION, RETENTION AND DESTRUCTION POLICY

Case Files

Adult Case File Creation

Effective January 2, 2023, the files of the District Attorney's Office will be primarily paperless. Cases will be maintained in PbK electronically, and not by a physical file system. An attorney may request, on a case by case basis, for a physical file to be created for a felony, but these requests should be made sparingly and for significant cases. When a physical file is created, it will be cataloged by Karpel number. As electronic files are created after the case number the following code should be appended at the end of the court case number in the following manner:

Case Cat	Case Type Code	Court Case Identifier	
DUI	(Code DUI)	A	
DV	(Code DV)	D	
Homicide	(Code HO)	H	
Sex/290 Reg	(Code SREG)	S	
Strike Offense	(Code SVF)	X	
Traffic Case	(Code VC)	T	----- For NON DUI VC offenses

You may add any additional case type as you see appropriate, but if it falls within one of those 6 categories the appropriate case type box should be checked.

In addition all cases MUST have a case type completed for the most serious charge.

Felony	(Code FEL)	F
Misdemeanor	(Code MM)	M

In this way once a case is filed and we get a court case number admin staff will be able to put in the Court File number to read as follows:

(CASE #) (Severity Code) (Case Type Code(s))

For Example: CR-23-0000X FD

Adult Case File Retention/Destruction

Subject to adoption to the Board of Supervisors: 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.

i. For a misdemeanor case this means 30 days after the defendant is sentenced and no notice of appeal is filed, and for a felony case this means 60 days after the defendant is sentenced and no notice of appeal is filed.

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 cases 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

Special Provisions Regarding Health and Safety Code §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 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.

<u>Non-Case Files</u>

1. General paperwork may be destroyed two years after the date of receipt or upon scanning into Karpel into the relevant PbK file.

2. 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.

3. 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.

4. 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 San Benito County government.)

Electronic Materials Associated with Karpel Files

1. Frequently cases entered into Karpel have associated electronic evidence materials (i.e. body cam/dash cam/surveillance video) that are provided by law enforcement agencies. These electronic materials will be catalogued by the discovery clerk/investigative assistant and retained in file cabinets organized by Karpel number. The discovery clerk/investigative assistant will enter into Karpel under "Location" the location of the electronic evidence.

2. For closed misdemeanor cases, 2 years after the date of final adjudication (i.e. 30 days after judgment if no appeal filed, or 1 year after appeal is completed if case is appealed) this electronic evidence may be destroyed or recycled. The date the electronic evidence is destroyed/recycled will be notated in the "location" information in Karpel. If the information is retained on CD/DVD the CD/DVD may be destroyed, if the information is retained on a USB, the USB may be recycled for future use for future electronic media. The USB shall be formatted before it is returned to "use."