

SPECIAL DIRECTIVE 20-08

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: SENTENCING ENHANCEMENTS/ALLEGATIONS

DATE: DECEMBER 7, 2020

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

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

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

INTRODUCTION

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or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters.

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

¹ Mueller-Smith, Michael (2015) “The Criminal and Labor Market Impacts of Incarceration.”, *available at* <https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf>.

273.5(f)(1)), etc.], nor does it affect Evidence Code provisions allowing for the introduction of prior conduct (i.e., Evidence Code §1101, 1108, and 1109).

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

POLICY

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

II. PENDING CASES

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

III. SENTENCED CASES

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

APPENDIX

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

The Stanford Computational Policy Lab studied San Francisco's use of sentencing enhancements from 2005 to 2017. They released their report, *Sentencing Enhancements and Incarceration: San Francisco, 2005-2017* in October of 2019. The following policy is informed by the results of the Stanford study.

As noted in the study:

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

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

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

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

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

According to Pfaff, a growing body of evidence-based studies have suggested that policing deters; long sentences do little. What deters most effectively is the risk of detection and

apprehension in the first place. Other studies increasingly indicate that spending more time in prison can *cause* the risk of later reoffending; as the harms and traumas experienced in prison grow, the ability to reintegrate after release falls.

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

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

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