

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

INTRODUCTION

This direct referral policy *only* applies to crimes that can be charged as either a felony or a misdemeanor (“wobblers”). This direct referral policy *does not apply* if the offense can only be filed as a straight felony (e.g., murder, residential burglary, rape, kidnapping) or as a straight misdemeanor (e.g., violations of Penal Code §243(e)(1), first time violation of protective orders, vandalism with damage less than \$400.)

SCHEDULE I

DIRECT REFERRAL CRITERIA FOR PENAL CODE §17(b)(4) OFFENSES

The following offenses must be initially reviewed by the District Attorney’s Office if the crime is a “wobbler” and any of the following factors are present:

Grand Theft (Penal Code §487(a))

- The suspect has a prior serious or violent felony conviction (“Strikes”) or 290 registration requirement
- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related convictions within the last five years
- The theft involved the use of credit cards or constituted a form of identity theft
- The aggregated value of attempted or actual theft exceeded \$2,500

Auto Burglary (Penal Code §459)

- The suspect has a prior serious or violent felony conviction (“Strikes”) or 290 registration requirement
- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related convictions within the last five years
- The offense involved burglary of more than one vehicle
- The aggregated damage (damage to car plus damage/loss of personal property inside) exceeded \$2,500

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Forgery Charges Punishable under Penal Code section 473(a)

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has a prior felony or misdemeanor conviction for theft or fraud-related offenses within the last five years
- The offense involved evidence of identity theft (e.g., phony license, possession of multiple credit cards with different names)
- The offense involved a forgery of more than one document
- The aggregate value of attempted or actual theft exceeded \$2,500

Passing a Non-Sufficient Funds Check between \$951-2,500 (Penal Code §476a(a))

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related convictions within the last five years
- The offense involved evidence of identity theft (e.g., phony license, possession of multiple credit cards with different names)
- The aggregate value of attempted or actual theft exceeded \$2,500

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Hit and Run Driving Causing Injury to Another Person (Penal Code §20001)

- The offense involved significant injury

Examples of significant injuries include, but are not limited to:

- Loss of consciousness
- Injuries requiring admission to the hospital
- Bone fractures
- Injuries requiring sutures

Examples of non-significant injuries include, but are not limited to:

- Complaint of pain only
- Minor bruising
- Swelling
- Abrasions

Note: If at the scene there is only a complaint of pain, the investigating officer should interview the injured party, family member of the injured party or medical personnel in order to assess whether the injury is non-significant or significant prior to presenting the case for filing. This interview should be incorporated in a supplemental report. If the injury is non-significant the case may be directly referred to a city attorney or city prosecutor for misdemeanor filing consideration.

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Driving Under the Influence Causing Bodily Injury (Vehicle Code §23153) (Excluding offenses punishable under Vehicle Code §§ 23560, 23566(a) & 23566(b))

- The offense involved significant injury

Examples of significant injuries include, but are not limited to:

- Loss of consciousness
- Injuries requiring admission to the hospital
- Bone fractures
- Injuries requiring sutures

Examples of non-significant injuries include, but are not limited to:

- Complaint of pain only
- Minor bruising
- Swelling
- Abrasions

Note: If at the scene there is only a complaint of pain, the investigating officer should interview the injured party, family member of the injured party or medical personnel in order to assess whether the injury is non-significant or significant prior to presenting the case for filing. This interview should be incorporated in a supplemental report. If the injury is non-significant the case may be directly referred to a city attorney or city prosecutor for misdemeanor filing consideration.

Vandalism (Penal Code §594)

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has a prior felony or misdemeanor conviction for vandalism
- There is evidence that the crime was motivated by gang involvement or that the crime is hate-related
- The property damage exceeded \$2,500

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Weapons Possession¹

- The suspect has a prior serious or violent felony conviction or 290 registration requirement
- The suspect has a prior conviction for weapons or assault crimes
- A weapon was used in the commission of a crime
- The suspect is a gang member or associate gang member
- The weapon is a firearm

Commercial Burglary (Penal Code §459 (Not during business hours or amount exceeding \$950))

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related convictions within the last five years
- The suspect used tools in the entry
- The suspect used an electrical device to defeat an alarm

¹ Penal Code §§ 20310, 20410, 20510, 20610, 20710, 20910, 21110, 21310, 21810, 22210, 22410, 24310, 24410, 30210(a), 30210(b).

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Possession of a Controlled Substance (Health and Safety Code §§11375/11382)

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has a prior felony or misdemeanor conviction for drug-related offenses within the last five years
- The quantity possessed indicates major sales activity

Unlawful Driving or Taking of a Vehicle (Vehicle Code §10851; Penal Code §487(d)(1))

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has more than three prior felony or misdemeanor theft, receiving stolen property or other fraud-related convictions within the last five years
- The suspect has a prior felony or misdemeanor conviction for auto theft, within last five years
- The theft appears related to a criminal enterprise or chop-shop operation
- There was a pursuit involved in apprehension or arrest
- There was significant damage to the victim's vehicle

Counterfeit of Registered Mark (Penal Code §350(a))

- The street value of the goods exceeded \$2,500
- The suspect has a prior felony conviction
- The suspect has a prior counterfeit or piracy conviction within the last five years

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Assault with Force Likely to Produce GBI (Penal Code §245(a)(4))²

- The suspect has a serious or violent felony prior conviction ("Strikes") or 290 registration requirement
- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence or weapons
- The victim suffered a significant injury (If medical attention was warranted, even if the victim declined, the case should be reviewed by the District Attorney's Office)

Examples of significant injury include, but are not limited to:

- Extensive bruising
- Open wounds that required stitches or other medical care
- Broken bones
- Petechiae (Minute discolored spots on the surface of the skin or mucous membrane due to ruptured blood vessel)
- Loss of consciousness

Examples of non-significant injuries include, but are not limited to:

- Minor redness
- Swelling
- Scratches
- Moderate bruising
- The suspect strangled or suffocated the victim. Strangulation is knowingly or intentionally impeding the normal breathing or circulation of the blood of another by applying pressure on the throat or neck of a person.

² For cases involving family members or intimate partners, please refer to the standards for violations of Penal Code §273.5.

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Criminal Threats (Penal Code §422)

- The suspect has a serious or violent felony prior conviction ("Strikes") or 290 registration requirement
- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence or weapons
- A weapon was used, brandished or mentioned in the commission of the offense

Note: All domestic violence-related criminal threats must be initially reviewed by the District Attorney's Office. A crime involving domestic violence is when the victim is a spouse or former spouse, cohabitant or former cohabitant, person with whom suspect has or had a child, person with whom suspect is having or has had a dating or engagement relationship, a child of a party, or any other person related by blood or marriage.³

Unlawful Sexual Intercourse (Penal Code §261.5)

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has a prior investigation or arrest for committing a sexual offense
- The suspect is 21 years of age or older
- The victim is 15 years of age or younger
- The sexual activity was forcible
- There was alcohol and/or drugs involved
- The victim suffered from a traumatic condition (including pregnancy) in the instant case

³ See Penal Code §13700 and Family Code § 6211.

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Intimate Partner Battering (Domestic Violence) (Penal Code §273.5)

- The suspect has a prior serious or violent felony conviction ("Strikes") within the last 10 years, or 290 registration requirement
- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence or weapons within the last 10 years
- A deadly weapon was used or brandished in the commission of the current offense. A deadly weapon is "any object, instrument, or weapon that is inherently deadly or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury."⁴
- The victim suffered a significant injury (If medical attention was warranted, even if the victim declined, the case should be reviewed by the District Attorney's Office)

Examples of significant injury include, but are not limited to:

- Extensive bruising
- Open wounds that required stitches or other medical care
- Broken bones
- Petechiae (Minute discolored spots on the surface of the skin or mucous membrane due to ruptured blood vessel)
- Loss of consciousness

Examples of non-significant injuries include, but are not limited to:

- Minor redness
- Swelling
- Scratches
- Moderate bruising
- The suspect strangled or suffocated the victim. Strangulation is knowingly or intentionally impeding the normal breathing or circulation of the blood of another by applying pressure on the throat or neck of a person.
- The victim is pregnant and the suspect directed physical force at the victim's abdomen or made verbal threats against the pregnancy
- The victim was particularly vulnerable (asleep, developmentally disabled, physically impaired)
- The suspect has a history of making homicidal and/or suicidal threats
- The suspect previously engaged or is currently engaging in stalking behavior
- The suspect has threatened to abduct and/or injure children or other family members
- The suspect caused an injury to a pet(s)

⁴ See CALCRIM 875.

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

The following offenses must be initially reviewed by the District Attorney's Office if the crime is a "wobbler" and any of the following factors are present:

Child Abuse/Endangerment (Penal Code §273a(a)/273d)

Note: Penal Code §273a(a) requires the likelihood of great bodily injury or death. Section 273d applies when injury is inflicted during discipline. Though a parent has a right to discipline his or her child, there are limits under the law, and when a parent actually causes physical injury, then a charge of violating section 273d may be warranted (e.g., parent punches child in face for bad grades). Section 273(a)(b) are child abuse cases where there is no likelihood of GBI or death and are straight misdemeanors, not wobblers.

If the victim is **under** the age of 8, the case should be brought first to the District Attorney's Office.

If the victim is **over** the age of 8, the case should be brought first to the District Attorney's Office **if**:

- The suspect has a prior serious or violent felony conviction ("Strikes") or 290 registration requirement
- The suspect has a prior felony or misdemeanor conviction involving violence, threats of violence, or weapons
- There is prior DCFS contact (the results of a check of both ESCARS and the Family and Children's Index (FCI) confirming that there is no record of prior DCFS contact must be included in the police report submitted for review by the local prosecutor)
- A deadly weapon was used or brandished in the commission of the current offense. A deadly weapon is "any object, instrument, or weapon that is inherently deadly or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury."⁵
- The suspect punched, strangled, suffocated or burned a child
- The victim suffered a significant injury (If medical attention was warranted, even if the victim declined, the case should be reviewed by the District Attorney's Office)

Examples of significant injury include, but are not limited to:

- Extensive bruising
- Injuries requiring admission to the hospital
- Open wounds that required stitches or other medical care
- Broken bones
- Petechiae (Minute discolored spots on the surface of the skin or mucous membrane due to ruptured blood vessel)

⁵ See CALCRIM 875.

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

- Loss of consciousness

Examples of non-significant injuries, include, but not limited to:

- Minor redness
- Swelling
- Scratches
- Moderate bruising

INTER-AGENCY OPERATIONAL AGREEMENT
PENAL CODE §17(B)(4) REFERRALS

THE LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE SHALL REVIEW ALL CASES INVOLVING:

- Penal Code §646.9 – Stalking
- Penal Code §422.7 – Hate Crimes
- Penal Code §368 – Elder Abuse
- Penal Code §136.1 – Witness Intimidation
- Penal Code §243(c)(1), (2) – Crimes Against Peace Officers
- All allegations involving police misconduct or public official corruption