

The following best practice was approved by the District Attorney on November 3, 2020 and replaces all previous Best Practices and Guidelines.

SPECIFIC CRIMES BEST PRACTICES: PENAL CODE SECTIONS 69 AND 148

I. Officer/Agency Notification:

- A. Officers Entitled to Restitution:** In instances in which a peace officer may be entitled to restitution, a representative from the district attorney's office shall notify and contact any involved officer prior to a disposition, reduction or dismissal of the charge of PC 69 and/or PC 148 pursuant to Marsy's Law. (Article 1, Section 28.)
- B. Contacting the Involved Officer(s) and Supervision When Disposition Deviating from the Charged Offense(s):** Prior to the dismissal or deviation from the charged offense(s) of PC 69 and/or PC 148 the assigned DDA and their MDDA are expected to notify any officer(s) involved and their immediate supervisor(s) of the expected dismissal or deviation from the charged offense(s) of PC 69 and PC 148.
- C. Reviewing DDA/MDDA re PC 69 cases:** All felony cases alleging violations of Penal Code section 69 involving the use of a weapon against a peace officer or resulting in an injury other than minor scrapes, cuts or bruises should be reviewed by the designated CAPO DDA in each region. If that DDA is not able to review the case for filing, the case should be reviewed by the Gang Unit MDDA or their designee.
- D. Reviewing Prosecutor of PC 69 and PC 148 Cases:** Cases submitted to the Riverside County District Attorney's office for filing consideration for charges of Penal Code Sections 69 and/or 148, not accompanied by existing body worn camera video evidence, should be returned to the submitting agency for further investigation citing the lack of body worn camera video evidence.

The following policy was approved by the District Attorney on November 3, 2020 and replaces all previously Related Policies, Protocols and Guidelines.

SPECIFIC CRIMES POLICY: PENAL CODE SECTIONS 69 AND 148

- I. **INTRODUCTION:** To achieve uniformity, the District Attorney's Office institutes the following policy regarding the prosecution of any resisting arrest cases within the meaning of Penal Code sections 69 and 148.

II. **FILING AND CASE REVIEW:**

A. **Evidence:**

1. **Review of All Relevant Evidence Prior to Filing Decision:** The assigned Deputy District Attorney (DDA) shall review all relevant body worn camera footage and any other available relevant evidence before a filing decision is made.
2. **Filing Evaluation based on Reasonable Doubt Standard:** The reviewing DDA shall carefully evaluate these cases to ensure the case can be proven beyond a reasonable doubt. Please refer to the Crime Charging Policy.

B. **Civil Liability:**

1. **Not to Be Considered:** Civil liability on behalf of a law enforcement agency, or an individual officer, should never be a consideration in determining whether to file a charge any charge, including a charge of Penal Code section 148 or 69. Any consideration of civil liability is not to be considered when determining whether a crime has been committed.
2. **Independent Ethical Obligations:** DDAs must follow their independent ethical obligations for the filing and prosecution of all cases.

III. **DISPOSITIONS:**

- A. **Staffing:** If a DDA is seeking to dismiss, change, or otherwise reduce a count of Penal Code section 148 or 69, the case must be staffed by the assigned DDA's regional Assistant District Attorney (ADA), or their designee.
1. **Reduction PC 69 Charge from a felony to a misdemeanor:** A disposition staffing is **not** required when reducing a violation of Penal Code section 69 from a felony to a misdemeanor. Such a reduction is permissible within the

bounds of the Discretion Policy and Memorandum provided to the assigned DDA by their MDDA.

B. Civil Liability:

1. **Independent Ethical Obligations:** Prosecutors must follow their independent ethical obligations for the filing and prosecution of all cases.
2. **Not to be Considered:** Civil liability on behalf of a law enforcement agency or an individual officer should never be a consideration for the reduction or dismissal of a charge of Penal Code section 148 or 69.
3. **Stipulations to Probable Cause:** A prosecutor shall not require, solicit, or accept a stipulation of probable cause for arrest in exchange for dismissal of a criminal case.

IV. Conflicts of Interest:

- A. **Recusal from Prosecution:** If an assigned prosecutor has a relationship with the officer involved in the arrest, that gives rise to the appearance of impropriety, that prosecutor shall alert their direct supervisor who, in consultation with the MDDA of S.O.A.P., will determine if a conflict of interest exists. In the event it is determined a conflict exists, the filing review and/or prosecution of the case will be reassigned to another prosecutor.
- B. **Recusal from Decision re Disposition:** If any prosecutor or investigator present at a disposition staffing related to a PC 69 and PC 148 charge has a relationship with the officer(s) involved in the arrest, that gives rise to the appearance of impropriety, those prosecutors and/or investigators shall recuse themselves from the staffing and from making any decision about the disposition of the case, unless required to do so by law.
- C. **Incident Resulted in an OIS or OIF:** If the incident being reviewed resulted in an Officer Involved Shooting (OIS) or Officer Involved Fatality (OIF), the DDA who attended the OIS or OIF call-out, and is responsible for drafting the staffing memorandum, shall not participate in the filing or disposition of the underlying criminal case. However, the prosecutor assigned to the resisting arrest case shall be responsible for obtaining any and all statutory, constitutional, and ethically required discovery from the OIS or OIF DDA.