

CHIEF OF DETECTIVES

NOTICE 8.3

December 11, 2018

TO: All Sworn Personnel

FROM: Chief of Detectives

SUBJECT: JUVENILE CLEARANCE OF NON-CUSTODY CRIME REPORTS

The Los Angeles County District Attorney's Office (LADA) and the Probation Department (Probation) have set forth procedures for the District Attorney's Office to review non-custody consensual sexual acts between two minors similar in age.

The LADA published a notice stating an exception may be made for a limited class of cases involving a non-book juvenile. These cases may be reviewed without first being presented to the Probation Department if all the following are satisfied:


- The case involves consensual sexual contact between minors with no more than three years difference in age where there is no evidence of force or coercion, and where it would be inequitable to charge one minor and not the other, such as, but not limited to, violations of Penal Code (PC) §261.5.
- A complete investigation package shall be submitted to the filing Deputy District Attorney, including all reports, pictures and audio/video files, witness statements, and any efforts made to interview the accused.

The LADA protocol supersedes previous informal protocols that arose when cases were brought directly to the LADA, pursuant to the agreement with Probation Department.

Any questions regarding this Notice may be directed to Detective Christine Ruedas, Juvenile Division Consultant, at (213) 486-0560.

APPROVED:


SEAN W. MALINOWSKI, Deputy Chief
Chief of Detectives


BOB GREEN, Deputy Chief
Chief of Staff
Office of the Chief of Police

Attachment

DISTRIBUTION "A"

MEMORANDUM

TO: ALL DISTRICT ATTORNEY PERSONNEL
Juvenile Division

FROM: SHAWN N. RANDOLPH, Head Deputy
Juvenile Division

SUBJECT: NON-BOOK REVIEWS AND DECLINATIONS

DATE: OCTOBER 5, 2018

This policy covers cases presented for filing that have not been cleared and sorted by the Probation Department (Probation). Juvenile filings are different from adult filings because Probation is legally mandated to participate in the review process. Welfare and Institutions Code (WIC) §§652 and 653.5 require that law enforcement agencies (LEAs) submit non-detained cases¹ to Probation whenever the LEAs believe a case should be filed.² WIC mandates that Probation must accept all non-detained cases and “investigate” them to determine if informal services are warranted or if the case should be presented to the District Attorney’s Office (LADA) for filing, also known as “sorting.” All non-detained cases must be brought to Probation for sorting prior to LADA review. Probation has an internal requirement that a non-detained case will not be accepted for sorting unless a citation is attached.

There are times when an LEA seeks LADA review of a case where it has not arrested or cited the minor and has therefore not presented the case to Probation.³ These requests for direct review deprive Probation of their legal mandate to sort. An LEA may seek a direct review of a case for many reasons, including that the LEA thinks it does not have a fileable case and therefore it does not want to present the case to Probation because doing so would result in the minor gaining a criminal record for a case which the LEA believes would be an LADA reject. Since WIC §§652 and 653.5 mandate that Probation receive and investigate all cases to determine if Juvenile court proceedings should be initiated, cases should not be accepted for review without having first

¹ Detained cases and arrest warrant cases do not have to be submitted to Probation by LEAs prior to being filed with the LADA’s office.

² While this legal mandate has been in effect since 1961, there was a period of time, including up until 2013-2014, that the Los Angeles County District Attorney’s office received all cases directly from LEAs and conducted the sorting process, determining which cases the LADA would keep and which cases would be referred to Probation. In 2013-2014, this procedure changed back to what the WIC legally mandates. Since that time, Probation receives all non-detained cases and makes a determination as to whether they will keep the case to offer the minor their informal, pre-filing services or if they will forward the case the LADA’s office to be evaluated for filing.

³ When a case is presented to Probation, Probation will create Probation Department Juvenile (PDJ) and Juvenile Automated Index (JAI) numbers which are entered into various criminal databases and which will become part of the minor’s criminal record. This is true as long as the minor has been cited by the LEA regardless of whether the minor was booked.

been presented to Probation. An exception may be made and a case may be reviewed without being presented to Probation if all the following are satisfied:

- The case involves consensual sexual contact between minors with no more than three years difference in age where there is no evidence of force or coercion, and where it would be inequitable to charge one minor and not the other, such as, but not limited to, violations of Penal Code (PC) §261.5. A separate worksheet must be submitted for each minor and a declination may be entered as to each minor. (Special instructions on how to decline these cases in Juvenile Case Management (JCM) are referred to below.)
- The filing deputy district attorney (DDA) believes the case does not warrant that the minors be arrested and cited.

If the filing DDA determines that a deviation from WIC §§652 and 653.5 is warranted on a case for these limited reasons, the following must occur:

- The LEA must present a complete investigation package including all reports, pictures and audio/video files. All material witnesses should be interviewed. Substantial efforts must be made to obtain a legally admissible statement from the accused. (Legal Policies Manual (LPM) §2.02.01)
- If the case investigation appears significantly incomplete for any reason, a DDA shall decline to undertake a direct review of the case and insist that the LEA conduct further investigation to resolve any major deficiencies. (LPM §2.02.02)

Probation has agreed that this very limited class of cases may be brought directly to the LADA for review.⁴ In all other cases, permission to review a case for filing or declination without Probation's involvement should be made by the deputy-in-charge (DIC). Such a case should involve exceptionally rare circumstances, and obvious equities. It is not permissible to review and reject cases without having them go to Probation for sorting simply because it appears that there may be insufficient evidence to file charges, or if the case is a pre-arrest diversion fall-off that cannot be filed due to the statute of limitations time limits being exceeded.⁵

If the filing DDA, based upon a thorough review of the case in appropriate circumstances as outlined above, thinks that the case should be declined, the filing DDA may issue a non-book declination. The declination will be entered in JCM. *(To avoid a report to DOJ, staff should go to 3. Case, and select Non-Book. Staff should select Non-Book Decline from the Non-Book Type drop-down list. The case should not otherwise be rejected/declined. A Charge Evaluation Worksheet will be generated.)* If, however, the filing DDA thinks the case should be filed or thinks that the case is not a reject because it requires further investigation, the DDA shall return the case filing package to the LEA. *(Staff should go to 3. Case, and select Non-Book. Staff should select Non-book Return to LEA from the Non-Book Type drop-down list. The case should not otherwise be rejected/declined. A Charge Evaluation Worksheet will not be generated.)* Any

⁴ Probation Deputy Chief Felicia Cotton, in consultation with County Counsel for Probation Carrie Clarke and Bureau Chief Sharon Harada, agreed to this limited exception.

⁵ There will be no record of unsuccessful efforts at diversion available to Probation or the LADA or to other law enforcement agencies if the case is not brought to Probation.

case that the filing DDA determines is not a reject, must be returned to the LEA so that the LEA can exercise its discretion under WIC §626 to release or divert the minor or, in the alternative, present the case to Probation pursuant to WIC §§652 and 653.5. For further instructions on JCM entries, please refer to the *Non-Book Process* handout attached.

LEAs have the discretion to determine that there is insufficient evidence for a filing and to elect, in their discretion, to close out their case without district attorney involvement. PC §849(b) allows LEAs to release a person from custody if the officer is satisfied that there are insufficient grounds to constitute a criminal complaint. WIC §626 allows LEAs the discretion to release or divert minors without Probation or district attorney involvement on most crimes (except WIC §707(b) offenses and felonies involving firearms). Further, if a minor is cited, booked and/or presented to Probation, and PDJ and JAI records are created, the court has wide latitude to seal the minor's record.

1. Prior Informal Protocols Pertaining to “Non-book” Reviews

This protocol supersedes previous informal protocols that arose when cases were brought directly to the LADA, when the LADA was responsible (pursuant to agreement with Probation) for sorting. In 2013, the agreement wherein the Probation Department allowed the LADA to sort cases was rescinded and the sorting became the sole responsibility of Probation, as legally mandated by the WIC. As such, unless an LEA seeks a detained or a warrant filing, or presents a case for consideration within the guidelines stated herein, all cases must be brought to Probation prior to filing review by the LADA.