

TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

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PENAL CODE 741 AND RACE BLIND CHARGING BY PROSECUTORS

I. PURPOSE

To provide Department personnel with information and guidance on the new prosecutorial guidelines for “race-blind charging”.

II. SCOPE

This Training Bulletin applies to all Department personnel.

III. BACKGROUND

In September 2022, the California Legislature approved AB 2778, which directed the California Department of Justice to create guidelines for California prosecutorial “race-blind charging” and implement it by January 1, 2025. AB 2778 is codified in Penal Code section 741.

V. PROCEDURES

- A. Beginning January 1, 2025, the San Diego County District Attorney’s Office and San Diego City Attorney’s Office must comply with Penal Code section 741.
- B. Penal Code section 741 requires that prosecutorial agencies do the following steps with cases before filing charges:
 - 1. The prosecuting agency shall redact the race and ethnicity, including words or terms that would imply or suggest a person is of a particular race or ethnicity for any suspect, victim, or witness.

2. A prosecutor will perform an initial charging evaluation based on the redacted reports and decide as to whether or not to charge the case.
3. The same prosecutor shall then complete a second charging evaluation, this time using unredacted reports and all available evidence.
4. The prosecutor must document when:
 - a. The initial race-blind evaluation resulted in a decision not to charge but the second review determined charges be filed.
 - b. The initial race-blind evaluation resulted in a decision to charge but the second review determined charges not to be filed.

NOTE: The explanation for the change in charging decision shall be part of the case record and may be discoverable upon request.

5. Certain case types may be exempt from this process, including:
 - a. Homicides;
 - b. Hate Crimes;
 - c. Physical Confrontations captured on video;
 - d. Domestic violence;
 - e. Sex Crimes;
 - f. Gang crimes;
 - g. Crimes involving sexual assault;
 - h. Physical abuse or neglect relying on upon either a forensic interview of a child or interviews of multiple victims or multiple defendants;
 - i. Financial crimes with voluminous records;
 - j. Public integrity crimes, and;

- k. Cases where the prosecuting agency has participated in the pre-charging investigation such as reviewing search warrants or advising law enforcement with the investigation.

VI. IMPACT ON THE PROSECUTORIAL AGENCIES

- A. The law did not include additional funds or resources for prosecution offices to meet these responsibilities.
- B. Reviewing cases will take significantly more prosecutorial staff time and require the assistance of more personnel.
 - 1. Each case is processed and entered into case management system.
 - 2. The case then needs to be redacted and evaluated twice by the prosecutor, who will need to properly document their decisions and support any changes in their assessments.

VII. WHAT SDDP PERSONNEL CAN DO TO HELP

- A. Prosecutorial agencies will need more time to review cases much earlier for suspects who are in custody or have a bail to return date.
- B. Department personnel are to complete and submit cases for prosecution as soon as possible.
- C. Clearly note if search warrants were obtained prior to submitting the case for an issuing decision.
- D. Any further guidance from the DA and CA's offices will be provided to Department personnel as necessary.