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January 12, 2021

Ms. Michelle Hanisee  
President  
Association of Deputy District Attorneys  
515 S. Flower Street, 18th Floor  
Los Angeles, CA 90071

Dear Ms. Hanisee,

The California District Attorneys Association (CDAA) is an organization for California's deputy district attorneys and the individual elected District Attorneys who lead them. Complementing CDAA's primary mission of educating and training the state's approximately 5,000 prosecutors, we also educate the public about the many challenges that prosecutors face in the courtroom in their pursuit of justice on behalf of California's crime victims.

CDAA is not a regulatory body and does not typically address policy differences among the 58 elected District Attorneys. However, CDAA believes it must act when policies implemented by an individual District Attorney go beyond the exercise of discretion to contravene the state constitution and prosecutor ethics.

CDAA has grave concerns that recent policy directives implemented by the newly elected Los Angeles County District Attorney George Gascón undermines California's bedrock expectation that prosecutors will never abandon their obligation to advocate passionately for crime victims. These mandates ignore our laws and governing ethical standards. Under threat of insubordination charges and termination, such directives prevent Los Angeles County prosecutors from carrying out the statutory and constitutional obligations they are mandated to perform on behalf of crime victims. We note Mr. Gascón previously served two terms as San Francisco County District Attorney and was a member of CDAA.

CDAA's membership has wholeheartedly committed itself to eliminating from our criminal justice system all forms of bias and discrimination, express or implied. However, CDAA is compelled to object when policy directives do not reform but instead subvert our system of justice and the ability of prosecutors to advocate on behalf of crime victims.

In California, a crime victim's rights are so cherished that our state constitution took care to enumerate them specifically: "Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California." (Cal. Const., art. 1, § 28(a)(2).) "California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity." (*Ibid.*)

Our constitution rightly connects a crime victim's realization of justice to *the personal safety and welfare of all of California's citizens*, and unequivocally encompasses a clear warning that—when justice for a crime victim is threatened—*we are collectively threatened*.

The Los Angeles County District Attorney's new policy directives ignore this most vital of constitutional mandates. Although these policies are limited to Los Angeles County, the reverberations will be felt statewide. The Los Angeles County DA's Office has historically served as a persuasive state influence. The new policy directives imperil this legacy.

Mr. Gascón delivered several instructions through a series of Special Directives issued on December 7, 2020.

### **Sentencing Enhancement Directive**

The Special Directive regarding sentencing enhancements is likely the most troubling. That policy states, "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." Such a proposition is patently untrue.

Crime "enhancements" are a foundational to the fair administration of justice. They ensure punishment fits the crime by taking into consideration both the facts and circumstances of the present crime and the offender's prior criminal record. By prohibiting prosecutors from pursuing enhancements (and by directing that prosecutors dismiss pending enhancements in the "interests of justice"), this policy eliminates the graduated system of punishment enacted by the Legislature and the People of California.

This directive will not work in practice. For example, if a defendant commits a robbery (a "strike") by pointing a handgun at a store clerk, California law recognizes that he can be punished for both the act of robbing the clerk and his use of the gun. By prohibiting the gun enhancement, this new policy seeks to punish a gun-wielding robber the same as a

defendant who snatches a purse from a victim's shoulder. Worse, if this defendant commits yet another robbery he would effectively be treated as a first-time offender. In fact, at least in Los Angeles County, the defendant could commit an endless string of robberies and still face no greater punishment for the successive crimes.

This directive proved so contentious that it had to be twice amended within a matter of days. Imagine that the above defendant *shot* his victim during a robbery. California law authorizes gun-use enhancements, yet, shockingly, Los Angeles county prosecutors would be prohibited from using those enhancements to protect the community. On December 18, 2020, this directive was amended to allow for a gun discharge allegation, but only in "extraordinary circumstances with written Bureau Director approval upon written recommendation by the Head Deputy ...."

Criminals in Los Angeles County have been bestowed an unimaginable windfall. Owing to these new directives, in Los Angeles County today a gunman might open fire and kill dozens, yet prosecutors cannot seek life imprisonment *without the possibility of parole*, because they are categorically prohibited from alleging this enhancement. A one-size-fits-all approach to individuals charged with crime is both arbitrary and ineffective. By prohibiting prosecutors from using the basic tools necessary to seek justice, the District Attorney figuratively places his hand upon the scales of justice, and tips that scale against crime victims, in favor of criminal defendants.

### **Bail Directive**

In a very limited sense, CDAA agrees with this directive's observation that despite "California voters [choosing] not to implement SB 10 through the passage of Proposition 25, the conversation about bail reform remains active and robust." However, this directive commands that prosecutors stop providing the courts with case-specific guidance on bail, which is usually based on a victim's safety, the public's safety, and an accused's demonstrated history of past violence and flight risk. This directive instead casts criminal offenders (described as "court-involved individuals") as the real victims: "It is our duty ... [to] ensur[e] that our office's prosecutorial actions do not inflict needless harm on court-involved individuals through unnecessary incarceration."

The directive further states that prosecutors may "not request cash bail for any ... non-serious felony, or non-violent felony offense[.]" thereby eliminating a prosecutor's discretion to seek bail in cases involving the *actual* infliction of violence. This clearly violates a victim's constitutional right to have their safety considered in setting bail. For example, bail may not be requested by Los Angeles County prosecutors in some felony

cases involving violence, such as assault likely to cause great bodily injury, in violation of Penal Code section 245(a)(4).

Our constitution confers on crime victims the right to expect that a criminal offender will be “appropriately detained in custody.” (Cal. Const., art. 1, § 28(a)(4).) It also confers on a crime victim the right “[t]o have the safety of the victim and the victim’s family considered in fixing the amount of bail and release conditions for the defendant.” (Cal. Const., art. 1, § 28(a)(16).) *Yet this bail directive prevents prosecutors from advocating for crime victims. In fact, it never even refers to victims, much less a victim’s constitutional rights.*

### **Parole Hearing Directive**

In another example illustrating a disregard for a victim’s rights, yet another directive requires that Los Angeles County prosecutors not attend parole hearings. Moreover, prosecutors are directed to support—in writing—a grant of parole to those inmates who have served a minimum incarceration term. This directive requires that prosecutors cease from evaluating the ongoing criminal propensities of a prison inmate, because there is “already a presumption that people shall be released when they have reached their minimum eligibility parole date.” In other words, prosecutors are now directed to “presume” that an inmate does not pose a danger to the victim or to the public.

Despite the claim that a prosecutor’s role at a parole hearing is “limited,” prosecutors have always played an important role in helping ensure that the Parole Board does not release inmates who still pose an unreasonable risk of danger to a victim or to the public. (Cal. Code Regs., title 15, § 2281(a).) “The role of the prosecutor is to comment on the facts of the case and present an opinion about the appropriate disposition.” (*Id.* at § 2030(d)(2).)

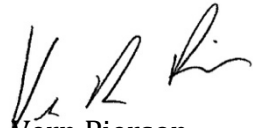
Los Angeles County’s crime victims are already being shortchanged by directives that tie the hands of prosecutors against seeking just and appropriate sentences. To add insult to injury, this directive again tips the scales of justice against crime victims, by requiring those same prosecutors to later *facilitate* an inmate’s release, without regard for the victim’s needs and wishes, nor the public’s safety.

Los Angeles County’s prosecutors have been placed in an impossible position, having been directed to disregard California’s rule of law and the constitutionally protected rights of victims of crime. Despite arbitrary directives, prosecutors are legally bound to “support the Constitution of the United States and the Constitution of the State of California” (Bus. & Prof. Code, § 6067) and to “support the Constitution and laws ... of this state” (*Id.*, § 6068(a)), which includes advocating for the rights of victims (Cal. Const., art. 1, § 28(a)).

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CDAА stands firm with Los Angeles County deputy district attorneys and victims and their families. In seeking justice, prosecutors work relentlessly and courageously for California's crime victims. Even in the most perfect of circumstances, the job of a prosecutor has always been exceptionally challenging. Now Los Angeles County's deputy district attorneys face unprecedented demands to ignore the very oath they take as officers of the court. CDAА cannot remain silent when the ethical responsibilities of our colleagues are threatened in this manner. Nor should Californians turn a blind eye to this emerging public safety tragedy; they deserve better.

Sincerely,



Vern Pierson  
CDAА President  
El Dorado County District Attorney



Michael Hestrin  
CDAА Ethics Committee Co-Chair  
Riverside County District Attorney