



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

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MEMORANDUM FOR DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES
ATTORNEYS
UNITED STATES ATTORNEYS
HEADS OF LITIGATING COMPONENTS

FROM: THE DEPUTY ATTORNEY GENERAL *Lin M. MacD* 10/1/21

SUBJECT: Ensuring Appropriate Coordination with State, Local and Tribal
Law Enforcement Authorities

The Department must be vigilant in protecting the communities it serves, including the most vulnerable segments of our population. When considering whether to initiate federal criminal charges, we must never forget the people who put their trust in the Department to keep them safe. This trust is a privilege each of us must earn every day. Often, fulfilling our core public safety mission—and ensuring justice is done—requires close coordination with state, local, or tribal law enforcement partners. Today, I am directing a modification to the Department’s policies to emphasize the need for such collaboration when our prosecutors believe the Department is unable to bring federal criminal charges.

The Department’s law enforcement officials and government attorneys must be particularly mindful of our duty to promote public safety when there may be an ongoing risk of violence or harm to victims. Preventing violence or harm must be our top priority. Nowhere is this obligation more important than when vulnerable populations—including minors—are at risk, as their victimization ripples through families, communities, and society at large. The Department is committed to identifying, investigating, and enforcing all federal laws against those who target these victims.

The Department’s *Principles of Federal Prosecution* set forth a variety of factors government attorneys must consider when deciding whether to initiate federal criminal charges. See Justice Manual (JM) § 9-27.000, *et. seq.* In deciding whether there is a “substantial federal interest” in a prosecution, the Justice Manual currently includes factors such as the “nature and seriousness of the offense” and the “the economic, physical, and psychological impact of the offense, and subsequent prosecution, on any victims.” § 9-27.230. Of course, potential ongoing victimization is a strong indication of a federal interest. Moreover, as the Justice Manual currently states: “Prosecution of all crimes involving the sexual abuse or sexual exploitation of children and the distribution of child pornography is strongly encouraged.” § 9-75.020.

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Even in those instances where the federal government cannot bring its own criminal charges, our obligation to protect crime victims and ensure public safety does not end. Instead, proper coordination with state, local, or tribal law enforcement partners may become more important, particularly in the face of apparent, ongoing criminal behavior that puts victims at risk. When the Department declines to initiate criminal charges—but determines that the conduct under review appears to be a violation of state, local, or tribal law—it must carefully consider the need to make state, local, or tribal law enforcement officials aware of the alleged criminal conduct. Indeed, government attorneys should consider this coordination even prior to making a charging determination.

To emphasize the importance of coordination with law enforcement partners, I am directing that JM § 9-27.240 be amended to include the following:

When declining prosecution, or reviewing whether federal prosecution should be initiated, the attorney for the government should: (1) consider whether to discuss the matter under review with state, local, or tribal law enforcement authorities for further investigation or prosecution; and (2) coordinate with those authorities as appropriate. The attorney for the government should be especially aware of the need to coordinate with state, local, and tribal law enforcement authorities, and shall do so as permitted by law, when declining a matter that involves an ongoing threat or relates to acts of violence or abuse against vulnerable victims, including minors. The attorney for the government should document these coordination efforts, where undertaken, when federal prosecution is declined.

I am also directing each component to develop internal policies and training to ensure they are coordinating with our state, local, and tribal law enforcement partners appropriately. Coordination with our law enforcement partners will depend on a variety of factors, including the sensitivity of the investigation; the availability of state, local, or tribal charges; the needs of the victims; legal restriction governing disclosure of information (such as relating to classified or grand jury information); and protection of the community from those allegedly engaged in criminal conduct. In order to facilitate effective policies and training, the Department will develop and present a webinar on this topic in the upcoming few months.

Even if federal prosecution is not available, we must be certain that victims receive the support and services they deserve and that offenders are held accountable under state, local, or tribal law as appropriate. Our commitment to public safety requires nothing less.