POLICY MANUAL

CROOK COUNTY DISTRICT ATTORNEY'S OFFICE

ADOPTED DECEMBER 2020

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Mission Statement

It is the Mission of the Crook County District Attorney's Office to seek justice and safety for crime victims and the community. In pursuing this mission, the office will uphold the provisions of the Oregon and U.S. Constitutions. The office will vigorously and impartially prosecute crimes, to preserve the safety of the public, to protect the rights of crime victims, to hold offenders accountable for criminal conduct and to pursue justice for all with skill, honor and integrity.

Justice in each case begins with basing our decisions upon the facts and law in each case and seeking a result that is supported by the facts and is proportional to the crimes committed and the criminal history of each offender. Seeking Justice also involves honoring the rights of crime victims and protecting the rights of the accused.

Section 01 – Professional Ethics

Professional Ethics

Employees of the Crook County District Attorney's office are expected to conduct their professional activities under the highest ethical standards.

Integrity is an integral part of ethical conduct. Integrity is fostered and maintained by the persistent examination of the merits of any issue, decision, or action. Toward that end, Crook County District Attorney employees are encouraged to speak up if they feel an activity undertaken by this office impinges on the department's integrity.

Ethical Expectations

Crook County Deputy District Attorneys shall be familiar with the Oregon Rules of Professional Conduct and perform their duties in a manner consistent with those standards.

Public Trust

We are employees of the citizens of Crook County. Our actions should bolster the public trust in our office and create no opportunity for questioning our motives. The pressure in this job can be intense and there are times when the nature of our work generates frustration and even anger. But our goal should be to accept our responsibilities and conduct our activities in a climate of mutual trust, respect for those we encounter in our activities and firm dedication to fairness and impartiality

Affidavits of Prejudice

If you believe that information you have reflects on a sitting judge's prejudice toward the state, provide the information, in writing, to the District Attorney. Affidavits of prejudice, motions to excuse, or requests for a judge to recuse himself or herself can be filed by the District Attorney.

Attorney Conduct with Jurors

Except as necessary during a trial, under the tenets of UTCR 3.120(2), Deputy District Attorneys, or their agents, parties, witnesses, or court employees may not initiate contact with any juror concerning any case the juror was sworn to try. Review UTCR 3.121.

Criminal Activity by State Licensed Professionals

If you are aware that a defendant who is a member of a profession or occupation licensed by a state regulatory agency is under investigation or has been charged with a crime, report this information to the District Attorney.

If contacted by a State Regulatory/Licensing Agency regarding someone under their jurisdiction, it is the policy of the Crook County District Attorney's Office to forward a copy of the charging document and report(s) at their request.

Public Statements Regarding Other Agencies

No one in the District Attorney's Office is authorized to engage in a public evaluation of police or sheriff personnel, judges or members of other public agencies.

Any complaints concerning judicial decisions or conduct shall be directed to the District Attorney. No direct correspondence to a judge concerning these matters shall be made by a member of the District Attorney's staff unless the letter is personally approved by the District Attorney.

Occasionally a Deputy District Attorney may be asked by a member of the media to comment publicly upon an adverse verdict, sentence or other court ruling. While it is permissible to express disappointment in an adverse ruling and reiterate why the state was seeking a particular outcome, further statements could be viewed as a personal comment and should be avoided.

Conflicts of Interest

If a Deputy District Attorney feels that there exists a possible conflict of interest or any other reason the office should not handle a given case, that Deputy District Attorney shall bring the case to the attention of the District Attorney. If the District Attorney determines that the office should not handle a given case, a request will be made for the assistance of another District Attorney's Office within the State of Oregon or the Attorney General's Office to prosecute the case.

If an employee's immediate family member or a person living in the same household as an employee is arrested, cited, or investigated in Crook County or involves a Crook County law enforcement agency, the employee shall contact the Chief Deputy District Attorney or District Attorney as soon as possible, but no later than the next business day and provide a written report on the matter.

Lawsuits and Bar Complaints

When an employee is served with an employment-related lawsuit or bar complaint, he or she shall immediately notify the District Attorney, and provide a copy of the complaint.

Continuing Legal Education

Deputy District Attorneys are expected to meet the minimum continuing legal education requirements established by the Oregon State Bar. Deputies should maintain their own continuing education records and report the progress of their continuing education to the bar. The cost of continuing legal education courses will be paid by the office if preapproved by the District Attorney.

Prohibition of Profiling

Pursuant to ORS 131.915 and ORS 131.920, under no circumstances should decisions made in this office be based upon a person's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness, or disability. All decisions by this office should be based upon the facts of each case, the criminal history of each defendant, and the input and advice of the crime victims in each case.

Any complaints of a violation of this policy will be received, documented, and investigated. In each complaint, a response will be provided to the complainant within a reasonable period of time. Pursuant to ORS 131.920, a copy of each such complaint shall be forwarded to the Law Enforcement Contacts Policy Data Review Committee.

Law Enforcement Contacts Policy and Data Review Committee

(lecc@psu.edu)

ATTN: CCJ-JUST

P.O. Box 751 Portland, OR 97201

Section 02 – Crime Victims

Crime Victim's Rights

The Crook County District Attorney's Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice system. We treat them with dignity and respect. We make every effort to provide victims with as large a part as possible in each phase of a criminal case. Deputy District Attorneys shall familiarize themselves with the Crime Victims Bill of Rights as well as with Article 1, Section 42 of the Oregon Constitution, the Crime Victim's Rights Amendment.

The interests of the victim should be kept in mind when setting the hearing date and during plea negotiations in any felony involving a person.

Victim Assistance Program (VAP)

The Crook County District Attorney's Office provides crime victims with support and consideration during all phases of criminal proceedings. A major component of that support is the Victims Assistance Program, which acts as an Advocate for the victim in the judicial process.

Deputy District Attorneys and Victims Assistance shall ensure that the victim is advised of his or her rights and that the victim is afforded those rights as requested. The Victim Assistance Program provides victims with immediate crisis intervention, on-scene response with law enforcement, safety planning, restraining order applications, and stalking protective order applications. The program also provides Victim Rights and Crime Victim Compensation information, criminal justice system process and case status information, court accompaniment, and community resource referrals.

Victims Rights Under Oregon Law

Oregon law gives crime victims rights that protect their interests in criminal investigations and judicial proceedings. This office is familiar with those rights and makes every effort to see that victims benefit from them. Among these rights are:

- The right to be informed of these rights as soon as practicable.
- The right, if requested, to keep the victim's address and phone number from the person charged [ORS135.970(1)];
- The right, if a defense attorney or representative contacts the victim, to be told who they are, that the victim does not have to talk to them, and that the victim may have a Deputy District Attorney present if they do decide to speak with a defense attorney [ORS135.970(2)];

- The right to a court hearing if harassed or intimidated by the person charged [ORS135.970(3)];

- The right to be considered when court dates and hearings are scheduled or rescheduled [ORS136.145];

- The right to be inside the courtroom during the trial [ORS40.385]; and

- The right to appear personally or with their own attorney, in addition to a Deputy District Attorney, and express their views at the time of the disposition [ORS137.013].

The Oregon constitution also explains victim's rights. Among these are:

- The right to be reasonably protected from the defendant throughout the criminal justice process;

- The right to be consulted, upon request, regarding plea negotiations involving any violent felony;

- The right, if requested, to be informed in advance when the defendant will be present at a particular stage of the judicial process and to be allowed to speak at each stage;

- The right, if requested, to information about the conviction, sentence, imprisonment, criminal history, and future release of the defendant;

- The right, if requested, to be consulted about plea negotiations on any violent felony charge;

- The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present;

- The right to be heard at the pretrial release hearing and sentencing or the juvenile court delinquency disposition;

- The right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant;

- The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury;

  The right to heave a copy of a transcript of any court proceeding in open court, if one is otherwise prepared.

Victims Participate in Proceedings

Deputy District Attorneys should make every effort to see that victims are active participants in criminal proceedings. This office is committed to providing victims with all assistance or referral information available.

Victims Input on Offers

ORS 147.512 requires that in violent felony cases, if a crime victim requests, a Deputy District Attorneys must consult with the victim prior to making a settlement offer in the case. The statute defines “violent felony” as those person felonies listed in the sentencing guidelines administrative rules. Even if there has been no request from the victim, the assigned Deputy District Attorney should attempt to get the victim’s position on a proposed settlement offer in Measure 11 cases and any felony sex crime. In other felony or misdemeanor cases Deputy District Attorneys need to contact victims who have requested input on plea negotiations.

Victim Considerations in Negotiations

Deputy District Attorneys should consider the circumstances and attitude of the victim and witnesses in deciding whether to negotiate with a defendant. Deputy District Attorneys should weigh the following factors:

- Extent of injury to the victim,
- Economic loss incurred by the victim,
- Victim and witnesses availability for trial, and
- The victim’s and witnesses’ physical or mental impairment that would affect testimony.

Victim Restitution

It is the policy of the Crook County District Attorney's Office that the office will seek to obtain court ordered restitution for every crime victim when there is sufficient evidence to proceed on criminal charges. Attorneys should be familiar with the case law and statutes concerning restitution, beginning at ORS 137.103. Restitution may also be ordered on violation cases. ORS 137.106.

Attorneys should seek to have defendant(s) stipulate to the basis for restitution, including all potential avenues, as a part of any negotiated plea. The stipulation will help if a defendant challenges the amount and/or basis for restitution in a restitution hearing.

Whenever possible, this office will have a restitution worksheet prepared and submitted to the court at the time of sentencing. It may not be feasible for this information to be ready for sentencing if the

case is complex, has multiple medical bills or resolves quickly. If a restitution worksheet has not been prepared and submitted to the court at the time of sentencing, the Deputy District Attorney in court should request 90 days to submit a motion and order for restitution. ORS 137.106

Section 03 – Charging Decisions

Screening and Charging Decisions

Deciding if criminal charges should be filed and initiating the charging process is the responsibility of the Deputy District Attorney. Screening is the process by which a determination is made whether to initiate or pursue criminal charges. These decisions, whether they occur before or after formal charging, must be made according to established guidelines. Deputy District Attorneys should use discretion in screening to eliminate cases in which prosecution is not justified. Deputy District Attorneys also have the responsibility to see that the charge selected adequately describes the offense(s) committed and the charge provides for an adequate sentence for the offense(s).

Generally, Deputy District Attorneys should review cases and make charging decisions before the initial arraignment date in order to avoid unnecessary delays. However, charging decisions may be delayed beyond the initial arraignment date if the Deputy District Attorney determines further investigation or review of the facts is warranted.

Deputy District Attorneys are not obligated to file all possible charges that the evidence might support. The prosecutor may properly exercise discretion to present only those charges which are consistent with the evidence and in the best interests of justice.

Charging Decision Guidelines/ Factors

A non-exclusive list, in no particular order, of factors to consider when making charging decisions, regarding driving under the influence, controlled substance offenses, domestic violence incidents, and all other crimes:

- The nature of the offense;
- Probability of conviction;
- Possible deterrent value of prosecution;
- The characteristics of the offender;
- The interests of the victim;
- Recommendations of the law enforcement agency involved;
- Any provisions for restitution;
- The age of the offender;

- Doubt as to the guilt of the accursed;
- A history of non-enforcement of the statute;
- Excessive costs of prosecution in relation to seriousness of the offense;
- The age of the case;
- Insufficiency of evidence to support the case;
- Aid to other prosecutorial goals through non-prosecution;
- An expressed wish by the victim not to prosecute;
- Possible improper motives of the victim or witness;.
- Likelihood of prosecution by another criminal justice authority;
- Any mitigating evidence;
- The attitude and physical and mental state of the defendant;
- Undo hardship caused to the accused;

Charge Limits

In making the charging decision, Deputy District Attorneys shall file only those charges which are reasonably substantiated by admissible evidence at trial. Deputy District Attorneys shall not attempt to use the charging decision as a leverage device (that is, overcharging) in an attempt to obtain a guilty plea to a lesser charge.

Deputy District Attorneys shall also avoid charging an excessive number of counts, indictments, or informations merely to provide sufficient leverage to persuade a defendant to enter a guilty plea to one or several charges.

Aggregation of Value in Charging Property Crimes

Oregon law allows the state to aggregate the value of losses in certain property crimes cases when there are multiple violations against the same or multiple victims. See e.g. ORS 164.115(5), 164.125(4), 164.367. The effect of such aggregation is that a defendant may be charged with a more serious crime if the aggregate loss totals more than the statutory minimum loss required for the more serious degree of the applicable charge.

It is the policy of the Crook County District Attorney's Office that in property crimes cases subject to aggregation, the charging Deputy District Attorney shall first aggregate individual incidents in such a way as to maximize the number of available B Felony charges. After maximizing the B felonies, the charging deputy shall aggregate in such a way as to maximize the number of available C Felony charges. Finally, if the two prior options are exhausted and uncharged incidents are still available, the charging deputy shall aggregate in such a way as to maximize the available number of A misdemeanor charges.

During plea negotiations on property crime cases subject to aggregation, the Deputy District Attorney should take into consideration the availability of witnesses, the availability of financial records, the defendant's criminal history, the injury or harm suffered by the victim(s), any recommendations expressed by the victim(s), the factors listed in ORS 135.415 and any other pertinent information available at the time of negotiations.

Joinder

Whenever possible, defendants shall be charged and tried jointly under ORS 136.060. Likewise, it is the policy of this office to join charges against the same defendant under ORS 132.560, provided:

- The offenses are of a similar character,
- They are based on two or more connected acts constituting parts of a common scheme or plan, or
- They are based on the same act or transaction.

Joinder of defendants is in the best interest of the community because it maximizes efficiency in the court system and minimizes the ordeal of criminal proceedings on victims.

Decisions to Seek the Death Penalty

The Crook County District Attorney's Office believes that in every Aggravated Murder case evidence that supports the elements necessary to impose the death penalty should be presented to the fact-finder for consideration. It is this office's position that the State doesn't elect to seek the death penalty but functions to put forth to the fact-finder the known evidence relating to each element required to impose the death penalty for consideration.

Declining Prosecution

If a Deputy District Attorney elects to decline prosecution, she/he shall state the reasons for the declination in a prosecution decline memorandum. This document, in addition to providing a case screening record for the office, notifies law enforcement agencies and victims of the disposition of the criminal incident and reasons for the decision. A copy of the decline memorandum may be made available to the victim.

Deputy District Attorneys should be aware that although prosecution decline memos are not normally public information, there may be circumstances in which they may be made public. Therefore, Deputy District Attorneys should use good judgment in wording the document.

Criminal History Verifications

Oregon law makes it necessary for the defendant to give the District Attorney and the Court written notice of any dispute in the criminal history summary filed with the court.

Deputy District Attorneys should request two-week set-overs for in-state history checks and 30 days for out-of-state verification.

Deputy District Attorneys should use discretion in ordering verification when the challenged conviction will not affect the presumptive sentence.

Section 04 – Warrants, Security and Release

Warrant Request Policy

When a warrant is necessary to secure the appearance of a defendant, oral and written requests to the court should incorporate the recommendations below. The scope of the warrant request shall be dependent upon the most serious charge on the accusatory instrument. Open criminal cases and probation violations will receive the same warrant request.

Felony

Class A & B Person	Nationwide
Measure 11	Nationwide
Class A & B Non-Person	Oregon and Adjacent States (Washington, Idaho, Nevada, California)
Class C	Shuttle States (Washington, Idaho, Montana)

Misdemeanor

C Misdemeanor	Oregon only
B Misdemeanor	Oregon only
A Misdemeanor	Oregon only

Security Requests

In-Custody

When appearing during an in-custody arraignment, the Deputy District Attorney should give the court a brief factual basis of the alleged incident as well as a summary of the defendant's criminal history. Additionally, the Deputy District Attorney should make the court aware of factors under ORS 135.230: "Primary release criteria" and "Secondary release criteria." In rare circumstances, if the Deputy District Attorney believes a security amount higher than the presumptive bail schedule is necessary to secure the attendance of the defendant and/or needed to ensure community safety, the Deputy District Attorney should request the court impose a higher security amount. If the Deputy District Attorney believes no security is necessary to secure attendance or protect the community, the Deputy District Attorney should alert the court there is no objection to releasing the defendant on his/her own recognizance.

Primary Release Criteria

1) Reasonable protection of the victim and/or public;

2) Nature of the current charges;

3) Defendant's prior criminal record, if any, and, if the defendant previously has been released pending trial, whether the defendant appeared as required.

4) Any facts indicating the possibility of violations of law if the defendant is released without regulations;

5) Any other facts tending to indicate that the defendant is likely to appear.

Secondary Release Criteria

1) The defendant's employment status and history and financial condition;

2) The nature and extent of the family relationships of the defendant;

3) The past and present residences of the defendant;

4) Names of persons who agree to assist the defendant in attending court at the proper time;

5) Any facts tending to indicate that the defendant has strong ties to the community.

Out-of-Custody

In the vast majority of cases, if a defendant appears on a cite or letter for arraignment, the Deputy District Attorney should not request a security amount for release. However, if a Deputy District Attorney in assessing the need to secure attendance and/or ensure community safety believes security is necessary, the Deputy District Attorney should make that request citing the above "Primary release criteria" and "Secondary release criteria" factors for the court to remand defendant into custody.

Domestic Violence Pre-Trial Release Conditions

When requesting a security amount or release on his/her own recognizance, the Deputy District Attorney should consider if pre-trial release conditions are necessary to ensure attendance at future Court appearances and/or to protect victims, witnesses, and/or the community.

- Victim Cases: request no contact with the victim and/or the victim's residence. Where a case involves minor victim(s) of physical and/or sexual abuse a condition of no contact with minors should be requested. There is a strict no-contact policy with victims of domestic violence at the onset of each domestic violence case.
- Alcohol and/or controlled substances: request no intoxicants as part of the release.
- Weapon: request to prevent possession of firearms and other weapons.

The above list of potential pre-trial release condition requests is non-exclusive, and is only meant to help Deputy District Attorney s since it is impossible to think of every possibility that may warrant a condition for release.

When a domestic violence defendant is in custody, the Deputy District Attorney should attempt to contact the victim to determine the victim's position on release. Factors to be considered in a bail recommendation are:

- The nature of the charge;
- Whether the defendant poses a continuing threat of harm to the victim or community;
- Whether the defendant has an alternative residence to stay while the no contact order is in place
- Defendant's criminal history; and
- The flight risk posed by the defendant.

No Contact Orders and Contempt

In domestic violence cases, a no contact order is routinely requested by the Deputy District Attorney at arraignment. Violation of no contact orders will result in the assigned Deputy District Attorney filing a Contempt petition with the court. Contempt petitions will also be filed on violation of restraining order and stalking orders.

Section 05 – Discovery

Discovery Policy

All Crook County Deputy District Attorneys are required to know and follow the constitutional principles announced in *Brady v. Maryland*, 373 US 83 (1963); *Giglio v. United States*, 405 US 150 (1972); ORS 135.805 through 135.873*;* and Rule 3.8 of the Oregon Rules of Professional Conduct with regard to discovery in all criminal cases. To ensure the fair administration of justice, Deputy District Attorney s have an affirmative obligation in all cases to comply with discovery requirements, which may involve the Deputy District Attorney having to seek further information from police agencies.

Deputy District Attorney s must be alert to problems experienced by police agencies in providing all case police reports to the District Attorney's Office. Particularly in major cases, Deputy District Attorney s should follow-up with police agencies to ensure that all reports that should be disclosed are received by this office and disclosed to the defense.

Except as otherwise provided in ORS 135.855 (Material and information not subject to discovery) and 135.873 (Protective orders), the District Attorney's Office shall provide the defendant the following material and information within the possession or control of the district attorney:

(A) The names and addresses of persons whom the district attorney intends to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons.

(B) Any written or recorded statements or memoranda of any oral statements made by the defendant or made by a codefendant if the trial is to be a joint one.

(C) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which the district attorney intends to offer in evidence at the trial.

(D) Any books, papers, documents, photographs or tangible objects:

(a) Which the district attorney intends to offer in evidence at the trial; or

(b) Which were obtained from or belong to the defendant.

(E) If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.

(F) All prior convictions of the defendant known to the state that would affect the determination of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Commission.

(G) Any material or information that tends to:

(a) Exculpate the defendant;

(b) Negate or mitigate the defendant's guilt or punishment; or

(c) Impeach a person the district attorney intends to call as a witness at the trial.

Each Deputy District Attorney has a duty to review their files and disclose any material that is clearly exculpatory or favorable, and material to the defendant. Furthermore, the Deputy District Attorney "has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." *Strickler v. Greene*, 527 US 263, 281 (1999).

Discovery should not be released to the defendant's attorney until after arraignment. Discovery can be released to defendant's attorney prior to arraignment only if authorized by a prosecutor and the release is in the best interests of justice, or aids in the efficient resolution of the criminal case. Discovery will be released to defendants without lawyers only after the defendant has been arraigned, has waived his/her right to counsel in court and only after the cost incurred in supplying the discovery has been paid.

Discovery Process

The majority of discovery provided by this office will be disclosed digitally through the cloud. Once discovery is prepared it will be sent to the appointed/retained defense attorney through an email containing a link that will allow the discovery to be downloaded. If a defense attorney requires discovery in a different format he/she will be required to formally make that request of the Office Manager. When there are items of discovery that cannot be sent digitally, those items will be placed in hard file stored in the main office for an attorney or his/her representative to pick up.

The process for a pro se defendant to obtain discovery is to call the office and request discovery. The CCDA Office will call the pro se defendant when discovery is ready to be picked up and inform the person of the cost. When the pro se defendant picks up discovery it will need to be paid for with exact change in cash.

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The office will provide pro se defendants lodged at the Crook County Jail, with a trial date with discovery appropriately redacted in accordance with the law.

Discovery Charges/Billing

The amount charged for discovery shall be as follows:

- Digital reports $
- Digital audio/video $
- Hard copy of audio/video $

Privately retained defense attorneys will be sent an invoice upon discovery being sent. If a defense attorney fails to pay his/her balance within 60 days, discovery will no longer be provided. If this occurs the defense attorney will need to schedule a time to come review police reports and other items of discovery for their cases. As soon as the past balance is paid or an appropriate payment plan is established, discovery will be provided once again, as laid out in the process section.

The Office of Public Defense Services will be billed on a monthly basis on behalf of the court appointed public defenders.

Pro se defendants will not be invoiced and are required to pay for discovery at the time that it is picked up from the office.

Sexually Explicit Evidence

Frequently, the prosecution of sex abuse cases involves sexually explicit (pornographic) material as evidence. The following procedures detail the requirements of how such material shall be handled in the District Attorney's Office.

- Pornography is evidence and should be treated as evidence. This means that it should be stored in the police evidence locker with other evidence. It ordinarily does not belong in the District Attorney's file. The assigned prosecutor and the defense attorney can visit the police department prior to trial to view the material, just as they would other evidence. The investigating police officer can bring the pornographic evidence to court. It is especially important to follow this procedure when the sexually explicit material involves children.

- Sexually explicit material involving children should **NOT** be given out as discovery, absent an explicit order of the court. It the defendant seeks such an order, the assigned prosecutor shall seek a protective order prohibiting copying by the defendant or his/her attorney and requiring return of the copies when the case is completed.

- Transferring, uploading or replicating sexually explicit materials that involve children is prohibited on any computer or electronic device to comply with state and federal laws, specifically 42 U.S.C. §16911 et seq, the Adam Walsh Child Protection and Safety Act.

- Should it be necessary to have child pornography kept at the District Attorney's Office for purposes of trial or case preparation, the evidence shall be placed in an envelope clearly marked "SEXUALLY EXPLICIT MATERIAL." If the evidence is in electronic format it should be in the file in a secured format such as a disk or drive and not as printed materials. This evidence shall be stored in a locked cabinet in the District Attorney's Office with special permission.

- Once prosecution is concluded, any actual or suspected child pornography should be returned to the investigating agency immediately. No child pornography will be kept with closed files under any circumstances.

- If it is necessary to have the material in the District Attorney's file, it shall be placed in an envelope clearly marked "Sexually Explicit Material." If the evidence is in electronic format, it should be in the file on a compact disk, not as printed material.

- Once the file is closed, any sexually explicit material should be returned to the investigating agency or destroyed. The material should not be kept in closed files.

- When files which are already closed are scanned, the Records Management personnel will return any files containing sexually explicit material to the assigned prosecutor so the material can be returned to the police agency or destroyed.

SENSITIVE EVIDENCE & DISCOVERY PROCEDURES

It is the policy of the Crook County District Attorney's Office to comply with all relevant statutory and constitutional obligations to produce evidence to defense attorneys. It is also the policy of the Crook County District Attorney's Office to ensure that the privacy and security of victims and witnesses is protected through our evidence collection and discovery procedures. The following policy outlines how such materials will be handled and discovered by the District Attorney's Office.

1. Sensitive evidence may be stored in the office of the Deputy District Attorney handling the case unless the evidence includes photographs of the genitals of any child witness or victim. Such photographs, whether in printed or electronic format, shall not be stored in the file or in the office of the Deputy District Attorney handling the case. Rather, such photographs will be maintained by law enforcement for viewing by the Deputy District Attorney on the premises of the law enforcement agency. Any deviation from this policy must be approved by the District Attorney.

2. Sensitive evidence, including evaluations and digital recordings of child interviews from a CAC shall only be produced pursuant to a protective order. Photographic evidence of the child victim in any state of undress shall not be produced, but shall be made available to the defense for inspection in cooperation with the CAC upon request of the defense attorney.

3. Personal financial information, including the social security numbers and bank account/ credit card numbers of victims or witnesses that fall within the State's discovery obligation in criminal cases will only be released pursuant to a stipulated protective order which shall restrict reproduction or re-disclosure. Personal financial information that is not discoverable in a criminal case but is contained in documents that are discoverable will be redacted. It is the responsibility of the Deputy District Attorney assigned to the criminal case to identify sensitive information that needs to be redacted prior to making evidence available for discovery and instruct staff accordingly.

4. Where the evidence relates to medical, counseling, mental health, DHS or drug treatment records of a witness or victim, such records shall only be produced pursuant to a stipulated protective order which shall restrict reproduction and re-disclosure of the evidence. The order shall be signed prior to or contemporaneous providing this type of discovery to the defense.

5. All protective orders must also address disposal or return of the protected evidence once the case has concluded.

6. Should defense counsel refuse to sign a stipulated protective order, the Deputy District Attorney handling the case shall file a Motion for a Protective Order with the court, seeking that the court sign a Protective Order prior to discovery of the evidence.

7. Should the Deputy District Attorney become aware that a defense attorney has violated a protective order, the Deputy District Attorney will promptly report the violation to his/her team leader so that the management team can determine the appropriate course of action to deal with the situation.

8. If a case has been resolved by plea, copies of CAC recordings shall be destroyed. If the case resulted in a guilty verdict after trial, the recording shall be maintained by the District Attorney's Office until the appeal is concluded.

Section 06 – Juvenile Charges

Authority to File Juvenile Petitions

Pursuant to ORS 419C.250, the Crook County District Attorney has authorized the Crook County Juvenile Department to file petitions alleging that a youth is within the jurisdiction of the juvenile court as provided in ORS 419C.005. Deputy District Attorney s conduct intake in the same manner as adult criminal cases. Deputy District Attorney s review police reports and make charging decisions in Karpel. After charging language is complete, the Deputy District Attorney sends a reminder to their assigned legal assistant indicating the charging language is ready to be forwarded to the juvenile department. The juvenile department will prepare the petition and file with the circuit court.

Juvenile Recommendations

Generally, the juvenile department will draft the recommendations for disposition on juvenile cases. If a defense attorney wishes to engage in negotiations on the terms of the recommendations, the Deputy District Attorney may do so in consultation with the assigned juvenile department probation officer.

Formal Accountability Agreements (FAA)

An FAA allows a youth to address issues and assume accountability without having to admit to allegations filed in a petition against the youth. If a youth continues to engage in criminal activity then the purpose of the FAA is not being met. A youth should only be granted one FAA. If the Crook County Juvenile Department believes extenuating circumstances exist for a second FAA, consultation with a Deputy District Attorney is required.

FAAs may be entered into both before and after a qualifying petition has been filed. See ORS 419C. 230(2) for list of offenses that do not qualify for a FAA without approval from the District Attorney's Office.

FAA after a petition has been filed: If a petition has been filed in juvenile court and the Crook County Juvenile Department, the Deputy District Attorney and the youth/youth's attorney agree a FAA is the best resolution to a case, the youth must enter an admission on the record prior to entering into a FAA with the Juvenile Department. The Juvenile Court judge will then set disposition out for a reasonable period of time for the youth to complete the terms of the FAA, but not more than one year per ORS 419C.239. If the FAA is completed by the youth before disposition the case will be dismissed.

Minor in Possession of Alcohol/Marijuana

Minor in Possession of Alcohol and Marijuana cases will be resolved as follows:

FIRST TIME-MIP (ALCOHOL & MARIJUANA)
Juvenile Department will file petition with court

- Juvenile Department will recommend:
    - 12 month probation ($30 supervision fee)
        - Follow all recommendations and directives of probation officer
    - 24 hours community service
    - Participate in risk assessments as directed by the juvenile department
    - Participate in random UAs if requested (marijuana cases only)
    - Attend MIP Alcohol/Marijuana class ($20 class fee)
    - $265 statutory fine (ORS 153.019)
        - Fine to be vacated upon successful completion of probation
    - 1 year license suspension if offense involved operating a vehicle (ORS 809.260, 809.280)

SECOND TIME (OR SUBSESQUENT) MIP (ALCOHOL & MARIJUANA)
Juvenile Department will file petition with court

- Juvenile Department will recommend:
    - 12 month probation ($30 supervision fee)
        - Follow all recommendations and directives of probation officer
    - 24 hours community service
    - Participate in risk assessments as directed by the juvenile department
    - Obtain an Alcohol/Drug Evaluation and comply with any recommended treatment
    - Participate in random UAs if requested (marijuana cases only)
    - Attend MIP Alcohol/Marijuana class ($20 class fee)
    - $265 statutory fine (ORS 153.019)
        - Fine to be vacated upon successful completion of probation
    - 1 year license suspension for second or subsequent violation (ORS 809.260, 809.280)

Traffic/Game/Boating Waivers

Pursuant to ORS 419C.370, all cases involving violation of a law or ordinance relating to the Oregon Vehicle Code (ORS chapters 801 through 826) and any Municipal Code pertaining to traffic laws; all Oregon boating laws; and all Oregon games laws are waived to Crook County Circuit Court. The District Attorney's Office shall give notice to the Crook County Juvenile Department before any hearing is held if the youth is under 18 and the matter is not a traffic violation as defined by ORS 801.557.

Juvenile Defendants in Measure 11 Statutory Sex Cases

Cases involving a 15- to 17-year-old perpetrator accused of a Measure 11 statutory sex crime will be issued in juvenile court, if the perpetrator would otherwise be sentenced under ORS 137.712. Any case involving a Measure 11 perpetrator who was 15 to 17 at the time of the criminal act, but because of a delayed report, is now 18 or older and could otherwise be sentenced under ORS 137.712, must be reviewed by the District Attorney before grand jury presentation. Appropriate aggravating and mitigating factors will be considered when deciding on the case.

Juvenile Waiver to Adult Court

As a result of the passage of HB 1008 in the 2019 legislative session, automatic waiver into adult court for Measure 11 crimes is no longer possible. This policy is written to address how juvenile cases, mostly Measure 11 crimes, will be handled in the future.

In general, the factors to consider when seeking to prosecute a juvenile offender in adult court are:

1. The seriousness of the offense;

2. The wishes and position of the victims(s);

3. Protection of the community;

4. Whether, in the interests of justice, the potential punishments are proportional to the offense;

5. The criminal history of the juvenile offender, including whether or not the juvenile offender has consistently demonstrated that the unique jurisdiction of the juvenile court and programs can ameliorate their criminal behavior;

6. Whether or not the juvenile justice system, due to possible alternative and less punitive alternatives being available, is more or less likely to achieve rehabilitation of the offender than the adult system.

The process for making these determinations is as follows:

When a case referral is received from law enforcement for crimes enumerated in ORS 137.707 (Measure 11), the assigned Deputy District Attorney with meet with the District Attorney and review the case and determine the appropriate charging decision, including whether or not to initially seek waiver into adult court. Given juvenile statutes set stringent time limits for these cases, initial decisions about charging and waiver must be made expeditiously. Any initial decision to not seek waiver can be reconsidered at a later date if further facts or circumstances develop.

Under HB 1008 and ORS 419C.349, there are two categories of cases that may be waived into adult court by the juvenile court:

- Category 1 crimes fall under ORS 419C.349(1)(a) and include crimes numerated under ORS 137.707 (Juvenile Measure 11 crimes) and aggravated murder.

- Category 2 crimes fall under ORS 419C.349(1)(b) and are the lesser included offenses of Juvenile Measure 11 crimes not specifically enumerated in ORS 137.707(4). Crimes under ORS 137.712 (Ballot Measure 11 Lite), including Class A and Class B felonies and certain Class C felonies are included.

Category 2 crimes will generally remain in juvenile court. In certain exceptional cases it may be necessary for the protection of the public or in the interest of justice (proportional punishment) or if the juvenile offender has consistently demonstrated that the unique jurisdiction of juvenile court and its programs will not ameliorate their criminal conduct.

All referrals of juvenile offenders into adult court must be approved by the District Attorney.

Section 07 – Grand Jury & Preliminary Hearing

General

Amendment Article VII, Section 5, of the Oregon Constitution provides two separate procedures for charging defendants in Circuit Court, either by indictment of the grand jury or by information gathered by the state after a preliminary hearing. Crook County Deputy District Attorneys are to be familiar with and follow the statutory provisions found in ORS 132.010-132.990.

In order to ensure that the choice between indictment and information is made according to consistent criteria and that the privilege of either a grand jury indictment or a preliminary hearing is equally available to all, the Crook County District Attorney's Office takes all cases to a grand jury unless there is a specific evidentiary need, such as eyewitness identification or preservation of testimony, in an individual case, or because a grand jury proceeding could not be scheduled before a preliminary hearing is set.

A decision to take a case to a preliminary hearing must be approved by the District Attorney.

A represented defendant who requests to testify voluntarily before the Grand Jury shall be allowed to testify pursuant to ORS 132.320(12). A Deputy District Attorney is under no obligation to affirmatively offer an opportunity to testify to a defendant.

The compelled testimony before the Grand Jury of any witness who might objectively be considered a criminal suspect must be approved by the District Attorney.

Procedure

Docket: Every matter presented to the Grand Jury should be recorded on a Grand Jury Docket by case name and DA case number.

Witnesses

1. All witnesses will be placed under oath before presenting testimony before the Grand Jury. The names of each witness will be listed on the indictment, if an indictment is returned;

2. Where clearly authorized by statute, witness testimony can be presented by written report. In those instances the name of the witness and, "by report" will be listed on the indictment, if an indictment is returned; and

3. In a situation where a witness appears by simultaneous video transmission, the name of the witness on the indictment should be followed by, "…by simultaneous video transmission", if an indictment is returned.

Simultaneous Video Grand Jury Testimony

Under Oregon Revised Statute 132.320(5), "a grand jury may receive testimony of a witness by means of simultaneous television transmission…", however the statute gives no other guidance. This policy is meant to set the expectations and standards for when the Crook County District Attorney's Office will offer the option of simultaneous video testimony to the grand jury.

The officer/witness will be contacted by the Grand Jury Coordinator and to set an appearance time as near as possible to the time their case is scheduled for Grand Jury. The witness should remain available for 10 minutes after testifying in the event the Grand Jury has clarifying questions after other witnesses testify.

When using simultaneous video for grand jury testimony the officer/witness must be in a room or vehicle alone. During the testimony no kids, pets, or other adults can be present.

Evidence

1. Only evidence that is admissible at trial will be presented to the Grand Jury. The Deputy District Attorney will ensure witness testimony is limited to admissible evidence;

2. Additionally, Deputy District Attorneys will limit Grand Juror questions that will produce answers that are inadmissible at trial; and

3. Deputy District Attorneys will not present evidence which was clearly obtained in violation of a suspect's constitutional rights.

Subpoena Duces Tecum

As part of a criminal investigation it is common that law enforcement will seek access to various records, such as phone, bank, internet protocol, and medical, through a grand jury subpoena. The matter under investigation must be one that may reasonably be expected to come before the Grand Jury when the investigation has progressed.

For an officer to be scheduled for an appearance before the Grand Jury to request a subpoena for records, the officer should submit a request form to a Deputy District Attorney who will then contact the Grand Jury Coordinator to request the matter be placed on the Grand Jury docket like other cases presented to the Grand Jury. The requesting officer, or another officer on his/her behalf, must make a return of the subpoena within a reasonable period of time after receipt of the requested records.

Recording

With the passage of SB 505, ORS 132.250 to 132.270 was adopted, which requires all Grand Jury proceedings to be recorded, except the request for Subpoena Duces Tecums. In order to comply with SB 505, the District Attorney's Office has adopted the procedure set out below.

1. At Grand Jury Orientation a "recorder" is selected, by the court, to operate the recording equipment. On the first day of the Grand Jury session, the Grand Jury Coordinator will train the "recorder" on how to operate the equipment.

2. Prior to each Grand Jury session, the Grand Jury Coordinator will use the recording equipment to create a separate tab for each case scheduled that day. The tab will be labeled to enable the grand jury to easily identify the scheduled case.

3. During the daily session of Grand Jury, it is the duty of the Deputy District Attorney to ensure the following:

    1) The case name and DA case number are audio recorded at the beginning of each individual case (When the digital clock is on it means the equipment is recording), the first witness is sworn in;

    2) The name of each witnesses is audio-recorded, along with each question and response of the witness;

    3) After the last witness in a case testifies, the Deputy District Attorney will state "Testimony is concluded" or "This case is being held over for _____'s testimony", or "This case is being withdrawn from Grand Jury"; and

    4) When the Deputy District Attorney leaves the room for deliberations, the Deputy District Attorney will ensure the digital clock is off in order to prevent the recording of deliberations

- The Deputy District Attorney will not, at any time, operate the Grand Jury recording equipment.

- The District Attorney's Office will wait 10 days after arraignment on the indictment before discovering the recording to a defense attorney.

- If a defendant is pro se, the District Attorney's Office will only provide a copy of the Grand Jury recording once the defendant has filed a proper motion with the court and the court has granted the motion.

- A Grand Jury recording that doesn't result in a "true bill" will not be disclosed or released. However, if there is a subsequent Grand Jury proceeding regarding the same criminal episode, the previous recording will be provided as stated above.

Protective Orders

The Crook County District Attorney's Office will inform victims/witnesses of their right to seek a protective order regarding their recorded Grand Jury testimony. The criteria the court looks at to decide whether to grant a Protective Order is listed in ORS 132.270(4)(c),and uses the standard of "substantial and compelling circumstances."

Procedure for Deputy District Attorney: The Deputy District Attorney who took a case through Grand Jury where a Protective Order is requested by a victim/witness will meet and discuss with the victim to determine whether or not the victim/witness's concerns meet the criteria to make the request. In either of the situations below it is the responsibility of the Deputy District Attorney filing the motion to file it within 10 days of a returned indictment, and include in the motion the date/time, and portion of the audio recording needing redaction.

Section 08 – Plea Negotiations

General

The mission of the Crook County District Attorney's Office is to seek justice and protect our community. As a foundation of this mission this office shall conduct pleas and sentencing negotiations in a fair and nonpartisan manner. Deputy District Attorneys shall treat all defendants fairly and impartially in plea and sentence negotiations. Pleas take a number of forms:

- pleas to one or more charges;
- reduction of charges;
- sentence bargaining; or
- dismissal or non-prosecution of other filed or unfiled charges

It is the policy of this office to recognize truth in sentencing as a core principle that protects public confidence in our justice system and recognizes the crime victims who are constitutionally guaranteed the right to accurate information about a criminal sentence. (Oregon Constitution Art. I Sec. 42). In plea and sentencing negotiations, Deputy District Attorneys shall be aware of the impact any sentencing or time reduction programs have on the total sentence, whenever possible. This information should be appropriately communicated to victims, with the caveat that Oregon Administrative Rules and the Oregon Legislature can later alter the reductions, when discussing potential resolutions.

All plea negotiations are made part of the court record for judicial review. Deputy District Attorneys should record any amendments to plea offers and their final offers in Karpel. This is particularly important if another Deputy District Attorney is handling the case on behalf of the assigned Deputy District Attorney during the sentencing.

In the interest of justice, the Crook County District Attorney's Office encourages all Deputy District Attorneys to be mindful that the accused may, in fact, be innocent of the offense charged. If you feel this is the case, notify the District Attorney. It is the policy of this office to seek dismissal immediately in such instances.

Deputy District Attorneys' Plea Discretion

Deputy District Attorneys have the discretion to negotiate dismissal of charges, non-prosecutions, and sentences in all cases subject to other policies in this office regarding plea agreements. However, Deputy District Attorneys may not imply to the defendant a greater power to influence the disposition of a case than actually exists.

Equality in Plea Negotiations

The choice of defense counsel cannot be a factor used by a Deputy District Attorney in offering a sentence or resolution for a case. A defendant must not receive an advantage or be put at a disadvantage in negotiations based on the Deputy District Attorney's (or Crook County District Attorney's Office) history with a specific defense counsel.

Negotiation Factors

A nonexclusive list of factors to consider when negotiating a plea/sentence:

- nature of the offense;
- degree of offense charged;
- mitigating circumstances;
- relationship between the accused and the victim;
- age, background, and criminal record of the accused;
- age of the victim;
- attitude and mental state of the accused at the present time;
- sufficiency of admissible evidence to support a verdict;
- undue hardship caused to the victim or the accused;
- deterrent value of prosecution;
- aid to other prosecution goals through non-prosecution;
- history of non-enforcement of the statute involved;
- expressed wish of the victim;
- age of the case;
- likelihood of prosecution in other jurisdictions; and/or
- feasibility of restitution being made

Victim Considerations in Negotiations

Deputy District Attorneys should consider the circumstances and attitude of the victim and witnesses in deciding whether to negotiate with a defendant. Deputy District Attorneys should weigh the following factors:

- Extent of injury to the victim;
- Economic loss incurred by the victim;
- Victim and witness availability for trial; and
- The victim's and witnesses' physical or mental impairment that would affect testimony

Non-Negotiable Factors

In accordance with ORS 135.405, Crook County Deputy District Attorneys shall not prepare any plea offers and/or negotiate provisions restricting a defendant's eligibility for reduction in sentence, leave, or release from custody of any type or any program (also known as AIP eligibility).

Measure 11 Plea Negotiations

When voters passed Measure 11 the intent to was increase sentences for violent offenders by adopting mandatory minimum sentences. Deputy District Attorneys should only proceed with Measure 11 offers that appropriately deter and/or punish behavior and/or a defendant. Deputy District Attorneys should never use or threaten the use of Measure 11 charges as a way to obtain a plea to a lesser charge.

If after charging an individual with a Measure 11 offense, a Deputy District Attorney later believes a proper resolution would warrant a plea to a non-Measure 11 offense, the Deputy District Attorney needs to get approval from the District Attorney. A non-exclusive list of factors that may warrant a negotiation out of Measure 11 are:

- The defendant has a minimal criminal history;
- Degree of harm or loss was less than typical;
- The defendant's role in the commission of the offense was minimal;
- The defendant is cooperating with the State;
- A deadly or dangerous weapon was not used;
- Defendant's mental capacity was limited or diminished (excluding voluntary intoxication);
- Legal impediments to the admissibility of evidence or other proof problems;
- The victim's actions substantially contributed to commission of the offense;
- The victim requests a lesser sanction; and/or
- Optional probation criteria

Plea Negotiation Aggravating Factors

The following is a non-exclusive list of aggravating factors to consider in Measure 11 plea negotiations:

- Defendant has an extensive criminal history.
- The crime involved multiple victims.
- The injury or loss incurred was greater than typical.

- Witnesses were threatened or harmed.
- The defendant exploited the victim's vulnerability.
- The defendant violated the public trust or professional responsibility.
- There have multiple offenses by the defendant against the victim.
- The defendant has persistently been involved in similar criminal behavior

Plea Negotiation Mitigating Factors

The following mitigating factors, though by no means the only ones, should be considered in Measure 11 plea negotiations:

- The defendant has a minor criminal record or no prior convictions.
- The degree of harm or loss was less than typical.
- The defendant's role in the commission of the offense was minimal.
- Whether the defendant is cooperating with the state.
- A deadly or dangerous weapon was not used in the commission of the offense.
- The defendant's youth.
- Legal impediments to the admissibility of evidence or other proof problems.
- The victim's actions substantially contributed to commission of the offense.
- The defendant's mental capacity was limited or diminished (excluding voluntary alcohol or drug consumption).
- The victim requests a lesser sanction.
- The defendant's amenability to treatment.
- The availability of appropriate treatment programs.

Measure 57 (Repeat Property Offender) Policy

For the purpose of this policy, a Measure 57 case is one in which, based on the allegations therein and the defendant's prior record, the defendant could be sentenced to a minimum sentence set out in Measure 57. This includes repeat property offenses under ORS 137.717 (as amended). It also includes serious drug offenses, and Aggravated Theft from a victim 65 years of age or older.

Defendants charged with Measure 57 crimes shall be treated in a manner consistent with the intent of Measure 57 to increase the sentences for repeat property offenders, serious drug offenses, and Aggravated Theft from seniors. A defendant charged with Measure 57 crimes but whose case is more appropriately punished with a non-prison sentence, shall be given the opportunity to resolve his or her case in that manner.

Cases submitted for prosecution are charged as Measure 57 cases when there are facts that clearly support such charges. Any exception to this charging policy must be approved by either the Chief Deputy or District Attorney. In most instances, non-prison sentences will be achieved by means of a dispositional departure.

All Measure 57 cases should be presented by the assigned Deputy District Attorney to either the Chief Deputy District Attorney or District Attorney. The case review examines the strength of the case, the victim's concerns and opinions, any mitigating factors, and any aggravating factors. All plea offers for Measure 57 cases must be approved prior to sending to defense counsel.

Measure 57- Aggravating Factors

The following is a non-exclusive list of aggravating factors to consider in Measure 57 plea negotiations:

- Defendant has an extensive criminal history.
- The crime involved multiple victims or multiple offenses.
- The injury or loss incurred was greater than typical.
- The defendant exploited the victim's vulnerability.
- The defendant violated the public trust or professional responsibility or a position of trust.
- The defendant has persistently been involved in similar criminal behavior.
- The defendant was on supervision at the time of the present crime.
- Other crimes were dismissed or not prosecuted.
- The defendant has served a prior prison sentence

Measure 57- Mitigating Factors

The following mitigating factors, though by no means the only ones, should be considered in Measure 57 plea negotiations:

- The defendant has a minor criminal record or has been conviction free for a substantial period of time.
- The degree of harm or loss was less than typical.
- The defendant's role in the commission of the offense was minimal.
- Whether the defendant is cooperating with the state.
- The defendant's youth.
- Legal impediments to the admissibility of evidence or other proof problems.
- The victim's actions substantially contributed to commission of the offense.

- The defendant's mental capacity was limited or diminished (excluding voluntary alcohol or drug consumption).
- The victim requests a lesser sanction.
- The defendant's amenability to treatment and the availability of appropriate treatment programs at the local level.
- Whether the defendant has had the benefit of supervised probation.
- The defendant's status as a Repeat Property Offender is based on solely on his being sentenced for multiple acts arising out of separate criminal episodes.
- The defendant's ability and willingness to make the victim whole by paying restitution.

Domestic Violence Negotiations Bail Recommendations

Before entering into plea negotiations with a domestic violence defendant, the Deputy District Attorney should consult the victim. The victim's opinions should be given significant weight in developing the terms of the negotiations.

In most cases, probation conditions include:

- Supervised probation to the Department of Corrections, including all general conditions of supervision;
- Batterer's intervention counseling at the direction of the Probation Officer;
- Alcohol or drug package if appropriate;
- No contact with the victim if appropriate; and
- Restitution to appropriate parties.

Jail or Prison Recommendations

The following factors should be considered in making a recommendation for jail or prison in a domestic violence case:

- Offender's criminal history and whether there are prior arrests or conviction for domestic violence;
- Whether the present offense involved the use of a weapon;
- Level of injury to the victim;
- Whether there existed a potential for injury to children or whether the offense occurred in the presence of children;
- Concerns of the victim; and
- Whether the defendant sought appropriate treatment prior to entry of a plea.

Standard Misdemeanor Plea Offers

Standard sentencing recommendations for misdemeanors are intended solely for the guidance of prosecutors within the Crook County District Attorney's Office. They are not intended to create substantive or procedural rights or benefits for any person. Deputies are free to depart from these guidelines based upon factors listed above.

Fast-Track Disposition

Oregon law allows early disposition for defendants who are charged with non-person offenses and not had any criminal convictions for a prolonged period of time (including no prior criminal history). The approach is called Fast-Track Disposition. The goal is to:

- Hold offenders accountable for their actions;
- Ensure prompt resolution of criminal matters;
- Protect the rights of the public and the offender;
- Get the most out of community resources to provide alternative sanctions to criminal behavior; and
- Reduce the costs of the criminal justice system

In carrying out Fast-Track Disposition, the Crook County District Attorney's Office shall identify, at intake, crimes eligible for fast-track disposition. At the defendant's first appearance, the defendant should be advised by the court that she or he is eligible for the fast-track disposition and informed the offer will at expire within 14 days or the defendant's next scheduled court appearance (whichever is later).

If the defendant refuses the fast-track offer, the offer immediately expires and the case goes forward in the ordinary course. The terms of the fast-track plea offer shall not be renewed in ensuing proceedings and an updated plea offer with less generous terms will be forwarded to defense counsel.

Crimes Eligible for Fast-Track Proceedings

The following crimes are eligible for Fast-Track:

- No offenses within the last five years:
    - driving while suspended (misdemeanor);
    - theft in the second and third degree;
    - disorderly conduct in the second and third degree;
    - criminal mischief in the second and third degree;
    - criminal trespass in the second degree;
    - harassment (non-family member) and
    - offensive littering

Identifying Fast-Track Cases

The Deputy District Attorney should review the defendant's criminal history to ensure that this is a first-time offender and that the crime falls under the fast track program. The Deputy District Attorney should enter a Fast-Track eligibility note in the file, generating a plea offer on the plea offer form.

PCS Misdemeanor Treatment Guidelines

Pursuant to HB 2355 (2017), the following are guidelines that must be considered, uniformly, when a Deputy District Attorney in this office is evaluating whether to elect to treat a felony drug possession charge as a misdemeanor. In making such a decision, the Deputy District Attorney must consider the following factors, however, this list is not exhaustive and the Deputy District Attorney's are encouraged to use their prosecutorial discretion. The factors include:

1. Nature and circumstances of the underlying crime but not limited to the quantity of drugs. A person in possession of a substantial quantity of drugs would not be eligible for misdemeanor treatment.
2. A defendant's criminal history. The Deputy District Attorney should specifically focus on the number of convictions, the type of convictions, the age of the convictions, and the outcome. A defendant convicted of any violent crime(s) or person felony crimes would not be eligible for misdemeanor treatment.
3. A defendant who committed the new possession of drug crime(s) who was on probation at the time of the commission of the new crimes would not be eligible for misdemeanor treatment.
4. The defendant's willingness to engage and complete substance treatment and whether the defendant had entered and/or completed treatment in the past.

In applying these guidelines, the Deputy District Attorney will ultimately determine based on these factors and other relevant factors, to elect to treat a felony possession of drug charge as a misdemeanor when that attorney believes that it would be unduly harsh to convict the defendant of a felony.

Fines and Court Appointed Attorney Fees

It is the policy of Crook County District Attorney's Office to leave fines, assessments, and court appointed attorney fees to the discretion of the sentencing court. There are two exceptions to this rule:

- Statutorily Mandated: Under Oregon law, certain convictions carry with it statutorily mandated fines and assessments. In these instances, the Crook County District Attorney's Office will request these mandated fines and assessments. A non-exclusive list of examples, include Driving Under the Influence, Driving While Suspended/Revoked (depending on the reason for the suspension), and Furnishing Alcohol to a Minor.

- Negotiated or Requested: In some circumstances a defendant through his or her attorney may choose to negotiate a fine in lieu of receiving a jail sentence and/or community service. There may also be situations where a compensatory fine is negotiated to help cover costs not included in restitution.

Civil Compromise Agreements

Civil compromises are available under ORS 135.703 and 135.705, in instances in which a defendant is charged with a crime punishable as a misdemeanor. The injured party may seek to handle the matter as a civil proceeding. There are a few exceptions, most importantly in cases involving domestic violence and the elderly. The Court, on payment of costs and expenses incurred, may order the complaint dismissed. It is the policy of the Crook County District Attorney's Office to, as a rule, oppose civil compromises.

The Oregon State Bar has ruled that it is unethical under certain circumstances for a prosecuting attorney to advise an injured party against opting for a civil compromise of a criminal case. However, in the interest of justice and in the interest of protecting community safety, this office believes that criminal acts should be handled in criminal court. Deputy District Attorneys should point out to misdemeanor crime victims who are considering a civil compromise that if the obligations undertaken by the defendant in the compromise are not met, the criminal case cannot be revived. Providing this information to the injured party, in the view of the District Attorney's Office, does not violate the Oregon State Bar rule.

Mental Disease or Defect Defense

The defense of Mental Disease or Defect is commonly asserted. When handling such cases, Deputy District Attorneys must be thoroughly familiar with the ORS sections that control these

cases. A thorough history of the defendant is essential in evaluating a defense claim of Mental Disease or Defect. An investigation should be made into prior mental health issues, prior criminal conduct, and family history. Particular attention should be made to alcohol and drug abuse history.

The Deputy District Attorney must staff the case with the Chief Deputy or District Attorney. In those cases where the defense is factually supported, the Deputy District Attorney can stipulate to the facts of the case and any medical records. However, the Deputy District Attorney may not stipulate that the person is guilty except for insanity.

If a person is found guilty except for insanity, the assigned Deputy District Attorney is responsible for preparing a case summary to be forwarded to the Assistant Attorney General. This summary will be used in preparing for future hearings before the Psychiatric Security Review Board. Additionally, the Deputy District Attorney is to contact the Psychiatric Security Review Board and provide all necessary documents to the Board.

Psychiatric Security Review Board hearing notices will be forwarded to the case assigned Deputy District Attorney. The Deputy District Attorney will coordinate with the Assistant Attorney General on preparing for the hearings, including appearing before the Board on appropriate cases. The Deputy District Attorney is responsible to notify crime victims of Psychiatric Security Review Board hearings

Stipulated Facts Trial

The following rules should be observed when Deputy District Attorneys consider a stipulated facts trial:

- Always agree to a stipulation to allegations contained in the charging instrument.
- Remember that a stipulated trial is a trial for purposes of double jeopardy. You should seldom, if ever, allow a defendant to stipulate to a lesser included charge. If the conviction is reversed or the Court allows a new trial, you can only proceed on the charge(s) for which the defendant was found guilty.
- There must always be a jury trial waiver in a stipulated facts trial.
- Never allow the defense to put on **any** evidence.
- Consider a no-contest plea, especially in instances in which the defendant is likely to tell the Court that he/she is innocent.

Be aware of Steward v. Cupp, 12 OR App 167 (1973), which holds that if the stipulated facts trial later falls apart on appeal or post-conviction relief, you may be barred from bringing back the charges you dismissed pursuant to any agreement. Therefore, for both stipulations and pleas, Deputy District Attorneys should be aware of the consequences of reducing or dropping other charges. In those cases, you can get a waiver, but it must be done at the time of the stipulated facts trial.

Negotiations After Trial Readiness

It is the customary practice of the court to schedule several trials on the same day to ensure the docketing time dedicated to trials is utilized. The court then conducts a trial readiness hearing the

week before the scheduled trial dates to inform parties which case(s) are primary and which case(s) are back-up. It is the policy of this office that plea negotiations cease after trial readiness has been complete.

If, after trial readiness, the defendant decides he/she does not want to proceed to trial, the defendant must enter a plea to each and every count on the charging instrument and proceed to open sentencing.

Exceptions to this policy will be limited to circumstances where unforeseen and unpreventable events have impacted the ability of the state to proceed to trial.

Polygraph Examinations

The Oregon Supreme Count has ruled (State v. Lyon) that polygraph examinations, even if they are stipulated, cannot be introduced by the state as evidence tending to prove guilt. Therefore, a Deputy District Attorney should never stipulate to a polygraph.

Polygraphs may still be used by the police for investigative purposes. However, once a case has been issued, if a Deputy District Attorney wishes to dismiss it on the basis of a polygraph, the Deputy District Attorney must obtain the approval of the District Attorney.

Grants of Immunity

The Crook County District Attorney's Office recognizes that it is sometimes necessary to grant immunity to an individual who has participated in a crime in order to obtain the individual's testimony and secure a conviction against others involved in the crime. But it is an action that should be taken only with the utmost caution and done after careful consideration.

The need for a co-defendant's testimony must be balanced against a reduced plea or dismissal. Before offering anyone immunity, a number of legal matters should be considered as well as the circumstances of the crime and the co-defendant's criminal record.

In any event, only the District Attorney can grant immunity from prosecution.

Statutory Immunity Under Oregon Law

Oregon law (ORS 136.617 and ORS 136.619) is very specific about the conditions under which statutory immunity may be granted. Statutory immunity is complete (or transactional) immunity from prosecution, as opposed to testimonial or use immunity.

The statutory immunity statutes allow only the District Attorney to grant it, and then, only under limited circumstances. Deputy District Attorneys who wish to discuss immunity, of any kind, should first speak with the District Attorney. Statutory immunity requests should be made as early as possible in the case if appropriate.

Making Statutory Immunity Requests

If you believe statutory immunity should be considered, be prepared to discuss the following information with the District Attorney for consideration:

- Include criminal record of the individual being considered for immunity.
- Provide information on the precise actions for which immunity is being requested.
- Explain why immunity is necessary, including a summary, if applicable, of other means that have been tried (presumably unsuccessfully) to obtain testimony.
- Prepare a sample draft of the immunity motion or order.
- Outline the benefits to be obtained from the testimony of the person being granted immunity.

When an immunity agreement is signed, the Deputy District Attorney should immediately discover copies of the agreement to all defendants associated with the case. Copies are uploaded into the case management system

Contractual or Informal Immunity

Contractual or informal immunity compels an individual to testify before a grand jury, at trial, at sentencing, or in other proceedings in exchange for the state's promise to dismiss or not bring certain charges or to allow the individual to plea to lesser charges. (The charges on which the state negotiates do not necessarily have to be associated with the incident on which the individual will testify).

The advantage of contractual immunity is that the Deputy District Attorney controls its details. Like all immunity agreements contractual immunity conditions and understandings should be explained precisely, in writing. Ambiguities in contractual immunity agreements should be avoided. Uncertainties arising from the agreement are likely to be adjudicated against the state.

Deputy District Attorneys who wish to consider contractual immunity, should first speak with the District Attorney. Once contractual immunity is agreed to by a Deputy District Attorney, it is binding on this office once the individual has fulfilled all of her/his obligations under the contract.

Contractual Immunity Approval

In all situations involving crimes against a person and significant crimes not involving a person, the District Attorney is responsible for approving contractual immunity agreements. Once signed, the Deputy District Attorney should immediately discover copies of the agreement to all defendants associated with the case. Copies are uploaded into the case management system.

Here are the points to be covered in any contractual agreement. This information, in writing, must be supplied to the District Attorney at the time the contractual immunity request is made:

- A statement that the agreement only covers the crimes listed in the agreement.
- A statement that everything associated with the agreement, including charges, must be in writing and signed by all parties. This statement should say that the agreement contains the "exclusive recital of the terms."
- A statement which explains precisely the nature of the information the witness agrees to provide as well as the exact details of the crime involved.
- A statement that the witness is subject to prosecution if he/she commits perjury.
- A list of the conditions that will void the immunity agreement. This should include the commission of any new crimes by the witness during the duration of the agreement; perjury associated with the testimony being agreed to; and failure of the witness to satisfy every requirement of the agreement. Substantial compliance is not acceptable. Strict compliance is required.
- A statement identifying who will decide that the agreement has been breached. In all but the most unusual circumstances, this should be the District Attorney.
- A statement on the duration of the agreement. Normally, this will include trial, appeals, post-conviction, and re-trials.
- Set out the terms of any plea agreement associated with the agreement. These terms should be specific concerning what happens to the plea bargain should the agreement be breached by the witness.

A statement of the obligations that accrue to the witness, such as to truthfully provide complete and detailed information; provide all information known; name names; make and record phone calls; agree to wear recording devices; and other conditions the District Attorney deems necessary to successfully prosecute the crime.

Contractual Immunity Considerations

Here are some, but by no means all, of the factors that the District Attorney and Chief Deputy shall take into consideration in granting contractual immunity.

- Is the testimony of the witness necessary for conviction?
- Are there other means of obtaining required information?
- What was the role of the witness in the crime as compared with others involved?
- The witness' prior record compared with the criminal record of others involved.
- The witness' cooperation and willingness to aid early in the investigation or prosecution.

- The willingness of the witness to provide full disclosure of the crime and any related criminal activity.
- Is the witness willing to take a polygraph examination?
- What were the polygraph examination results?
- The witness' willingness to provide a truthful sworn statement before being granted immunity.
- If the immunity involves a separate crime from the one on which the witness is testifying, how serious was it compared with the crime at issues in the testimony?

Weapons Charges and Destruction of Weapons

It shall be the policy of the Crook County District Attorney's Office to vigorously prosecute all crimes involving the possession and use of a firearm.

The District Attorney's Office will file criminal charges in any case in which there is a prosecutable case involving a weapon. In addition, this office shall plead mandatory minimums and sentencing guideline subcategories whenever applicable.

Weapons Destruction

Except in the case of stolen firearms, the District Attorney's Office will normally request that all firearms and dangerous weapons illegally possessed, carried, or used in the commission of a crime be confiscated and destroyed as part of any sentence imposed. Deputy District Attorneys should not agree to return a weapon to a defendant. It is up to the police agency involved to determine the status of the weapon.

Section 09 – Alternative Sentencing Programs

Conditional Discharge (charged after 1/1/20)

ORS 475.245 allows a person charged with the crime of possession of a controlled substance, or of a property offense that is motivated by a dependence on a controlled substance, to enter into a probation agreement. The court may enter a probation agreement order only with the consent of the District Attorney. Should a probation agreement be approved, and the defendant successfully complete the conditions thereof, the case will be dismissed.

Eligibility: It is the policy of the Crook County District Attorney's Office that probation agreements under ORS 475.245 shall only be offered to persons charged with the crime of possession of a controlled substance. Some persons charged with Tampering with Drug Records under ORS 167.212 may also be eligible for participation in the program at the discretion of the Deputy District Attorney. Persons charged with property offenses motivated by a dependence on a controlled substance shall not be eligible for a probation agreement. However, those persons may meet the criteria for participation in the Crook County Drug Court.

The probation agreement program is intended as an early disposition program. As such, defendants who seek to enter into the program must agree to waive their right to have the controlled substance(s) tested by the Oregon State Police Forensics Lab and also waive their right to file pre-trial motions to suppress evidence. The acceptance of an offer for the probation agreement program must be made no later than 30 days after arraignment. Acceptance means setting a change of plea date within 60 days of arraignment and entering into the probation agreement within those 60 days. Once a trial date has been set, the defendant will no longer be eligible to participate in the probation agreement program.

The following factors will exclude a defendant from a probation agreement offer:

1. Any previous conviction for a crime involving controlled substances under any statute of the State of Oregon, the United States, or of any other state or foreign country. Convictions for non-criminal violations, such as possession of less than one ounce of marijuana, will not disqualify the defendant.

2. Previous entry into a conditional discharge, probation agreement, diversion or any other form of conditional dismissal, for any offense involving controlled substances under any statutes of the State of Oregon, the United States, or of any other state or foreign country.

3. Any felony convictions within the last five years.

4. Felony convictions entered more than five years prior to the date of the current charge may be considered in determining whether a person is eligible to participate in the probation

agreement program. The Deputy District Attorney should consider the number, age and severity of any prior charges.

5. The Deputy District Attorney may also consider the likelihood that a person will be successful in the probation agreement program based on factors such as the defendant's motivation to successfully complete a drug treatment program, previous performance on probation, and other factors

6. Failure to appear in court on the charged offense after having received actual notice of the charge; failure to appear in court after arraignment; or failure to appear on the charge within one year of the filing date, regardless of whether or not the defendant received actual notice.

7. Since persons who are supervised under the probation agreement program cannot have their supervision transferred out of state, it is a requirement of the program that the defendant reside in the State of Oregon until successful completion of the probation agreement and dismissal of the underlying charge.

Entry into a Probation Agreement

Defendant must sign the Order Entering Conditional Discharge Under ORS 475.245 and Probation Agreement. If defendant is represented, the defendant's attorney should also sign the document. The court will then enter the order for a probation agreement and stay the criminal proceedings.

When entering into a probation agreement the defendant waives these rights and stipulates to these facts, with respect to each criminal charge, if the agreement is later revoked and criminal proceedings reinitiated:

- right to a speedy trial and trial by jury;
- right to present evidence on the defendant's behalf;
- right to confront and cross-examine witnesses against the defendant;
- right to contest evidence presented against the defendant, including the right to object to hearsay evidence;
- right to appeal from a judgment of conviction resulting from an adjudication of guilt entered under ORS 475.245(2), unless the appeal is based on an allegation that the sentence exceeds the maximum allowed by law or constitutes cruel and unusual punishment;
- stipulates to the fact that the controlled substance alleged in each count of the charging document listed in the probation agreement, is said controlled substance beyond a reasonable doubt; and
- stipulates to the fact that the weight of the controlled substance alleged in each count of the charging document listed in the probation agreement, is said weight beyond a reasonable doubt.

Probationary conditions: The defendant shall be placed on supervised probation to the Crook County Community Justice Department for a period of 18 months subject to all general statutory conditions of probation as set forth in ORS 137.540, and subject to the following special conditions of probation:

- Defendant is ordered to pay a supervision fee.
- Keep the Court advised of mailing address, throughout the probationary period, and immediately notify the Court in writing of any change in address.
- Obey all municipal, county, state and federal laws.
- Report immediately in-person following sentencing or release from custody to Crook County Community Corrections at 301 NE Third Street, Prineville, OR, Phone: 541-447-3315.
- Remain in the State of Oregon until written permission to leave is granted by Community Corrections or the Court.
- Not change employment or residence without prior permission from Community Corrections or the Court.
- If physically able, find and maintain gainful full-time employment, approved schooling or a full-time combination of both.
- Execute a release of information to permit any screener, evaluator, or treatment provider to release information to the Court, District Attorney, or Community Corrections to monitor your compliance with treatment obligations. Deliver copies of the release to each party within 30 days of meeting with a screener, evaluator, or treatment provider.
- Submit to an observed blood, breath and/or urinalysis test at the direction of the treatment provider, court or supervising officer, if any. Pay any and all costs involved with testing.
- Consent to the random search of person, vehicle, property or premises, at the request of supervising probation officer if the supervision officer has reasonable grounds to believe that evidence of a violation will be found.
- Defendant shall successfully complete a substance abuse evaluation and recommended treatment program approved by defendant's Probation Officer, if applicable, at defendant's expense. The evaluation shall be scheduled within 30 days of today's date. Provide proof of completion of treatment to supervising probation officer, if applicable, the District Attorney, and the Court at least 60 days prior to the expiration of probation.
- Not use or possess controlled substances, marijuana, or intoxicating inhalants unless lawfully prescribed by a licensed medical professional.
- Notify the probation officer of all prescription drugs and provide copies upon request.
- Not associate with any person known to use, sell, manufacture, deliver, or possess unlawful controlled substances, narcotics, or marijuana.
- Not knowingly be present at any place where unlawful controlled substances or marijuana is used, kept, sold, grown, manufactured, or distributed.
- Not use, possess, or attempt to use or possess any drug paraphernalia.

Termination of a Probation Agreement

Prior to the 18-month pre-trial date, the District Attorney's Office will confer with Crook County Community Justice to determine if the defendant has successfully completed the terms of the probation agreement. Community Justice will run a record check to determine that the defendant has not been charged with a new offense, and also check to confirm that the defendant has successfully

completed any treatment requirements and has paid all required fees. The District Attorney's Office will check its computer system to confirm that no new charges have been filed. Once it has been determined that the terms of the probation agreement have been fulfilled, the District Attorney will move to dismiss the case.

If at any time prior to completion of the probation agreement, the defendant is found to be in violation of the terms of the agreement, Community Justice shall so notify the District Attorney and the District Attorney will move the court to revoke the probation agreement, and reinitiate criminal proceedings, in accordance with ORS 475.245.

Domestic Violence Deferred Sentencing Program

The Crook County District Attorney's Office places special emphasis on domestic violence cases because of the threat these cases pose to children and families. An individual charged with a domestic violence misdemeanor crime against a family or household member (as defined in ORS 107.705) may be eligible for the Domestic Violence Deferred Sentencing Program. Participation is solely at the discretion of the District Attorney's Office based upon a review of the eligibility criteria.

This policy in our office is to promote accountability and early acceptance of responsibility in domestic violence cases. Early acceptance helps to protect the victim and potentially change the offenders' behaviors.

Eligibility

The charged domestic violence crime must be a misdemeanor which may include; Assault in the Fourth Degree, Menacing, Recklessly Endangering Another Person, Interference with Making a Report, Criminal Mischief in the Second Degree and Harassment. Strangulation is specifically excluded from consideration and eligibility of this program.

1. No prior participation in a domestic violence diversion or deferred sentencing program
2. No prior convictions for domestic violence;
3. No prior person crimes within the past 15 years;
4. No pending charges, including DUII, but excluding all other driving charges;
5. No children were injured during the violence; and
6. The present offense did not involve the use, or threatened use, of a dangerous or deadly weapon

Process

Arraignment: The arraigning Deputy District Attorney shall advise the Court if the defendant is eligible for Domestic Violence Deferred Sentencing Program. Similar to the DUII Diversion Program, the matter should be set for an election hearing within 30 days, allowing the defendant time to consider the program and seek legal advice.

A Victim Advocate will attempt to notify the victim of the possibility of the defendant entering into the Domestic Violence Deferred Sentencing Program and explain the program. The victim's input regarding the Domestic Violence Deferred Sentencing Program will be communicated to the Deputy District Attorney.

Election Hearing and Plea: The election hearing is the defendant's sole opportunity to enter into the Domestic Violence Deferred Sentencing Program. If the defendant is undecided about entering the program or chooses not to enter at that time, the defendant is not allowed to enter the program at a later date.

The defendant is required to plead guilty. In order to be successful in the program the offender is required to accept responsibility, and pleading "no contest" is not accepting responsibility.

If the defendant chooses to enter the program, but appears pro se at the hearing, the Court shall seek a waiver of counsel before proceeding with the plea. If the Court accepts the waiver, a plea petition shall be completed and the defendant pleads guilty.

Should the defendant fail to appear at the election hearing, the District Attorney shall seek a bench warrant for the defendant's arrest and entering the Domestic Violence Deferred Sentencing Program will not be an option.

Deferred Sentencing Conditions

The typical conditions set in the deferred sentencing program:

- Defendant must participate in and successfully complete a batterer's intervention program and must enroll in such a program within 30 days of entry into the deferred sentencing program.
- Defendant must abide by the conditions of a drug and alcohol package if requested by the Deputy District Attorney and approved by the Court.
- Defendant must pay appropriate restitution, attorney's fees, and supervision fees.
- Defendant must regularly attend any required treatment to the satisfaction of the batterer's intervention program.

Defendant must obey all laws and must not demonstrate any behavior inconsistent with the purpose of the deferred sentencing program.

Compliance with Sentencing Conditions

At any point during the deferred sentencing program, the batterer's intervention program may notify the Court and District Attorney regarding the defendant's compliance status.

If the Deputy District Attorney determines the defendant is not in compliance, the Deputy District Attorney may file a motion to show cause why the defendant's participation in the deferred sentencing program should not be revoked.

If, at any point during the program, the Court determines that the defendant has not complied with the deferred sentencing conditions, and that participation in the program is serving no useful purpose, the deferred sentence shall be revoked and a sentence entered by the Court.

If the defendant complies with the conditions of the batterer's intervention program and provides proof of completion of the program, the case shall be dismissed with prejudice at the end of the probationary term.

Drug Court (Specialty Court-D)

The Crook County District Attorney's Office supports and participates in our local Drug Court program that includes intensive treatment and local supervision. This program offers help to a population charged with drug or drug-related crimes and aims to reduce the criminal conduct of these individuals.

The multidisciplinary Drug Court team consists of a Judge, Deputy District Attorney, defense attorneys, treatment providers, probation officers, DHS caseworkers and Drug Court Coordinator. The Drug Court team meets twice a month to evaluate perspective and current participants. Successful completion of Drug Court includes full payment of restitution to the victim(s) if applicable.

Eligibility Criteria

To participate in Crook County's Drug Court the individuals must be a Crook County resident and have a drug addiction issue that appears to be the primary factor in the person's involvement with the criminal justice system:

Pre-Adjudication Track

The District Attorney reserves the right to consult with any named victim prior to determining eligibility. The input from the victim(s) will be a major contributing factor in determining whether the District Attorney will recommend entry into the program. The District Attorney reserves the right to exclude any participant from the program prior to adjudication.

Factors the Deputy District Attorney should consider may include but are not limited to:

1. Prior criminal history;
2. Whether the criminal activity is verifiably driven by addiction issues;
3. Prior participation in a diversion/deferred Court program;
4. Prior participation in treatment not mandated by the court;
5. Number of people victimized by the defendant's criminal conduct in the cases being considered for entry;
6. Damages done to the victim(s) in the current cases;

7. The victims' position on entry into treatment court/intensive supervision program;
8. Facts that suggest the defendant is or is not amenable to treatment; and
9. Pending out of county criminal cases.

Excluded Charges:

1. Crime Category "8" and "9" Burglary I;
2. Any violent person felonies (excluding Robbery III cases involving minimal force used in a shoplifting scenario);
3. Crime Category "9" and "10" Delivery/Manufacture of a Controlled Substance;
4. Felon in Possession of a Firearm (if prison eligible);
5. Driving Under the Influence of Intoxicants;
6. Attempting to Elude a Police Officer—Felony; and
7. Any Charges of a Sexual Nature

POST-ADJUDICATION TRACK (PROBATION TRACK)

Upon recommendation of the probation officer or defense attorney during the pendency of a probation violation, the Deputy District Attorney will review the case file and consult with any named victim prior to taking a position on the appropriateness of entry into the program. If a consensus of all Drug Court team members cannot be reached as to whether defendant should enter the program, the Court is the final arbiter. Conditions of probation may be altered to include participation in Drug Court over the objection of the Deputy District Attorney.

Deputy District Attorneys will maintain a standing objection to any candidate being considered for Drug Court during a probation violation sentencing that is on probation for any of the "Excluded Charges" listed above.

Consideration for Program Participation

PRE-ADJUDICATION TRACK

Misdemeanor Charge(s):

- Charges to be dismissed upon successfully completion of program

Felony Charge(s)

- Charges may be reduced to misdemeanors upon successful completion of program

POST-ADJUDICATION TRACK (PROBATION TRACK)

When conditions of probation are altered to include entry into mental health court, consideration for participation in the program may include:

- Avoidance of probation revocation
- Reduction in use of sanction units
- Possible early termination from probation

Referrals- Drug Court

A member of the multi-disciplinary Drug Court team (Judge, treatment provider, probation officer, defense attorney, DHS caseworker or Deputy District Attorney) may submit a Drug Court referral form to the Crook County Drug Court Coordinator via email or by dropping those items off to the Drug Court Coordinator's office. Defendant must sign a release of information to be considered for the screening process.

District Attorney's Office Vetting Process

The District Attorney will designate one Deputy District Attorney to be the office representative on the Drug Court Team. If any Deputy District Attorney in the office believes he/she has an appropriate candidate for Drug Court that Deputy District Attorney should staff that candidate during the daily Deputy District Attorney morning meeting. All Deputy District Attorneys will have the opportunity to discuss eligibility criteria and the appropriateness of the candidate for the program. In the event consensus cannot be reached, the District Attorney will be the final arbitrator of eligibility.

If the candidate is deemed eligible through the District Attorney's Office interoffice staffing, the Deputy District Attorney assigned to the case will extend a conditional Drug Court plea offer to defense counsel. The plea offer will indicate defendant must participate in a screening process with the Drug Court Coordinator and be approved by the Drug Court team as a condition of the plea offer becoming formal and subject to acceptance. Prior to making a Drug Court offer, the assigned Deputy District Attorney should make contact with a victim to allow input in the disposition. The assigned Deputy District Attorney will retain case assignment until the candidate formally enters into Drug Court by order of the judge. If the candidate is not approved by the Drug Court team or rejects the offer, the assigned Deputy District Attorney will continue with prosecution of the case.

Mental Health Court (Specialty Court-M)

Certain defendants suffer from different forms of mental illness that cause or are substantial contributing factors to the individual's continued criminal behavior. In order to effectively reduce the criminal conduct of these individuals, traditional criminal punishment needs to be supplemented with broad-based mental health treatment and supervision.

The Mental Health Court Team meets on a regular basis and uses a multidisciplinary approach to evaluate perspective and current participants. Successful completion of MHC includes full payment of restitution to the victim(s) if applicable.

Eligibility Criteria

To participate in Crook County's Mental Health Court the individuals must have a serious and persistent mental illness (SPMI) per the definition of the office of Addictions and Mental Health (AMH) for the State of Oregon, and as determined by a mental health professional, with mental illness appearing to be the primary motivating factor in the person's involvement with the criminal justice system:

Pre-Adjudication Track

The District Attorney reserves the right to consult with any named victim prior to determining eligibility. The input from the victim(s) will be a major contributing factor in determining whether the District Attorney will recommend entry into the program. The District Attorney reserves the right to exclude any participant from the program prior to adjudication.

In cases involving restitution, the participant must agree to pay restitution and make payment in full prior to completion of the program.

Misdemeanor Crimes

ALL misdemeanor crimes will be given consideration with the exception of:

1) Driving Under the Influence of Intoxicants
2) All "person crimes" as designated under OAR 213-003-0001(15)
3) Any crime involving a firearm or weapon

Felony Crimes

MOST felony crimes will be given consideration with the exception of:

1) Measure 11 Crimes (ORS 137.700)
2) Driving Under the Influence of Intoxicants
3) All "person crimes" as designated under OAR 213-003-0001(14)
4) Any crime involving a firearm or weapon

As noted above, all "person crimes" will be presumptively excluded unless exceptional circumstances dictate additional review and consideration. These cases will be evaluated on a case-by-case basis with the District Attorney making the final determination after consideration of the totality of the circumstances.

POST-ADJUDICATION TRACK (PROBATION TRACK)

Upon recommendation of the probation officer or defense attorney during the pendency of a probation violation, the District Attorney will review the case file and consult with any named victim prior to taking a position on the appropriateness of entry into the program. If a consensus of all mental health court team members cannot be reached as to whether defendant should enter the program, the Court is the final arbiter. Conditions of probation may be altered to include participation in mental health court over the objection of the District Attorney.

Consideration for Program Participation

PRE-ADJUDICATION TRACK

Misdemeanor Charge(s):

- Charges to be dismissed upon successfully completion of program

Felony Charge(s)

- Charges to be reduced to misdemeanors upon successful completion of program

POST-ADJUDICATION TRACK (PROBATION TRACK)

When conditions of probation are altered to include entry into mental health court, consideration for participation in the program may include:

- Avoidance of probation revocation
- Reduction in use of sanction units
- Possible early termination from probation

Referrals- Mental Health Court

A member of the multi-disciplinary MHC team (Judge, treatment provider, probation officer, defense attorney, DHS caseworker or Deputy District Attorney) may submit a MHC referral form to the Crook County Mental Health Court Coordinator via email or by dropping those items off to the MHC Coordinator's office. Defendant must sign a release of information to be considered for the screening process.

District Attorney's Office Vetting Process

The District Attorney will designate one Deputy District Attorney to be the office representative on the MHC Team. If any Deputy District Attorney in the office believes he/she has an appropriate candidate for the MHC that Deputy District Attorney should staff that candidate during the daily Deputy District Attorney morning meeting. All Deputy District Attorney s will have the opportunity to

discuss eligibility criteria and the appropriateness of the candidate for the program. In the event consensus cannot be reached, the District Attorney will be the final arbitrator of eligibility.

If the candidate is deemed eligible through the District Attorney's Office interoffice staffing, the Deputy District Attorney assigned to the case will extend a conditional MHC plea offer to defense counsel. The plea offer will indicate defendant must participate in a screening process with the MHC Coordinator and be approved by the MHC team as a condition of the plea offer becoming formal and subject to acceptance. Prior to making a MHC offer, the assigned Deputy District Attorney should make contact with a victim to allow input in the disposition. The assigned Deputy District Attorney will retain case assignment until the candidate formally enters into MHC by order of the judge. If the candidate is not approved by the MHC team or rejects the offer, the assigned Deputy District Attorney will continue with prosecution of the case.

Section 10 – Trials

Negotiations Day of Trial Prohibited

Consistent with office policy that plea negotiations cease after trial readiness has been complete, Deputy District Attorneys will not entertain defense offers of settlement the day of the scheduled trial. This policy will be strictly enforced to encourage settlement of cases much earlier in the criminal process.

At the point the case is ready to proceed to trial, the Court has designated significant docketing time and in cases of a jury trial, summoned citizens for jury service. The District Attorney's Office will have also expended significant resources both in time for trial preparation and money to secure witness appearances.

If on the morning of trial or during the course of the trial, the defendant decides he/she does not want to proceed to trial, the defendant must enter a plea to each and every count on the charging instrument and proceed to open sentencing.

Exceptions to this policy will be limited to circumstances where unforeseen and unpreventable events have impacted the ability of the state to proceed or continue with the trial and settlement is in the best interest of the state.

Expert Witness Fees

Fees for the testimony of expert witnesses shall be consistent with the Circuit Court Fee Schedule. If a District Deputy Attorney anticipates a need to exceed schedule payments, the matter should be brought to the attention of the Chief Deputy before the expert witness is employed. The District Attorney must approve all fees prior to agreement with the expert witness.

Payment Procedures

Expert witnesses shall submit an itemized bill for services to the Deputy District Attorney who handled the case. All bills should be sent to the Crook County District Attorney, 300 NE Third Street Prineville, OR 97754.

The Deputy District Attorney who receives the bill should review it and bring the bill to the District Attorney for review and final approval. After District Attorney approval, the Deputy District Attorney should write the case number on the bill and then submit it to the Office Manager for payment.

Witness Fees

Fees for witnesses in criminal prosecutions shall be consistent with fees established by Oregon state statute (see ORS 44.415). These reimbursements include fees for daily appearance as a witness and for mileage reimbursement.

In certain cases where the witness is out of state or lives a significant distance from the courthouse and is indigent or would otherwise be unable to attend due to financial limitations, it may be necessary to provide temporary lodging and/or meals. Requests for this support should be made only after all other resources have been examined. Such requests should be made by the case deputy and must be approved by the District Attorney. It is the assigned Deputy District Attorney's responsibility to ensure that requests are limited to those situations where this support will prevent a miscarriage of justice.

Approval will be based upon factors that support the best interests of justice. Factors to be considered include the seriousness of the case, the importance of the witness, the total cost, the financial need of the witness, the lack of any other witness resources, and other factors that impact the best interest of justice

Evidence Released by the Court

Items of evidence that are submitted as exhibits to the court during motion hearings or trial are still original items that should be returned to the originating agency. Should these items need to be preserved for appeal or other future litigation, preservation of these items should be ensured by the original agency and should be clearly marked so as not to be destroyed. Exhibits such as documents or photographs that are not considered original evidence will be scanned and maintained with the digital file. Demonstrative exhibits too large to be scanned shall be photographed and the photographs will be scanned into the digital file.

Victim Appearance in Domestic Violence Cases

In a domestic violence case, every effort should be made to ensure the appearance of the victim for trial. Victim Advocates should maintain contact with the victim before trial and arrange transportation to the trial, if requested.

The following steps are taken if the victim fails to appear on the trial date:

- The Deputy District Attorney should request additional time from the trial judge in order to send an officer and/or a Victim Advocate, if available, to make contact with the victim.

- The officer shall encourage the victim to comply with the subpoena and educate the victim that an arrest warrant may be issued to force his/her appearance at trial.

- Should the victim still fail to comply with the subpoena, the Deputy District Attorney may seek the approval of Chief Deputy or the District Attorney for an arrest warrant.

- If an arrest warrant is authorized, the Deputy District Attorney shall seek its issuance from the trial judge and the officer shall execute it immediately and bring the victim to court.

Below are some of the factors to keep in mind in making the decision whether to obtain an arrest warrant for a domestic violence victim. There may be others, depending on the circumstances of the case:

- Defendant's history of violence;
- Danger posed by the defendant to the victim;
- Ability to proceed with the trial without the victim's appearance;
- Victim's expressed reason for not appearing;
- Defendant's criminal history;
- Severity of the victim's injury;
- Presence and involvement of children in the incident;
- Use of a weapon;
- Cause to believe there may have been witness or evidence tampering;
- Risk or inconvenience to other witnesses, and
- The expense of compelling the victim's presence at trial.

Section 11 – Review and Disclosure of Brady Material

Policy

It is the policy of the Crook County District Attorney's Office to comply with all statutory, constitutional and ethical obligations to provide timely disclosure of Brady/Impeachment evidence related to Law Enforcement/Government witnesses. To comply with this obligation the District Attorney's Office has adopted the following procedures.

When any police agency contacts a Deputy District Attorney regarding a criminal investigation of a police officer, the Deputy District Attorney shall immediately notify the District Attorney. The District attorney will form a Brady Committee.

Brady Committee Composition

The committee will consist of the District Attorney, Chief Deputy District Attorney, and at least one Senior Deputy District Attorney, preferably both Senior Deputy District Attorneys.

Purpose

This committee will be tasked with determining what obligations, if any, the District Attorney's Office has with regard to potential Brady information brought to the Committee's attention.

Notice/Awareness of Brady Material

Annually and/or when leadership changes in a Law Enforcement Agency during the year, the Crook County District Attorney's Office shall send out a letter reminding each agency of its on-going obligation to turn over Brady Information within that agency's possession on any law enforcement officer. The letter in part states:

Such materials include not only exculpatory information, but also any findings or substantiated allegations that call into question the credibility of a government witness (impeachment information). With respect to law enforcement officers, the following is considered impeachment information:
1. Any findings of misconduct that reflects upon the truthfulness or possible bias of the employee, including dishonesty during an administrative inquiry;

2. Any past or pending criminal charge brought against the employee;

3. Any credible allegation of misconduct that reflects upon the truthfulness or possible bias of the employee that is subject of a pending investigation; and

4. Any allegation made by a state or federal prosecutor, judge or magistrate that reflects upon the truthfulness or bias of the employee.

The District Attorney's duty to disclose also extends to any exculpatory evidence not specifically listed above. Exculpatory evidence includes evidence or information that tends to negate the guilt of the accused or mitigates the offense or sentence. It is commonly referred to as "Brady" evidence. The duty to disclose encompasses all evidence and information, whether it is documented in writing or not.

Aside from receiving notice of potential Brady Information directly from Law Enforcement Agency Command Staffs, the District Attorney's Office will accept complaints from other officers, attorneys, and/or citizens regarding potential Brady Information. However, the District Attorney's Office doesn't have its own investigator to look into complaints or obligation to conduct its own investigation. When a complaint is initiated from a non-Command Staff submittal the District Attorney's Office will reach out to the involved agency to request any material that is relevant to the complaint and review any material submitted by the complaining party.

Brady Information Review

Standard of Review

When reviewing the material for determination of Brady Information the committee shall use a clear and convincing standard to address the question of whether the information/evidence tends to effect the credibility of the officer/witness, ie: impeachment information. In making this determination the District Attorney's Office will use a tiered approach in its review.

Tier I—Intentional and Malicious Deceptive Conduct:
Will likely result in disqualification as a witness. This type of dishonesty usually has a direct nexus to employment. A non-exclusive list of examples:

1. Deceptive conduct in a formal setting, ie: testimony, affidavit, police report, official statement, internal affairs investigation;
2. Tampering with or fabricating evidence;
3. Deliberate failure to report criminal conduct by other officers;
4. Willfully making a false statement to another officer on which the other officer relies in an official setting;
5. Criminal conduct resulting in conviction that is fraudulent in nature;
6. Repeated, habitual or a pattern of dishonesty, however minor, during an internal affairs investigation;
7. Repeated and persistent acts/language that demonstrate bias and prejudice against a constitutionally protected class of people;
8. Persistent dishonesty following Garrity warnings or following administrative action; and/or

9. Other deceitful acts that demonstrate disregard for constitutional rights of others or the law, policies and standards of proper police practice

Tier II—Conduct Intended to Deceive but Not Malicious in Nature:
Will likely require disclosure but may not disqualify a witness. While not condoned, this type of dishonesty is limited to a specific time and circumstance and may be explained in one extenuating circumstance. A non-exclusive list of examples:

1. A simple exculpatory "no" when faced with an allegation of misconduct;
2. A deceptive statement made in an effort to conceal minor unintentional misconduct;
3. A purely private, off-duty statement intended to deceive another about private matters;
4. An isolated dishonest act that occurred years prior;
5. A spontaneous, thoughtless statement made under stressful circumstances that is later recognized as misleading and is corrected;
6. Isolated "administrative deception" related to minor employment matters (ie: calling in sick when not sick, misleading claim about availability for a shift); and/or
7. Isolated act/language that demonstrates bias and prejudice against a constitutionally protected class of people

Tier III—Excusable or Justified Deception:
Will likely not require Brady disclosure of any type and will not be considered impeachment material even if it results in some sort of disciplinary action. A non-exclusive list of examples:

1. Inaccurate or false statements based on misinformation or a genuine misunderstanding of applicable facts, procedures, or law;
2. Investigatory tactics that are deceptive but lawful;
3. Lies told in jest concerning trivial matters or to spare another's feelings;
4. Negligence in reporting facts or providing misleading information to the public that later turns out to be false; and/or
5. Nonmaterial exaggerations, boasting or embellishments in descriptions of events or behaviors of others

Initial Process/Review

When a Brady complaint is submitted to the District Attorney's Office, the investigation/material submitted with the complaint shall be copied and provided to the members of the Brady Committee for review.

At this time the Deputy District Attorneys in the office will be put on notice that an officer is in the review process, and the office manager will run a report in the data management system to create a list of open cases in which the officer is involved. Deputy District Attorneys who have this officer on a case that is set for a change of plea will need to alert the defense attorney that there may be new material that needs to be discovered on a "witness" however this will not be known for a period of time. This allows a defense attorney to make a decision whether to allow their client to plea or set it over. Deputy District Attorneys who have trial set with this officer should request continuances by the end of the week prior to the trial until notice of the Brady Committee's findings.

The Brady Committee will convene a meeting as soon as practical to discuss the investigation/material that was dispersed. At the end this meeting, the Brady Committee will tentatively discuss whether the investigation/material represents Tier I, Tier II, or Tier III information, or the Committee may find it doesn't fall within any of those categories or may in some instances decide to request witnesses to appear before the committee to clarify information.

When the decision of the Committee tentatively classifies the officer in review as a Tier I, Tier II, or Tier III officer, the District Attorney will send a letter/e-mail to the affected Officer alerting the officer of the possible designation. In this communication the officer will be invited to come speak to the Brady Committee, and/or submit materials of explanation/mitigation.

Final Review

After receiving all the evidence/material in a Brady complaint the members of the Brady Committee will meet for a final time to discuss this information. At this time a final vote will be held to determine the status of the person before the committee. The vote will consider whether there was enough evidence to classify the witness as a Tier I, Tier II, or Tier III designation or may decide that the information presented did not qualify as Brady material or meet the burden of **clear and convincing evidence**, necessary to declare a tier classification. The final vote requires a majority finding, and in the event of a tie, the District Attorney will make the final determination.

Notice/Record/Disclosure

At the conclusion of a Brady Committee review, the District Attorney will draft a memorandum documenting the evidence reviewed, basis of the group's decision, and the final findings of the group. This memorandum will be shared with the officer's law enforcement agency.

Notice of the committee's decision and any impact it will have on the use of the officer as a witness will be communicated to the officer by the District Attorney. A copy of the memorandum will be sent to the officer.

If the officer is classified as Tier I or Tier II. that decision will be documented internally in Karpel and the packet of documents consisting of the committee's memorandum and discovery material will be scanned under the document tab of that officer. A list of Tier I and Tier II officers will be kept by the District Attorney.

The Deputy District Attorney handling a case where a witness is classified as Tier I or Tier II will see this in the case management system and ensure that the material is discovered to the defense, even if the officer is not being called as a witness.

Tier I officers are disqualified from being called as a witness by the Crook County District Attorney's Office. Deviation from this policy requires the permission of the District Attorney.

Section 12 – Investigations Involving LEA Use of Deadly Force

General

An officer's decision to use deadly physical force against another is a decision that warrants an independent review by the Crook County District Attorney. The District Attorney alone will decide whether the case will be presented to a Crook County Grand Jury.

Process

The investigation of an officer's use of deadly physical force can be complex and take several weeks to complete. Whenever practical the presentation to the grand jury should occur when the investigation, including the formal interviews of the involved officers, is completed. However, when an incident leads to a suspect being criminally charged for conduct that occurred during the incident where an officer used deadly physical force, the presentation of the case to the grand jury may be on an accelerated timeline in order to adhere to Constitutional safeguards of an accused suspect. This may force the presentation to the grand jury before the investigation is fully complete as it relates to the officer's conduct.

The Crook County District Attorney's Office will follow the process outlined in the Crook County Deadly Physical Force Plan pursuant to SB 111 (2007).

Section 13 – Public Records and Information Security

General Information Security

It is standard practice in Crook County District Attorney's Office to collect, store, and disseminate information in a manner that maintains security and prevents information from being accessed by unauthorized individuals or organizations. We recognize, and make every effort to maintain, the right of privacy from unwarranted intrusions. Employees of the Crook County District Attorney's Office should exercise every precaution to protect information.

Employees of the Crook District Attorney's Office who have special certifications and/or privileges for access into confidential databases should be familiar with and follow each databases specific guidelines.
If an employee is asked to supply information, the person should obtain the requester's identity and purpose for obtaining the information. If in doubt about supplying the information to an entity outside of the office, the employee should seek guidance of a supervisor.

General Public Records

The Crook County District Attorney's Office recognizes the Oregon public records law applies to all state and local government records, regardless of form, as long as they contain information "relating to the conduct" of the public's business that are prepared, owned, used, or otherwise retained by the public body. Records subject to the law may include hand-written notes, typewritten records, printed material, copies, photographs, maps, emails, and computer records. Oregon Public Records laws (ORS 192.311-192.431) encourage transparency within the government, and are a set of laws meant to facilitate the disclosure of records not inhibit it.

Case Notes

Crook County Deputy District Attorneys are required to document events, decisions, and other work on cases in the appropriate place in the "notes" section of Karpel. Professional and appropriate language should be used to document these notes about the case. Deputy District Attorneys should keep in mind that the notes within a case may become public information.

Law Enforcement Agency Reports

All requests for law enforcement agency reports should be forwarded to the District Attorney assigned the case. Generally, police agency reports are subject to public records requests and released unless they involve a pending case or unless release of the report jeopardizes the prosecution of pending cases or impairs the defendant's right to a fair trial. If a case is closed the Deputy District Attorney should direct the requesting party to contact the actual custodian of the original record (the reporting agency) in order to obtain a copy of the report.

In cases involving a driver charged with driving under the influence of intoxicants Oregon law requires disclosure of the report to a victim and/or his/her designee. In other cases where a victim needs a copy of a police report or a portion of the police report for insurance or other collateral issues, the Deputy District Attorney should attempt to work with the victim in providing the report to an insurance company or another entity, as long as it does not put the State's case or Defendant's right to fair trial in jeopardy.

Public Record Requests for District Attorney Records

When the Crook County District Attorney's Office receives a written/emailed public records request, the request should be forwarded to the District Attorney.

The District Attorney will acknowledge receipt of the request within the statutory mandated time. The records will then be collected and reviewed to determine whether to release the information. This decision is will be based upon compliance with ORS 192.311-192.431. After a final decision is made within the statutory mandated time, the response/denial and records, if disclosed will be sent to the requester.

Releasing Juvenile Records

Under Oregon law, special rules apply to the release of juvenile records, but, generally, juvenile records, including police reports, can be released only under court order. Juvenile records may not be released to non-criminal justice agencies. The District Attorney can give you advice on the special rules that apply to the release of juvenile records.

Release of information on traffic accidents involving a juvenile can be released under Oregon law. You should send a letter to the party requesting such information saying that a motion must be made to the Juvenile Court before such traffic records can be released. A copy of the letter shall be sent to the police agency involved.

Releasing Pre-sentence Reports

Oregon law (ORS 137.077) explains who may obtain a copy of a pre-sentencing report. Unless the requesting entity is specifically cited in the statute as being authorized to receive a copy of the report, a hard copy shall not be provided. The information can, at the Deputy District Attorney's discretion, be passed along verbally or the requesting party may view a copy of the report in the District Attorney's Office.

Appeals From Other Public Entity Denials

The Crook County District Attorney is designated by ORS 192.415(1)(a) as the entity for reviewing public record request denials by local government agencies within Crook County.

An appeal of public record denial should be forwarded to the District Attorney. The District Attorney will acknowledge receipt of the appeal within the set statutory timeframe and also contact the government entity to request the documents/information for review. The District Attorney will review the documents/information

and make a determination on whether or not the documents/information should be disclosed in accordance with Oregon Public Records Laws (ORS 192.311-192.431).

Fees for Public Records Requests

District Attorney employee time and materials used to comply with public records requests are charged at an amount reasonable calculated to reimburse the District Attorney's Office. The District Attorney's Office will not charge more than a reasonable calculation of the actual costs to respond to the request, in compliance with ORS 192.

Charges to the requester for single-page, one-sided copies (letter, legal, or 11 x 17) may be charged at the rate of $1 for the first page and 10 cents for each additional page. There is not a fee for electronic copies (except staff time).

Eligible employee time to be charged to the requester Includes time spent locating, retrieving, and compiling documents. Employee time charges are composed of the employee's base hourly rate, plus an average tax and benefit cost. Employee charges will be calculated by adding up the time spent by the employee working on the request, and then multiplying that number by the employee's hourly rate and tax and benefit percentage.

The District Attorney or designee may waive or reduce fees for copying or inspecting records if the District Attorney or designee finds the waiver is in public interest.

Section 14 - Records and Evidence Retention

General Internal Case Retention

The Crook County District Attorney's Office has adopted a schedule for retaining and destroying case records, based on the nature and resolution of a crime, and the document(s) involved. Depending on the year the case record was created, the record may be stored on site at the District Attorney's Office, in the cloud case/data management system, or in the county archive storage warehouse. Ultimately, based on the schedule, paper records are destroyed. All case records that are currently scannable are stored in a cloud-based data management system.

Internal Record Retention/Destruction

The following records retention schedule adheres at a minimum to Oregon law, and is broken into case type. Case reports submitted to the Crook County District Attorney's Office are scanned into a cloud-based data management system. Video, audio and photographic (unless submitted as part of the report or in documentary format) evidence is documented as received under the evidence tab in the cloud-based data management system. These digital records are kept in accordance with the retention schedule.

The following Records Retention Schedule shows (1) the minimum retention period, by case type, required by Oregon law; (2) the current retention period; (3) and whether or not the records are scanned into an online record system.

Records Retention Schedule			
Case Type	**Minimum Retention (OAR 150)**	**Current Retention**	**Scanned**
Homicide, guilty	60 years	Permanent	Yes
Homicide, not guilty	3 years	Permanent	Yes
Class A, guilty	60 years	Permanent	Yes
Class A, not guilty	3 years	Permanent	Yes
Class B, guilty	3 years after sentence expires	Permanent	Yes
Class B, not guilty	3 years	Permanent	Yes
Class C, guilty	3 years after sentence expires	Permanent	Yes
Class C, not guilty	3 years	Permanent	Yes
Misdemeanor	3 years after closed	Permanent	Yes

Public Records	2 years after request	Permanent	Yes
Support enforcement	2 years after all support paid.	Permanent	Yes
Juvenile Delinquent Case Files, Adjudicated (Formal and Informal))	Unless expunged, until the individual turns 27 years of age and the case has been closed 3 years.	Permanent	Yes
Juvenile Dependency Case Files	Unless expunged, until the individual turns 27 years of age and the case has been closed 10 years.	Permanent	Yes
Juvenile Detention Use Reports	Until the individual is 27 years of age.	Permanent	Yes
Juvenile Court Records (2.240)	Unless expunged, 75 years from the individual's date of birth.	Permanent	Yes
Sealed Juvenile Court Expunctions (2.513)	75 years after the order is granted.	Permanent	Yes
Mental Commitment	5 years	Permanent	Yes
Civil Forfeiture	5 years	Permanent	Yes
Grand Jury Logs	20 years	Permanent	Yes

General External Evidence Retention

Each agency will have different needs and available space for evidence storage. However, this evidence retention schedule should be used by area property control/records personnel as a general guide. Video, audio, and photographic evidence retained in the records division of each agency should adhere to this retention schedule for those items. There will certainly be exceptions to the general guidelines which will depend on the circumstances of an individual case.

Prior to disposition of evidence on some cases; property/records personnel should confirm that no appeal, state PCR proceeding or federal habeas corpus petition is pending. A notice of appeal must generally be filed in the trial court within 30 days of the entry of the judgment of conviction and sentence. That is easily checked in E-Court/Odyssey.

However, the time periods for filing for state PCR or federal habeas are more complex. Also, these cases are not filed in the Crook County Circuit Court. The best way to determine if either PCR or federal habeas has been filed on a case is to call or email the Oregon Attorney General's Trial Division, Post-Conviction Relief Section (503-378-4400). If two years have passed from the date the judgment was entered in the trial court, and no appeal, PCR or federal habeas has been filed; generally, the evidence may be released at that time. However, if any of those actions have been filed on a case, the time periods to file subsequent challenges are affected. In such cases, prior to disposing of any evidence property/records personnel should confirm with the PCR Section that the applicable time periods have run and that the defendant would be barred from filing any further challenges to the conviction in either state or federal court.

In any case in which there were co-defendants, property/records personnel should be sure that the necessary time periods have run on all of the defendants before disposing of any of the property. Agencies should also keep in mind that evidence which was seized pursuant to a search warrant requires that a court order be obtained prior to release. The release of weapons also requires special care, and in many cases, they may not be returned to the defendant.

External Evidence Retention Schedule

Each agency will have different needs and available space for evidence storage. However, this evidence retention schedule

Cases Submitted but No Suspect Has Been Identified

1. Misdemeanor—1 year
2. Felonies—3 years
3. Measure 11 offenses—5 years, after consulting with the investigating officer
4. Homicides—Only after consulting with the officer and the District Attorney
5. Sex crimes with extended statute of limitations- Retain until the statute of limitations has run. For victims under 18, the statute runs when the victim reaches the age of 30 on a felony case, and age 22 on a misdemeanor case. Also, if the identity of the perpetrator is established by DNA evidence,

prosecution can be commenced up to 25 years after the crime. See ORS 131.125 for specifics on the extended statute of limitations.

Cases Submitted to The District Attorney's Office

1. If the D.A. determines that no charges will be filed on a case—The evidence may be released at that time

2. Cases filed with the court:

    a. Cases which have an outstanding warrant—Should be held until the case is disposed of, at which point the procedures set out below should be followed

    b. Cases which are filed and then subsequently dismissed—The evidence may be released at that time.

    c. Cases in which the defendant has pleaded guilty

        i. Misdemeanors and most felonies—90 days after the defendant has been sentenced

        ii. Measure 11 cases—2 years, and after determining that no appeals, state PCR or federal habeas corpus petitions are pending or may yet be filed with the court. On homicide cases, please check with the District Attorney

3. Cases in which the defendant has been convicted at trial

    a. Misdemeanors and most felonies—90 days after the defendant has been sentenced and after determining that no notice of appeal has been filed

    b. Measure 11 cases—2 years, and after determining that no appeals, state post-conviction relief or federal habeas corpus petitions are pending or may yet be filed with the court. On homicide cases, please check with the D.A.

4. Cases in which the defendant has been found not guilty on all charges at trial—The evidence may be released at that time

Special Rules Regarding Blood & Urine Samples Held Subsequent to Testing for Drug and/or Alcohol Content

According to a meta-analysis conducted by the Oregon State Police Forensic Laboratory, urine and blood samples stored beyond two years will degrade to such a point that they lose their forensic value. The two-year window assumes ideal storage conditions (frozen urine samples and refrigerated blood samples). Accordingly, these items need only be held for two years, with the exceptions listed below:

1. Cases on appeal, or pending state PCR or federal habeas

2. Vehicular assaults/homicides and Measure 11 cases

When one of these exceptions applies, the property officer should follow the guidelines set out in this schedule that would otherwise apply.

Rules Regarding the Retention of Biological Evidence: ORS 133.707 governs the law as it pertains to the retention of biological evidence.

1. "Biological evidence" means an individual's blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identified biological material, and includes the contents of a sexual assault forensic evidence kit.

2. In cases of aggravated murder, murder, rape in the first degree, sodomy in the first degree or unlawful sexual penetration in the first degree, biological evidence must be preserved for 60 years, or until the death of the defendant.

3. In cases of aggravated vehicular homicide or manslaughter in the first or second degree, biological evidence must be preserved until the defendant has served the sentence imposed.

4. If no person is convicted or the case is otherwise closed, and the offense is one of those listed in B or C above, biological evidence must be retained until the expiration of the applicable statute of limitations. If the offense is not one of those listed in B or C above, ORS 133.707 does not require extended preservation of the evidence, and Sections I and II of this evidence retention schedule should be followed.

5. If the evidence is too large to practically retain, the custodian may remove and preserve a portion of the physical evidence that is likely to contain biological evidence in a quantity sufficient to permit future DNA testing. The custodian may then return or otherwise dispose of the evidence.

6. Biological evidence may be disposed of prior to the time periods set out above only pursuant to a complex scheme set out in ORS 133.707. A request to dispose of such property must initially be directed, in writing, to the District Attorney.

Rules Regarding Collection, Submission for Testing, Retention & Destruction of Kits: ORS 181A.325 governs the law as it pertains to sexual assault kits.

1. Law enforcement agencies must obtain a sexual assault forensic evidence kit from a medical facility within seven days after notification that the kit has been collected.

2. The sexual assault forensic evidence kit must be submitted to the Department of State Police for testing within 14 days of taking possession of the kit from a medical facility.

3. Anonymous kits should not be sent to the Department of State Police for testing.

4. All sexual forensic evidence kits, including anonymous kits, must be retained for no less than 60 years after the collection of the evidence.

5. If a victim who did not previously participate with a law enforcement agency in the creation of a report of a sexual assault later participates in the creation of a report, the sexual assault forensic evidence kit associated with the report must be reclassified as a nonanonymous kit.

6. When a sexual assault forensic evidence kit is reclassified as non-anonymous, the law enforcement agency in possession of the kit shall submit the kit to the department for testing within 14 days of the reclassification.

Section 15 – Prosecuting Environmental Crimes

Guidelines for Prosecuting Environmental Crimes

In 1993, the Oregon Legislature passed Ch 422, which establishes severe penalties for certain violations of state environmental laws. Any conduct that violates CH422 is also a violation of state regulatory statutes and administrative rules. For many violations, administrative remedies and civil penalties are adequate responses. For some conduct, the bringing of a misdemeanor charge may be appropriate. Bringing felony charges should be reserved for the most serious violations of state environmental laws.
The decision to prosecute an act under the environmental laws is a matter of prosecutorial discretion determined by specific circumstances of each case. No single factor on the list below is controlling and the weight accorded each factor will vary from case to case. The guidelines are intended to promote consistency in the prosecution of environmental crimes and to ensure compliance with the legislative goals. For purposes of the guidelines detailed here, "person" includes corporations.

Factors to Consider in Environmental Prosecutions

The following is a list of the factors Deputy District Attorneys should consider in evaluating environmental crime prosecutions:

1. The complexity and the clarity of the statute or regulation violated. If the regulation is very complex and difficult to understand, the likelihood increases that a person could violate a statute or regulation despite making a good effort to comply with the law. Such circumstances will normally diminish the necessity for prosecution.

2. The actions and the mental state of the actor. Was the violation inadvertent or was it so egregious that, despite the complexity of the statute or regulation, the person should have known that the person’s action was unlawful or the person’s conduct was nonetheless reckless as to the consequences for human health or the environment? Did the actor know that his/her actions were in violation of the law and consciously disregarded the law?

3. The extent to which the person was or should have been aware of the regulation requirement violated. Does the person engage in a heavily regulated occupation or industry, so that knowledge of environmental requirements is an elementary part of doing business? Has the person made a good faith effort to determine whether the conduct violated the law? Is the general practice of the occupation or industry to hire or consult with environmental consultants or for regulatory agencies to offer technical assistance or publish guidance? Has the person had contact with the regulatory or enforcement agency? Has the agency clearly defined the conduct which would violate the law or a regulation?

4. The existence and effectiveness of a person’s program to promote compliance with environmental regulations. The existence of a genuine compliance program may weigh against the need for criminal prosecution. Where such a program is in place, it suggests that the violation may be isolated and inadvertent, and that the person has means in place to prevent or detect future violations before they result in substantial harm to human beings or the environment. These inferences, however, will not be

true in every case; the existence of an effective compliance program will not negate prosecution if there is evidence that shows that the person knowingly violated the law or caused substantial harm.

5. The magnitude and probability of the actual or potential harm to humans or to the environment. Protection of public health and safety and the protection of the environment is the State goal of the environmental statutes, and is the central consideration for the District Attorney. Considerations here will typically include the nature of the waste, its toxicity, and the known or suspected health risks associated with it. The greater the probability and magnitude of harm, the greater the need for criminal sanctions. In considering the magnitude of harm, the District Attorney will consider whether the harm is long-lasting or can be remedied promptly. If the person's conduct created a great risk of substantial harm, the fact that little or no harm actually occurred may be irrelevant.

6. The need for public sanctions to protect human health and the environment or to deter others from committing similar violations. A person's persistent and willful violations or a person's flagrant violation that causes a great risk of substantial harm to human beings or the environment will generally justify the prosecution. If the violation applies to many others, publicity concerning its enforcement may also deter others from similar activities and may create general deterrence against violations of other environmental laws/regulations.

7. The person's history of repeated violations of environmental laws after having been given notice of those violations. Repeated violations after notice shows both intentional and knowing criminal conduct, which makes criminal sanctions particularly appropriate.

8. The person's statements, concealment of misconduct or tampering with monitoring or pollution control equipment. False statements are knowingly made, concealment and tampering imply intentional misconduct, making criminal sanctions more appropriate. In addition, they undermine the integrity of the regulatory system, which relies upon reporting. If an honest mistake is made, generally civil and administrative remedies will provide adequate sanctions.

9. The person's cooperation with regulatory authorities, including voluntary disclosure and prompt subsequent efforts to comply with applicable regulations and to remedy harm caused by the violations. Generally, voluntary disclosure and prompt efforts to remove violations and remedy harm will not result in criminal prosecution.

10. The likelihood of successful affirmative defense. The law provides for an affirmative defense for a defendant who (1) did not cause or create the condition for occurrence constituting the offense; (2) reported the violation promptly to the appropriate regulatory agency; and (3) took reasonable steps to correct the violation.

11. The appropriate regulatory agency's current and past policy and practice regarding the enforcement of the applicable environmental law. If the regulatory agency does not enforce a regulation, rule, or law, criminal prosecution would generally be inappropriate. If the regulatory agency that has jurisdiction has determined that a violation is not serious enough to merit civil or administrative enforcement, criminal sanctions would usually be disproportionate to the severity of the violation and, therefore, prosecution would be inappropriate. Absent extraordinary circumstances, the District Attorney's Office will communicate with the regulatory agency and will consider the agency's recommendation regarding criminal prosecution.

12. The person's good faith effort to comply with the law to the extent practicable. Generally, criminal prosecution is not justified when a person has made a good faith effort to comply with the law and has tried to work with the regulatory agency. The determination of what constitutes good faith effort to comply and reasonable effort rests with the District Attorney.

13. The person’s underlying conduct that lead to the violation was criminal in nature. If the conduct that lead to the violation was criminal, then prosecution is generally appropriate. For instance, manufacturing of controlled substances or dumping hazardous waste containers on other people’ property.

14. The chances of successful prosecution. Before an environmental crime is brought there must be a strong likelihood that the state will be successful in its prosecution.

Environmental Crime Prosecution Procedure

Absent extraordinary circumstances, before a felony environmental criminal charge is brought, the investigating law enforcement agency and the regulatory agency shall be consulted. Any Deputy District Attorney interested in bringing such a charge should first consult with the District Attorney. If the District Attorney concludes a felony case should be filed, the District Attorney will prepare a certification approving prosecution.

Section 16 – Asset Forfeiture

Civil

Introduction

The Crook County District Attorney's Office has adopted this policy to meet the requirements of Oregon Revised Statute 131A.005 to 131A.400 (effective date April 28, 2009). The purpose of forfeiture, both civil and criminal is to prevent criminal organizations from transferring to taxpayers the costs of their unlawful conduct.

Statutory Basis for Forfeiture

Article XV, section 10 of the Oregon Constitution authorizes forfeiture in Oregon. Measure 53 amended Article XV, section 10 to allow forfeiture without a conviction. ORS 131A.005 to 131A.400 embodies the laws guiding civil forfeiture. Specifically, it authorizes civil forfeiture of property that is a proceed or an instrumentality of criminal conduct.

The standard of proof is different between a civil forfeiture case and a criminal forfeiture case. Article XV, section 10 of the Oregon Constitution sets the standard of proof in a civil forfeiture case as:

1. Preponderance of the evidence if the property subject to forfeiture is personal property;
2. Clear and convincing evidence if the property is real property.

If cash, weapons, or negotiable instruments are found in close proximity to controlled substances or instrumentalities of criminal conduct, the burden is on the defendant to prove by a preponderance of the evidence that those items were not proceeds or instrumentalities of criminal conduct.

Unlike Criminal Forfeiture, Civil Forfeiture does not depend upon a criminal conviction or pending case. Civil forfeiture is ONLY applicable to drug cases and select prostitution related crimes (see ORS 131A.005(12) (definition of prohibited conduct)).

The policy of the Crook County District Attorney's Office is to pursue civil forfeiture actions on qualifying property (without a third-party lien) and monies with a value over $1000.00. In rare circumstances monies with a value under $1000 will be considered for a civil forfeiture case with prior District Attorney approval. If any qualifying property has a third-party lien, a civil forfeiture case may still be instituted with prior District Attorney approval.

Specific Items Subject to Forfeiture

1. **Contraband:** All raw materials, products and equipment of any kind that are used in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct. Prohibited conduct means any violation of ORS 475.005 to ORS 475.285 and ORS 475.805 to ORS 475.980. All property that is used as a container for property described in this section.

2. **Vehicles**: All conveyances, including aircraft, vehicles or vessels, that are used to transport or in any manner facilitate the transportation, sale, receipt, possession or concealment of property described in this section, and all conveyances, including aircraft, vehicles or vessels, that are used in prohibited conduct or that are used to facilitate prohibited conduct in any manner.

3. **Records:** All books, records, computers and research, including formulae, microfilm, tapes and data that are used to facilitate prohibited conduct in any manner.

4. **Money:** All moneys, negotiable instruments, balances in deposit accounts or other accounts, securities or other things of value furnished by any person in the course of prohibited conduct, all proceeds of prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used to facilitate any prohibited conduct. Oregon Revised Statute 131A.035 states that US currency in an amount less than $15,000 may not be seized for forfeiture solely on the basis that the money is in the form of cash rather than some other form.

5. **Real Property**: All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used in any manner, in whole or part, to commit or facilitate prohibited conduct.

6. **Weapons:** All weapons possessed, used or available for use in any manner to facilitate prohibited conduct.

7. **Other**: Any property described in this section that was intended for use in committing or facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS 161.435 or a conspiracy as described in ORS 161.450.

Forfeiture Counsel

The Crook County District Attorney's Office may act as forfeiture counsel in any forfeiture proceeding instituted in the Circuit Court for the State of Oregon for Crook County regardless of whether criminal charges have been filed. See ORS 131A.400.

Consent Search

Property that is seized solely on the basis of a consensual search of a motor vehicle is NOT subject to forfeiture UNLESS, before obtaining consent of a person for the search, the person is provided with written, multilingual notice of the right to refuse consent. See ORS 131A.025.

The notice shall include:

- Notice that the person has a right to refuse a consent to search;
- Notice that a refusal to consent to a search cannot be used against the person for any purpose;
- Notice that anything found in the search can be seized as evidence of a crime or can be seized for forfeiture.

Seizure of Property for Forfeiture

Property seized for forfeiture is not subject to a motion or order to return under ORS Chapter 133. If the property was seized unconstitutionally, the property may still be forfeited if the evidence presented is not fruit of the unconstitutional seizure.

Property other than real property may be constructively seized by affixing a forfeiture notice to the property or by recording a forfeiture notice in the public record. Real property may be seized only by recording a forfeiture notice. If property is physically removed from the place of seizure, and the place is unoccupied, the officer shall file the receipt in the public records of the forfeiting agency.

Property can either be seized with a court order or without one. If the property is to be seized with a court order, the seizing agency may apply for an ex parte order to seize specific property. The application must be supported by an affidavit outlining probable cause to believe that the property is subject to forfeiture. Upon finding that the property is subject to forfeiture, the court issues the order which must direct any person having control over the property, including money and assets held in an account, to deliver the property to the police officer. The order may be part of a search warrant. The property may be seized without a court order if there is probable cause to believe that the property is subject to forfeiture and the property may be constitutionally seized without a warrant, during a lawful stop, search, arrest, or with consent. Property may also be seized without a court order if it is dangerous to the health and safety of any person.

Forfeiture Procedure

Right, title and interest in the property forfeited under ORS 131A.005 to 131A.400 vests in the forfeiting agency upon the occurrence of the prohibited conduct on which the forfeiture is based.

Upon seizure of the property, the officer who seized the property shall make an inventory of the seized property. The inventory should include an estimate of the value of the seized property. If the inventory is determined to be substantially incorrect before the commencement of a forfeiture action, the agency shall amend the inventory. The changes must be clearly indicated in the amended inventory and a copy of the original and amended inventory must be served with any summons and complaint served. If an amendment is necessary after the commencement of the proceedings, the amended inventory must be served on all persons previously served with summons and complaint in the proceeding.

If the property is taken from the possession of a person, or there is a person who has apparent control of the property at the time of seizure, the officer shall issue a receipt for the seized items. The receipt must have:

- A copy of the inventory
- Identity of the seizing agency
- Address and telephone number of agency where the person can get more information concerning the forfeiture

Forfeiting Agency

1. **Care of Seized Property**: The forfeiting agency is responsible for the care, storage, towing and maintenance of property that is in the physical custody of the agency to ensure that its value is preserved. If the property is money, stocks, bonds, promissory notes or other security notes, it may be maintained in the forfeiture trust account pending final outcome of the forfeiture proceedings. The forfeiting agency shall pay all costs and expenses relating to towing and storage of the property.

2. **Sale, Rental or Lease of Seized Property – Prior to Forfeiture**: The forfeiting agency may apply for a court order allowing the sale, rental or lease of the seized property. Any sale, rental or lease of seized property must be conducted in a commercially reasonable manner and may not result in a material reduction of the property's value. The order for sale, lease or rental of the seized property may only be entered after notice and opportunity to be heard is provided to all persons known to have an interest in the property, or claim to have an interest in the property and with the consent of all

persons holding a security interest in the property. The proceeds shall be held by the forfeiting agency in a forfeiture trust account.

3. **Forfeiture Trust Account:** All money seized, as well as all money from the sale, lease or rental of seized property, must be deposited into an interest-bearing forfeiture trust account maintained by the seizing agency exclusively for this purpose.

   Cash may be retained as evidence in a criminal proceeding but must be deposited in a trust account immediately after the cash is no longer needed as evidence.

   If forfeiture proceedings are dismissed, and there is not a court ordered judgment for forfeiture, the amount in the trust account (including interest) shall be distributed to the person from whom the property was seized.

   If judgment of forfeiture is entered but parties other than the forfeiting agency have a claim to the seized money and that claim is equal or larger to the amount in the trust account, the seizing agency shall distribute the money to the parties in order of the priority of their claim.

   Once any security interests, lien holders and other claimants have been paid, the balance may be retained by the forfeiting agency for distribution as outlined in Section IX.

4. **The Publication**: Seizing agency shall issue a forfeiture notice in a newspaper (Mail Tribune), in accordance with ORCP 7D(6)(b) to (d), that contains a copy of the inventory prepared by the officer; the name of the person from whom the property was seized; the name, address and telephone number of the seizing agency; address and telephone number of the Crook County District Attorney's Office, 300 NE Third Street, Prineville, Oregon 97754, 541-447-4158; and a statement in substantially the form listed by the statute. The agency can include as many forfeiture notices as the agency considers convenient in a single publication.

5. **Service**: The forfeiting agency must serve a summons and complaint on all persons known to have an interest in the property subject to a forfeiture action. The forfeiting agency shall make all reasonable efforts to serve forfeiture notice on all interested parties in accordance with Oregon Rules of Civil Procedure (ORCP 7D(6)(b) to (d)).

6. **Ex Parte Judgment of Forfeiture**: Once the time for filing a claim has lapsed, a forfeiting agency may petition the court for an ex parte judgment of forfeiture. The petition must state that the requirements of publication have been met. An affidavit must be attached to the petition that states that forfeiture notice was served on all persons claiming an interest in the property, or that sets forth facts demonstrating the forfeiture agency's efforts to accomplish service, together with any proof of publication notices.

7. **Judgment for Claimant**: If the judgment is entered for claimant, the seizing agency shall pay all costs and expenses relating to towing and storage of the property. The court shall award costs, disbursements and attorney fees to the prevailing claimant to be paid by the seizing agency.

8. **Disposition of Forfeited Property**: If the property is forfeited, the forfeiting agency may sell, lease, or transfer the property to any federal, state or local law enforcement agency or district attorney, sell the property by public or commercially reasonable sale, retain the property or, with written consent of the district attorney, destroy any forfeited firearms or controlled substances.

9. **Record Keeping**: The forfeiting agency shall maintain written documentation of each seizure and any transfer of forfeited property. The forfeiting agency shall be responsible for equitable distribution of proceeds.

Proceeds of Forfeiture

The seizing agency will pay all expenses associated with liquidating the seized property. After all costs are paid (disbursements, attorney fees, special expenses), the seizing agency will distribute proceeds according to any restitution orders and to lien holders or those with a security interest in the property.

The remaining proceeds shall be distributed as follows:

- 10% to the Commission on Children and Families for relief nurseries;
- 20% to the Criminal Justice Commission (CJC) for drug courts;
- 2.5% to CJC for monitoring and oversight;
- 5% for the Illegal Drug Clean-up Fund and;
- The remaining 62.5% to the seizing agency for equipment, education, cash for undercover "buys" and administrative expenses, and for distribution pursuant to intergovernmental agreement between the forfeiting agency and Crook County.

Forfeiture Actions

1. **In Rem Actions:** An in rem action is an action that involves property. It may be brought in any case in which forfeiture is sought. An in rem action is required if real property is involved or the property is subject to an interest by a third party. An action is commenced by filing a complaint in Circuit Court. A copy of the inventory must be attached. The complaint must allege probable cause for the seizure. The complaint is not subject to any pretrial motion to dismiss on the basis that any claimant has not be convicted of a crime nor can it be dismissed because of a dismissal or acquittal of criminal charges. If the property that is seized has a lien on it from a financial institution, that institution may proceed with any legal action involving that property even though it has been seized and forfeiture proceedings have commenced. The financial institution's action may be consolidated with the forfeiture action for purposes of trial.

2. **Responsive Pleading or Affidavit**

    a. A person claiming an interest in property that is the subject of forfeiture must file a responsive pleading or affidavit. The pleading or affidavit must be filed within 30 days of service of the summons and complaint. Failure to file will constitute a default.

    b. The forfeiting agency may file objections to the pleadings or affidavits. Any objection must be filed within 20 days of the filing of the pleading or affidavit. If no objection is filed, the interest of the party filing the affidavit is conclusively established.

    c. A response may be filed by the interested party within 5 days of the objection being filed.

3. **Stay of Forfeiture Action:** The court may stay a forfeiture action upon the filing of criminal charges that are related to the prohibited conduct that is the basis for the action.

4. **Consolidation**: Forfeiture proceedings can be consolidated with criminal proceedings and heard by the same trier of fact.

Forfeiture Deadlines

1. Service of forfeiture notice (Receipt issued with inventory or notice of forfeiture) – Day of forfeiture; if not day of, then within 15 days.

2. Application for hearing on Probable Cause – 15 days after forfeiture notice is served or within 15 days of receiving actual notice – whichever is later. A hearing shall be held within 15 days after the service of all persons known to have an interest in the property.

3. Claim of interest on seized property – 21 days. Extensions are not granted. In order for a claim to be valid it must be a sworn statement that includes the true name of the claimant, address of claimant and a statement that the claimant has an interest in the property.

4. Decision on seeking forfeiture – not more than 30 days after property is seized.

5. Filing of action in rem – 15 days after receipt of the claim.

6. Filing of all other forfeiture actions – 30 days after seizure of the property.

7. Motion for release of property – may be filed within 90 days of the property being seized if a criminal action is not filed against the claimant.

8. Judgments – forfeiture counsel shall send a copy of the judgment to the Asset Forfeiture Oversight Advisory Committee upon completion of the action.

Criminal

Introduction

The Crook County District Attorney's Office has adopted this policy to meet the requirements of ORS 131.550-.600 regarding criminal forfeiture actions.

Statutory Basis for Forfeiture

ORS 131.550-.600 provides that certain kinds of property may be forfeited under specified circumstances. Under this provision, the district attorney's office must determine if property is subject to criminal forfeiture. If so, property seized must be included in the indictment so long as there is proof beyond a reasonable doubt that the property seized was proceeds of the crime or instrumentalities used to facilitate the criminal conduct.

The most important requirement for criminal forfeiture, however, is that someone must be convicted in an underlying criminal action of a related offense. Unless there is a stipulation by the parties to the contrary, if there is no conviction, there is no forfeiture. The current policy of the Crook County District Attorney's Office will allow for criminal forfeiture in cases listed under ORS 131.602.

Specific Items Subject to Forfeiture

1. **Money**: All moneys, negotiable instruments, balances in deposit or other accounts or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct or intended to be used to facilitate any prohibited conduct are subject to forfeiture. Criminal Forfeiture will

be considered on cash/money seizures of $300 or more, if an officer is requesting criminal forfeiture for a seizure under $300 it requires Deputy District Attorney approval.

2. **Vehicles**: All conveyances, except common carriers, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property that is related to a controlled substance offense, or that are used or intended for use in prohibited conduct or to facilitate prohibited conduct, or are proceeds of prohibited conduct, are subject to forfeiture. Forfeiture will be considered on vehicles in which the defendant has $5000 or more equity.

3. **Other Real or Personal Property**: Other miscellaneous property that constitutes proceeds of criminal activity or was used to facilitate a crime will be analyzed on a case by case basis for forfeiture.

Procedures Generally Applicable at Initial Seizure

Assuming that probable cause exists to believe that the property is subject to seizure, the following steps must be taken in order to institute a forfeiture:

1. As soon as practical after the seizure, the officer seizing the property, or other law enforcement personnel, must give a receipt and completed statement form to the person or persons from whom the property was taken.

2. The receipt must meet the requirements of ORS 133.455 for property taken from a person arrested by a police officer.

3. If the property is not taken from the personal possession of any person, or if the person who had personal possession disclaims ownership, the receipt should be given to the person in possession of the premises from which the property was taken. If the person in possession of the property is not present when the seizure is made, then the receipt must be left in a prominent place at the premises.

4. When the initial seizure is made, that is a seizure of evidence and not one of forfeiture.

5. It will be the decision of the Crook County District Attorney whether to proceed with a forfeiture action and the decision of the Crook County Grand Jury whether to issue an indictment containing a forfeiture count relating to that seized property.

6. Any forfeiture questions should be directed to the Deputy District Attorney assigned to the case.

Considerations for officers:

1. **Cost:** The seizing agency shall pay for all towing and storage costs and discharge all liens that have attached from the time property was seized for criminal forfeiture until a case is concluded. These costs may be deducted from the proceeds of sale if the property is ordered forfeited by the court.

2. **Investigation:**

    - Interview suspect(s) regarding whether the property (particularly cash) constitutes “proceeds” or an “instrumentality” that was “intentionally” used to facilitate the commission of a felony or a Class A misdemeanor. Issues of possible inquiry include:

        - The suspect(s)’ employment status and history,
        - How the suspect(s) obtained the property and with what funds, and/or

- Any other sources of income that explain the suspect(s)' ownership of the property.

- Document the proximity of the property to other evidence of the crime. The following steps should be considered:

  - Photograph the property in the location where it was seized;
  - Fingerprint the property; and/or
  - Have the property examined by a drug dog.

- To limit unfounded third-party claims, interview the defendant, and all persons who could potentially claim an interest in the property, regarding the person's interest in the property.

Section 17 – Appeals

Appeals Review Procedure

This section describes the process and procedures by which the Crook County District Attorney's Office will file appeals in criminal cases.

A Deputy District Attorney who wishes to have an adverse ruling appealed, must first review the case with the Chief Deputy District Attorney and District Attorney.

Appeals Review Steps

The following steps are necessary for review of all appeals decisions:

1. When considering if an appeal is warranted, the Deputy District Attorney must immediately prepare a memo which states:
   - The issue to be appealed.
   - A brief summary of the main facts, which should include how the court resolved any conflicts of evidence or credibility issues.
   - Citation of leading cases each side relied upon.
2. The Deputy District Attorney assigned to the case must obtain a copy of the signed order or judgment that is the subject of appeal.
3. The Deputy District Attorney should email the memo and order or judgment to both the Chief Deputy District Attorney and District Attorney and request a meeting to staff the case. This should be completed within 10 days after entry of the order or judgment.
4. By the 20th day after entry of the order or judgment, the review of the case should be complete. This review may include consultation with the office of the State Attorney General. If the decision is that the appeal be declined, the file will be returned to the Deputy District Attorney assigned to the case. If the recommendation is to take the appeal, the file is forwarded to the District Attorney who will ensure the appeal is timely filed.

Section 18 – Collateral Challenges to Convictions

State Post-Conviction Relief

A person convicted of any crime under state law may file a petition for post-conviction relief, under ORS 138.510. Generally, the petition must be filed within two years of the date of conviction or the date that an appeal becomes final, whichever is later. The petition is to be filed in the Circuit Court for the county in which the petitioner is imprisoned, or if not imprisoned, in the Circuit Court for the county in which the conviction and sentence was obtained.

When a petitioner is incarcerated in a state prison, the response is handled by attorneys from the trial division of the Oregon Department of Justice. If a petition in such case is mistakenly served on Crook County District Attorney's Office, a copy of the petition should be immediately sent to the trial division.

For Crook County cases in which the petitioner is not in custody, ORS 138.560(1) provides that the petitioner is to file an original and two copies of the petition with the clerk of the court. The statute does not require that the petitioner serve a copy of the petition on the attorney for the named defendant, but requires the court to do so if the petitioner has not.

ORS 138.570 sets out the rule by which the appropriate party to be named as defendant is to be determined and further indicates whether the defendant will be represented by the Attorney General or the Crook County District Attorney's Office. Generally, this office is required to appear whenever the petitioner is in local custody or is not currently in custody.

If the District Attorney's Office is served with a petition the case will be assigned to the attorney who handled the criminal case, however if that is not possible, the District Attorney or Chief Deputy District Attorney will assign the matter accordingly.

Under ORS 138.610, the defendant (the government) is required to answer the petition within 30 days after the petition has been filed with the Court. The assigned Deputy District Attorney will likely need to reach out to the trial division of the Oregon Department of Justice to seek advice on how to properly answer and proceed.

State Habeas Corpus Relief

Habeas Corpus relief is available in both state and federal court. Any person "imprisoned or otherwise restrained of liberty, within this state" may "prosecute a writ of habeas corpus to inquire into the cause of such imprisonment." ORS 34.310. Jurisdiction is vested with the circuit court for the county in which the petitioner is imprisoned.

State habeas petitions are filed most often in cases involving fugitive complaints. The filing of this writ is generally the last procedural hurdle that a defendant who is wanted in another state is able to raise prior to the issuance of a governor's warrant. County Counsel handles any state writs of habeas. If a writ is served on the District Attorney's Office, it should be forwarded immediately to County Counsel.

Federal Habeas Corpus Relief

Federal courts are able to review any federal constitutional issues that relate to a person held in custody on state charges. 28 U.S.C. Sec. 2254. A defendant has 15 months to file a federal habeas corpus claim after a final state appellate judgment has been entered, or after the time for appeal in state court has passed. The 15 months period tolls, if a state PCR petition is filed. These cases are handled by the trial division of the Oregon Department of Justice. If the District Attorney's Office is served with a federal writ it should be forwarded immediately to the trial division of the Oregon Department of Justice.

Section 19 – Motions to Set Aside

General Motion to Set Aside

It is standard practice in Crook County District Attorney's Office to review any Motion to Set Aside and file an answer with the court in accordance with ORS 137.225. When a Motion to Set Aside is served on the Crook County District Attorney's Office, it will be processed by the Office Manager and reviewed by the District Attorney. Once the Office Manager confirms that all required documentation, fingerprint cards, and payment has been received, the Office Manager will forward to the Oregon State Police (OSP) for positive identification of the petitioner in accordance with ORS 137.225. The Office Manager will make every reasonable effort to forward these documents to OSP within 30 days of the receipt of the documentation.

Victim Notification

The Office Manager will make efforts to notify any victim associated with a case attached to the Motion by mailing a copy of the motion to the victim's last-known address, in accordance with ORS 137.225(2)(b). This will include information on how to contact the Crook County District Attorney's Office, and the victim will be informed of his or her rights to speak at a hearing on the Motion to Set Aside if they contact the Crook County District Attorney's Office. The victim will also be notified of a hearing date, if an objection is filed resulting in a hearing date. If the notice is not delivered or is not able to be mailed to the victim due to lack of information regarding the victim's last known address, that will be noted in Karpel.

Confirmation of the Petitioner

Once the petitioner has been identified by the OSP and the appropriate documentation has been returned to the District Attorney's Office, the Office Manager will run a current criminal history record check on the petitioner. The criminal history will be uploaded into Karpel, and all documentation will be forwarded to the District Attorney to review the motions.

The District Attorney will make every reasonable effort to review the provided documentation within 30 days of receipt from the Office Manager and come to a decision about whether to object or agree to the motion to set aside based on the requirements set forth in ORS 137.225. If the District Attorney agrees that the Motion has met the requirements set forth in ORS 137.225, the District Attorney will file an answer with the court noting that there is no objection to the motion. When the District Attorney has an objection, the District Attorney will compose an objection, which will be e-filed by the Office Manager with the Circuit Court.

Every reasonable effort will be made by the Crook County District Attorney's Office to have an answer filed within 90 days of the Petitioner's filing of a Motion to Set Aside.

Section 20 – General Employment

General

The Crook County District Attorney's Office works under the general personnel policies of Crook County. Employees of the Crook County District Attorney's Office should be familiar with the general county personnel policies. Any questions should be brought to the attention of your direct supervisor.

At-Will Status of Deputy District Attorneys

It is the policy of Crook County that all employees are at-will employees. This means that both the employee and the county have the right to terminate a work relationship at any time, subject to protections under a contract or state or federal laws. Deputy District Attorneys hold their appointments at the pleasure of the District Attorney.

The relationship between the County Board of Commissioners and the District Attorney is a partnership. The Board is the governing body of the county. The District Attorney is a constitutional elected state official who has both state and county functions. By statute, Deputy District Attorney salaries are paid by the county, and the county is required to provide necessary office space and equipment. On the other hand, the appointive power is granted by statute to the District Attorney. ORS 8.780. ORS 241.025(6). Each deputy wields the enormous authority of the state in the name of the elected District Attorney. For all of these reasons, the District Attorney reserves the decision to hire, fire, demote or otherwise discipline a Deputy District Attorney as a matter within the sole discretion of the District Attorney.

Duty to Report Misconduct

Employees of the District Attorney's Office have an affirmative duty to report misconduct or wrongdoing. If an employee learns of evidence of such conduct, they should immediately report that information to the appropriate supervisor so that it can be properly investigated.

Working Hours

Office Hours: Normal working hours of the Crook County District Attorney's Office are 8:00 a.m. to 5:00 p.m., Monday through Friday. Due to the nature of our work, overtime is frequently required of both professional and support staff. Supervisors may request employees to adjust their daily work schedule to meet workload demands.

On-Call Deputy District Attorney: In order to provide continuous service, the District Attorney's Office maintains an on-call list of Deputy District Attorneys to provide after-hours and weekend support to law enforcement.

On-Call Advocates: Victim Assistance Advocates maintain an after-hours and weekend call-our list to respond to hospitals or with law enforcement to crime scenes.

Absences, Late Arrivals: Employees who anticipate arriving late for work or who will be absent from work, for whatever reason, should call their direct supervisor and advise her/him of the situation.

Early Departures: Employees who need to leave work early should advise their direct supervisor before they depart.

Vacation Guidelines

In order to ensure that the office can adequately deliver services, the following guidelines are used in setting the vacation schedule. If you have questions, you should seek clarification from your direct supervisor.

- Vacation requests shall be made in writing on the approved leave form.
- Vacations can be scheduled up to 12 months in advance.
- The vacation request shall be forwarded the direct supervisor for final approval.

Every effort is made to satisfy vacation requests. Exceptions are considered based on workload, and staffing resources as a result of other vacation requests granted to other employees.

Attorney Dress Code

We represent Crook County and the State of Oregon when an attorney appears in court. It is important to dress in appropriate professional attire for our role. Attorneys should be dressed in court attire when they appear in court. In the office your dress code can be slightly relaxed as long as you have the ability to be in court attire on short notice if called to court.

For men court attire includes a long-sleeved dress shirt, tie and tailored sport coat or suit jacket worn with dress trousers or nice khaki pants. Jeans and shorts are not appropriate. Dress shoes, oxfords or nice loafers for shoes are appropriate. Athletic shoes, tennis shoes, hiking boots and flip-flops are not appropriate. Typically for a trial before a jury, attorneys should be in a suit with a tie.

For women court attire includes business like dresses and skirts or tailored pantsuits and coordinated dressy separates worn with or without a blazer. Jeans and shorts are not appropriate. Shoes should be professionally appropriate dress shoes. Athletic shoes, tennis shoes, hiking boots and flip-flops are not appropriate. Typically for a trial before a jury, attorneys should be in a suit.

No dress code can cover all contingencies so employees must exert a certain amount of judgment in their choice of clothing to wear to work. If you experience uncertainty about acceptable, professional business attire for work, please ask the District Attorney. Failure to follow this dress code could lead to discipline, up to and including termination.

Cellular Telephone and Personal Digital Assistant Policy

Cell phones for official office business are assigned at the discretion of the District Attorney and may be assigned on a permanent or temporary basis. These phones are intended for use in conducting official business. Activity on county provided cell phones may be subject to public records requests.

Continuing Legal Education

Deputy District Attorneys are expected to meet the minimum continuing legal education requirements established by the Oregon State Bar. Deputies should maintain their own continuing education records and report the progress of their continuing education to the Bar.

Training and Travel Requests

Within the confines of our limited training budget, every effort is made to assist employees in obtaining training that furthers the mission of the District Attorney's Office. The office supports employees in their self-improvement efforts.

Deputy District Attorneys and other employees who request training/travel should submit an email to the District Attorney and Office Manager describing the training/travel and costs associated with it. After reviewing the email, the District Attorney will notify the Deputy District Attorney/employee regarding the request.

Communication with Community Partners and Public

Crook County Deputy District Attorneys are expected to return phone and email messages in a timely manner. In the majority of circumstances this should occur within three days of receipt.

Search Warrant Review

It is expected that every non-telephonic search warrant presented to a Circuit Judge for a case that is likely to be prosecuted in Crook County will be reviewed by a Crook County Deputy District Attorney. The only exception being standard Driving Under the Influence search warrants that the officer fills out the template and submits in the evening/early morning hours.

Training Community Partners

Crook County District Attorney's Office wants to ensure law enforcement partners and others in the community have access to the most update training and information on the criminal justice system and its processes/procedures. At the request of a law enforcement agency/community partner/ community organization or at the direction of the District Attorney, a Crook County Deputy District Attorney may be required to make a presentation/training to said group. Such training is considered to be in the ordinary scope of employment and may occur outside normal business hours.

Conflicts of Interest

If a Deputy District Attorney feels that there exists a possible conflict of interest or any other reason the office should not handle a given case, that Deputy District Attorney shall bring the case to the attention of the District Attorney. The District Attorney will determine whether the office should not handle a given case and if so, a request will be made for the assistance of another District Attorney's Office within the state of Oregon or the Attorney General's Office to prosecute the case.

Handling Confidential Information

By its nature, the District Attorney's Office possesses and processes sensitive and confidential information. Staff members need to be careful in discussing cases. Case information should not be discussed in the office reception area or any other public area of the office or courthouse.

Reporting of Child Abuse

Responsible reporting of child abuse is an important aspect of protecting the children of our community, and it is the policy of the Crook County District Attorney's Office to encourage the responsible reporting of suspected child abuse by all employees.

Any Deputy District Attorney having reasonable cause to believe that any child with whom they come in contact has suffered abuse is required by law to immediately report the suspected abuse to the Department of Human Services screening hotline at 1-855-503-SAFE (7233) and local law enforcement. Deputy District Attorneys are required to follow the law and are prohibited making a factual determination as to the validity of the claim of abuse.

Employees other than Deputy District Attorneys are strongly encouraged to report suspected child abuse to the Department of Human Services screening hotline at 1-855-503-SAFE (7233) any time the employee has reasonable cause to believe that child abuse has occurred.

Diversity

The Crook County District Attorney's Office is committed to an inclusive and diverse workplace for our employees and the people we serve. We welcome individuals who bring their own unique abilities, perspectives, innovative ideas and who share our values, commitment to our mission, and a sense of accountability. We embrace the following definitions of diversity, equity, and inclusion.

Everyone has their own unique story. We approach diversity in its broadest terms. To us, diversity celebrates the value of each individual and group. We recognize that people identify with multiple and intersecting identities and those identities can be fluid and shift over time. We are committed to fostering an open, and accepting culture that evolves with our employees and the people we serve, including, but not limited to race, ethnicity, gender, gender-identity, sexual orientation, veteran status, socio-economic status, geography, family dynamics and structures, education, physical appearance, perspectives, and life experiences.

Inclusion is the intentional creation and preservation of environments in which every individual and group feels welcome, respected and valued. In this office, all are seen, invited, encouraged, and supported to fully participate in the work of this office. We are committed to justice and fairness for all.

Sexual Harassment and Discrimination

Sexual harassment is not tolerated in the Crook County District Attorney's Office. This includes harassment that takes place in personal contacts, via e-mail, text, or in any other form.

Employees are strictly prohibited from harassing or embarrassing other employees; creating, down loading, or storing sexually explicit or other inappropriate materials on office computers; sending harassing e-mails; or circulating offensive jokes or other material.

Any employee who encounters offensive material should immediately report it to his/her direct supervisor. Corrective measures will be taking immediately.

Staff Encounters with Law Enforcement

The District Attorney's Office has policy that employees report encounters with law enforcement.

All employees are required, with one exception, to report any personal contact with police. Self-reporting is required when an employee is contacted, arrested, or made part of a police investigation. This includes contact with any federal, state or county law enforcement agency. The one exception is a traffic infraction, unless it occurs while driving on county business.

Under the Notification Policy, employees must make a written report to their immediate supervisor and describe the incident. This report should be completed as soon as possible, but not later than by the end of the next business day following the encounter.

If an employee's immediate family member or a person living in the same household as an employee is arrested, cited, or investigated in Crook County or involves a Crook County law enforcement agency, the employee shall contact his/her manager as soon as possible, but no later than the next business day and provide a written report on the matter.

Acceptance of Gifts, Favors

Employees may not accept gifts, gratuities or favors from firms, organizations, their employees, agents, or other individuals who may or do conduct business with the District Attorney's Office.

Illness, Medical Appointments

If you are ill and intend to use sick leave, you should call your direct supervisor as early as possible.

If you have a medical appointment scheduled, you should complete the vacation/sick leave form as early as possible and forward it to your direct supervisor.

Inclement Weather Policy

Employees of the District Attorney's Office are expected to make every effort to serve the public, regardless of weather conditions. However, in more severe weather, the office may have to close. In those circumstances it is important that our employees not take undue risks or be exposed to unsafe weather conditions.

At the discretion of a direct supervisor, an employee may be excused from reporting to work or may be allowed to start late due to inclement weather. Employees who are excused by a supervisor from reporting to work because of inclement weather have the option of using vacation, compensatory time, or leave without pay to account for the missed time; or they may make up the time, subject to supervisor approval.

Employees who expect to encounter unusual difficulty in getting home during the work day may be allowed to leave early. Employees who leave work early have the option of using vacation, compensatory time, or leave without pay to account for the missed time; or they may make up the time, subject to supervisor approval.

All final decisions about whether the office will remain open or close will be made by the District Attorney in consultation with county commissioners. In those unusual circumstances in which the office closes during the day, employees will be notified. If the decision to close the office is made at the beginning of the day, employees will be notified by their direct supervisor.

Lawsuits and Ethics Complaints

When an employee is served with an employment-related lawsuit or ethics complaint, she/he shall immediately inform the District Attorney. The employee should also provide the District Attorney with a copy of the complaint.

Certified Law Students

The Crook County District Attorney's Office may use Certified Law Students as summer interns and/or externs during the school year. The Chief Deputy District Attorney or a designated Deputy District Attorney will be the supervisor of the Certified Law Student. The Certified Law Student can make charging decisions when reviewing police reports but those decisions will be reviewed by a Deputy District Attorney prior to filing with the court. The Certified Law Student will appear in court representing the office in arraignments and may appear in Court without co-counsel for contested misdemeanor case appearances (motions and trials), upon demonstrating competence in the evidence code, court decorum, and professional rules of conduct.

Substance Abuse Policy

It is essential that all employees of the District Attorney's Office provide the citizens of Crook County with the highest quality service. Employees, are expected to conduct themselves in a manner that does not reflect poorly upon this office or the county. With that in mind, this office maintains a strong and clear policy towards substance abuse: The District Attorney's Office is alcohol and drug-free.

The intent of this substance abuse policy is to assure Crook County Citizens that they can depend on the District Attorney's Office to provide quality service, and assure the staff of this office that they can work in an alcohol and drug-free environment.

We recognize the value of each of our employees and their health and safety are of significant importance to this office. However, we also expect that all staff whether on or off duty will follow reasonable rules of good conduct. Conduct that brings discredit upon the Crook County District Attorney's Office is prohibited and could result in disciplinary action.

Employee Assistance Program

Staff members are encouraged to deal with any substance abuse problem through the county employee assistance program or the Oregon State Bar can also provide attorneys with help and referral for substance abuse problems.

The District Attorney's Office believes that problems associated with substance abuse (or any prohibited conduct) are best solved through referral to the county employee assistance program. Every effort will be made to support the employee through participation in the program.

Substance Abuse Prohibited Conduct

As part of the our substance abuse policy, the following conduct is prohibited:

- Being under the influence of alcohol or a controlled substance while performing duties for the District Attorney's Office;

- Being under the influence of alcohol or a controlled substance while the Deputy District Attorney is on-call for his/her designated week
- Use of alcoholic beverages on or off office premises during normal working hours, which includes lunch and breaks;
- Reporting for work or working with a noticeable odor of alcoholic beverage on their breath;
- Keeping alcoholic beverages in the office for personal use, or possessing alcohol while on duty; and
- Unlawful possession, use, manufacture, and/or distribution of controlled substances, which includes prescription drugs.

Substance Abuse Disciplinary Action

When there is reasonable cause to believe that a Deputy District Attorney or non-represented staff member has violated the substance abuse policy, the District Attorney may require that employee to take a blood, urine, or breathalyzer test. If there is a positive finding from such a test, a second confirmation test will be made. Test results are confidential.

Penalties for violating the substance abuse policy include, but are not limited to:

- Verbal or written reprimands;
- Requiring participation in a treatment program as a condition of continued employment;
- Suspending or terminating an employee;

Outside Employment

In addition to the Crook County rules on outside employment, Oregon law and the following District Attorney policies apply to the professional staff of this office:

- All professional staff members are prohibited from engaging in the private practice of law. (ORS 8.720; 8.725; 8.790)
- Professional staff members are encouraged to participate in projects directed by the District Attorney's Office; Oregon District Attorneys Association; Attorney General's Office; State and County Bar Associations; Board of Police Standards and Training; or any other law enforcement agency or legislative committee. Professional staff should notify the Chief Deputy of their outside activities prior to beginning such work.

With respect to employment performed during non-working hours, Deputies may not engage in any type of work or activity that potentially conflicts with the operation and function of the District Attorney's Office. Outside employment unrelated to the position of Deputy District Attorney is not prohibited, per se. However, Deputies must receive the written approval of the District Attorney before undertaking such employment.

Leaving the Job

When a Deputy District Attorney has accepted other employment opportunities or otherwise leaves the employ of the District Attorney's Office, he/she should make every effort to provide at least two weeks advanced notice of departure. The Deputy District Attorney should work with the District Attorney to ensure an orderly transfer of files to another Deputy District Attorney.

When any District Attorney employee leaves the office, office keys, identification cards/badges, , cell phones and business cards should be turned over to the District Attorney.

Employee Disciplinary Action

Employees of the Crook County District Attorney's Office are expected to conduct themselves in a manner that reflects favorably on this office. Conduct that is determined to be detrimental to the reputation of the District Attorney's Office and the good order and operation of the office may result in disciplinary action. This conduct includes, but is not limited to, an activity by an employee that results in arrest, prosecution, or conviction of a crime. Deputies are "at will" employees.

Disciplinary action can result in a wide range of outcomes, up to termination.

Section 21 – Media Relations

Media Relations

It is the policy of the Crook County District Attorney's Office to be open and cooperative towards the media and their requests for information. However, it is also important that we not compromise our obligations to the court to ensure a fair trial and to obey the law and the ethical rules of the Oregon State Bar.

Deputy District Attorneys should forward inquiries from the press to the District Attorney. Questions regarding the policy of the office should also be forwarded to the District Attorney.

All staff and Deputy District Attorneys should familiarize themselves with the Oregon Rules of Professional Conduct and adhere to the standards of the Oregon State Bar, particularly Rule 3.6-Trial Publicity.

The rules of Professional Conduct prohibit Deputy District Attorneys and staff from making any extrajudicial statements that might be disseminated by public communication that the Deputy District Attorney or staff member knows, or reasonably should know, will have a substantial likelihood of materially prejudicing the legal proceedings. Therefore, Deputy District Attorneys and staff should exercise added caution when making any out of court statements regarding any pending investigation or prosecution in which the office is involved.

However, it is generally appropriate to discuss the following:

1. The arrested person’s name, age, residence, family status and relevant biographical information, including occupation.
2. The charges.
3. The amount of bail and/or release conditions.
4. The fact, time and place of the arrest.
5. The identity of the investigating and arresting officers or agencies and the length of the investigation.
6. A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest.
7. That the accused has not yet been apprehended and information necessary to aid in the apprehension of the accused.
8. That an investigation is still ongoing and a request for assistance in obtaining evidence and information necessary to either arrest or prosecution.
9. Any information already contained in a public record.

It is rarely, if ever, appropriate to disclose for publication outside the courtroom, prior to or during the trial, the following:

1. The contents of any admission or confession, or the fact that an admission or confession has been made.
2. Opinions about an arrested person's character, guilt or innocence.
3. Opinions concerning evidence or argument in the case.
4. Statements concerning anticipated testimony or the truthfulness of prospective witnesses.
5. The results of fingerprints, polygraph, or mental health examinations, ballistic tests, or laboratory tests.
6. Precise descriptions of items seized or discovered during the investigation.
7. Prior criminal charges or convictions.
8. Evidentiary details that were excluded in prior judicial proceedings in the same case.
9. All press releases shall be released by the District Attorney only, unless otherwise specifically directed by the District Attorney.