CCDA POLICY MANUAL

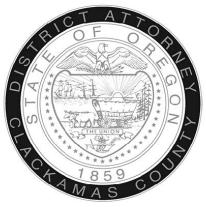

Table of Contents

Mission Statement

Mission Statement

It is the Mission of the Clackamas 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,. 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. A core value of this office is "Truth in Sentencing" which includes attempting to ensure that the sentence ordered by the court is actually served. This office will work with our criminal justice Partners to support outcomes that have been proven to reduce crime and recidivism.

Section 01 - Ethics

Professional Ethics

In every task, employees of the Clackamas 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, Clackamas County District Attorney employees are encouraged to speak up if they feel an activity undertaken by this office impinges on the department's integrity.

Deputy District Attorneys Ethical Expectations

In accordance with the rules of professional conduct adopted under ORS 9.490, Clackamas County Deputy District Attorneys shall be familiar with the canons of professional ethics of the Oregon State Bar and perform their duties in a manner consistent with those standards. In addition, attorneys are expected to know and follow all rules promulgated by the Oregon Supreme Court and by the Circuit Court of Clackamas County.

Public Trust

We are employees of the citizens of Clackamas 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 Chief Deputy and to the District Attorney. Affidavits of prejudice, motions to excuse, or requests for a judge to recuse himself or herself can be filed only with the written approval of the District Attorney.

Affidavits of prejudice are filed by the District Attorney with the presiding Circuit Court judge. A copy is provided to the judge who is the subject of the affidavit.

Search Warrants of Attorney's Offices

No Deputy District Attorney may prepare or authorize a search warrant of an attorney's office without the written approval of the District Attorney. Requests for such a search warrant must be directed to the Chief Deputy.

Subpoenaing an Attorney

Here are the steps Deputy District Attorneys shall follow when it becomes necessary to require the attendance of an attorney in a criminal proceeding:

- Contact the attorney by phone and explain the purpose of the testimony. Make every effort to arrange the appearance at a mutually convenient time.
- Ask the attorney if she or he will appear voluntarily or if a subpoena, either mailed or served, is desired.
- Follow-up the phone conversation with a confirming letter.
- Notify the District Attorney or the Chief Deputy when an attorney is subpoenaed.

When an attorney is subpoenaed for the crime of Failure to Appear, follow the requirements of ORS 162.193. Deputy District Attorneys shall provide the Chief Deputy, in writing, with a summary that shows there is no other reasonable means of establishing the material elements of the offense.

When it is appropriate, Deputy District Attorneys shall arrange a stipulation with the subpoenaed attorney regarding the substance of the attorney's testimony

> **Note**: An attorney should never be subpoenaed without first being contacted by phone or letter.

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 Chief Deputy or the District Attorney.

If an individual licensed by a state regulatory agency is charged with a crime, Deputy District Attorneys shall forward the following at the conclusion of the criminal proceedings— to the Chief Deputy:

- A copy of the charging instrument,
- Police report(s), and
- A summary of the disposition of the case.

It is the policy of the Clackamas County District Attorney's Office to forward such information to the appropriate state licensing agency

Political Activity

Employees are encouraged to participate in political activities, judicial races, initiative campaigns, as well as legislative and ballot debates. However, to avoid any perception of bias, favoritism, or conflict of interests, you should always advise your supervisor of your political activities.

Under Oregon Election Laws, public employees may not advocate on behalf of, or against, a petition, measure, or candidate while acting in their “official capacity.”

Any work done in connection with political activities must only be done outside of normal working hours. Employees may conduct such activities during their lunch and break periods.

Employees should document the time they spend on political activities so they have a record showing that such work was done outside of normal working hours. This is particularly important for salaried and management employees since they have no set lunch or break periods.

If you are asked to comment or provide information to political candidates or individuals involved in preparing legislation, do not do so without first receiving the approval of the Chief Deputy.

For more information on the participation by public employees in political activities, Review ORS 260.432.

Oregon State Bar Complaints

Deputy District Attorneys shall immediately notify the Chief Deputy District Attorney of any Oregon State Bar complaints he or she receives.

Adherence with ORS 131.915 and ORS 131.920

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.

Section 02 - Crime Victims

Crime Victim's Rights

The Clackamas 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.

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 have a copy of a transcript of any court proceeding in open court, if one is otherwise prepared

Advise Victims of Their Rights

The Deputy District Attorney responsible for a case shall advise victims of their rights as soon as possible after receiving the case. If the victim wishes to exercise his or her rights, the Deputy District Attorney should inform the victim of hearings, negotiations, or any other element of the case affecting the victim's rights. This can be done either directly by the Deputy District Attorney or through Victim's Assistance.

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.

Victim Assistance Program

The Clackamas 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. Victims Assistance deals primarily with person-to-person crimes, such as homicides, sexual assaults, and domestic violence cases.

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, hospital forensic exam support, 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.

Victim Restitution

It is our policy to seek restitution equaling the amount of pecuniary loss for victims of all types of crimes. Seeking such restitution in no way supersedes or obviates any civil claims a victim might make against the defendant.

Deputy District Attorneys should inform Victims Assistance of pending criminal cases. Deputy District Attorneys shall supply victims with financial loss forms to facilitate restitution. Victim

Assistance will then take responsibility for tracking these forms, communicating with the victim(s) and Crime Victim Compensation.

The financial loss documents will include monies paid or pending to be paid by victim insurance companies. After completion, the loss forms shall be put in the case file prior to the appropriate court date of case disposition.

During the sentencing hearing, Deputy District Attorneys should refer to the completed loss forms to request that restitution be made part of the sentence. Restitution should be ordered based on the loss to the victim, not the offender's ability to pay at the time of sentencing. In cases in which more than one defendant is held responsible for a criminal act, causing a pecuniary loss, this office views all defendants as being jointly and severally liable for paying restitution.

As a result, Deputy District Attorneys should request that judges pronounce sentence in such a way that, in the absence of mitigating circumstances, leaves all defendants jointly and severally liable for the victim's losses and equally responsible for the expenses incurred by all parties as a result of their criminal actions (ORS 147.005 –147.365).

When restitution is legally unattainable as no pecuniary loss is provable, Deputy District Attorneys should consider alternative options such as compensatory fines or community service.

Section 03 - Prosecution

Criminal Case Records

The Clackamas County District Attorney's Office has adopted a schedule for retaining and destroying case records, based on the nature of the crime and the document(s) involved. Based on this schedule, some records are stored on site at the District Attorney's Office, while others are in the county archive storage warehouse. Records are stored on site in the event of an appeal or probation violation. Ultimately, based on the schedule, paper records are destroyed and the information is retained on microfilm or scanned into a computer.

Records Retrieval

It is possible to have a file retrieved from archives within 24 hours, provided the paper records are still available. If the file has been destroyed, leaving only a microfilm copy, retrieval may take up to five days.

Records Retention / Destruction 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

Screening and Charging Decisions - Intro

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.

Screening and Charging Decision Guidelines/ Factors

- 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.

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.

PCS Misdemeanor Treatment Guidelines

Pursuant to HB 2355 (2017), the following are guidelines that must be considered, uniformly, when a deputy district attorney (DDA) in this office is evaluating whether to elect to treat a felony drug possession charge as a misdemeanor. In making such a decision, the DDA must consider the following factors, however, this list is not exhaustive and the DDA'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 DDA 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 DDA 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.

Reporting Status of Non U.S. Citizens Charged with a Crime

During the course of our responsibilities as an office, we receive criminal cases in which the potential defendant is not a U.S. citizen and not legally in the United States.

State law (ORS 181A.820) prohibits state law enforcement officials from notifying federal immigration officials of the suspected immigration status of individuals whose only potential criminal offense(s) involves their immigration status. This state prohibition does not apply to defendants who are under criminal investigation or have been arrested or charged with a non-immigration related crime. In many cases, federal law requires notification to federal immigration authorities in such circumstances.

It is the policy of this office to notify the Federal Immigration and Customs Enforcement Office (ICE) in writing when we have charged a defendant whom we know or have reason to believe is in the United States illegally. In addition, it is the policy of this office to notify ICE in writing when a defendant is convicted of a crime, and we know or have reason to believe he/she is not a U.S. citizen. This office will not notify ICE of the status of a victim or witness. The office will use a standard form of written notification in those cases where this policy is applicable. If notification has already occurred in a case after charges are filed, it is not necessary to send a second notification upon conviction.

Federal immigration authorities shall be notified as soon as practicable. In addition, the deputy district attorney may request federal immigration authorities to refrain from or delay placing an immigration hold if that action would further the interests of state prosecution.

Issuing Cases for Other Trial Teams

No Deputy District Attorney 1 should issue a felony charge or appear before the Grand Jury without case specific approval from the Chief Deputy or a Senior DDA. If a felony charge is appropriate, the decision and the case should be referred to the appropriate felony team prior to issuing.

If a felony Deputy District Attorney reviews a felony case in which the defendant is in custody and determines that only misdemeanor charges are appropriate, it is the responsibility of the

felony Deputy District Attorney to file the appropriate misdemeanor charges. The felony Deputy District Attorney should then forward the case to the supervisor of the misdemeanor team for assignment to a Deputy District Attorney on the misdemeanor team.

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.

Grand Jury and Preliminary Hearing

Amendment Article VII, Section 5, of the Oregon Constitution provides two separate procedures for charging defendants in Circuit Court. Amended Article VII provides that defendants may be charged either by

- Indictment of the grand jury, or
- By information gathered by the state after a preliminary hearing.

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 Clackamas 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.

A decision to take a case by means of a preliminary hearing must be approved by the Chief Deputy.

Deputy District Attorneys are to be familiar with and follow the statutory provisions found in ORS 132.010-132.990.

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.

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. Additionally, Deputy District Attorneys will limit grand juror questions which will produce answers that are inadmissible at trial.

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

Unless clearly authorized by statute, witness testimony is not to be presented by written report.

Oregon law only allows the audio recordation of grand jury testimony in limited circumstances. If testimony is audio recorded, all witness testimony must be recorded.

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 or Chief Deputy District Attorney.

At the beginning of each grand jury term, the grand jurors will receive orientation from a Senior Deputy District Attorney, or their designee. The orientation will cover information about the legal procedures of the grand jury.

Subpoenaed Records

As part of a criminal investigation it is common that law enforcement will seek access to various records (phone, medical, etc.) through a grand jury subpoena. For a grand jury subpoena to be issued by the District Attorney's Office, law enforcement will provide a summary of the nature of the case and the reason for a request of a grand jury subpoena. Upon receipt of the sealed records and before the records are examined, the investigator is to appear before the grand jury to explain the nature of the investigation and the reason the records may assist the investigation. The District Attorney's Office staff will record the law enforcement officer requesting the records, the type of records subpoenaed and the date the records were opened.

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.

Deputy District Attorneys should request two-week setovers 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.

Charging in RICO Cases

The District Attorney's Office operates under two principals when a potential RICO charge exists:

- The RICO statute shall be applied selectively and uniformly and only with the approval of the District Attorney.
- This office shall not pursue RICO prosecutions when the charges are far afield from the legislative purpose of the statute.

Not every case that technically contains RICO elements shall be charged under the statute. The Equal Privileges and Immunities Clause of the Oregon Constitution prohibits different kinds of prosecutions for defendants in similarly situated positions. These RICO guidelines have been developed to avoid violation of that section of the Oregon Constitution.

Deputy District Attorneys seeking to charge under RICO shall first submit their charging recommendation in writing to the Chief Deputy who shall confer with the District Attorney.

Here is a list of the factors to keep in mind in considering RICO charges.

- Does the evidence support a prosecution under RICO?
- Applicability of other judicial remedies.
- Does the nature or scope of the crime warrant the heavy RICO penalties?
- The number of victims.
- The relationship of the defendant to the criminal enterprise.
- The history of the criminal activity.
- The economic gain of the enterprise or organization.
- The chances of successful prosecution.
- Number of predicate offenses.

In short, Deputy District Attorneys should keep in mind that RICO charges typically involve lengthy investigations, have the potential to incur high prosecution costs, and bring severe penalties. RICO charges should be filed only after careful consideration.

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.

Prosecuting Environmental Crimes

It is policy of the Clackamas County District Attorney's Office to ensure that the statutes and regulations established by the Oregon Legislature in the prosecution of environmental crimes are observed in both their letter and spirit. While not every technical violation of environmental laws will be criminally pursued, the most serious conduct will be vigorously prosecuted.

Among other standards, Oregon statutes require the following:

- The District Attorney shall adopt written guidelines for the filing of felony criminal charges in environmental crimes.
- The District Attorney is required to consider strict criteria in determining whether or not to bring environmental charges.
- The District Attorney shall personally certify that he/she has reviewed the case and that the case meets the requirements of the guidelines.

Note: The general principles, guidelines, and specific charging criteria associated with the prosecution of environment crimes are explained in Appendix A to this manual.

Discovery Policy

The discovery obligations of the Clackamas County District Attorney's Office are generally established by ORS 135.805 – 135.825; ORS 135.845 – 135.855*; Brady v. Maryland*, 373 US 83 (1963); *Giglio v. United States*, 405 US 150 (1972) and Rule 3.8 of the Oregon Rules of Professional Conduct. In order to meet discovery obligations in a given case, prosecutors must be familiar with these authorities and with the judicial interpretations that discuss or address the application of these authorities to particular facts. In addition, it is important for prosecutors to thoroughly consider how to meet their discovery obligations in each case and consult with their supervisors for guidance whenever appropriate.

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.

NOTE: The disclosure required by subsection (G) shall occur **without delay** after arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If the existence of the material or information is not known at that time, the disclosure shall be made upon discovery without regard to whether the represented defendant has entered or agreed to enter a guilty plea.

NOTE: Nothing in subsection (G):

(a) Expands any obligation under a statutory provision or the Oregon or United States Constitution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement officers.

(b) Imposes any obligation on the district attorney to provide material or information beyond the obligation imposed by the Oregon and United States Constitutions."

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.

Plea/Sentence Negotiation

The Clackamas County District Attorney's Office conducts plea and sentencing negotiations in a fair and nonpartisan manner. Pleas take a number of forms:

- Pleas to one or more of the charges
- Reduction of charges
- Sentence bargaining **or**
- Dismissal or non-prosecution of other indicted or unindicted charges

All plea negotiations are made part of the court record for judicial review. Deputy District Attorneys should record the nature and outcome of the negotiations in the case file. Deputy District Attorneys should include a note explaining the reason(s) plea negotiations were undertaken.

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

A plea negotiation can involve the reduction of a charge in exchange for a plea, but it is the general policy of this office to characterize the conduct of a defendant by the individual's conviction record. For example, an individual with a long criminal history of burglary, should be charged with burglary and not trespassing, simply to obtain a plea. To this end, categories have been established in which reduction plea bargaining is generally not allowed.

Note: All Deputy District Attorneys must be familiar with and follow their team's current, written plea policies. Plea negotiation questions should be directed to the appropriate team leader or Chief Deputy.

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 the general standards of this office for 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.

If Deputy District Attorneys are unable to fulfill a plea agreement, they shall notify the defendant (or defendant's counsel) and the trial judge promptly.

Equality in Plea Negotiations

It is the policy of the Clackamas County District Attorney's Office to treat all defendants fairly and impartially in plea and sentencing negotiations. The choice of defense counsel cannot be a factor in a Deputy District Attorney's decision to negotiate. Likewise, a defendant must not receive an advantage or be put at a disadvantage in negotiations based on the Deputy District Attorney's (or this Office's) history with defense counsel.

When to Negotiate

Here are the factors to take into consideration in deciding whether a plea or sentencing negotiation is warranted:

- 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
- Feasibility of restitution being made.

Guidelines for Reducing a Felony Possession of a Controlled Substance Charge to a Misdemeanor

Oregon law requires that the district attorney adopt written guidelines for determining when and under what circumstances the district attorney or one of his designees may elect to treat a felony drug possession charge as a misdemeanor. The office has developed such guidelines that have been distributed among the deputies. Every deputy district attorney shall be familiar with the guidelines, apply them uniformly and properly exercise the appropriate discretion when making such a decision to ensure that every decision made is in the best interests of justice.

Measure 11 Pleas

The section in this manual that discusses Measure 11 explains how plea negotiations are conducted in those crimes.

Negotiations of Homicide Cases

Before any plea offer is extended in any homicide case, the case Deputy District Attorney and the Chief Deputy must meet with the District Attorney. During this meeting the case Deputy District Attorney will present a factual summary of the case and review the mitigating and aggravating factors in the case. Any plea must be approved by the District Attorney.

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.

Case Manager Appearances

Case Manager is a plea negotiation system designed to promote efficiency and bring early resolutions to appropriate cases. It is a pre-trial court appearance designed to facilitate negotiations. It involves the prosecutor, defense counsel, and defendant. Case Manager negotiations determine if the case may be resolved by a plea or if the matter will be docketed for trial. Prior to these negotiations, the state provides the defendant with a formal, written plea offer as part of discovery after arraignment that specifies the state's position if the defendant is prepared to plead guilty at case manager and accept responsibility for the crime.

Deputy District Attorneys should remember that victims have a right to be present at sentencing. If the case involves a person crime, or a crime involving restitution to the victim, the Deputy District Attorney should communicate with Victim Assistance.

Plea negotiations at or before Case Manager are designed to provide additional motivation for defendants to waive a trial and plead guilty earlier in the legal proceedings. Earlier disposition of cases brings speedier justice to victims and costs savings and efficiencies for the public. Plea negotiations are also designed to recognize when defendants are prepared to accept responsibility for their actions.

If the defendant chooses to enter a guilty plea, the plea offer provided in discovery shall be honored by the court and the defendant will be sentenced according to the offer. If the Court is unwilling to honor the plea agreement, the defendant is granted an opportunity to withdraw his/her guilty plea.

If the defendant chooses not to enter a guilty plea to a negotiated agreement, the Case Manager offer is permanently revoked and the case is docketed for trial. A pre-trial offer of substantially greater consequence shall remain open until two judicial days before the trial. If the case is not resolved by two days before trial, the pre-trial offer is revoked and the expectation of the Court is that the case will proceed to trial.

Any plea entered on the date of the trial shall be authorized by the appropriate team leader and involves open sentencing at which the state will recommend a more substantial sentence than previously offered.

In considering Case Manager plea negotiations, Deputy District Attorneys should weigh the aggravating and mitigating factors involved in the crime. Written plea offer standards exist

within each trial team to guide Deputy District Attorneys in their Case Manager decisions. These standards can be obtained from the team leader.

A Case Manager appearance occurs five weeks after initial arraignment in a criminal case. This date may be reset by the defendant by making a motion to the court and providing notice to the District Attorney's Office. The defendant is required to appear in Case Manager negotiations. If the defendant fails to appear, the Court issues a bench warrant for his/her arrest. The District Attorney's Office reserves the right to adjust plea offer policy as appropriate.

> **Note**: Ballot Measure 11 cases generally are not docketed for a case manager appearance.

Grants of Immunity

The Clackamas 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 Chief Deputy, who will, if she/he feels it is warranted, bring the matter to the attention of the District Attorney. Statutory immunity requests should be made as early as possible in the case.

Making Statutory Immunity Requests

If you believe statutory immunity should be considered, prepare the following information for the Chief Deputy's and District Attorney's 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 order is signed, the Deputy District Attorney should provide copies of the motion and order to the District Attorney. Copies are placed in the case file.

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.

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 Chief Deputy is responsible for approving contractual immunity agreements. If approved by the Chief Deputy, he/she shall supply a copy of the agreement to the District Attorney and place a copy in the criminal file.

Here are the points to be covered in any contractual agreement. This information, in writing, must be supplied to the Chief Deputy 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.
- 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 Deputy 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?

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 Team Leader and the Chief Deputy. 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 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

Mental Health Court

Certain repeat criminal offenders who have been identified as mentally ill, commit petty non-violent crimes and have significant mental health concerns. In order to effectively reduce the criminal conduct of these individuals, traditional criminal punishment can be supplemented with broad-based mental health treatment and supervision.

In order to implement this multidisciplinary approach, various Clackamas County agencies have originated Clackamas County's first Mental Health Court. The Clackamas County District Attorney's Office is the "gatekeeper" for this program, with veto power to endorse or deny admission of individuals into the program.

Mental Health Court Admission Criteria

The criteria under which people are admitted to the program are:

- The crime committed is a non-person misdemeanor.
- The defendant has no history of person crimes.
- The defendant has been diagnosed with a mental disorder.
- The defendant has a stable Clackamas County address and is treatable in a community setting.
- The defendant is legally competent.
- The defendant consents to voluntary participation in the Mental Health Court.
- Treatment of the mental illness will enhance public safety by reducing the risk of recidivism.

Mental Health Court Disposition Options

Disposition of cases handled within the Mental Health Court process may include:

- Dismissal of charges upon successful completion of the mental health process.
- Entry of a guilty plea, with sentencing deferred until successful completion of the mental health process, at which time the guilty plea is withdrawn.
- Entry of a guilty plea and the defendant is sentenced to probation, with enrollment in a mental health process a condition of probation.

Post-Conviction Transfers

Defendants previously sentenced and on active probation may enter Mental Health Court if all admissions criteria are satisfied. In such transfers, the defendant's probation shall be modified

by stipulation of the defendant and the Mental Health Court Deputy District Attorney to include mental health court supervision. Such modification shall enhance the defendant's original sentence and promote community safety by elevating the level of probationary supervision. As such, it is possible in rare and appropriate cases, that a low-level, non-violent offender, who meets all other eligibility criteria, but has been convicted of a non-person felony, may be referred to Mental Health Court in order to better protect the community by offering enhanced supervision. Such cases will result in a permanent conviction and are not subject to dismissal upon completion of the probation.

Entering the Mental Health Court Program

A Deputy District Attorney has been assigned the responsibility of assessing the appropriateness for the entry of an individual in the Mental Health Court program. This Deputy District Attorney works with the Clackamas County Behavioral Health in making such evaluations. Deputy District Attorneys who believe that a defendant in a case they are handling is a candidate for Mental Health Court should contact the Mental Health Court Deputy District Attorney.

A representative of Clackamas County Behavioral Health serves as the court liaison in Mental Health Court cases. This individual monitors the defendant's progress and appears before the Mental Health Court judge to report on the defendant's progress compliance with the prescribed court conditions. The Deputy District Attorney with Mental Health Court responsibilities represents the state in these proceedings. The defendant may be represented by counsel.

Limited Mental Health Court Openings

Please be aware that there are limited openings in the Mental Health Court program. Deputy District Attorney's should be careful not to create unrealistic expectations in the defendant or defendant's counsel that entry to the program is guaranteed.

Drug Court Treatment

Clackamas County operates three separate drug courts, each offering help to a particular segment of the population charged with a drug or drug-related crime. The three courts are:

- Adult Drug Court
- Juvenile Drug Court
- Family Drug Court

Each court provides a diversion program tailored to a particular part of the community and each has its own criteria for entry, individual goals and measurements of success. The courts are operated in conjunction with the Clackamas County Mental Health Department and involve a variety of agencies and individual community resources in an integrated effort to stem substance abuse crimes.

Each type of drug court is explained in this section of the manual.

Adult Drug Court

The Adult Drug Court is available to adult defendants charged with drug crimes through the Adult Drug Court, a four-phase program, and 13-weeks in each phase that lasts one year.

The Deputy District Attorney in charge of the case must review the defendant's application to ensure compliance with the treatment program criteria. The Deputy District Attorney shall make a recommendation for or against approval.

Adult Drug Court Treatment Criteria

Here is the criteria for a defendant's entrance into the Drug Court Treatment Program:

- The crime involves possession or attempted possession of a controlled substance.
- This is the defendant's first appearance in Drug Court and the defendant has not previously participated in any other Drug Court program.
- The defendant is not associated with a gang or a criminal enterprise.
- None of the following factors are involved in the case:
  - Ballot Measure 11 or other person felony
  - A person misdemeanor
  - A DUII, reckless driving, or attempt to elude
  - Crime(s) in which restitution is owed
- There are no holds on the defendant that cannot be resolved.
- The defendant provides a written statement stipulating that he/she has the capacity to benefit from and succeed in treatment.

The following factors may be taken into consideration in making a recommendation for admission to the Drug Court Treatment Program, but in and of themselves, will not automatically disqualify a defendant for admission:

- The defendant's criminal record.
- The defendant's present probation or parole status.
- Previous participation by the defendant in other outpatient programs (not associated with Drug Court).
- The defendant faces further, pending charges, provided admittance to the treatment program does not create a release issue.

Note: If there are other charges against the defendant, they must be resolved separately. They are not dismissed simply because the defendant successfully completes the Drug Court Treatment program.

Juvenile Drug Court Team

Juvenile Drug Court uses an integrated approach to select juveniles for admittance to the program, to assess their progress in completing it, and in recommending sanctions and incentives to the juvenile court once an individual completes the program. In addition to the District Attorney's Office, a number of different agencies and community organizations make up the Drug Court team, including:

- The juvenile court
- The Clackamas County Mental Health Department
- The Clackamas County Juvenile Department
- The Oregon Youth Authority
- The Indigent Defense Counsel Group
- Clackamas Community College

Representatives from these organizations meet weekly to evaluate and recommend or decline applicants entrance to the program and to measure the progress of individuals already admitted. Program participants make regular appearances in juvenile court, at which time the team gives the court a review of each individual's progress in completing the program.

Each member of the team has the right to refuse admittance to any potential participant of the drug court program. Once a participant is admitted, decisions are made either by consensus or by a majority of the team.

Juvenile Drug Court Program Goals

The goals of the Juvenile Drug Court Program are to:

- Reduce criminal recidivism by frequent contact and accountability and individualized treatment plans to meet the unique needs of the youth.
- Reduce substance and alcohol abuse by rapidly assessing the treatment needs of the youth and providing treatment and accountability designed to substantially reduce use.
- Increase youths' success in obtaining their personal goals by improving the youths' level of functioning in their environment, addressing problems that may be contributing to their use of drugs or alcohol and the commission of delinquent offenses.
- Provide immediate intervention, treatment, and structure in the lives of juveniles who use drug or alcohol illegally through ongoing, active oversight and monitoring.
- Strengthen families of drug-involved youth by improving their capacity to provide structure and guidance to their children.

Family Drug Court

The Family Drug Court is a deferred disposition program for parents in dependency cases who have admitted that they have neglected their children as a result of substance or alcohol abuse. Parents who are responsible for physical or sexual abuse to their children are not eligible for Family Drug Court. The purpose of the Family Drug Court program is to protect infants and children who have suffered substantial neglect as a result of parental use of drugs and/or

alcohol, to strengthen the family unit, to enhance parental capacity to meet the health and developmental needs of their children and to expedite permanency for infants and children in state care. The Family Drug Court is a 12-month, four-phase program.

The Family Drug Court program seeks to quickly identify and assess drug-exposed infants and children, reduce substance-abuse of the parents, develop comprehensive multi-disciplinary case plans for families, ensure intensive case monitoring, and provide for frequent court supervision of court orders, case plan compliance and progress in treatment.

In order to seek admission to the program, the offender must admit to the drug/alcohol charge and admit to allegations of neglect of a child.

Family Drug Court Team

The Family Drug Court uses an integrated approach to selecting parents for admission to the program and in measuring their progress in successfully completing it. In addition to the District Attorney's Office, a number of different agencies and community organizations make up the Drug Court team, including:

- The Juvenile Court
- The Clackamas County Mental Health Department
- The Clackamas County Juvenile Department
- The Department of Human Services
- The Indigent Counsel Defense Group
- The Court Appointed Special Advocate Program
- Community volunteers

Representatives from these organizations meet weekly to evaluate and recommend or decline applicants entrance to the program and to measure the progress of individuals already admitted. Program participants make regular appearances in juvenile court, at which time the District Attorney's Office makes recommendations of incentives and sanctions based upon each individual's progress in completing the program.

Each member of the team has the right to refuse admittance to any potential participant of the drug court program. Once a participant is admitted, decisions are made either by consensus or by a majority of the team.

Family Drug Court Program Goals

The goals to the Family Court Program are to:

- Reduce substance and alcohol abuse by parents.
- Reunite infants and children with their parents more quickly than in a traditional dependency case.
- Improve and strengthen family relationships.
- Create a permanent, safe home to infants and children

Measure 11 Policy

Defendants charged with Measure 11 crimes shall be treated in a manner consistent with the intent of Measure 11 to increase the sentences for violent offenders. A defendant charged with Measure 11 crimes but whose case is more appropriately punished outside of Measure 11, shall be given the opportunity to resolve his or her case in that manner.

Cases submitted for prosecution are charged as Measure 11 cases when there are facts that clearly support such charges. Any exception to this charging policy must be approved by the team leader. Pre-indictment resolution of any Measure 11 case must be cleared with the team leader and the Chief Deputy.

All measure 11 cases should be presented by the assigned Deputy District Attorney for peer review. This review should also include the team leader and the Chief Deputy. 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 11 cases must be approved by the team leader and Chief Deputy.

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.

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 team leader before grand jury presentation. Appropriate aggravating and mitigating factors will be considered when deciding on the case. Any exceptions to this policy must be approved by the team leader who will make community safety the primary consideration.

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 Chief Deputy will work with the Senior Deputy in the Juvenile Team and the Senior Deputy of the Person Crimes Team to 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.

Case referrals under ORS 419C.352 allegedly committed by juveniles under 15 years of age shall be subject to review by the Chief Deputy, Senior Deputy of Juvenile Team and Senior Deputy of the Person Crime Team.

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

Measure 57 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 the team leader. Pre-indictment resolution of any Measure 57 case must be cleared with the team leader. 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 for peer review which will include a Senior Deputy 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 a Senior Deputy District Attorney.

Plea Negotiation 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

Plea Negotiation 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.

Fast-Track Disposition

Oregon law allows early disposition for first-time offenders who are charged with non-person offenses. The approach is called Fast-Track Disposition. The goal is to save indigent defense costs and 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 Clackamas County District Attorney's Office shall identify, at intake, crimes eligible for violation treatment. At the defendant's first appearance,

the defendant should be advised by the court that she or he is eligible for the program and informed of the offer to treat the case as a violation. A fine of up to $600 will be recommended and shall be stipulated to by the defendant.

If the defendant refuses the plea offer, the offer immediately expires and the case goes forward for trial. The plea offer shall not be renewed in ensuing proceedings and will be treated as a crime.

Crimes Eligible for Fast-Track Proceedings

The following crimes are eligible for Fast-Track:

- All misdemeanor driving while suspended cases;
- First offender theft in the second degree;
- First offender theft in the third degree;
- First offender criminal mischief in the second degree;
- First offender criminal mischief in the third degree;
- First offender criminal trespass in the second degree; and
- First offender offensive littering

Identifying Fast-Track Cases

The misdemeanor team shall identify cases eligible for Fast-Track Disposition. The Deputy District Attorney should review the defendant's criminal history to ensure that this is a first time offender (except in driving while suspended cases) 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.

Weapons Charges and Destruction of Weapons

It shall be the policy of the Clackamas 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.

Civil Compromise Agreements

Civil compromises are available under Oregon law (ORS 135.703 and ORS 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. The Court, on payment of costs and expenses incurred, may order the complaint dismissed. Although generally disfavored, civil compromises may be appropriate in certain circumstances and Deputy District Attorneys should use their discretion when not to oppose a civil compromise. Factors to consider are the defendant's criminal history, relationship between the defendant and victim, nature of the crime, facts of the case, and other appropriate circumstances.

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.

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.

The Chief Deputy shall approve any exception to joinder.

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 Chief Deputy must approve fees that exceed $500.

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 Clackamas County District Attorney, 807 Main Street Room 7, Oregon City, OR 97045.

The Deputy District Attorney who receives the bill should review it and indicate that is has been approved by signing her/his initials on the bill and the date the bill was reviewed and approved. The Deputy District Attorney should write the case number on the bill and submit it to the Office Administrator 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 Chief Deputy. 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.

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 Chief Deputy or the District Attorney.

Ex Parte Polygraph Examinations

Ex parte polygraph examinations are often obtained by defense attorneys prior to submitting their clients to a stipulated polygraph. If such ex parte examinations are at public expense, it is the policy of this office to request reimbursement for the county in any sentence the defendant may ultimately receive.

Appeals Review Procedure

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

As used in this manual, "appeal" includes any special proceeding in the higher courts in lieu of an appeal.

A Deputy District Attorney has been assigned the responsibility of Appellate Review Coordinator. This Deputy District Attorney manages the appeals policies and procedures established by this office. (See Appendix B.)

All state's appeals must be submitted to Appellate Review Committee which consists of the:

- Appellate Review Coordinator
- Chief Deputy District Attorney
- Deputy District Attorney(s) assigned to case
- Team leader of the Deputy District Attorney assigned to the case

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 assigned to the case will consult with his/her team leader. A file log note will be made to reflect the content of that consultation.

2. If an appeal is recommended, , the Deputy District Attorney assigned to the case will 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.

3. The Deputy District Attorney assigned to the case must obtain a copy of the signed order or judgment that is the subject of appeal.

4. By the 10th day after entry of the order or judgment, the file with memo and order are forwarded to the Appellate Review Coordinator. The Coordinator will determine if any further information is necessary

5. The Coordinator will set up a meeting with other members of the Appellate Review Committee, including the team leader of the Deputy District Attorney assigned to the case, and distribute copies of the memo requesting the appeal.

6. By the 20th day after entry of the order or judgment, the Appellate Review Committee will meet and review the case. This review may include consultation with the office of the State Attorney General. If the committee recommends 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 Chief Deputy for consultation with the District Attorney and final approval.

The District Attorney must approve an appeal to appellate courts rising from any court case handled by the office. In making this decision, the District Attorney shall consider the recommendation of the office's Appellate Review Committee.

By the 25th day after entry of the order judgment, the file will be returned to the Appellate Coordinator for filing of the appeal.

Forfeiture

It is the policy of the Clackamas County District Attorney Office that any profits from criminal activity shall be forfeited as shall all conveyances used to conceal or transport illegal drugs and narcotics.

If the illegal profits were stolen from innocent third parties, it shall be the policy of this office to return those sums in restitution.

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.
- 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 or microfilmed, 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.

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 Clackamas County District Attorney's Office to encourage the responsible reporting of suspected child abuse by all employees.

Any Deputy District Attorney or District Attorney's Investigator 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 or to a local law enforcement agency. Deputy District Attorney's and District Attorney's Investigators 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 or District Attorney's Investigators are strongly encouraged to report suspected child abuse to the Department of Human Services or local law enforcement any time the employee has reasonable cause to believe that child abuse has occurred.

Property Storage Room and Evidence

For the convenience of prosecutors and investigators, the Clackamas County District Attorney's Office maintains a temporary, secure storage area for property and evidence. The storage area is for the temporary retention of property and evidence relating to court proceedings or matters that are currently under investigation. The following policy outlines how such evidence will be maintained and discovered by the District Attorney's Office.

I. DEFINITIONS

1. Physical Evidence: For purposes of this policy, physical evidence is defined as original and/or tangible items collected or produced during the course of a criminal investigation. Examples of physical evidence includes, but is not limited to, weapons, controlled substances, currency, or jewelry.
2. Electronic Evidence: For purposes of this policy, electronic evidence is evidence stored on a CD/DVD or other digital device. Examples of electronic evidence includes but is not limited to photos, videos, audio recordings, cell phone examinations and computer examinations.
3. Child Pornography: For purposes of this policy, child pornography is defined pursuant to ORS 163.665.
4. Sensitive Evidence: For purposes of this policy, sensitive evidence includes:

    - The medical records, counseling records, mental health records, DHS records or drug treatment records of any victim or witness that is received pursuant to a grand jury or trial subpoena.
    - Any report, photographic documentation or digital record, including but not limited to DVDs and/or colposcopy photographs received from a Children's Advocacy Center (CAC), such as the Children's Center of Clackamas County, or CARES Northwest related to any child.

- Records which contain private financial information, including bank account numbers, social security numbers, or other personal identifying information beyond the publicly available name and address of any victim or witness that is received pursuant to a grand jury or trial subpoena

Unless it is sexually explicit or sensitive evidence, this policy refers only to original evidence and does not cover duplicates and/or copies of originals that come into possession of this office.

II. EVIDENCE PROCEDURES AND BEST PRACTICES

While the secure storage area is available for storage of property and evidence, whenever possible, law enforcement witnesses should maintain custody and control of their evidence. If it is expected that original evidence will be in the possession of the District Attorney's Office, the following procedures will be followed:

1. At no time will employees of this office store original evidence in their offices or workspaces without the express permission of the Chief Deputy, a Senior Deputy, the Senior Investigator or their designee. Every effort should be made to store evidence only in the locked storage area.
2. All evidence received and released by the District Attorney's Office will recorded on a Property and Evidence Transaction form. The form will indicate the item being transferred, dates and times of receipt or release, the persons conducting the transaction and their signatures.
3. The DDA or Investigator will provide the signed Property and Evidence Transaction form to a Legal Secretary to attach and update information in PbK.
4. All evidence checked in and out the secure storage area will be documented by a District Attorney's Office investigator on the Evidence Intake and Release log. The log will contain a brief description of the item, the date and time the item was submitted or released and the person checking the item(s) in or out. The secure storage area is the only approved area for evidence storage. If an item is too large for the storage area and must be temporarily stored in the District Attorney's Office, it should be locked in an investigator's office or remain at the original agency and transported and maintained by the law enforcement witness.
5. Items with an unbroken seal from the releasing agency and in their original evidence packaging can be accepted for placement in the storage area without further inspection.
6. Items that have been opened or removed from the original sealed packaging should be repackaged. The preferred method of repackaging evidence is in clear plastic packaging available in the storage area or back into the original packing and resealed with evidence tape. Evidence tape is provided in the storage area. Items which are not conducive to being placed in any of the available packaging due to size or other factors should be labeled with a clearly visible identification tag.
7. Property and evidence shall be returned at the earliest possible time to the original agency that took custody of the item.
8. The items below require permission of the Chief Deputy, a Senior Deputy, the Senior Investigator or their designee prior to placement in the secure storage area, and the following procedures shall be followed when storing such evidence:

- **Currency**: All currency should be sealed and initialed when placed in the storage area regardless of the condition of the initial packaging. Currency packaging pouches are available in the evidence storage area.
- **Controlled Substances**: Controlled substances should not be stored in the storage area unless absolutely necessary. If necessary it should be sealed and initialed when placed in the storage area regardless of the condition of the initial packaging.
- **Firearms**: All firearms brought to the courthouse for purpose of placement in the secure storage area must undergo a safety check by the Civil Division of the Clackamas County sheriff's Office. Firearms that are placed in the secure storage area should be done so in a safe manner. Firearms will be unloaded and ammunition should be kept separate from the firearm. If the weapon is not secured with a zip tie when received from the releasing agency, it will be secured with a zip tie rendering it safe.
- **Valuable items**: No item with an actual or estimated value of more than $2500.00 can be placed in the secure storage area without the permission of the Chief Deputy, a Senior Deputy, the Senior Investigator or their designee.
- **Damaged Property**: Any item of evidence that is damaged while it is in the custody of the District Attorney's Office shall be promptly documented and reported to the Chief Deputy, a Senior Deputy or the Senior Investigator. The damage will be documented in the form of a report and photographs and also reported to the original agency.

9. Once a month, all items placed in the secure storage area will be inventoried by the Senior Investigator or the Senior Investigator's designee. Items which can be returned to the law enforcement agency of record shall be returned. Any item remaining in the storage area for longer than one month must be inspected to determine if it has been damaged or tampered with. No item will remain in the facility for longer than sixty days without the approval of the Chief Deputy.
10. Items of evidence that are not claimed by an original agency within 60 days , shall be stored only as long as is required to notify all partner agencies in an effort to facilitate their return. Items that remain unreturned shall be reported to the Chief Deputy and then turned over to the Oregon Department of State Lands as unclaimed property.
11. Any item of evidence found in the office that is not stored in the secure storage area and is not covered by an authorized exception must be immediately turned over to the Senior Investigator.
12. Every effort should be made to routinely reconcile evidence between the DA's Office and its partner agencies to ensure that both have an accurate accounting as to what materials have transferred back and forth between agencies.

III. SEXUALLY EXPLICIT EVIDENCE/CHILD PORNOGRAPHY EVIDENCE STORAGE AND DISCOVERY PROCEDURES

The District Attorney's Office acknowledges that investigation and prosecution of cases can involve legal sexually explicit materials that unintentionally come with other investigative materials and/or as items intended to be offered as evidence. Legally created or produced sexually explicit evidence that does not contain any actual or suspected child pornography may be stored in the District Attorney's physical and/or digital file.

Child pornography, as defined pursuant to ORS 163.665, is subject to the below listed policy:

1. Child pornography shall never be stored in employee offices or files unless specifically authorized to do so by the Chief Deputy, a Senior Deputy or the Senior Investigator.
2. Viewing child pornography for purposes of case preparation should be done by the prosecutor, the DA Investigator, the defense attorney or defense investigator at the investigating agency. If there are unforeseen circumstances that necessitate viewing of this type of evidence outside of the investigating agency, permission must be obtained from the Chief Deputy, a Senior Deputy or the Senior Investigator. The date, reason and persons present for such viewing must be noted in PBK.
3. The transportation of child pornography between a police evidence facility and the courts is the responsibility of the investigating agency. It can be transported by DA investigators only if the investigating agency is unavailable.
4. Sexually explicit material depicting minors or victims **will not** be given out as discovery, absent an explicit order of the court. If the defendant seeks and the court grants such an order, the assigned prosecutor shall seek a protective order prohibiting copying by the defendant or their attorney and requiring return of the materials when the case in completed. All protective orders must also address disposal or return of the evidence once the case has concluded.
5. 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.
6. 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.
7. Should it be necessary to have child pornography kept at the District Attorney's Office secure storage area 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 the secured in the safe inside the storage locker and can only be done with the permission of the Chief Deputy, Senior Deputy or Senior Investigator.
8. 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.

IV. SENSITIVE EVIDENCE AND DISCOVERY PROCEDURES

It is the policy of the Clackamas 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 Clackamas 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 DDA handling the case. Rather, such photographs will be maintained by the medical records division of the CAC for viewing by the Deputy District Attorney on the premises of the CAC. Any deviation from this policy must be approved by the Chief Deputy, a Senior Deputy, the Senior Investigator or their designee.
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 DDA 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.

V. EVIDENCE RELEASED TO DISTRICT ATTORNEY'S OFFICE BY THE COURT

Items of evidence that are submitted as exhibits to the court during motion hearings or trial are still subject to this policy. As such, exhibits that are original items should be returned to the originating agency or placed in the evidence storage area pending return to the investigating 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.

Returning Stolen Property in Misdemeanor Cases

It is the policy of the Clackamas County District Attorney's Office to authorize return of stolen property to its rightful owner as early as possible without jeopardizing the criminal case.

Generally, it would be better to have the stolen item available at trial. This is particularly true if a claim is made by the defendant that the property was purchased elsewhere or a claim that it was physically impossible to conceal the item from store security.

The District Attorney's Office does not require a retail store to retain stolen property pending the resolution of a misdemeanor charge. It will be the store's option whether to return the property to stock or retain it as evidence.

It is important to remember when deciding how to handle stolen property prior to trial that, in some cases, failure to retain the property could result in the dismissal of the case, the granting of a judgment of acquittal, or a verdict of not guilty.

Section 04 - Domestic Violence Team

Domestic Violence Team

The Clackamas County District Attorney's Office places special emphasis on domestic violence cases because of the threat these cases pose to children and families. The Domestic Violence Team has been created to ensure this emphasis. The team, operated under the direction of a full-time Senior Deputy District Attorney, is responsible for charging, negotiating, and trying nearly all misdemeanor and felony crimes involving domestic violence as defined under the Family Abuse Prevention Act, ORS 107.700. The exception is criminal mistreatment. The Domestic Violence Team also prosecutes Family Abuse Prevention Act restraining order violations.

Domestic Violence Intake

As domestic violence cases are received by the District Attorney's Office from law enforcement, they shall be given a unique code to distinguish them from other cases and given a domestic violation designation in the CLASS database.

Case Screening Procedures

When a police report of a domestic crime is received, a Domestic Violence Team Deputy District Attorney shall determine whether the case should be prosecuted. All cases are forwarded to a Victim Advocate. The Advocate should attempt to contact the victim and provide information to the victim about whether charges will be filed and explain the resources available to the victim.

Victim Appearance in Domestic Violence Cases

In a domestic violence case, the victim is expected, but not required, to appear before a grand jury. In such cases, testimony of the victim may be presented through the testimony of the investigating police officer.

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 a District Attorney Investigator and/or a Victim Advocate, if available, to make contact with the victim.
- The Investigator shall encourage the victim to comply with the subpoena and warn 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 Investigator shall execute it immediately and bring the victim to court.

Here 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.

Bail Recommendations

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;
- Defendant's criminal history; and
- The flight risk posed by the defendant.

No Contact Orders

In domestic violence cases, a no contact order is routinely requested by the Deputy District Attorney at arraignment.

Plea Negotiations and Probation Conditions

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.

Vulnerable Victims

Cases involving the victimization of "vulnerable victims" will be assigned to Deputy District Attorneys who specialize in prosecuting these types of offenses. "Vulnerable victim" cases are defined as those cases where the commission of a crime was the direct result of someone (especially a caregiver) who takes advantage of an elderly or disabled person's particular vulnerability. The manipulation of these victims includes the following:

- Any physical injury to a vulnerable adult by a caregiver caused by other than accidental means.
- Neglect:
  - Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a vulnerable adult that may result in physical harm or significant emotional harm to the person;
  - The Failure of a caregiver to make a reasonable effort to protect a vulnerable adult from abuse; or
  - Withholding of services necessary to maintain the health and well-being of a vulnerable adult which leads to physical harm of that person.
- Abandonment, including desertion or willful forsaking of a vulnerable adult or the withdrawal or neglect of duties and obligations owed a vulnerable adult by a caregiver or other person.
- Willful infliction of physical pain or injury upon a vulnerable adult.
- An act that constitutes a crime of sexual abuse.
- Financial exploitation:
  - Wrongfully taking the assets, funds or property belonging to or intended for the use of a vulnerable adult;
  - Alarming a vulnerable adult by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out;
  - Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by a vulnerable adult; or

    - Failing to use the income or assets of a vulnerable adult effectively for the support and maintenance of the person.

- Involuntary seclusion of a vulnerable adult for the convenience of a caregiver or to discipline the person.
- A wrongful use of a physical or chemical restraint of a vulnerable adult.
- Any death of a vulnerable adult caused by other than accidental or natural means.

Domestic Violence Deferred Sentencing Program

An individual charged with a domestic violence misdemeanor crime against a family or household member may be eligible for the Domestic Violence Deferred Sentencing Program (DVDSP). Participation is solely at the discretion of the District Attorney's Office, based on the recommendation of the Domestic Violence Team Deputy District Attorney.

Defendants are included in the deferred sentencing program only after the Deputy District Attorney has reviewed the case, and approval has been given by the Deputy District Attorney.

A domestic violence misdemeanor includes assault in the fourth degree; strangulation; harassment; menacing; reckless endangering; interference with making a report; and criminal mischief in the second degree.

Family or household members are defined in ORS107.705.

Deferred Sentencing Eligibility

A person is eligible for the Domestic Violence Deferred Sentencing Program if she or he has:

- Never participated in a domestic violence deferred sentencing program;
- The present offense is not, and cannot, be charged as a felony;
- No pending felony or misdemeanor cases other than DUII or DWS and has no felony convictions (other than DWS);
- No conviction for misdemeanor person crimes or restraining order violations within the past 15 years (Misdemeanor person crimes include assault, harassment, menacing, reckless endangering, and resisting arrest.);
- No hold from any other jurisdictions (The defendant may petition for inclusion in the deferred sentencing program if the hold is resolved.);
- Not been revoked from probation on any crime within the past 15 years;
- Not been charged in the pending case with any other non-domestic violence related person or property crimes; and
- The present offense did not involve the use, or threatened use, of a dangerous or deadly weapon.

Courtroom Procedures

Two courtroom proceedings are involved in determining whether an eligible domestic violence defendant enters DVDSP: an arraignment and an election hearing, in which a plea is entered. Election hearings are held twice a month on dates set by the Court.

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

Arraignment: The arraigning Deputy District Attorney shall advise the Court if the defendant is eligible for DVDSP. The Court shall explain the program to the defendant. The matter is set for an election hearing within 21 days, allowing the defendant time to consider the program and seek legal advice. The defendant's appearance at the election hearing is mandatory.

Election Hearing and Plea: The election hearing is the defendant's sole opportunity to enter DVDSP. If the defendant is undecided about entering the program or chooses not to enter it, the case is set for trial. The defendant is not allowed to enter the program at a later date.

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 DVDSP will not be an option.

When a defendant enters the deferred sentencing program, the Court shall set a compliance hearing 30 days after entry into the program.

Deferred Sentencing Conditions

Here are 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

One hundred and twenty days after entry into the deferred sentencing program, the defendant shall appear before the Court to show that he/she is in compliance with the conditions of the deferred sentencing program. The batterer's intervention program shall provide the Court with a report regarding the defendant's compliance.

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 whey 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, the case shall be dismissed with prejudice.

Section 05 - Human Trafficking

Human Trafficking

The Clackamas County District Attorney's Office recognizes that human trafficking is a threat to vulnerable women, children, and even men. Human trafficking involves the use of force, coercion, or fraud to obtain forced labor or commercial sex acts. The District Attorney's Office recognizes trafficking is a hidden crime because victims rarely come forward to seek help out of their own trauma or fear of traffickers and/or law enforcement. This office is dedicated to identifying, responding to, and prosecuting sex trafficking cases with an emphasis on both enforcement against the traffickers and on addressing the unique needs of human trafficking survivors. This office will approach human trafficking cases with a victim centered approach, with an emphasis on providing support and resources to those who are exploited by human traffickers.

Human trafficking is conducted in two ways that are most common. First, is "sex trafficking" which is defined as the recruitment, harboring, transporting, provisioning, obtaining, patronizing, or soliciting person(s) for the purpose of a commercial act, which is inducted by force, fraud, or coercion. See ORS 163.266. Second, is "labor trafficking" which is defined as the recruitment, harboring, transporting, provisioning, or obtaining a person(s) for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary service. See ORS 163.263 and ORS 163.264.

In screening a sex trafficking case for possible prosecution, it is the policy of this office that juvenile survivors of sex trafficking are to be treated as crime victims and, as such, are not prosecuted for related crimes such as prostitution unless there are extenuating circumstances which must be pre-approved by a Senior Deputy District Attorney. All cases of sex trafficking shall be immediately forwarded to a Victim Advocate to work with the survivors. The Victim Advocate will make resources and information available to survivors, including non-governmental agencies such as Safety Compass for specialized services specifically designed for survivors of human trafficking.

All plea negotiations must be conducted in consultation with the human trafficking survivor(s). In addition, law enforcement on each case should be consulted in the plea negotiation process for their input and advice.

This office has lead the effort to establish the first Clackamas County Human Trafficking Multi-Disciplinary Team (MDT) whose purpose is to coordinate training, investigations, and communication between all the partners who work together to address this intractable criminal enterprise. These partners include law enforcement, non-governmental non-profit organizations such as Safety Compass, the Juvenile Department, and the District Attorney's Office. Deputy District Attorneys who prosecute human trafficking cases or work with this MDT will assist law enforcement with legal advice, investigative support, including the preparation of search warrants, grand jury subpoenas and tactical investigative strategies.

Section 06 - Community Prosecution

Community Prosecution Program

The Clackamas County Community Prosecution Program fosters and supports cooperation between communities and public safety offices in the county. The program creates partnerships with citizens in order to reduce crime and improve the quality of life in Clackamas County neighborhoods. This is accomplished through citizen involvement in crime prevention and criminal prosecutions.

In order to fulfill its mission, the Community Prosecution Program must maintain an active communication network with the community and those agencies that support the unit.

The Community Prosecution Program uses creative problem-solving strategies to augment traditional criminal prosecution.

Communication with the Community

Active and regular communication with communities is the key to success in using the resources of the District Attorney's Office to improve the quality of life for county citizens. Community Prosecutors pass along information of use to citizens in fighting crime and also take note of citizens' concerns and information

Some of the methods used by Community Prosecutors to stay in communication with communities are:

- Regular monthly meetings with community groups.
- Bi-weekly or monthly neighborhood steering committee meetings.
- Sponsorship of periodic "Summits" that focus on crime identification and prevention.
- Monthly meetings of the Community Action Workgroup.
- Attendance by team members at community meetings on an as needed basis.
- Liaison with Community Court.
- Supports creation of community action groups oriented towards crime reduction and improvement in quality of life in the community.

Community Prosecution Strategies

Community Prosecutors target specific activities and conditions that adversely affect the quality of life in a community. Here are some examples of specific strategies used by Community Prosecutors:

- Drug dealing: Active arrest and prosecution of drug dealers and drug users. Zero tolerance for drug house activity. Enforcement of the Chronic Nuisance Property Ordinance and other codes. Establishment and communication with Neighborhood Watch organizations. Exclusion from a neighborhood(s) as a voluntary condition of probation.
- Neighborhood decay: Code enforcement to rid the neighborhood of garbage and trash. Organized neighborhood cleanups. Neighborhood Watch.
- Illegal urban camping: Code Enforcement. CCSO Property Trespass/Exclusion Program. Organized sweeps of camps by law enforcement. Clean up of camp sites by Corrections work crews.

- Using the resources of Community Court to supplement the efforts of the community to reduce crime and provide restitution to victims.

Section 08 - Special Prosecutors

Special Prosecutor Program

The purpose of the Clackamas County District Attorney's Office Special Prosecutor Program is to promote open communication with the civil bar in Clackamas County. Attorneys in private civil practice in Clackamas County will be offered an opportunity to serve as special deputies in an effort to gain valuable litigation experience through the handling of a small number of misdemeanor cases through the trial process. The program is administered, supervised, and monitored by the Senior Deputy in charge of the Misdemeanor Team. All special prosecutors shall be sworn in prior to beginning their service and will be subject to all the policies and procedures of the Clackamas County District Attorney's Office during their specified term of service. Each participating special prosecutor shall read and sign a confidentiality agreement prior to their service. All office files, supplies and equipment remain the property of the District Attorney's Office and may not be removed from the office.

Section 09 - Alleged Police Misconduct

Alleged Police Misconduct

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 Chief Deputy who shall then notify the District Attorney. The Deputy District Attorney who has responsibility for the police investigation must update the Chief Deputy on a regular basis until the case is resolved.

Clackamas County District Attorney's Office Procedure for Disclosure of Brady/Impeachment Evidence Regarding Law Enforcement/Government Witnesses

It is the policy of the Clackamas 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. Such witnesses include law enforcement, personnel employed by the Oregon State Police Forensic Laboratory, DHS caseworkers and members of the Oregon State Medical Examiner's Office who are likely to testify in a Clackamas County grand jury, hearing or trial. To comply with this obligation the District Attorney's Office has established the following procedures.

When the District Attorney's Office learns of potential *Brady*/Impeachment material from any source, that material will be referred to a *Brady* Review Committee (Committee) for review.

Brady Review Committee

The Committee will consist of the Chief Deputy, and at least two Sr. DDAs. If the Chief Deputy is unavailable, at least three Sr. DDAs will conduct the review. The purpose of the Committee is to screen relevant information received from all sources for legitimate *Brady*/impeachment material. Committee members may consider oral, written or other relevant evidence in reaching their decisions.

The following procedures will be followed by the Committee in each case:

Notice

1. State witnesses will receive written notice that they are the subject of a pending review;
2. The witness's Agency Liaison will receive written notice that the employee is the subject of a pending review;

Evidence Considered

3. State witnesses will have the opportunity to provide relevant materials for consideration to the Committee and to appear before the Committee;

4. The employing agency of the State's witness may provide any relevant information to the Committee.

Outcome

The Committee will determine what obligations, if any, the District Attorney's Office has in light of the evidence reviewed. The obligation will usually fall into the following three options, although other recommendations may be made on a case by case basis:

1. No obligation to provide any information

2. Information must be provided as part of discovery obligation.

- Request for an *in camera* review by the court
- Provide to the defense as part of discovery

3. In addition to options included in "2**,**" determine if the information requires the State to disqualify this witness from testifying in the pending case and/or future cases.

Appeals Process

Notice of the Committee's decision will be provided in writing to the employing agency's Agency Liaison and to the potential witness.

State witnesses may file a written appeal within 30 days of the Committee's decision. In support of their appeal, witnesses may submit additional or new information to the Committee.

State witnesses identified as having use restrictions and/or their employing agency always have the opportunity to submit additional materials at any time if they choose to seek reconsideration by the Committee. The District Attorney will review all appeals and will accept or reject the Committee's decision on appeal.

Notice to DDAs

If the review Committee determines there is a *Brady*/Impeachment obligation, that decision will be documented internally in the District Attorney's Office case management system. A restriction on the use of that witness in pending or future cases will cause an automatic notice to be sent to case prosecutors.

When a DDA determines that a state witness is flagged in the case management system as subject to a *Brady*/impeachment restriction, they are required to meet with the Chief Deputy to discuss the necessity of the witness in the DDA's case, and the manner in which the information

will be disclosed, if at all. Release of *Brady*/impeachment information to defense counsel is not a stipulation as to its admissibility.

> It is anticipated that this procedure will apply to most cases. However, there may be situations that require modification of this process.

Section 10 - Police Discharge of Firearms Involving Death

Police Discharge of Firearms Involving Death

The grand jury will review all cases involving a law enforcement officer's discharge of a firearm which results in death, unless, at the discretion of the District Attorney, it is determined that a grand jury review is unwarranted.

Section 11 - DA Investigators

District Attorney Investigations

Investigators of the District Attorney's Office provide law enforcement support for the investigation and prosecution of criminal cases. As such their duties may include but are not limited to, responding to crime scenes, interviewing witnesses, victim and suspects of crimes both in controlled environments and in the field, conducting surveillance, gathering and protecting evidence and the service of subpoenas and other court documents.

Investigators also perform new employee background checks and conduct internal investigations at the direction of the District Attorney's Office.

Investigators are under the general supervision of the Chief Deputy and direct supervision of the Senior Investigator. Investigators will adhere to the highest standards of integrity and honesty.

Carry and Use of Weapons - General

Investigators who are currently DPSST certified police officers are authorized to carry weapons consistent with their duties after they have been trained by State approved instructors on the use of force and the specific weapon employed.

Investigators who are authorized to carry a weapon must have the weapon approved for carry by the Senior Investigator or his or her designee.

Investigators who are authorized to carry a weapon must qualify with that weapon no less than once a year and must qualify with a score of no less than 85%. Additionally Investigators must have 8 hours of use of force training a year as required by DPSST.

Weapons Safety

Weapons safety training is an integral component of both operational and personal responsibility. The Senior Investigator will be responsible for weapons safety coordination in state approved training provided by a law enforcement agency. Training records of Use of Force/Weapons training will be the responsibility of the Senior Investigator who will record all training on a DPSST F-6 form for submission to the DPSST. Minimum safety practices shall include:

- Proper and safe practices with all firearms, and adhering to the four cardinal rules of firearms safety:
  - All weapons are considered loaded;
  - Never point your weapon at anything that you are not willing and justified to destroy or kill;
  - Keep your trigger finger out of the trigger guard until you are ready to shoot; and
  - Be aware of your target and what lies beyond your target.
- While on-duty, maintaining personal control or observation of firearms, unless secured in a storage compartment, rack or container. CCDA encourages the use of a safe/locker at home and when not on duty; and

- Weapons carried in a vehicle and not on the investigators person shall be secured in the trunk/enclosed cargo box or a weapons rack. When the vehicle is removed from service, being repaired or otherwise not within the care and control of the CCDA (such as leaving a vehicle unattended while off-duty without parking it inside a closed garage), all weapons and ammunition shall be removed and stored appropriately.

Dispensing Firearms

CCDA Investigators shall not lend, give, or sell any firearm to any person, group, or organization that does not have the legal right to possess such firearm.

Technical Weapon Specifications and Training/ Proficiency

The Senior Investigator is responsible for monitoring state and federal weapon developments associated with law enforcement and corrections to ensure CCDA is in compliance.

CCDA investigators must be trained and qualified by DPSST approved and/or endorsed instructors prior to the use of any firearm or weapon system if required (e.g. electronic stun devices or less-lethal munitions), which includes the following:

- Investigators must qualify at a range session prior to carrying a firearm on duty or off duty when the weapon is carried under the provisions of ORS 166.260(1);
- Investigators must qualify with their on- and off-duty firearm(s) (e.g. rifle, shotgun, handgun) annually;
- Investigators must qualify and recertify with less-lethal weapons at least biennially if using such equipment; and
- Investigators authorized to carry weapons shall take annual in-service training on Use of and Reporting procedures.

All investigators will adhere to the safety procedures required during training exercises.

In the event of an unintentional discharge of a firearm, whether in training or operational status, the employee in control of the firearm will complete a County Incident Report, documenting the circumstances leading to the discharge and any resulting damage or injury. In training situations, the instructor of the session will also document the circumstances surrounding the unintentional discharge of a weapon. Unintentional discharge reports will be sent to the Chief Deputy District Attorney. The incident will be examined for compliance at the time of the incident with appropriate policy, procedure and safety practices.

Display and Discharge

CCDA investigators shall not discharge firearms at another person except as provided by Oregon Revised Statutes. Whenever possible, Verbal Warnings are to be given prior to utilization of any weapon. The use, threatened use or intentional display of any weapon upon a person to gain compliance requires submission of a Use of Force report to the Chief Deputy District Attorney or their designee.

Warning shots are prohibited.

CCDA investigators shall not discharge a firearm from a moving vehicle and should not discharge firearms to disable a vehicle. Sworn investigators may only fire at someone in a vehicle under circumstances that warrant the use of deadly physical force.

When a CCDA investigator discharges a firearm at another person, the incident will be reported on a Use of Force report and investigated in accordance with the OIS protocol.

Any CCDA investigator who discharges a firearm on duty, while not undergoing firearms training, will immediately notify a supervisor of the occurrence. Depending on the circumstances of the firearm's discharge, the supervisor will ensure either appropriate reporting or investigating into the discharge is initiated.

CCDA investigators shall not clean, repair, load or unload firearms within a Clackamas County facility or vehicle except while at the range, making the weapon safe, or for duty purposes. CCDA investigators shall not unnecessarily handle or display firearms at any time.

Loss or theft of a firearm carried as authorized by this policy shall be immediately reported to the Chief Deputy District Attorney and a law enforcement report shall be filed.

Authorized Weapons and Ammunition

CCDA authorizes sworn investigators to be trained on and carry/use the following weapons and defense systems:

- Approved handguns;
- Approved shotguns and rifles;
- Approved impact weapons;
- Approved chemical restraint (for example Oleoresin Capsicum);

Approved firearm and ammunition specifications shall be outlined within at the direction of the Senior Investigator or their designee.

Modifications or alternations of a firearm are prohibited unless approved by the Senior Investigator. Any modifications or alternations must be documented and performed by a certified gunsmith or armorer.

Carrying Weapons

Investigators must be a currently certified DPSST police officer to carry a firearm.

The carry of a weapon will preferably be concealed from public view in an appropriate holster. When a firearm is carried not concealed it must be in a holster with an appropriate retention level and the Investigators badge must be clearly visible.

Investigators are strongly encouraged to carry additional ammunition when they carry their firearm as well as handcuffs, a flashlight and a communication device (radio or cellular telephone).

Weapons Maintenance

Each investigator is responsible for the proper maintenance and cleaning of his or her firearm(s) to ensure that they are operational at all times. Firearms are subject to inspection by the supervisor without prior notification.

CCDA investigators shall report any damaged or malfunctioning firearms to their supervisor and it shall be immediately removed from service until repaired. All authorized firearms will be adjusted and repaired at the owner's expense.

Medical Treatment

Investigators have a responsibility to render first aid any time force is used on a subject (lethal or less lethal) once the threat to the Investigator and/or the public has been neutralized. When first aid assessment indicates the need, Investigators must seek medical attention for the person, or ensure they are transported to a medical facility for evaluation.

Section 12 - Electronic Surveillance

Electronic Surveillance Orders

In most instances, only the District Attorney can authorize electronic surveillance. The exceptions are electronic surveillance orders covered under ORS165.540. Deputy District Attorneys must first discuss the matter with the Chief Deputy who will, if he/she feels it appropriate, bring it to the attention of the District Attorney.

All electronic surveillance orders should be entered in the electronic surveillance log and a deadline sheet completed for each order. The Deputy District Attorney in charge of surveillance is responsible for meeting the deadline. Information from the log used to compile an annual report on body wires and wire taps which is submitted to the Oregon Attorney General's Office.

Section 13 - Public Records and Privacy

Public Records and Information Security and Privacy

It is standard practice in the Clackamas 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.

"Information" means data collected and generated by all automated office systems (DACMS, OJIN, CLASS, and NCIC), Family Support software, and all manual record systems.

This office has established information protection guidelines that are patterned after those established by the U.S. Department of Justice. All employees of the District Attorney's Office shall familiarize themselves with the following guidelines. If you are asked to supply information, obtain the requesters identity and purpose for obtaining the information. If you are in doubt about supplying information to an entity outside this office, seek the guidance of your supervisor.

The following information access guidelines cover:

- The right of an individual to review his/her criminal history records;
- The release of information from the files of the District Attorney;
- Access to juvenile records;
- Access to Family Support software information; and
- Protecting computer information.

Note: Deputy District Attorneys should keep in mind that documentation associated with a case may become public information. Therefore, care should be taken to ensure that all decisions and the events associated with a case are thoroughly and accurately documented.

Speaker's Panel

The Clackamas County District Attorney's Office maintains a Speaker's Panel to provide education and accurate information to community groups, professional organizations, schools and others who are interested in learning more about the criminal justice system and the District Attorney's Office. An effort is made to distribute the speaking assignments fairly and equitably, as well as to ensure that the best situated or qualified person is assigned to each speaking opportunity. If anyone in the office is offered or receives a request to speak to a group or organization, the request should be forwarded to the Panel Coordinator for assignment.

Criminal History Reviews

Individuals have a right to review and correct their criminal histories. Criminal history inquiries from an individual should be referred to the appropriate law enforcement agency. Employees of the District Attorney's Office shall be familiar with the Clackamas County policy on releasing criminal history information.

Releasing District Attorney Information

All requests for review of District Attorney Office information should be referred to the Chief Deputy as should all requests for authorization to have law enforcement agencies release reports. Generally, police agency reports are 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.

Public Records Requests

The public records contact person for the District Attorney's Office is the Deputy District Attorney assigned to respond to public records. Any record petition request must be forwarded to this individual who makes a recommendation on whether the public records law allows such disclosure. That recommendation is forwarded to the Chief Deputy District Attorney who makes the final decision. The Chief Deputy shall make the decision to release information or deny access, based on state law, county ordinances, and District Attorney Office policy. If the Chief Deputy approves release of the records, she/he refers the matter to the Deputy District Attorney assigned to respond to public records.

Release of information from the files of the Clackamas County District Attorney's Office is done in compliance with the public records law (ORS 192.410 – 192.505). This law is meant to facilitate the disclosure of records, not inhibit it. As the law points out, "Every person has a right to inspect any public record of a public body of this state, except as otherwise expressly provided by ORS 192.501 to 192.505."

The public records law applies to all Oregon 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, recordings (sound or picture) and computer records, including e-mail.

Note: As a general rule, office work product should be protected from public disclosure. However, Deputy District Attorneys should keep in mind that public record law in Oregon encourages the release of information. Therefore, Deputy District Attorneys should keep this in mind when working on their files.

Deputy District Attorneys are encouraged to document work on specific cases by the use of log notes. Professional and appropriate language should be used to document log notes.

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. The average tax and benefit cost for a full time employee is 57% above base hourly pay. The average tax and benefit cost for a part time or temporary worker is 30%. 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.

Petitions for Review of County Agency Denials for Public Records

The Clackamas County District Attorney is designated by Oregon Statute ORS 192.460(1) (a) as the office for appellate review when Clackamas County agencies deny requests for public records. The Deputy District Attorney assigned to respond to public records requests shall also be responsible for reviewing and responding to requests for review of denials for public records from county agencies.

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 Deputy District Attorney responsible for the release of public records 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.

Office Publications

All office publications, including brochures, flyers, etc., shall be reviewed and approved for content and format by the Office Administrator prior to their release or dissemination.

Protecting Computer Information

Only employees of the District Attorney's Office and authorized personnel of criminal justice agencies may use District Attorney computer systems. Any use of these systems is restricted to law enforcement purposes. If you have questions about what constitutes law enforcement purposes in accessing this information, you should seek clarification from the Chief Deputy.

District Attorney computer resources may not be used for personal purposes.

Section 14 - Office Security

Office Security

All visitors to the District Attorney's Office, both Room Seven in the Clackamas County Courthouse and in associated DA facilities, shall be met at the front desk and politely asked the nature their business. During office hours, law enforcement personnel may enter the office unescorted if they either show proper identification or are in uniform. All other visitors should be escorted to their destinations in the office. If you encounter a visitor wandering around the office, ask if you can help them and then either escort them to the appropriate destination or show them out of the office.

With one exception, visitors are not admitted to the District Attorney's Office before 8:00 a.m. The one exception is law enforcement personnel who can have access outside normal business hours when they show proper identification or are in uniform.

All visitors to other DA facilities, such as in the Butler Building, must identify themselves before they are allowed into the office.

Section 15 - Human Resources

Human Resources

The Clackamas County District Attorney's (CCDA) Office works under the general personnel policies of Clackamas County. The policies in Section 14.0 of the CCDA Procedures Manual have been established specifically for this office.

Employees of the Clackamas County District Attorney's Office should be familiar with the general county personnel policies. Any questions should be brought to the attention of your Supervisor or Manager.

> **Note**: With one exception, the personnel subjects in this section of the Policy Manual are presented in alphabetical order to make them easy to locate. The one exception is the office policy surrounding substance abuse. This subject deserves special attention and rigorous compliance. Therefore, a separate Substance Abuse Policy section has been added at the end of the Human Resources chapter. Employees and volunteers are urged to become familiar with this policy.

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.

Acceptance of Fees, Honorariums

Deputy District Attorneys may not accept fees or honorariums for activities conducted in the course of official business.

If, at the direction of the Chief Deputy or District Attorney, a Deputy District Attorney provides a service and is offered a fee or honorarium, she/he can either donate the fee to a recognized charity or a 501©(3) organization or donate it to the Clackamas County general fund.

Deputies are permitted to accept fees or honorariums for services performed on their own time, provided official business is not involved and there is no conflict of interest.

Affirmative Action Policy Statement

This office is committed to affirmative action and equal employment opportunity and follows the Clackamas County Affirmative Action Policy as set down in County Code 2.05.240.2.

We hire employees without regard to sex, race, national origin, age, religion, marital status, sexual orientation, political affiliations, physical/mental disabilities, or any other factor that does not constitute bona fide occupational qualifications.

Badges and Identification Cards

The badge assigned to Deputies and Investigators and the office identification card assigned to all District Attorney employees are intended to assist staff in carrying out their duties. The badge and ID card are also intended to provide proper identification for each employee.

Misuse or inappropriate use of either the office badge or ID card is prohibited. The official badge and ID card are not intended and must never be used for personal use or advantage. This rule against improper use of the office and ID card is strictly enforced.

Cellular Telephone and Personal Digital Assistant Policy

Cellular telephones and wireless Personal Digital Assistants for business purposes 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.

The District Attorney's Office follows the Clackamas County Cellular Telephone Use Policy as explained in Employment Policy and Practice #50. (County employment polices and practices are explained on the county Web site: https://www.clackamas.us/des/epp.html .)

Personal Use of Phones

All personal phone calls (local and long distance) should be kept to a minimum during office hours so as to not interfere with the operation of the office or impede or interrupt the work being performed during office hours (8:00 a.m. to 5:00 p.m., Monday through Friday). Personal long distance phone calls should never be made in such a manner to cause expense to the office or the public. This means our employees should use other methods of payment such as calling cards, collect calls, or charging to home phone numbers. It is important that all of our employees understand that the county audits our monthly long distance phone bills and looks for this very problem.

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 Chief Deputy. 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. A record of all conflict cases shall be kept by the Chief Deputy.

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.

Employee Disciplinary Action

Employees and volunteers of the Clackamas 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.

All disciplinary actions involving union personnel are consistent with the policies and procedures set down in the current Union Bargaining Agreements between Clackamas County and Clackamas County Associations.

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

Dress Policy

All employees shall be appropriately attired and well groomed for representing the State of Oregon in all judicial proceedings and in carrying out their official duties.

Employees are expected to exercise good judgment, and dress and groom in a neat, clean and businesslike manner. Clothing should be clean, pressed, and in good repair.

While professional business attire is considered appropriate during working hours, there are several items of clothing that are not considered appropriate. For example: Jeans, athletic clothing, Bermuda shorts, pedal pushers (13" – 14" from the top of the ankle bone), cargo pants, bibbed overalls of any fabric, leggings worn as slacks, T-shirts with slogans or advertisements, shorts, cutoffs, halter tops or crop tops. In addition, athletic shoes, hiking boots, thongs and flip-flops are not considered appropriate footwear. Tennis shoes may be considered acceptable for health or safety reasons and each case will be considered individually.

Employee Firearm Policy

Only staff members authorized by the Clackamas County District Attorney's Office and under Oregon law may carry firearms while working in an official capacity, including work in the office, in court, and locations outside District Attorney's Office, such a crime scenes.

The District Attorney's Office supplies weapons safes for staff members who are authorized to carry firearms as part of their official duties.

Deputy District Attorneys and non-represented staff who wish to apply for a concealed weapons permit must advise the District Attorney of their intent to do so before they make application for the permit.

The District Attorney's Office maintains copies of concealed weapons permit applications and copies of the permits.

Only District Attorney employees authorized to carry weapons as part of their official duties may carry weapons in public vehicles assigned to the District Attorney's Office or in private vehicles being used for official business.

Nothing in this firearm policy is meant to restrict the carrying or possession of weapons necessary as evidence or otherwise in cases investigated or prosecuted by the District Attorney's Office.

Family Medical Leave (FML)

The District Attorney's Office follows the county's Employment Policy and Practice #10, which includes the policies and procedures for Family Medical Leave. (County employment polices and practices are explained on the county Web site: http://www.clackamas.us/des.)

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.

Illness, Medical Appointments

If you are ill and intend to use sick leave, you should call your Supervisor or Manager 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 Supervisor or Manager.

Inclement Weather Policy

The District Attorney's Office policy regarding absences during inclement weather is consistent with the County Inclement Weather & Natural Disaster Emergency Policy number 12 and is also consistent with the contractual agreements with our local bargaining units. With the exception of positions designated as "essential/ emergency" (see below). The following policy shall apply to all staff of the District Attorney's Office.

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 his/her Supervisor or Manager, 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 or Manager 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 or Manager approval.

An employee who does not notify his/her Supervisor or Manager of an absence due to inclement weather will be charged leave without pay and may be subject to disciplinary action.

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 or Manager approval.

All final decisions about whether the office will remain open or close will be made by the District Attorney. 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, notice will be posted on the Clackamas County Emergency Hot Line. It is the employee's responsibility to call the Clackamas County Emergency Hot Line, which will provide information about the operation of the office.

Consistent with the county inclement weather policy, the District Attorney's Office has designated certain positions in the offices as "essential/emergency." These employees may be asked to stay on the job or report to work while other fellow workers are excused. Those positions are:

- Sr. Deputy District Attorney
- Legal Office Supervisor
- Sr. Legal Secretary
- In-Custody Desk
- Child Support Agent
- Victim Advocate

Jury Duty Leave

The District Attorney encourages employees to report for jury duty when they are called.

- All staff are granted leave with full pay in lieu of jury fees when they are required to report for jury duty.
- All District Attorney Office employees shall surrender all jury fees and witness fees, with the exception of mileage reimbursement, to Clackamas County.
- If you are excused from jury duty early for the day, you should contact your Supervisor or Manager to determine whether you are to return work for the remainder of the business day.
- In the event you are selected for a criminal case, **do not** return to the office or discuss the case with anyone in the office until the case is completed.
- For attendance and office staffing purposes, you should call your Supervisor or Manager daily while you are on jury duty.

Lawsuits and Ethics Complaints

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

Deputies served with a complaint that has a mail in notice should not sign the notice until the Oregon Attorney General's Office has been notified. The Chief Deputy shall make this notification and shall supply a copy of the attorney general notice to the District Attorney and the Deputy District Attorney involved

Legal Library

As part of his/her regular responsibility, a Deputy District Attorney is assigned to act as law librarian for the legal library maintained by the District Attorney's Office. Deputies shall also familiarize themselves with the library and its procedures.

Deputy District Attorneys should familiarize themselves with the Clackamas County Law Library, located in the Holman Building at 821 Main Street, Room 101, as well as the District Attorney's legal library which is located in the Butler Building.

Leaving the Job

When a Deputy District Attorney leaves the employ of the District Attorney's Office, her/his Supervisor or Manager and the Chief Deputy should work with the Deputy 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, safe combinations, pagers, cell phones and business cards should be turned over to the Supervisor.

Outside Employment

In addition to the Clackamas 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 Chief Deputy or the District Attorney before undertaking such employment.

Sexual Harassment and Discrimination

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

The District Attorney's Office follows the Clackamas County Equal Employment Opportunity guidelines regarding sexual harassment and discrimination. (County employment polices and practices are explained on the county Web site: http://www.clackamas.us/des.)

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 her/his Supervisor or Manager.

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.

Staff and Volunteer Encounters with Law Enforcement

The District Attorney's Office has adopted an Office Notification Policy that provides guidelines on when and how employees report encounters with law enforcement.

> **Note**: The following explanation of the Notification Policy applies to all employees of the District Attorney's Office as well as volunteers.

All employees are required, with one exception, to report any personal contact with police. Self-reporting is required when an employee or volunteer 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 or Manager 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 Clackamas County or involves a Clackamas 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.

Training 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 also supports employees in their self-improvement efforts.

Deputies who request training should complete an education and travel request and submit it to the Chief Deputy. Other employees should complete an education and travel request and submit it to their Supervisor or Manager.

Employees who attend seminars, clinics, or conferences should submit a written report to the District Attorney and his/her Supervisor or Manager soon after their return. These reports help to evaluate the value of the conference and encourage a broader distribution within the office of the insights, techniques and instructional material that grew out of the conference.

If the decision is made not to use budget training dollars to fund a request, your Supervisor or Manager will work with you see if there is another way to help you obtain or professional or self-improvement goal(s).

Travel Requests

Deputies who request travel funds should complete an education and travel request and submit it to the Chief Deputy. Other employees requesting travel funds should complete an education and travel request and submit it to their Supervisor or Manager.

Using Passwords and Protecting Privacy

District Attorney employees should protect their personal computer password(s) and not allow others to log onto the office network for them. Users should log out at the end of the business day. You should respect the privacy of others by not reading files on another's PC or in another's directory or sub-directory.

Employees are expected to comply with all software licenses, copyrights, rules associated with nonproprietary systems used by the District Attorney's Office (such as LEDS, OJIN, etc.) and to observe all other state and federal laws governing intellectual property and on-line activity.

Using Office Equipment

The Internet, e-mail, voice mail, fax machines, printers, and computers are valuable tools that bring cost savings and efficiency to our work. Staff members are encouraged to use these tools in the performance of their duties. The use of office equipment for inappropriate or illegal

purposes is not allowed. The use of office equipment for political or commercial business purposes is not allowed.

Use of Computer, Internet and E-mail

The use of county computers and Internet access is intended for official business purposes only. Computer, Internet and e-mail may not be used for personal gain, political promotion or religious activities. Catalog shopping, chat room communication and stock trading are examples of common Internet usage that is not permitted. Incidental and occasional personal use is allowed. Personal use should be brief and infrequent.

Use of Social Media tools, which may include but not be limited to LinkedIn, blogs, wikis, photo and video sharing, podcasts, and social networking, must be for authorized business purposes and adhere to our Professional Ethics (1.0).

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 Supervisor or Manager.

- 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 approved by a Manager, Supervisor or Team Leader.
- The approved request shall be forwarded to the appropriate Supervisor or Manager for final approval and scheduling.

Note: Every effort is made to satisfy vacation requests. Exceptions are considered based on workload, staffing resources, and consultation with the employee's immediate Supervisor, or Manager. All requests involving union personnel will be handled in accordance with current Union Bargaining Agreements.

Working Hours

Office Hours: Normal working hours of the Clackamas 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 represented staff. Supervisors or Managers may request employees to adjust their daily work schedule to meet workload demands.

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

There are two parts to the on-call list, one for homicides and one for all other cases.

The list is confidential and for law enforcement use only. It contains cellular phone numbers and home phone numbers of DDAs, Investigators, and Deputy Medical Examiners.

- DDAs on-call for homicides are listed by name and in the order in which they are to be contacted.
- DDAs on-call for non-death cases carry a pager for a week at a time and are available to respond to routine after hour questions.

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. In addition, the Homicide Advocate Response Team (HART) is on call at all times to respond to homicides or suspicious deaths with law enforcement or Deputy Medical Examiners.

The list is confidential and for law enforcement use only. It contains cellular phone numbers and home phone numbers of DDAs, Investigators, and Deputy Medical Examiners.

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

Early Departures: Employees who need to leave work early should advise their Supervisor or Manager before they depart.

Section 16 - Diversity

Diversity

The Clackamas 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.

We acknowledge that access, opportunity and advancement are not experienced uniformly and universally in society. We acknowledge the existence of barriers-supported by individual, group and institutional actions-that prevent the full participation of some. Equity requires the identification and elimination of these barriers whenever possible. We are committed to justice and fairness for all.

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.

Section 17 - Substance Abuse

Substance Abuse Policy

It is essential that all employees of the District Attorney's Office provide the citizens of Clackamas 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 Clackamas 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 Clackamas County District Attorney's Office is prohibited and could result in disciplinary action.

Drug Screening

As of 10/18/05 pre-employment drug screening is mandatory for all District Attorney Employees.

Employee Assistance Program

Staff members are encouraged to deal with any substance abuse problem through the Clackamas County Employee Assistance Program (EAP). The Oregon State Bar can also provide attorneys with help and referral for substance abuse problems. Additional information on the Attorneys Assistance Program of the Professional Liability Fund can be obtained by calling the Bar.

The District Attorney's Office believes that problems associated with substance abuse (or any prohibited conduct) are best solved through referral to EAP. At the same time, the charter of this office demands that criminal acts be investigated and prosecuted.

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[1];
- 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.

[1] “Under the influence” is defined as being impaired as recognized by any reasonable individual.

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;
- Initiating a criminal investigation; or
- Prosecution

(See County Code 2.05.190, Disciplinary Actions.)

Section 18 - Media Relations

Media Relations

It is the policy of the Clackamas 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 can respond to routine inquiries from the press concerning specific cases they are handling. However, questions regarding the policy of the office should be forwarded to the District Attorney or the Chief Deputy. Requests for detailed interviews should also be referred to the District Attorney or Chief Deputy. These requests will be assigned to the most appropriate staff member in the office.

The rules of the Oregon State Bar were substantially revised in 2004 and are now replaced with the new Oregon Rules of Professional Conduct. All staff and Deputy District Attorneys should familiarize themselves with and adhere to the standards of the Oregon State Bar, particularly Rule 3.6-Trial Publicity.

The new 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 persons 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.

All press releases shall be released by the District Attorney only, unless otherwise specifically directed by the District Attorney.

Section 19a - Appendix A

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.

Applying the Guidelines

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.

Environmental Crime Prosecution Factors

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

- 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.
- 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?

- The extent to which the person was or should have been aware of the rev 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?

  Did the person know the conduct was a violation?

- 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.
- 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.

- 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. The action is necessary to protect human health and the environment from the person's criminal activity.

  If the violation applies to many others, publicity concerning its enforcement may also deter others from similar activities. In addition, the prosecution may create general deterrence against violations of other environment laws in addition to the specific statute or regulation that was violated in the particular case.

- 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. The repeated violations also demonstrate the fact the prior civil/administrative remedies were inadequate to deter misconduct.
- The person's statements, concealment of misconduct or tampering with monitoring or pollution control equipment. False statements that 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.
- 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.
- The likelihood of a successful affirmative defense. The law provides for an affirmative defense for a defendant who (1) did not cause or create the condition for occurrence

constitution the offense; (2) reported the violation promptly to the appropriate regulatory agency; and (3) took reasonable steps to correct the violation.

- 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. If the regulatory agency does not recommend or concur with prosecution, unless special circumstances exist, prosecution may not be appropriate.
- 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 made an effort to work with the regulatory agency. The determination of what constitutes good faith effort to comply and reasonable effort rests with the District Attorney.
- 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's property.
- The chances of successful prosecution. Before an environment crime is brought there must be a strong likelihood that the state will be successful in its prosecution.

Environmental Crime Prosecution Procedures

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 provide the Chief Deputy with a memorandum outlining the need for prosecution. The memorandum shall include:

- A case summary and evaluation, and
- An analysis of the environmental crime prosecution factors as they apply to the case.

The Chief Deputy shall consult the District Attorney. If the District Attorney concludes that the legislative purpose, as set out in the statutory criteria, is met and that it is in the public interest to prosecute, he/she will prepare a certification approving prosecution.

Once an environmental crime has been authorized for prosecution, the Deputy District Attorney involved shall keep the Chief Deputy and District Attorney apprised on the progress of the case.

Section 19b - Appendix B

Office Contact List

Position/Team	Individual Responsible
District Attorney	John Wentworth
Administrative Services Manager	Brandi Pelham
Chief Deputy	Chris Owen
First Assistant District Attorney	Scott Healy
Community Prosecution Program	Bill Stewart
Drug Court	Rusty Amos
Mental Health Court	Bryan Brock
Operations Manager	Vacant
Press/Public Information	Chris Owen
Public Records Requests	Brian Powell
Senior District Attorney Investigator	John Krummenacker
Speakers Bureau	VACANT
Team Leaders	
Misdemeanor	Bryan Brock
Property Crimes	Rusty Amos
Person Crimes	Bill Golden
DV/Vulnerable Victim Unit	Bill Golden
Juvenile	Christine Landers
Family Support	Sarah Dumont
Victim's Assistance Program	Carrie Walker