

## **General Administrative Policies**

All employees of this office hold a public trust and represent the Office of the District Attorney. You are expected to abide by the Umatilla County District Attorney Office's policies and principles. All employees are expected to exercise good judgment and common sense in their everyday dealings with the public, defense attorneys, representatives of other departments, other agencies and organizations, and each other.

All Staff employed by this office are expected to maintain the highest ethical standards. This means that everyone is expected to be mindful that public service is a public trust and our job as public servants is to serve with integrity. We are all expected to do the right thing for the right reasons.

You are responsible for your behavior outside of the organization and need to be aware that public perception can be a powerful influence. We have a responsibility to perform our duties as public servants with integrity and to serve the public trust.

All employees will be familiar with the rules 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 Umatilla County or any court that they may appear in.

### **Adherence to County Policies**

Umatilla County has its own policies and procedures. It is the responsibility of Umatilla County District Attorney employees to know and be aware of Umatilla County policies and procedures. The following Umatilla County District Attorney policies and procedures supplement the policies and procedures that apply to all county employees.

### **Workday and Workweek**

Employees are generally expected to be present physically working in the office during normal business hours, from 8:00 am to 5:00 pm Monday through Friday, excluding holidays, unless on approved leave or a different work schedule has been approved by a supervisor. Attorneys are expected to be in the office by 7:45 am to ensure staffing coverage for the day.

### **Accrued Leave**

Employees seeking to take time off should submit a request in advance, with as much notice as reasonably possible. This will allow supervisors to determine whether to approve the request and to make appropriate staffing adjustments if necessary. Attorneys should first seek to determine court coverage with others in the office prior to request. Employees are expected to be familiar with and follow county policies regarding attendance.

Employees who need to report that they are sick for the day must contact their supervisor as soon as possible to inform the supervisor of their sick status. Contact should occur in a manner to ensure the supervisor is aware of the sick employee's status as soon as possible. If the employee is not able to contact their supervisor directly, the employee should notify another person directly and follow-up with their supervisor at the next opportunity. The purpose of this requirement is to ensure that staffing coverage can occur without delay and that the supervisor is aware of the absence.

### **Attorney Dress Code**

Deputy District Attorneys are expected to dress business casual or in court appropriate attire in accordance with department standards for Court and Grand Jury and dependent upon the attorney's task(s) for the day. Deputy District Attorneys are required to have court appropriate attire at all times and be prepared to promptly change and report to Court or Grand Jury as needed.

### **On-Call Policy**

The purpose of on-call duty is to respond to questions from law enforcement and to review warrant applications. On-call DDA's are expected to be readily available by phone 24 hours per day and 7 days per week, to have access to e-mail, and to document as appropriate calls received. There shall be a regular assignment of on-call duty for DDA's. If the on-call DDA receives a call regarding a homicide they shall contact the District Attorney or Chief Deputy District Attorney.

### **Certified Law Clerk**

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

### **Special Prosecutors**

Occasionally, an outside prosecutor may be assigned to handle a Umatilla County matter. All outside prosecutor appointments must be approved by the District Attorney.

An outside prosecutor will be sworn in as a "special DDA" for the particular matter and a Umatilla County Deputy District Attorney will be assigned to act as a liaison for the special DDA. The liaison Deputy District Attorney will assist the special DDA in matters such as navigating local court and office procedures, scheduling grand jury time, helping work with support staff and victim advocates, and ensuring that the special DDA is able to operate effectively within the Umatilla County system.

If a special DDA is appointed due to a conflict of interest, the Umatilla County Deputy District Attorney liaison shall not take any action on the matter without specific direction from the special DDA. However, if requested by the special DDA, a Umatilla County Deputy District Attorney may appear on routine court appearances such as an arraignment or stipulated matters.

Occasionally, a Umatilla County Deputy District Attorney may be assigned to act as a special prosecutor for another District Attorney's Office. In such instances, the Umatilla County Deputy District Attorney functions primarily as a special DDA for the host jurisdiction. Nevertheless, the Umatilla County Deputy District Attorney is expected to comply with the legal and ethical requirements articulated in this policy manual while also complying with the logistical requirements of the host jurisdiction.

A record of all special DDA cases shall be maintained by the DA's Office Administrative Manager and filed with the Court.

## **Ethics and Professionalism**

### **General**

In every task, employees of the Umatilla County District Attorney's Office are expected to conduct their professional activities with 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, Umatilla County District Attorney employees are encouraged to speak up if they feel an activity undertaken by this office impinges the department's integrity.

### **Ethical Expectation**

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

### **Personal Conduct**

Employees shall conduct themselves in a professional and appropriate manner at all times, both in and outside of the District Attorney's Office. All District Attorney's Office employees are public servants and entrusted with public safety. Employees shall refrain from any conduct which may interfere with the mission statement of the Umatilla County District Attorney's Office or public trust.

### **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 that attention of the District Attorney or Chief Deputy District Attorney. If it is determined 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 District Attorney and Office Administrator.

### **Subpoenaing an Attorney or Judge**

A Deputy District Attorney may not issue a subpoena for an attorney or judge without approval of a supervisor and advance notice to the District Attorney or Chief Deputy District Attorney. Generally, prior to the issuance of such a subpoena, every effort should be made to determine whether the testimony of the attorney or judge is necessary, to secure an agreement to appear voluntarily, and to document such efforts in writing.

Additionally, if the testimony of an attorney is necessary for the crime of Failure to Appear, the requirements of ORS 162.193 also apply.

### **Search Warrants of Attorney's Office**

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 District Attorney or Chief Deputy District Attorney.

### **Affidavits of Prejudice**

Affidavits of prejudice, motions for change of judge, or requests for a judicial recusal must comply with the requirements of Oregon law and be approved in advance by the District Attorney or Chief Deputy District Attorney. If a Deputy District Attorney believes that she/he has information that reflects on a sitting judge's prejudice toward the state, that Deputy District Attorney shall provide the information, in writing, to the District Attorney and/or the Chief Deputy 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.

### **Public Statements Regarding Other Agencies or Individuals**

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

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

Any complaints of attorney/law enforcement misconduct shall first be directed to and discussed with the District Attorney prior to any proposed action.

### **Record Retention**

The Umatilla 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 scanned into a computer and our case management system (Karpel).

### **Transparency and Confidentiality**

This office is committed to transparency to the public it serves. Public records requests made to the Umatilla County District Attorney's Office will be processed in a timely and fiscally reasonable manner. If a law or court order requires that information possessed by this office be kept confidential, then the Umatilla County District Attorney's Office will ensure that such laws or orders are complied with (e.g. Juvenile files, victim information, medical files, personnel files or matters, etc.). All official media contacts (e.g., press releases) must be approved by the District Attorney or the Chief Deputy District Attorney.

### **Confidential Information**

The Umatilla County District Attorney's Office learns of and possesses confidential and sensitive information that is subject to various legal requirements and restrictions. All employees are required to be knowledgeable and in compliance with applicable requirements and restrictions, including applicable county policies. When it is necessary to dispose of a document containing confidential or sensitive information, disposal should occur via confidential shredding bins.

Employees shall exercise appropriate care and caution to ensure that disclosure of confidential and sensitive information occurs in an appropriate manner when such disclosure is required, but does not occur when such disclosure is prohibited.

If an improper disclosure occurs, the employee is required to report the issue to a supervisor as soon as practicable but no later than one business day.

The offices and work areas of the District Attorney's Office supervisors contains confidential and sensitive information relating to a variety of matters (e.g. personal issues, sensitive or confidential investigations, et.""). Employees are required to refrain from viewing such material and must exercise due diligence when in a supervisor's office or work areas.

### **SB-111**

The District Attorney takes the lead of Officers Use of Deadly Physical Force investigation and in doing so, will comply with all of the requirements of Senate Bill-111 and the Umatilla County MOU created to comply with the bill.

### **Investigation of Law Enforcement – Brady**

It is the policy of the Umatilla County District Attorney to ensure that when Umatilla County District Attorney calls police officers to the witness stand, that we have confidence that what they tell juries and judges is true. Any time there is an allegation that an officer has been dishonest, the District Attorney will conduct an investigation. The District Attorney will use *Best Practices for Navigating Brady in Oregon* as a guide in completing the investigation.

### **Lawsuits and Bar Complaints**

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

### **Continuing Legal Education**

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

### **Adherence with ORS 131.915 and ORS 131.920**

Pursuant to ORS 131.915 and ORS 131.290, under no circumstance 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. For each complaint, a response will be provided to the complainant within a reasonable period of time. Pursuant to ORS 131.290, a copy of each such complaint shall be forwarded to the Law Enforcement Contacts Policy Data Review Committee.

## **Crime Victims**

### **Crime Victim's Rights**

The Umatilla County District Attorney's Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice system. They are treated with dignity and respect. Every effort is made to provide victims with an opportunity to be involved in each phase of the criminal case. Deputy District Attorneys shall familiarize themselves with the Crime Victim Bill of Rights as well as with Article 1, Section 42 of the Oregon Constitution, the Crime Victim's Rights Amendment.

### **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 her or his 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 Assistance Program (VAP)**

The Umatilla County District Attorney's Office will maintain a Victim Assistance Program to ensure that victims have an advocate to inform them of their rights. The program will be responsible for ensuring victims are informed of their rights and that those rights are enforced.

### **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 Restitution**

It is the policy of the Umatilla County District Attorney's Office to seek restitution equaling the amount of pecuniary loss for victims of all types of crimes. Seeking restitution in no way supersedes or obviates any civil claims a victim might make against the defendant.

The Umatilla County Victim's Assistance Program 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 document 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 responsibly 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.

## **Charging Decisions**

### **General Philosophy**

Deciding if criminal charges should be filed and initiating the charging process is the responsibility of the Deputy District Attorney to whom that case has been assigned. Screening is the process by which a determination is made whether to initiate or pursue criminal charges. Deputy District Attorneys should use discretion while 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).

Charges in a criminal case should accurately reflect the criminal conduct that occurred. In making a charging decision, Deputy District Attorneys should consider a variety of objectives including but not limited to, the following:

- Holding an offender accountable for her/his actions
- Promoting victim rights, including accounting for any harm to a victim, the victim's right to reasonable protection and the victim's right to restitution
- Promoting community safety
- Ensuring appropriate sentencing options are available to the court upon conviction
- Promoting consistency among cases so that similar cases are charged in a similar manner

All cases are unique and a variety of additional factors will necessarily impact charging practices, such as the strength of a case, the completeness of an investigation, the credibility of witnesses, the amount and nature of corroboration, provability issues, relevant input from the victim and available resources.

Deputy District Attorneys shall exercise appropriate discretion and judgment in making charging determinations. Typically, this is achieved through case staffing coordination with other Deputy District Attorneys and consultation with supervising attorneys.

This charging policy applies to all felony and misdemeanor criminal cases, including but not limited to controlled substance crimes, DUII ORS 813.010 or 813.011, domestic violence, crimes which require mandatory minimum sentences, and to the aggregation of property offenses under 164.043, 164.045, 164.055, 164.057, 164.061, 164.098, 164.125, 164.140, 164.367, 165.013, 165.055, 165.694, and 165.803.

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 available evidence and in the best interest of justice.

### **C Felony Treated as A Misdemeanor – ORS 161.570**

A deputy district attorney may elect to treat a C Felony as an A Misdemeanor by indicating on the charging document that "Pursuant to ORS 161.570, the State elects to treat this C Felony as an A Misdemeanor."

A deputy district attorney may not treat a C Felony as an A Misdemeanor without prior approval from the District Attorney, or the Chief Deputy District Attorney. A charge may be reduced in this fashion when:

1. The reduction is pursuant to negotiations when the defendant has provided written proof of engagement with treatment prior to charges being filed, or other written proof of mitigating factors;

2. The reduction is in the best interests of justice because the specific facts and circumstances of the case make a felony charge or conviction inappropriate.
3. The reduction is to spare a child, elder, or other vulnerable victim the trauma of testifying at Grand Jury;

### **Declining Prosecution**

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

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

### **Decision to Seek the Death Penalty**

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

## **Grand Jury and Preliminary Hearing**

### **General**

Amended Article VII, Section 5, of the Oregon constitution provides two separate procedures for charging defendants in Circuit Court, either by indictment of grand jury or by information gathered by the state after a preliminary hearing. Umatilla County Deputy District Attorneys are responsible for being familiar with and following the statutory provisions found in ORS 132.010-132.990.

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

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

### **Discovery**

## **Discovery and Exculpatory Evidence**

The Umatilla County District Attorney's Office maintains a broad discovery policy, in compliance with all state and federal authority and the Oregon Rules of Professional Conduct. Oregon's discovery statutes (ORS 135.805-135.873) provide direction regarding the state's discovery obligations including scope, timing and protective orders. Umatilla County District Attorneys are required to know and follow the Constitutional principles announced in *Brady v. Maryland*, and its progeny including *Giglio v. United States* and *Kyles v. Whitely*.

Any material or information within the possession or control of the District Attorney's Office that falls within the scope of the discovery obligation must be disclosed to the defense in a timely and appropriate manner as required by law. The Deputy District Attorney assigned to a case is primarily responsible for ensuring appropriate discovery occurs.

Generally, the District Attorney's Office will produce or make available discoverable material to the defense. However, in certain circumstances (e.g. child pornography) copies will not be produced; rather, the defense will have an opportunity to inspect the material as allowed by statute. In some cases, such as cases wherein there is a forensic interview of a child witness or victim, discovery of that interview will only be provided after the Court grants a protective order. The signed protective order will then accompany the discovery. It is the obligation of the Deputy District Attorney to know the information in discovery well enough to determine if any of that information requires a protective order, as well as to move the Court for that order prior to dissemination to defense counsel.

Exculpatory material or information within the possession or control of the state must be produced to the defense as soon as practicable in accordance with state and federal law and the Oregon Rules of Professional Conduct.

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 the Deputy District Attorney handling the case and the release is in the best interest 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 her/his right to counsel in court and only after the cost incurred in supplying the discovery has been paid.

## **Process**

The District Attorney's Office makes discovery available in a variety of manners depending on the case and material. The following discovery production methods will commonly be used:

- Production of copies (in physical or electronic format)
- Opportunity to inspect discovery in possession of the state (e.g. child pornography)

## **Discovery Fees**

The costs charged for discovery materials shall be as set forth in Umatilla County Code §39.300. Discovery fees must be paid prior to delivery of the materials, unless the requestor has a prearranged payment structure in place with the office.

## **Plea Negotiations**

### **General**

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

- Pleas to one or more charges
- Reduction of charges
- Sentence bargaining or
- Dismissal or non-prosecution of other filed or unfiled charges

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

When engaging in plea negotiation, Deputy District Attorneys should be guided by the mission of the Umatilla County District Attorney's Office. Deputy District Attorneys should consider relevant factors such as the seriousness of the crime, the defendant's criminal history, input from the crime victim, how the District Attorney's Office has treated similarly situated defendants, and other mitigating and aggravating factors that may be present.

A plea negotiation can involve the reduction of a charge by pleading to a lesser included offense 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.

### **Equality in Plea Negotiations**

It is the policy of the Umatilla 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 the Office's) history with defense counsel.

### **Deputy District Attorney's Plea Discretion**

Deputy District Attorneys have the discretion to negotiate dismissal of charges, non-prosecutions, and sentences in all cases subject to other policies in this office regarding plea agreements.

### **Non-Negotiable Factors**

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

A DDA should not condition plea negotiations on a promise not to prosecute a third party (i.e. defendant pleads to a delivery charge in return for a promise not to prosecute his girlfriend for theft).

### **Consideration of Collateral Consequences**

To ensure equitable resolution of cases pursuant to the plea negotiations, Deputy District Attorneys shall first follow the parameters set forth in ORS 135.405 through 135.418. If defense counsel provides verifiable information of disproportionate collateral consequences of a negotiated plea agreement, Deputy District Attorneys shall weigh those consequences with other relevant factors.

### **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
- The victim's and witnesses' physical or mental impairment that would affect testimony

A DDA should make reasonable efforts to consider the views of victim's and investigative agencies before engaging plea negotiations. Plea agreements should reflect the totality and seriousness of defendant's conduct.

### **Departure Negotiations**

Any departure upward or downward from the presumptive sentence must be accomplished through the appropriate Oregon Administrative Rules. A Deputy District Attorney should not negotiate for, or stipulate to, a sentence that she/he knows could not legally be obtained after trial. A Deputy District Attorney must obtain the approval of the District Attorney or Chief Deputy District Attorney before negotiating an upward or downward departure from the presumptive sentence.

### **Ballot Measure 11 Negotiations**

All cases containing at least one Ballot Measure 11 charge (ORS 137.700) shall be staffed with the District Attorney or Chief Deputy District Attorney prior to a resolution of any type (e.g. trial, plea, or dismissal). The staffing will include a review of the following: charges, the facts of

the case, defendant's criminal history, victim input, mitigating or aggravating factors, assessment of legal or factual issues, defendant's plea offer and any other relevant considerations. It is the standard practice of the Umatilla County District Attorney's Office to encourage Defense counsel to provide the initial offer in these cases. The Deputy District Attorney will then review this offer with the District Attorney or Chief Deputy District Attorney, along with the victims.

### **Civil Compromise**

Civil compromises are available under ORS 135.703 and 135.705, in instances in which a defendant is charged with a crime punishable as a misdemeanor. The injured party may seek to handle the matter as a civil compromise. There are a few exceptions, most importantly in cases involving domestic violence and the elderly.

Deputy District Attorneys may provide information to crime victims regarding a civil compromise, but shall not provide legal advice or otherwise advise a victim whether to agree to a civil compromise. It is nevertheless appropriate for a Deputy District Attorney to provide factual information to a victim regarding what will occur as a result of a civil compromise.

A defense attorney motioning the court for a civil compromise must provide the Umatilla County District Attorney's Office position in the motion. The Umatilla County District Attorney's Office will evaluate every motion for civil compromise on a case by case basis. However, the Umatilla County District Attorney's Office will object to civil compromises in the following circumstances:

- When the crime is not eligible for compromise under ORS 135.703
- When the crime involves a breach of trust or fiduciary duty (e.g. employee theft)
- When the defendant has previously had a case dismissed pursuant to a civil compromise
- Any child abuse case
- When the circumstances of the case are aggravated and a supervising attorney has approved an objection

### **Requests for the Imposition of Fines and Fees**

Deputy District Attorneys should request that the court impose standard and appropriate fines and fees, as required by the applicable ORS, including attorneys' fees. A Deputy District Attorney may use judgment based on the circumstances of an individual case to agree to reduction or waiver of legally reducible fines and fees if the Deputy determines such a reduction is in the interest of justice. Ultimately, the decision to impose fines, fees and costs are at the discretion of the court.

### **Pre-Trial Release**

The following provisions directly govern Oregon's scheme for pre-trial release:

- Article I, Section 14 of the Oregon Constitution
- Article I, Section 43 of the Oregon Constitution
- ORS 135.230-ORS 135.290

All criminal prosecutors are expected to be familiar with these laws and to advocate for implementation of their provisions.

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## **District Attorney Diversion**

The Umatilla County District Attorney does not participate in DA Diversion, Early Disposition Program, or pre-arrest Diversion Program.

## **Drug Court**

### **General Role**

The District Attorney's role in the Treatment Court Program is twofold: First, to serve as a member of the Principals Team. The Principals Team is the decision-making group on policies, operating procedures, and program structure with guidance and advice provided by the Treatment Court Team. The Principals Team is responsible for looking into the long-term goals and objectives of the program regarding issues such as funding, staff, participant admissions procedures, participant enrollment numbers, and other program sustainability matters.

Second: The DA or his designee serves as a member on the Treatment Court Team. The Treatment Court Team manages the day-to-day operations of the program and interacts on a daily/weekly basis with the participants. The Treatment Court team communicates weekly and throughout the week on matters that arise regarding participant performance or nonperformance in the program. The Team meets weekly before Treatment Court to staff each participant that is required to report in court that day.

The DA provides guidance to the rest of the team regarding matters of law and evidentiary concerns.

The DA advises the Treatment Court Team on participant contacts with Law Enforcement and other pending court matters that a participant may be dealing with.

The DA works with Defense Counsel for the Participants in a non-adversarial manner, jointly focusing on principles of accountability, recovery, fairness and justice. The DA and Defense Counsel also collaborate on finding ways to streamline the petition and admissions process to encourage a smooth transition for participants seeking to enter the program.

The DA's office is a major source of referrals for participation in the program through its plea offers and negotiations on pending court matters. The District Attorney's office identifies potentially eligible participants during both the pretrial and post-disposition periods of a case. Those negotiations are conducted in collaboration with Defense Counsel and/or Probation Officers.

The DA also has the veto power to block a potential participant from entering the program. This power is to be used judiciously and only in cases where the risks to the program, the potential participant, or other participants outweighs the benefits of that individual's acceptance into the program.

## **Drug Court Objectives**

Goals and Objectives of the District Attorney's Office Regarding Treatment Court:

- To increase public safety through accountability and providing opportunities for treatment.
- To reduce recidivism of drug and property crime offenders and drug and property related crimes in Umatilla County.
- To encourage long lasting behavioral and attitudinal change in offenders through the combined efforts of the criminal justice system and data driven best practices of treatment and recovery.
- To provide a consistent and supportive partnership with other community stakeholders to ensure the successful endurance of the Treatment Court Program.
- To uphold the Constitution and Statutes of the State of Oregon and the United States of America by holding offenders accountable for their behavior and choices while simultaneously recognizing the need for education and opportunity for treatment and recovery as a way to accomplish the goals of increased public safety and decreased costs of the criminal justice system dealing with cyclical and recidivate offenders that are addicted to controlled or intoxicating substances.

<https://www.courts.oregon.gov/courts/umatilla/programs-services/Pages/TreatmentCourt.aspx>

## **Conviction Reconsideration – ORS 137.218 (SB 819)**

Oregon law provides that in for certain felonies, a criminal defendant may be re-sentenced. ORS 137.218 provides the mechanism for the state and the defendant to jointly petition the court to dismiss the conviction and resentence the defendant to a lesser sentence for the same crime of conviction, or to sentence a person for a new crime.

The power to re-sentence is a remedy similar to the commutation power granted to a governor or president. The Umatilla County District Attorney's Office will submit a petition under ORS 137.218 only after careful consideration of the specific facts of each case. Society has an interest in finality within the criminal justice system, and crime victims have a personal interest in finality that the criminal justice system may provide. Perpetual or prolonged litigation process is costly and can be contrary to the interests of justice.

The Umatilla County District Attorney's Office will only consider a sentence for ORS 137.218 treatment after a defendant has filled out a Resentencing Request Application, in full, along with a detailed cover letter describing the reasons for the request. Deputy District Attorneys must carefully review the defendant's application and cover letter.

If after this review, the deputy believes that the request complies with ORS 137.218 and furthers the interests of Justice, then the Deputy District Attorney may, with the District Attorney's consent, jointly petition the court for ORS 137.218 treatment. The Deputy District Attorney must ensure that the process completely complies with all victim rights laws.

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The Umatilla County District Attorney's Office shall reject a request if:

- 1) The request fails to further the interests of justice;
- 2) The request violates any victim rights law;
- 3) The request doesn't include a completely filled out application and cover letter.