OFFICE OF THE DISTRICT ATTORNEY

JACKSON COUNTY, OREGON

BETH HECKERT

# Policy Manual

## Introduction

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

## Mission Statement

The Mission of the Jackson County District Attorney's Office is to uphold the laws and Constitution of the State of Oregon and the United States Constitution, to vigorously and impartially prosecute crimes, to preserve the safety of the public, to protect the rights of crime victims, to hold offenders accountable for criminal conduct and to pursue justice for all with skill, honor and integrity.

# I. Professional Ethics

## a. General

**i.** In every task, employees of the Jackson County District Attorney's Office are expected to conduct their professional activities under the highest ethical standards.

**ii.** 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, Jackson County District Attorney employees are encouraged to speak up if they feel an activity undertaken by this office impinges on the department's integrity.

## b. Ethical Expectation

Jackson 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.

## c. 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 only be filed by the District Attorney.

## d. Criminal Activity by State Licensed Professionals

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

## e. 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.

Occasionally a DDA may be asked by a member of the media to comment publicly upon an adverse verdict, sentence or other Court ruling. While it is permissible to express disappointment in an adverse ruling and reiterate why the State was seeking a particular

outcome, further statements could be viewed as a personal comment and should be avoided.

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

## f. 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 DDA shall bring the case to the attention of the Chief Deputy District Attorney or District Attorney. If the District Attorney determines that the office should not handle a given case, a request will be made for the assistance of another District Attorney's Office within the State of Oregon or the Attorney General's Office to prosecute the case.

## g. Lawsuits and Bar Complaints

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

## h. Staff Encounters with Law Enforcement

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

Employees must make a written report to the Chief Deputy District Attorney or District Attorney 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 Jackson County or involves a Jackson County law enforcement agency, the employee shall contact the Chief Deputy District Attorney or District Attorney as soon as possible, but no later than the next business day and provide a written report on the matter.

## i. 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.

## j. Communication with Law Enforcement Regarding Cases

Jackson County Deputy District Attorneys are expected to note in the "notes" section of Karpel attempts and actual communications with law enforcement regarding charging decisions and plea negotiations in major felony investigations.

In select misdemeanor cases where law enforcement appears to have put in extensive investigation it is recommended that DDAs keep law enforcement informed of charging decisions and plea negotiations, again noting in the "notes" section of Karpel.

Although not always practical, it is recommended that when a DDA becomes aware that it is likely a trial/hearing will actually proceed in court, or that the appearance is being set-over, that the DDA attempt to notify the involved law enforcement personnel regarding what time and where he/she will need to appear.

## k. Prohibition of Profiling

i. **General:** No person shall be targeted by any member of this office (attorney or non-attorney) on the suspicion of the individual's having violated a provision of law, based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the attorney (or non-attorney) is acting on a suspect description or information related to an identified or suspected violation of a provision of law.

ii. **Complaint Process:** If a member of the public believes that they have been subjected to profiling by any person affiliated with the Jackson County District Attorney's Office, the member of the public may file a complaint with the Jackson County District Attorney's Office via the following methods:

1. In person by visiting the office, 815 W 10th Street, Medford, Oregon 97501;

2. In writing, signed by the complainant, and delivered by hand, postal mail, facsimile –541-608-2982, or email: heckerbe@jacksoncounty.org; or

3. By telephone 541-774-8181. Telephonic reports may be made anonymously or through a third party.

iii. **Complaint Investigation:** Upon receipt of a complaint alleging profiling, a designated member of the Jackson County District Attorney's management team shall conduct a thorough investigation of the complaint. The aforementioned investigation will be conducted within 60 days of the filing of the complaint. At the conclusion of the investigation, the report containing findings regarding the complaint, along with any recommended actions, will be forwarded to the

District Attorney. Copies of the report will be forwarded to the Law Enforcement Contacts Policy Data Review Committee and to the original complainant (*unless the complaint was made anonymously*).

iv. **State Compliance:** Every profiling complaint received will be copied and submitted to the Law Enforcement Contacts Policy Data Review Committee at:

Law Enforcement Contacts Policy and Data Review Committee
(lecc@psu.edu )
ATTN: CCJ-JUST
P.O. Box 751
Portland, OR 97204

## l. Off Duty Conduct

Jackson County District Attorney employees will ensure that their integrity and credibility is maintained and will avoid situations that discredit the District Attorney's Office. Employees will not engage in conduct or activities that interfere with or undermine the essential functions of the District Attorney's Office. Employees will be conscious and aware of statements, behaviors and interactions with others outside of the work place.

This policy is not intended to limit an employee's right to bring issues of concern to the attention of appropriate individuals, entities or authorities. Furthermore, this is not intended to limit an employee's right to speak as a private citizen.

Employees will be mindful that any statement(s) by employees can be associated with the District Attorney's Office. When making statements as a private citizen and not a representative of the District Attorney's Office the employee will make clear that any statement(s) made are the personal views of the employee only and don't reflect the official position of the District Attorney's Office

## II. General Employment

### a. Policy Concerning At-Will Status of Deputy District Attorneys

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

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

### b. Management Excused Time Policy

The provisions of this directive apply to all management employees within the District Attorney's Office. Pursuant to County Policy #5-44d, management employees are not entitled to accrue overtime or compensatory time off. It is expected that persons holding exempt management positions will remain on duty for whatever time is necessary to carry out the responsibilities of their positions.

The county does provide extra vacation time to management employees in recognition of their added responsibilities and in recognition that extra hours are necessary to complete assignments. County policy allows a department director to occasionally grant excused time off for extra hours of required work. The amount of excused time cannot exceed 40 hours in a rolling 12-month period, and must be used within 12 months of the date of approval by the department director. Such time is to be reported in the payroll system as "Excused Time." Accumulations of excused time are not subject to any form of payment upon termination. Such time is to be based upon job performance that exceeds the basic requirements of the job, not solely on extra hours worked to accomplish the basic job.

In accordance with county policy, management employees in the District Attorney's Office may occasionally be granted excused time off when they have been required to put in extra hours in order to accomplish the tasks assigned to their position. These extra hours will normally be necessary in order to accomplish a specific assignment, such as an evening or weekend call out, or weekend trial preparation for a major case.

In order to apply for excused time, the management employee shall submit an email request to the District Attorney within one week of the conclusion of the extra hours worked. The request shall indicate the number of extra hours worked, the reason that the

extra hours were necessary, the name of the case worked on (if applicable), the number of hours requested as excused time, and the date(s) and time requested as excused time.

### c. Training and Travel Requests

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

DDAs and other employees who request training/travel should submit a Travel/Training Request Form to the District Attorney, Chief Deputy District Attorney, and Office Manager describing the training/travel and costs associated with it. After review, the District Attorney or Chief Deputy District Attorney will alert the DDA/employee regarding the request.

### d. Attorney Dress Code

We represent Jackson County and the State of Oregon when an attorney appears in court. It is important to dress in appropriate professional attire for our role. Attorneys should be dressed in court attire when they appear in court. In the office your dress code can be slightly relaxed as long as you have the ability to be in court attire on short notice if called to court. Clothing that reveals too much cleavage, your back, your chest, your stomach or your underwear is not appropriate for a place of business. Clothing should be clean and pressed.

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

For women court attire includes business like dresses and skirts or tailored pantsuits and coordinated dressy separates worn with or without a blazer. Jeans and shorts are not appropriate. Shoes should be professionally appropriate dress shoes. Athletic shoes, tennis shoes, hiking boots, flip-flops, or slippers are not appropriate. Typically for a trial before a Jury, attorneys should be in a suit. Dress and skirt length should be at a length at which you can sit comfortably in public. Short, tight skirts that ride halfway up the thigh are inappropriate for work. Mini-skirts, skorts, sun dresses, beach dresses and spaghetti strap dresses (without a jacket) are inappropriate.

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

**e. Workplace-Related Incidents of Sexual Misconduct, Domestic Violence, and Dating Violence (<u>This policy is intended to comply with a Special Condition attached to the Stop Violence Against Women Grant Award</u>)**

**i. Applicability**

This directive is applicable to employees, volunteers, consultants, and contractors of the District Attorney's Office.

**ii. Definitions**

**1.** "Adjudication" includes a conviction, issuance of a final protection order, court-ordered diversion, or other judicial findings that the employee, volunteer, consultant, or contractor has engaged in domestic violence, dating violence, sexual assault, or stalking.

**2.** "Domestic Violence," "dating violence," "sexual assault," and "stalking" have the meanings given in 34 U.S.C. Section 12291(a).

**3.** "Sexual misconduct" means sexual assault, stalking and sexual harassment.

**4.** "Sexual harassment" for purposes of this policy, means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, whether such activity is carried out by a supervisor or by a co-worker, volunteer, or contractor.

**5.** "Workplace-related incidents" of sexual misconduct, domestic violence, and dating violence include acts, attempted acts, or threatened acts by or against employees, consultants, volunteers, or contractors, that occur in the workplace or that occur outside the workplace but have an impact on the workplace or otherwise undermine the ability of the DA's Office to carry out the Stop Violence Against Women Grant Award Project.

**iii. General Policy**

Employees who have information about or witness a workplace-related incident of sexual misconduct, domestic violence, or dating violence by an employee, volunteer, consultant, or contractor shall immediately report all information to the Chief Deputy District Attorney or the District Attorney.

If the District Attorney's Office becomes aware that an employee or volunteer is a victim of sexual misconduct, domestic violence, or dating violence, the District Attorney's Office will offer support to the victim to address any work

performance issues, in accordance with all applicable workplace policies and laws.

**iv.** An adjudication, as that term is defined above, may result in an employee, volunteer, contractor, or consultant being prohibited from occupying positions that could undermine the ability of the District Attorney's Office to carry out the Stop Violence Against Women Grant Award Project, such as positions working with victims and other vulnerable populations.

### f. Ride-Along Program

Each Jackson County Deputy District Attorney is expected to participate in two ride-alongs with local law enforcement each year. Each ride-along has to be with a different agency and needs to be at least 3 hours in length. Once the ride-along is complete submit an email to the Chief Deputy District Attorney containing the date/time and officer/agency of the ride-along.

### g. Search Warrant Review

It is expected that every non-telephonic search warrant presented to a Circuit Judge for a case that is likely to be prosecuted in Jackson County will be reviewed by a Jackson County Deputy District Attorney. When practical a telephonic search warrant should be orally briefed/reviewed with a Deputy District Attorney prior to calling a Circuit Court Judge.

After a Deputy District Attorney reviews a warrant, the Deputy District Attorney should as soon as possible record the Date/Time/Matter/Agency/Applicant on the "Warrant Review Log" on the I-drive, in the *_ShareIt* folder, under the *_Warrant Review* folder.

### h. Communication with Community Partners and the Public

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

### i. Training Community Partners

Jackson County District Attorney's Office wants to ensure that law enforcement partners and others in the community have access to the most up to date training and information on the criminal justice system and its processes/procedures. At the request of a law enforcement agency/community partner/community organization or at the direction of the Chief Deputy District Attorney or District Attorney, a Jackson County Deputy District Attorney may be required to make a presentation/training to said group.

If the request comes from a law enforcement agency/community partner/community organization the DDA shall request authorization to present on the desired topic from the Chief Deputy District Attorney or District Attorney. Once a presentation/training is completed, an email needs to be sent to the Office Manager indicating the date, length of time, topic, and who received the training/presentation.

## j. Internal Office CLE Programs

Periodically the Jackson County District Attorney's Office will organize its own internal CLE programs. The District Attorney or Chief Deputy District Attorney may request a Deputy District Attorney to present a minimum one-hour training for CLE credit or to arrange a speaker on a topic, or to be in charge of arranging an entire training day with between three to five hours of speakers.

If this request is made it will be the responsibility of the designated DDA to apply with the Oregon State Bar for CLE accreditation. This requires collecting material from the speaker(s) (ie—copies of their presentations), a bio from the speaker(s), an outline of the presentation times, and a form found on the bar website. These materials need to be turned into the Office Manger within 14 days of completed training.

The District Attorney or Chief Deputy District Attorney may pick a DDA at the end of a staff meeting, and that DDA will be responsible for providing a training summarizing the legal updates issued by the Oregon Attorney General's Office during the timeframe between meetings.

## k. Certified Law Students

The Jackson County District Attorney's Office may use Certified Law Students (CLS) as summer interns and/or externs during the school year. The Chief Deputy District Attorney or a designated Deputy District Attorney will be the supervisor of the CLS. The CLS can make charging decisions when reviewing police reports but those decisions will be reviewed by a member of the misdemeanor deputy district attorney team. The CLS will appear in Court representing the JCDA 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.

## l. Volunteer and Intern Criminal Backgrounds

The Jackson County Human Resources Department performs a criminal background check on all volunteers, interns, and CLS. If a volunteer, intern, or CLS have a criminal history it will be reviewed by the Jackson County District Attorney. If the District Attorney finds the criminal history is an impediment to the volunteer, intern, or CLS's ability to provide quality service to the community they may be denied a volunteer, intern, or CLS opportunity based on their criminal history. If the District Attorney finds that the criminal history poses no threat to the office or the community, they may be considered for a volunteer, intern, or CLS position at the Jackson County District

Attorney's Office. If a volunteer, intern, or CLS commits or is charged with a crime during their service, they will be discharged from service with the Jackson County District Attorney's Office.

# III. Crime Victims

## a. General

The Jackson County District Attorney's Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice systems. 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 (ORS 147.405 to 147.600) 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.

## b. Victims Assistance Program (VAP)

The Jackson County District Attorney's Office will maintain a Victims Assistance Program to ensure that victims have an advocate to inform them of their rights. The VAP will be primarily funded by grants from the Crime Victims Services Division of the Oregon Department of Justice. The program will be responsible for ensuring victims are informed of their rights and that those rights are enforced. The program will also be responsible for determining the amount of restitution in criminal cases and compiling supporting documentation.

## c. Crime Victims' Rights

Staff from the Jackson County District Attorney's Office VAP will ensure crime victims are aware of their rights as outlined in Article 1, Section 42 of the Oregon Constitution as well as other rights granted in the Oregon Revised Statues. All crime victims will receive a copy of the brochure entitled Victims' Rights Guide which is published by the Oregon Department of Justice. All crime victims will receive a Rights Request Form from the VAP so they have an opportunity to request those rights that, by statute, must be requested by crime victims.

## d. Victim Input on Offers

ORS 147.512 requires that in violent felony cases, if a crime victim requests, a DDA must consult with the victim prior to making a settlement offer in the case. The statute defines "violent felony" as those person felonies listed in the sentencing guidelines administrative rules. Even if there has been no request from the victim, the assigned DDA should attempt to get the victim's position on a proposed settlement offer in Measure 11 cases and any felony sex crime.

The Jackson County Victims Assistance Program gives each crime victim a copy of the statewide Rights Request Form (RRF). In most violent felony cases the form is given to the victim at the grand jury hearing. The form has a spot for the victim to check if they wish to be consulted regarding plea offers. Once the completed form is received by an advocate, the information regarding their wishes is entered in Karpel. There is a list of

boxes in Karpel that are checked to indicate which rights a given victim is requesting. This screen can be found by going to "Victim Svc" tab in Karpel and clicking on the name of the victim.

All measure 11 cases will be assigned to an advocate in the Victims' Assistance Program and it is the responsibility of the advocate to ensure the DDA knows the victim wishes to be notified of plea negotiations and notify the victims of any settlement conferences or other hearings regarding possible negotiations.

Deputy District Attorneys are expected to note in Karpel "notes" tab communications with victims about plea negotiations. In all Measure 11 and/or violent felony cases DDAs are expected to contact victims to discuss plea negotiations. In other felony or misdemeanor cases DDAs need to contact victims who have requested input on plea negotiations on their RRF.

### e. Notifying the Victim of Sentencing

Victims have a right to be present at all critical stages of the case, including sentencing. The aforementioned Rights Request Form (RRF) has a spot for the victim to check if they wish to be notified of critical stage hearings.

**i.** Once an advocate is assigned to a case in Karpel, that advocate will automatically receive electronic reminders of all case events including, but not limited to, sentencing.

**ii.** When the advocate sees a reminder in the case, they will immediately notify the victim of the sentencing hearing via phone or e-mail. In this communication, the advocate will do the following:

**1.** Ensure the victim has ample time to attend the hearing if they wish to do so;

**2.** Explain where the hearing will occur and will make arrangements to meet the victim for escort if the victim would like an escort; and

**3.** Will also explain all the different ways the victim can address the court (in writing, in person, on the phone, etc.).

**iii.** The advocate will then enter a note in the "events box" in Karpel to notify the DDA at sentencing of the results of their conversation with the victim. The note will indicate if the victim was notified and if the victim wishes to attend the hearing and if they wish to address the court. On the day of sentencing, an advocate will also write a note on the docket sheet for the attorney in court, to ensure they know the victim's wishes.

**iv.** The DDA in court, at the time of sentencing should review the docket sheet to see if the victim is present and wishes to speak. The DDA may ask if the victim

is present if the DDA is unsure and give the victim an opportunity to address the court at that time.

### f. Notifying the Victim of Bail Hearings

Crime victims have a right to be notified of critical stages in the prosecution of their case. This includes notification of bail hearings. ORS 147.500(5)(a). Victim advocates will attempt to notify any victims associated with a case, regardless of whether they are "named" in the indictment or information.

The court has adopted the following schedule for setting bail hearings. All bail hearings for lodged defendants will be set out a minimum of 24 hours and in felony cases in which there is a named victim, a minimum of 48 hours. Requests for hearings received on Friday, will be set for Monday or Tuesday of the following week.

The following procedures have been adopted for this office to follow when we receive notice of a bail hearing:

**i.** If an LA gets a call or email from a defense attorney about a bail hearing, as set out in the court policy quoted above, he/she will immediately notify the assigned attorney;

**ii.** Once the court sets the bail hearing, an Appearance notice will be pushed by the court through Karpel to the assigned LA and everyone listed under "More Staff" in Karpel. This will include the assigned victim advocate for the case;

**iii.** The LA for the assigned attorney will let the assigned DDA know to make bail recommendation notes in Karpel for the attorney who appears at the hearing;

**iv.** It will be the primary responsibility of the assigned advocate to notify victims of a bail hearing. If the primary advocate is a restitution specialist, it is the responsibility of the child abuse advocate to notify all victims of the bail hearing. Assigned restitution specialists will forward their reminders to the child abuse advocate to ensure notification occurs. Each advocate has an assigned backup advocate who will check their reminders if they are out of the office for any reason;

**v.** When the advocate is notified of a bail hearing, they will attempt to notify all victims that a bail hearing has been set and of their right to attend;

**vi.** The advocate will document their efforts to contact the victim in Karpel. This note will be in the "events box" in Karpel in bold and it will be handwritten on the arraignment sheet that goes to court. The notes will detail the results of the contact and any concerns voiced by the victim as well as if they will or will not attend the hearing;

**vii.** The assigned DDA should either appear at the bail hearing, or communicate the attorney's position regarding bail to the attorney who will appear in court via notes in Karpel; and

**viii.** The results of the bail hearing should be entered into Karpel under notes so all staff can see the results of the hearing.

## g. Restitution

The VAP will employ staff whose primary responsibility is to ensure that restitution is ordered in cases where crime victims suffered fiscal losses. Restitution specialists will prepare restitution orders, compile appropriate supporting documentation, and testify at restitution hearings if that becomes necessary. The Jackson County District Attorney's Office will order restitution for all entities who suffered a financial loss as a result of the crime. This will include insurance companies, credit card companies, businesses and individuals.

## h. Restitution Policy

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

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

Whenever possible, this office will have a restitution worksheet prepared and submitted to the court at the time of sentencing. It may not be feasible for this information to be ready for sentencing if the case is complex, has multiple medical bills or resolves quickly. If a restitution worksheet has not been prepared and submitted to the court at the time of sentencing, the deputy district attorney in court should request 90 days to submit a motion and order for restitution.

In order to ensure that the office makes every effort to begin to collect the restitution information promptly, the following procedures have been adopted:

**i.** In felony cases, after an indictment is obtained, an advocate in the Victims Assistance Program will send out an initial victim packet to the listed victims. In misdemeanor cases, the DDA will send a reminder to the restitution advocate through Karpel to let them know there is a new case and then the advocate will send out the initial victim packet. This packet will include a form inquiring about the victim's fiscal loss;

**ii.** The restitution clerk or a program volunteer in the program will follow up with the victim if no information is received by the office within the first 30 days after the initial mailing;

**iii.** Once the information is obtained from the victim and all necessary documentation is attached, the restitution specialist will prepare the restitution worksheet and save it in Karpel under documents;

**iv.** At the time of sentencing, an advocate will print out the restitution worksheet, put a red tab on the side with an R on it to denote a restitution document and attach two copies of the worksheet to the arraignment/sentencing docket to go to court;

**v.** If the documentation is not obtained by the time of sentencing, the restitution specialist will put a note in the "events box" in Karpel and a note will be hand written on the sentencing docket requesting 90 days for restitution to be determined;

**vi.** Once the attorney comes back from sentencing/arraignment the LA will see if they noted that there is 90 days restitution to be determined. If we have 90 days, the LA will put an event in the event code box in Karpel which will generate an e-mail to the restitution specialists letting them know they have 90 days to determine restitution in a given case; and

**vii.** Restitution will be determined by the restitution specialists within 80 days and the restitution specialist will send a reminder to the attorney requesting permission to e-sign. Once e-signature authorization is obtained the restitution specialist will e-file the motion and order for restitution.

### i. Support and Information

The VAP staff will help crime victims for the duration of the case by informing them of upcoming events, educating them about the purpose of various court hearings, and will attend hearings and meetings with crime victims. Advocates from the VAP will support clients by helping them to understand what is happening with the case, making sure their concerns are heard and understood by attorneys, and spending time with them to hear how they are feeling and what their needs are in the aftermath of a crime.

## IV. In-Take

### a. General Philosophy

**i.** In the Jackson County District Attorney's Office in-take is distributed in a manner consistent with the several specializations. The specialized groups consist of:

**1.** Child Sex and Physical Abuse & Failure to Register as a sex offender;

**2.** Domestic Violence, Stalking & Contempt;

**3.** MADGE & Civil Forfeiture;

**4.** Marijuana Related Offenses & Money Laundering;

**5.** Criminal Cases Involving Mental Health Issues & Civil Commitments; Criminal Mistreatment;

**6.** General Felony & Adult Sex Crimes;

**7.** General Felony, Drug Possessions & Felony Driving Offenses;

**8.** Non-Domestic Violence Misdemeanors & Misdemeanor Driving Offenses; and

**9.** Juvenile Delinquency

**ii.** Besides child sex/physical abuse, domestic violence, and DUII cases, general felony deputies will be expected to take all cases involving a specific defendant. It is difficult to list all possible contingencies where this may not be practical, but some exceptions are:

**1.** A misdemeanor attorney has an open file, and a felony property case is submitted. The open case and the new felony case should be assigned to a felony attorney;

**2.** A felony attorney has an open case, and a misdemeanor case is submitted. The misdemeanor case should be assigned to the felony attorney;

**3.** Driving under the influence cases should always remain with a misdemeanor attorney, unless there is a victim suffering serious physical injury or death; or

4. MADGE DDA has a drug **possession** case with a defendant, and a new felony case is submitted. The new felony case and open **possession** case should be assigned to the felony attorney

iii. Failure to register as a Sex Offender charges should be separated at the time of in-take from other accompanying criminal charges from the same episode.

iv. Contempt charges should be separated at the time of in-take from other accompanying criminal charges from the same episode.

### b. Reassignment of In-take

If a piece of in-take is assigned to a DDA that DDA needs to file the case. If the DDA believes that the in-take should be reassigned for some reason, it should be brought to the Office Manager, Chief Deputy District Attorney, or District Attorney for approval **prior to seeking reassignment**.

### c. Assignment of Measure 11 In-take

All non-sex related Measure 11 cases will be assigned by the Chief Deputy District Attorney or District Attorney. The in-take legal assistant will keep a tally sheet to ensure a fair distribution of Measure 11 cases.

### d. Processing Time-Lines

Jackson County Deputy District Attorneys will be expected to make a charging/filing decision on in-take within 60 days of the received date. If at all possible, a DDA should make a charging/filing decision on a case with a previously set arraignment date prior to that date.

In some instances, neither of these policies may be possible. If a piece of in-take is outside of the 60-day window, a note should be made in Karpel's "note" tab explaining the reason, such as waiting for follow-up and/or continuation reports or waiting for lab results.

### e. Declining In-take

When a DDA decides to no file in-take or send it back for further investigation, the DDA needs to enter the proper event code in Karpel, for a no file "DANOFILE" or further investigation "DAFURINV". The event code will create a document and in the document the DDA should explain in whatever detail is necessary a clear reason for returning the in-take. This document does not need to be printed.

In-take for a lodged defendant that is no filed or sent back for further investigation, requires the DDA to create another event under code "NOFC". The document created under this code needs to be provided to the DDA's legal assistant for processing.

The Chief Deputy District Attorney or District Attorney will review the document prepared in each no file/further investigation case. In some instances, the Chief Deputy District Attorney or District Attorney may disagree with the basis for returning the intake and send it back to the DDA to be filed or may further discuss the reasoning with the DDA.

# V. Charging

## a. General Philosophy

Deciding if criminal charges should be filed and initiating the charging process is the responsibility of the Jackson County District Attorney's Office. Reviewing in-take is the process by which a determination is made whether to initiate or pursue criminal charges. These decisions must be made according to established guidelines. Deputy District Attorneys should use discretion in reviewing in-take 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(s) provides for an adequate sentence for the offense(s).

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.

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

**i.** Nature of the offense;

**ii.** Probability of conviction;

**iii.** Possible deterrent value of prosecution;

**iv.** The characteristics of the offender;

**v.** The interests of the victim;

**vi.** Recommendations of the law enforcement officer;

**vii.** Any provisions for restitution;

**viii.** The age of the offender;

**ix.** Excessive costs of prosecution in relation to seriousness of the offense;

**x.** The age of the case;

**xi.** Insufficiency of evidence to support the case;

**xii.** Aid to other prosecutorial goals through non-prosecution;

**xiii.** An expressed wish by the victim not to prosecute;

**xiv.** Possible improper motives of the victim or witness;

**xv.** Likelihood of prosecution by another criminal justice authority;

**xvi.** Any mitigating evidence;

**xvii.** The attitude and physical and mental state of the defendant; and/or

**xviii.** Undue hardship caused to the accused.

## b. Charge Limits

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. DDAs shall also avoid charging an excessive number of counts merely to provide sufficient leverage to persuade a defendant to enter a guilty plea to one or several charges.

In order to file more than 10 counts on an individual defendant, a DDA must get prior approval from the District Attorney or Chief Deputy District Attorney. If this is not possible prior to charging, notify them ASAP after charging.

## c. Aggregation of Value in Charging Property Crimes

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

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

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

## d. Decisions to Seek the Death Penalty

The Jackson 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 JCDA Office's position that the State doesn't elect to seek the death penalty but functions to put forth to the fact-finder the known evidence relating to each element required to impose the death penalty for consideration.

**e. Karpel Charging Procedure**

### i. Misdemeanor Cases

**1.** Using the **Case Summary** button, write a sufficient summary of the case to support a factual basis in court;

**2.** Using the **Witness** tab, mark the appropriate court appearances for each witness;

**3.** When criminal charges are filed and language completed, enter the event code "IFM" to create a DA's Misdemeanor Information, sign it, and provide to your legal assistant;

**4.** When contempt charges are filed and language completed, enter the event code "IFC" to create a Contempt Information, sign it, and provide to your legal assistant;

**5.** Enter the event code "DACHARGE" to create a charges filed in-take form and print, then place the form in the corresponding agency box;

**6.** Entering the above code also creates an "Evidence Check List" document, enter the appropriate requests;

**7.** If the case contains a DUII charge, the DA's information should be stamped "Diversion Eligible", or when appropriate enter the event code "DIDUIIOB" to prepare a diversion objection form. Complete the form, print and give to your legal assistant with the DA's information;

**8.** In the majority of misdemeanor cases, a plea offer should be created at this point with the event code "OFFER", unless this an A misdemeanor person crime (do not print); and

**9.** Using the **Reminder** button, create a reminder to be sent to victim witness, in cases with a victim or restitution:

- **a.** Domestic Violence case reminders are sent to DV advocate;
- **b.** Child Abuse case reminders are sent to the child abuse advocate;
- **c.** Cases with a victim last name A-L are sent to the specifically assigned restitution advocate; and
- **d.** Cases with a victim last name M-Z are sent to the specifically assigned restitution advocate

### ii. Felony Cases

**1.** Using the **Case Summary** button, write a sufficient summary of the case so ANY DDA can present the case to the Grand Jury;

2. Using the **Witness** tab, mark the appropriate court appearances for each witness;

3. When charges are filed and language completed for a **lodged felony** case, enter the event code "IF" to create a DA's Felony Information, sign it, and provide to your legal assistant;

4. When charges are filed and language completed on **any felony** case, enter the event code "IN" to create an Indictment, be sure to pick the appropriate witnesses needed for Grand Jury, after selecting "build event" and prior to selecting "add event";

5. Defendants that are set for Grand Jury that have charges requiring proof of a prior conviction, must have the appropriate page of their CCH printed and highlighted, then put in the Grand Jury box upstairs;

6. Enter the event code "DACHARGE" to create a charges filed in-take form and print, then place the form in the corresponding agency box;

7. Entering the above code also creates an "Evidence Check List" document, enter the appropriate requests;

8. If the case contains a DUII charge, when appropriate enter the event code "DIDUIIOB" to prepare a diversion objection form. Complete the form, print and give to your legal assistant with the DA's information;

9. In a felony case where there is a large national/chain store/restaurant victim or no victim, a plea offer should be created at this point with the event code "OFFER" (do not print);

#### iii. Misdemeanor or Felony Co-Defendant Cases

Follow the same guidelines above, except when creating the charging document be sure to select "INCOM" for a misdemeanor information, "INCO" for a felony information, or "INMULTI" for an indictment.

### f. Citizen Traffic Complaints

#### i. General

Oregon Revised Statute 153.058 provides the process by which citizens may commence a violation proceeding against another citizen. Under the statute, "a person other than an enforcement officer may commence a violation proceeding by filing a complaint with a court that has jurisdiction over the alleged violation. The filing of the complaint is subject to ORS 153.048. Citizens may only commence a violation proceeding for boating violations (ORS chapter 830), traffic violations (ORS chapter 801 to 826), wildlife violations (ORS 496.002),

commercial fishing laws (ORS 506.001), and violations of weighing instruments (ORS 618.121 to 618.161).

### ii. Jackson County District Attorney's Office Involvement

The District Attorney's Office cannot offer legal advice to a citizen wishing to file a complaint under ORS 153.058. However, to help citizens and the Court, the Office created a blank pleading form that can be requested at the Office's reception window.

### iii. Process

If after requesting a blank pleading form, a citizen seeks advice from a Deputy District Attorney, the DDA can direct the citizen to ORS 153.048 which lays out what must be alleged for a complaint to move forward:

1. The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant;

2. A statement or designation of the violation that can be readily understood by a person making a reasonable effort to do so and the date, time, and place at which the violation is alleged to have been committed; and

3. A certificate under ORS 153.045(5) signed by the complainant stating that the complainant believes that the named defendant committed the violation specifically identified in the complaint and that the complainant has reasonable grounds for that belief. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. Complaints must be sworn to under penalty for false certification pursuant to ORS 153.990.

After completing the pleading form, the citizen should file it with Jackson County Circuit Court. After filing it, the statute states the Court shall cause a summons to be delivered to the defendant, and shall deliver a copy of the complaint to the District Attorney. The Court may require any enforcement officer to serve the summons.

# VI. Warrants, Bail and Pre-Trial Release

## a. Warrant Request Policy

Extradition of fugitives from other states to Oregon is financed and controlled through the State of Oregon. The Director of Extradition Services (Director) for the State of Oregon should be notified whenever a fugitive is picked up on a warrant before the District Attorney's Office commits to bringing the fugitive back to Oregon. The area of serviceability for a warrant is established through the guidelines provided by the Governor's Office. Therefore, all warrants requested by the Jackson County District Attorney's Office should adhere to the Governor's Office extradition policy, as follows:

### i. All States Warrants

Authorized on all Class A felonies except MCS/DCS and Burglary I (however on Burglary I, crime category 9, an all states warrant may be requested). The following Class B felonies are authorized to request all states warrants:

1. Assault II
2. Attempted Murder
3. Encouraging Child Sex Abuse I
4. Compelling Prostitution
5. Kidnapping II
6. Manslaughter II
7. Robbery II
8. Rape II
9. Sex Abuse I
10. Sodomy II
11. Unlawful Sexual Penetration II
12. Using a Child in a Display of Sexually Explicit Conduct

### ii. Oregon, Washington, and Idaho Warrants

The remainder of all Class B felonies, MCS/DCS and Burglary I, crime categories 7 & 8.

### iii. Oregon and Washington Warrants

The following Class C felonies:

1. Any property offense for which the offender is eligible for sentencing under the Repeat Property Offender Statute
2. Any offense which carries a presumptive prison sentence under sentencing guidelines
3. Aggravated Animal Abuse

4. Arson II
5. Assault III
6. Assault on a Public Safety Officer
7. Child Abandonment
8. Criminal Impersonation of a Peace Officer
9. Criminal Mistreatment I
10. Criminal Nonsupport
11. Custodial Interference
12. Encouraging Child Sex Abuse II
13. False Law Enforcement Identification
14. Felony Animal Abuse I
15. Assault IV—Felony
16. Felony Driving Under the Influence
17. Felony Driving while Suspended/Revoked
18. Felony Public Indecency
19. Hit and Run—Injury
20. Identity Theft
21. Incest
22. Intimidation I
23. Rape III
24. Riot
25. Robbery III
26. Sexual Abuse II
27. Simulating Legal Process
28. Sodomy III
29. Stalking
30. Violation of a Court Stalking Order

### iv. Oregon Only Warrants

All other Class C felonies, all possession of controlled substances, all Class A misdemeanors, and the following Class B and C misdemeanors:

1. Animal Abuse II
2. Animal Neglect
3. Carrying a Concealed Weapon
4. Harassment involving Domestic Violence
5. Telephonic Harassment
6. Unlawful Videotape Recording

### v. Jackson, Douglas, Josephine and Klamath County Only Warrants

All other Class B and C misdemeanors are restricted service to the above counties. The warrant should be requested as a cite warrant for all other Oregon counties.

### vi. Probation Violation Warrants

Requests for Class A and B felony probation violations are restricted to Oregon and Washington only. Class C felony and all misdemeanor probation violations warrants are restricted to Oregon only. If the probation officer and/or the Deputy District Attorney plan on recommending revocation that triggers a prison sentence, a request may be made to extend the warrant to other states. This request must be made through the appropriate person in the Governor's Office.

### vii. Exceptions

If a Deputy District Attorney assigned to a case believes there are extenuating circumstances which require additional states to be included on a warrant, a request must be made to the Director of Extradition Services in the Governor's Office. Even if the Governor's Office does not okay the extension of the warrant, the Jackson County District Attorney and/or a local law enforcement agency may decide to pay the costs for extradition. In the latter situation, the warrant will be extended with the understanding that the State of Oregon will not cover the cost.

## b. Notification of Served Warrants

When a Deputy District Attorney is alerted that a warrant has been served on an out of state defendant and/or a defendant in Department of Corrections' custody, the DDA should review the case to make sure it is still a viable case before requesting extradition and/or transport of the defendant back to Jackson County.

## c. Bail on First Appearance Warrants

When warrant requests are filed in Jackson County Circuit Court, with the initial charging documents the bail requested on those warrants should adhere to the bail schedule set by the Jackson County Circuit Court Presiding Judge and specific bail amounts set by Oregon Revised Statutes. A Deputy District Attorney may request a bail amount that deviates from the scheduled amount if after considering the below factors, the DDA determines a higher bail is necessary to secure the attendance of the defendant and/or needed to ensure community safety:

**i.** Defendant's prior criminal record;

**ii.** If defendant has a prior history of failure to appears or failure to comply;

**iii.** Nature of the current charges;

**iv.** Any facts indicating the possibility of violations of law if the defendant is released without regulations;

**v.** Reasonable protection of the victim and/or public;

**vi.** Any other facts tending to indicate that the defendant is likely to appear as required;

**vii.** Defendant's employment status;

**viii.** Nature and extent of the family relationships of the defendant;

**ix.** Past and present residences of the defendant; and

**x.** Any facts tending to indicate that the defendant has strong ties to the community

## d. Bail Requests During Court Appearances

In the vast majority of cases, if a defendant appears on a cite letter for arraignment, the Deputy District Attorney should not request a security amount for release. However, if a Deputy District Attorney in assessing the need to secure attendance and/or ensure community safety reviews the factors listed in *section c* of this policy, and believes security is necessary, the DDA should appear in Court or make notes in Karpel making that request.

If a Deputy District Attorney is appearing during lodged proceedings, the security requested by the DDA should correspond to the Presiding Judge's scheduled amount. However, if the DDA believes a different security amount is necessary to secure the attendance of the defendant and/or needed to ensure community safety, the DDA should consider the factors listed in *section c* of this policy, and if appropriate, ask for a higher or reduced security amount. If the DDA believes no security is necessary to secure attendance or protect the community, the DDA should alert the Court there is no objection to releasing the defendant on his/her own recognizance.

In cases where a lodged defendant has been extradited from another state, the DDA should request a higher than scheduled bail and a "no matrix" condition on the individual, at the defendant's first appearance.

## e. Pre-Trial Release Conditions

When requesting a security amount or release on his/her own recognizance the Deputy District Attorney should consider if pre-trial release conditions are necessary to ensure attendance at future Court appearances and/or to protect victims, witnesses, and/or the community. In violent felony cases, the DDA should request "intensive" supervision as a condition of release. In other felony cases where a defendant has a history of failures to appear and/or failures to comply and in misdemeanor domestic violence cases the DDA should request "enhanced" supervision as a condition of release.

In any case where there is a victim, the DDA should request no contact with the victim and/or the victim's residence. Where a case involves minor victim(s) of physical and/or

sexual abuse a condition of no contact with minors should be requested. In cases involving the use of alcohol and/or controlled substances the DDA should always request no intoxicants as part of the release, along with testing upon request of the Jackson County Community Justice. Finally, in cases where a weapon is used, a condition should be requested to prevent possession of firearms and other weapons. The above list of potential pre-trial release condition requests is non-exclusive, and is only meant to help DDAs since it is impossible to think of every possibility that may warrant a condition for release.

## f. Material Witness Orders/Warrants

### i. Process

ORS 136.608 provides that a District Attorney or defendant may apply to the court for a material witness order when:

1. An indictment has been filed with the court;

2. A grand jury proceeding has been commenced; or

3. A District Attorney's information charging a felony case has been filed in a court of competent jurisdiction.

The application must be in writing and sworn to by the applicant and must state facts establishing a reasonable belief that the person to be called as a witness:

1. Possesses information material to the action filed; and

2. Will not appear in response to a subpoena.

Upon receipt of a material witness application, ORS 136.611 provides that if the court determines that the application is well founded, the court shall:

1. Enter an order directing the prospective witness to appear before the court at a designated time; or

2. Issue a warrant of arrest if the application includes facts establishing a reasonable belief that the prospective witness would not respond to an order to appear.

When the person is brought before the court, the judge is to inform the person of their rights in connection with the case, including the right to a court-appointed attorney.

Pursuant to ORS 136.612, the prospective witness is entitled to a hearing on the material witness order. If the court finds by a preponderance of the evidence that the witness possesses material information about the case, and will not appear at the time scheduled for trial, the court shall establish a security amount calculated

to ensure the attendance of the witness. The state shall pay a witness held in jail on a material witness order the statutorily mandated amount for each day of confinement.

### ii. Initial Procedure

Officers wishing to obtain a material witness order on a pending case should first consult with the DDA assigned to the case. If the DDA agrees with the request, the DDA will seek clearance from the District Attorney or Chief Deputy District Attorney.

The officer will need to prepare an affidavit setting out facts establishing why the witness is necessary for trial, and what factors make the officer believe that the witness is unavailable and/or will not appear pursuant to a subpoena. The DDA will then affix the affidavit to a motion and order to deem the witness material, and in most case include an accompanying request for an arrest warrant.

### iii. Court Procedure

The officer should take the completed paperwork to a Circuit Court Judge for signature. Depending on the status of the case, the DDA may need to first advise the attorney for the defendant. Once signed, the officer should leave the completed paperwork with criminal division court clerk, who will assign a civil court case number and enter it into the system. The clerk will prepare the arrest warrant and will forward that to the appropriate police agency for entry into LEDS.

### iv. Material Witness Custody

Once the material witness is taken into custody, the officer should notify the assigned DDA. The DDA should inform the District Attorney's office manager, who is responsible for ensuring the payment of the statutory witness fee. The jail will put the witness on the next in-custody arraignment docket, at which time the Court will normally appoint an attorney for the witness. A hearing may be held at which time the judge may order the witness remain in custody or released pending trial. A witness who remains in custody will be issued a monthly check by the District Attorney's Office. Upon release from custody on the material witness hold, the witness should provide the District Attorney's Office with an updated address in order to ensure prompt delivery of the witness fee check.

## VII. Discovery

### a. General

All Jackson County Deputy 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*, Oregon Revised Statutes 135.805 through 135.873, and ethical obligations established in the Oregon Rules of Professional Conduct, with regard to discovery in all criminal cases. To ensure the fair administration of justice, DDAs have an affirmative obligation in all cases to comply with discovery requirements, which may involve the DDA having to seek further information from police agencies.

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

### b. Timing

Typically, the JCDA Office will not discover reports/evidence until after arraignment. However, once a case is filed (as long as it is not labeled with the court as confidential), receives a Jackson County Circuit Court case number, and the JCDA receives a notice of representation the JCDA will begin the discovery process. It is the practice of the Jackson County District Attorney's Office to disclose appropriate police reports to defense counsel at the earliest opportunity once a case is filed.

### c. Process

The majority of discovery provided by the JCDA Office will be disclosed digitally through the cloud. Once discovery is prepared it will be sent to the appointed/retained defense attorney through an email containing a link that will allow the discovery to be downloaded.

When there are items of discovery that cannot be sent digitally, those items will be placed in a file cabinet in the discovery room for an attorney or his/her representative to pick up.

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

If a pro se defendant or defense attorney chooses to not pay for discovery or fails to pay a discovery invoice after 60 days, discovery will not be provided. In this situation the pro se defendant or defense attorney will need to call and schedule a time with the JCDA Office to come in and review police reports and other discovery items.

The Jackson County District Attorney's Office will provide pro se defendants at the Jackson County Jail, who are still lodged after the setting of a trial date, with discovery appropriately redacted in accordance with the law.

### d. Restitution Documents

When restitution specialists receive documents pertaining to restitution those documents will be scanned into Karpel. Once a defense attorney is assigned to a case and restitution documents are prepared, the restitution specialist will generate an event in the data management system that sends a reminder to the assigned legal assistant to discover the documents.

After the initial discovery of restitution documents, any time new restitution documents are received, the restitution specialist will also generate the same event in the data management system alerting the assigned legal assistant to discover the new documents.

### e. Jail Phone and Video Communications

Deputy District Attorneys who access inmate phone and video calls are required to download any of those communications into the office data management system for discovery. Even if the communication is not listened to in its entirety, accessing the communication makes it a "known" statement by the defendant.

The downloaded file in the data management system should be labeled in such a way to make it recognizable as to the defendant and the date/time of the communication. A reminder should be sent to their legal assistant alerting them to a new item that needs to be discovered.

### f. Discovery Charges/Billing

i. **Cost:** The amount charged for discovery items is set by the Board of Commissioners on a yearly basis, based upon the cost associated with software, hardware, and personnel costs in preparing and providing the information. There is a base charge for the discovery, plus a per page charge after a certain number of pages, and then specific charges for videos, audios, photographs, and digital media.

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

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

## VIII. Juvenile Charges/Petitions

### a. General Waiving of Juveniles into Adult Court

The Jackson County District Attorney's Office may decide to pursue waiver of a juvenile aged 15-17 years old, who commits a crime listed in ORS 137.707 or 419C.349, into adult court. Research has shown that the brain development of juveniles in this age range can lead to poor decision making, and that long prison sentences are not always the preferred method for punishing these actions. Therefore, cases involving a 15-17 year-old perpetrator accused of one of the listed offenses will be reviewed on a case by case basis by the Deputy District Attorney assigned the juvenile delinquency docket.

### b. Factors to Assess in Waiver Decision

When assessing whether to file a motion for remand the Deputy District Attorney should consult with the juvenile division manager or their designee, and then review 419C.349 to determine if there is sufficient evidence to support the statutory requirements of waiver, which are as follows:

**i.** The youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and

**ii.** The juvenile court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified:

**1.** The amenability of the youth to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court that would have jurisdiction after transfer;

**2.** The protection required by the community, given the seriousness of the offense alleged, and whether the youth can be safely rehabilitated under the jurisdiction of the juvenile court;

**3.** The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;

**4.** The previous history of the youth, including:

**a.** Prior treatment efforts and out-of-home placements; and

**b.** The physical, emotional and mental health of the youth;

**5.** The youth's prior record of acts [which] that would be crimes if committed by an adult;

**6.** The gravity of the loss, damage or injury caused or attempted during the offense;

**7.** The prosecutive merit of the case against the youth; and

8. The desirability of disposing of all cases in one trial if there were adult co-offenders.

If the DDA believes there is sufficient evidence to support the statutory elements for remand, the DDA should also consider this non-exclusive list of factors regarding remand:

**i.** Number of victims;

**ii.** Number of incidents;

**iii.** Prior or persistent violent juvenile history;

**iv.** History of gang involvement;

**v.** Witness tampering;

**vi.** Victim's wishes;

**vii.** Age of the juvenile;

**viii.** Sophistication of the juvenile;

**ix.** Use of a dangerous or deadly weapon; and/or

**x.** Injury or loss to the victim was greater than typical

After reviewing the statutory requirements and the above factors regarding remand, the DDA shall bring the case to the Chief Deputy District Attorney or District Attorney for prior approval regarding the decision to request remand when possible.

### c. Waiver of Juveniles Younger than 15 Years Old

ORS 419C.352 lists the crimes where remand is available when a juvenile under the age of 15 years is the perpetrator. If a juvenile under the age of 15 years commits one of those crimes, the DDA assigned to the juvenile delinquency case load should alert the Chief Deputy District Attorney and/or the District Attorney. The DDA should then do the same analysis listed in section VIII(b).

### d. Authority to File Juvenile Petitions

Pursuant to ORS 419C.250, the Jackson County District Attorney has authorized the Jackson County Juvenile Department to file petitions alleging that a youth is within the jurisdiction of the juvenile court as provided in ORS 419C.005.

### e. Formal Accountability Agreements (FAA)

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

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

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

### f. Traffic/Game/Boating Waivers

Pursuant to ORS 419C.370 and see Jackson County Circuit Court Order 02-71 all cases involving violation of a law or ordinance relating to the Oregon Vehicle Code (ORS chapters 801 through 826) and any Municipal Code pertaining to traffic laws; all Oregon boating laws; and all Oregon games laws are waived to Jackson County Circuit Court or an appropriate Municipal Court. The District Attorney's Office, Circuit Court or Municipal Court shall give notice to the Jackson County Juvenile Department before any hearing is held if the youth is under 18 and the matter is not a traffic violation as defined by ORS 801.557.

### g. Victim Notification Process for Juvenile Cases

**i.** Review the police reports forwarded from the Juvenile Probation Department—police reports are received in the DA Juvenile distribution email list and have "VICTIM WITNESS" in the subject line.

**ii.** Determine whether a juvenile probation officer ("PO") has been assigned to the case in JJIS and if so, put their name in the data management system.

**iii.** Once the police report has been received by the DA's office, the assigned victim advocate should send the appropriate victim notification, except in the following circumstance:

**1.** Victim(s) in police reports received by the DA's Office from the Juvenile Probation Department labeled "FOR REVIEW" or "REVIEW FOR CHARGES" or the equivalent language shall not be notified.

2. If the Deputy District Attorney decides charges should be filed in a case sent to the District Attorney's Office for review, the Deputy District Attorney shall alert the assigned advocate so that the appropriate victim notification can be sent, at the same time the Deputy District Attorney requests the Juvenile Probation Department file a petition.

**iv.** Contact victim(s) as soon as possible in cases involving restitution in order to have that information prior to executing a FAA or an adjudication happening on a petition.

# IX. Grand Jury and Preliminary Hearing

## a. General

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

In order to ensure that the choice between indictment and information is made according to consistent criteria and that the privilege of either a grand jury indictment or a preliminary hearing is equally available to all, the Jackson 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 by means of a preliminary hearing must be approved by the District Attorney or Chief Deputy District Attorney.

## b. Orientation

During their first week of service the Grand Jury should be properly oriented as to their function and the laws applicable to their duties prior to presentation of evidence. This is in addition to the larger orientation that occurs the Monday prior to Grand Jury service commencing. If during the term of service an alternate Grand Juror is sat, the Deputy District Attorney handling the Grand Jury that day should conduct a refresher orientation regarding the function and applicable laws for the Grand Jury.

## c. Procedure

### i. **Docket**: Every matter presented to the Grand Jury should be recorded on a Grand Jury Docket by case name.

### ii. Witnesses

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

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

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

### iii. Simultaneous Video Grand Jury Testimony

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

The JCDA's Office prefers that testimony to the Grand Jury occur in person, but acknowledges that due to scheduling conflicts, police agency staffing and training issues, and other extenuating circumstances that simultaneous video testimony is a viable option. It is the policy of the JCDA Office that case agents in Measure 11 and domestic violence cases must appear in person to testify to the grand jury. Secondary officers in those cases can appear if necessary by simultaneous video. In other cases involving a victim, who is scheduled to appear at grand jury, it is the preference of the JCDA's Office that case agents make every attempt to appear in person before requesting simultaneous video testimony.

For simultaneous video testimony the JCDA's Office offers two options. The preferred option is Apple Facetime and requires the person testifying to have an Apple Device, while the secondary option is Skype, which requires the person testifying to have access to a Skype account. If an officer/witness requires simultaneous video testimony the officer/witness (or agency on behalf of the officer/witness) must contact the JCDA Office Grand Jury Clerk (GJClerk@jacksoncounty.org or 541-608-2901) at least one day in advance. When contacting the GJ clerk the officer/witness must provide the phone number that the Facetime will occur on, or must send a request via Skype to the JCDA Skype account (JacksonCnty) to be accepted as a contact. The officer/witness will be contacted by the JCDA Office on Facetime or Skype as near as possible to the time their case is scheduled for Grand Jury, and should remain available for 10-20 minutes after testifying in the event the Grand Jury has clarifying questions after other witnesses testify.

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

### iv. Evidence

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

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

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

## d. Subpoena Duces Tecum

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

For an officer to be scheduled for an appearance before the Grand Jury to request a subpoena for records, the officer should submit a request form to the District Attorney's Office (GJClerk@jacksoncounty.org) providing the agency case number, description of the records, and reason for request. The appearance will then be set on the Grand Jury docket like other cases presented to the Grand Jury. The requesting officer, or another officer on his/her behalf, must make a return of the subpoena within a reasonable period of time after receipt of the requested records.

## e. Recording

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

**i.** At Grand Jury Orientation a "recorder" is selected, by the District Attorney's Office, to operate the recording equipment. On the first day of the Grand Jury session, the District Attorney's Staff will train the "recorder" on how to operate the equipment.

**ii.** Prior to each Grand Jury session, the District Attorney's Staff will use the recording equipment to create a separate tab for each case scheduled that day. The tab will be labeled "karpel#DefsLastName" or in the instance of a codefendant case the tab will read "karpel#DefsLastName, karpel#DefsLastName"

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

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

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

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

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

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

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

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

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

## f. Protective Orders

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

**i. Procedure for Victim/Witness Notice:** The victim/witness representative in the Grand Jury waiting room will provide the "GJ Recording—Victim's Right Form" after a victim/witness has testified in Grand Jury. This representative will encourage the victim/witness to fill it out and submit it the same day he/she testified.

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

1. **Doesn't Meet the Standard:** In the event that a victim/witness makes a request that the DDA doesn't feel meets the statutory criteria, the DDA will file the document in Karpel "GJ Protective Order Motion—Behalf of Witness, in camera" with the Court.

2. **Does Meet the Standard:** When the statutory criteria is met, the DDA will file the document in Karpel "GJ Protective Order Motion—State's Request, in camera" with the Court. This motion will require the DDA to articulate the requested restriction and on what basis the request is made.

## X. Plea Negotiations

### a. General

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

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

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

All plea negotiations are made part of the court record for judicial review. Deputy District Attorneys should record their final offers in the case file.

In the interest of justice, the Jackson County District Attorney's Office encourages all Deputy District Attorneys to be mindful that the accused may, in fact, be innocent of the offense charged. If you feel this is the case, notify the District Attorney or Chief Deputy District Attorney. 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.

### b. Deputy District Attorneys' Plea Discretion

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

### c. Non-Factors in Plea Negotiations

The choice of defense counsel cannot be a factor used by a Deputy District Attorney in offering a sentence or resolution for a case. A defendant must not receive an advantage

or be put at a disadvantage in negotiations based on the Deputy District Attorney's (or the JCDA Office's) history with a specific defense counsel.

### d. Negotiation Factors

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

**i.** nature of the offense;

**ii.** degree of offense charged;

**iii.** mitigating circumstances;

**iv.** relationship between the accused and the victim;

**v.** age, background, and criminal record of the accused;

**vi.** age of the victim;

**vii.** attitude and mental state of the accused at the present time;

**viii.** sufficiency of admissible evidence to support a verdict;

**ix.** undue hardship caused to the victim or the accused;

**x.** deterrent value of prosecution;

**xi.** aid to other prosecution goals through non-prosecution;

**xii.** history of non-enforcement of the statute involved;

**xiii.** expressed wish of the victim;

**xiv.** age of the case;

**xv.** likelihood of prosecution in other jurisdictions; and/or

**xvi.** feasibility of restitution being made

### e. 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:

**i.** Extent of injury to the victim;

**ii.** Economic loss incurred by the victim;

**iii.** Victim and witness availability for trial; and

**iv.** The victim's and witnesses' physical or mental impairment that would affect testimony

## f. Non-Negotiable Factors

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

## g. Measure 11 Plea Negotiations

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

If after charging an individual with a Measure 11 offense, a Deputy District Attorney later believes a proper resolution would warrant a plea to a non-Measure 11 offense (this does not include use of the safety-valve) the Deputy District Attorney needs to get approval from the Chief Deputy District Attorney or District Attorney. A non-exclusive list of factors that may warrant a negotiation out of Measure 11 are:

**i.** The defendant has a minimal criminal history;

**ii.** Degree of harm or loss was less than typical;

**iii.** The defendant's role in the commission of the offense was minimal;

**iv.** The defendant is cooperating with the State;

**v.** A deadly or dangerous weapon was not used;

**vi.** Defendant's mental capacity was limited or diminished (excluding voluntary alcohol or drug use);

**vii.** Legal impediments to the admissibility of evidence or other proof problems;

**viii.** The victim's actions substantially contributed to commission of the offense;

**ix.** The victim requests a lesser sanction; and/or

**x.** Optional probation criteria

## h. Standard Misdemeanor Plea Offers

These sentencing recommendations are intended solely for the guidance of prosecutors within the Jackson County District Attorney's Office. They are not intended to create

substantive or procedural rights or benefits for any person. Deputies are free to depart from these guidelines based upon factors listed above.

i. **Driving Under The Influence:** Prior DUII diversions are counted as a prior offense for the purpose of jail time, however not for the statutory terms of the offer (e.g. suspensions and fines). If the defendant's BAC is over .15% then the fine is $2000. If a minor is in the vehicle who is more than three years younger than the defendant then the fine can be $10,000 per ORS 813.010(7).

**1. DUII Diversion Policy**

Defendants are only diversion eligible if no prior DUII, no conditional discharge, no CDL, or if their prior DUII conviction date was more than 15 years prior to incident date and was not a felony DUII.

Under ORS 813.210, defendants "must file a petition to enter the DUII diversion program within 30 days after the date of defendant's first appearance on the summons, unless the court allows after a showing of good cause. Demurrers, motions to suppress, or motions for omnibus hearing do not constitute good cause." Furthermore, eligibility ceases after the "commencement of any trial."

The Jackson County District Attorney's office realizes that good cause can exist for multiple reasons, the most important of which is discovery. However, when no good cause exists and a diversion-eligible DUII is set for trial, a defendant will have until 21 days before the <u>first</u> trial set to petition for an extension to apply for the DUII diversion program. Additionally, the policy of objecting to diversion if a motion on the case (e.g., a motion to suppress) is heard will remain in effect.
After that time, the State will object to the defendant's petition to extend time to apply for the DUII diversion program. This policy is consistent with the statute that mandates petitions to enter diversion occur within 30 days after the defendant's first appearance unless good cause is shown.

The purpose of this policy is to:

**a.** Comport with the statute and, thus, uphold the law;

**b.** Promote judicial efficiency and docket management;

**c.** Encourage diversion-eligible defendants who are serious about accepting early responsibility to do so in a timely manner; and

**d.** Promote confidence in the judicial system among the public, especially when civilian witnesses are subpoenaed, sometimes multiple times.

Scenarios that the State wants to avoid by encouraging this new policy:

**a.** A case set for trial multiple times before pleading into diversion the day before or morning of the final trial set.

**b.** A case where defendant went to trial, had their attorney question the panel in *voir dire*, and *then* decided to plead guilty to enter diversion after they determined the jury pool was not to their advantage or liking.

**c.** A case where defendant filed and argued a motion to suppress and then, after the motion was denied, pleaded guilty to enter into diversion.

**2. DUII Diversion Process**

At the time of filing, the Deputy District Attorney reviewing a DUII case shall determine if the defendant is diversion eligible under ORS 813.200 et. seq. If the defendant is diversion eligible the DDA shall stamp the charging instrument with the "Diversion Eligible" stamp.

If the defendant is not diversion eligible, the DDA should complete the Karpel form "Diversion Denial Notice". The DDA should list all mandatory denial reasons. If the DDA chooses to file a discretionary denial the basis should be explained on the form. Possible factors to consider for a discretionary denial:

**a.** A minor was in the vehicle;

**b.** Defendant's history of non-compliance (e.g. probation violations, FTAs, contempt, and/or pre-trial release violations);

**c.** Whether treatment will benefit the defendant; and/or

**d.** Defendant's current situation, facts of the current case or prior criminal cases demonstrate defendant's inability to follow through with diversion requirements.

## 3. DUII/BUII—Motorized Recommendations

**1st Offense:** Diversion **or** 2yr b/p, 20 days jail pre-PTC or 30 days jail post-PTC (statutory minimum: 2 days or 80 hrs CSW per ORS 813.020 and 137.129) AET/VIP, $1000 fine per ORS 813.010, 1 year ODL suspension (per ORS 8 13.400 and 809.428(2)), No intoxicants without a valid Rx

**2nd Offense**: 2 yr b/p, 30 days jail pre-PTC or 45 days jail post-PTC, AET/VIP, $1500 fine per ORS 813.010,3 year ODL suspension if within 5 years of 1st DUII conviction (per ORS 813.400 and 809.428(2)), No intoxicants without valid Rx

**3rd Offense:** Felony if within 10 years (Crime Category "4" ORS 813.012) **or** 2 yr b/p, 75 days jail pre-PTC or 120 days jail post-PTC,

AET/VIP, $2000 fine per ORS 813.010, ODL revocation per ORS 809.235, No intoxicants without valid Rx

**4th Offense:** Felony if within 10 years (Crime Category "6") **or** 2 yr bp, 150 days jail pre-PTC or 180 days jail post-PTC, AET/VIP, $2000 fine per ORS 813.010, ODL revocation per ORS 809.235, no intoxicants without valid Rx

**5th Offense:** Felony if within 10 years (Crime Category "6") **or** 2 yr bp, 1yr jail, AET/VIP, $2000 fine per ORS 813.010, ODL revocation per ORS 809.235, no intoxicants without valid Rx

#### 4. BUII Non-Motorized Craft Recommendations

**1st Offense:** violation treatment

**2nd Offense:** BUII Diversion

**3rd Offense:** 12 mo b/p, 5 days jail or 40 hrs CSW, Boating Safety Class, AET/VIP, $500 fine, 1 year Boating License Suspension per ORS 830.994, no intox without a valid Rx

### ii. Driving Crime Recommendations:

#### 1. Driving While Suspended

**1st Offense:** 18 mo b/p, 24-80 hrs CSW (if limited priors), $1000 fine if a DUII suspension per ORS 811.182(5)

**2nd Offense:** Same as above (SAA), +40-80 hrs CSW, $2000 fine if a DUII suspension per ORS 811.182(5)

**3rd Offense:** SAA, 10-15 days jail, $2000 fine if a DUII suspension per ORS 811.182(5)

**4th Offense:** SAA, 15-20 days jail, $2000 fine if a DUII suspension per ORS 811.182(5)

#### 2. Reckless Driving

**1st Offense:** 18 mo b/p, 80 hrs CSW, 90 day ODL, fines/fees per court

**2nd Offense:** SAA, 15-20 days jail

#### 3. Failure to Perform Duties of Driver--Property

**1st Offense:** 18 mo b/p, 80 hrs CSW, 90 day ODL, fines/fees per court

**2nd Offense:** SAA, 15-20 days jail

**4. Attempt to Elude—Felony**

Crime Category "2"—18 mo s/p, Any Cx or Tx, 90/30 10 days jail (if egregious activity—a RD should be added with extra jail time), 1 yr ODL per 809.409, fines/fees per court

**5. Attempt to Elude—Misdemeanor**

**1st Offense:** 18 mo b/p, 80 hrs CSW, 90 day ODL, fines/fees per court

**2nd Offense:** SAA, 15-20 days jail

**iii. Non-Domestic Violence Person Crimes**

**1. Assault IV/Menacing/REAP**

**1st Offense:** 18 mo b/p, 80 hrs CSW or 10 days jail, if a car caused an injury or was used 1 year ODL per ORS 809.411 (assault) or 809.428 (menacing), 90 day ODL per ORS 809.428 (reap—1 yr if 2nd within 5 years, 3 years if 3rd within 5 years), no contact with victim, fines/fees per court, restitution (if any)

**2nd Offense:** SAA with 30 days jail

**3rd Offense:** SAA with 45 days jail

**4th Offense:** SAA with 90 days jail

**2. Harassment/Telephonic Harassment**

12 mo bp, up to 80 hrs CSW or fines up to $1000(history of incidents jail time is okay), no contact with the victim, no intoxicants if appropriate

**iv. Domestic Violence Person Crimes:**

Intimate partner cases (assault, strangulation, and/or stalking) will be supervised probation even if a misdemeanor conviction. Typical requested conditions in these cases will be counseling and treatment per PO, contact with the victim per PO, no weapons, no intoxicants and polygraph testing for compliance.

Non-intimate partner misdemeanor cases and other misdemeanor crimes of domestic violence will be bench probation.

### v. Property Crimes

#### 1. Criminal Mischief III/Criminal Trespass II/Theft III

**1st Offense:** 18 mo b/p, no contact with victim, up to 40 hrs CSW or $500 fine or CTS, if car caused damage: 90 day ODL susp, Restitution and Fines and fees

**2nd Offense:** SAA but up to 80 hrs c/s, if car caused damage: 1 year ODL suspension if within 5 years

**3rd Offense:** SAA with up to 10 days jail depending on facts, if car caused damage: 3 year ODL suspension if within 5 years

**4th Offense:** SAA with up to 30 days jail depending on facts

#### 2. Criminal Mischief II/Criminal Trespass I/UEMV

**1st Offense:** 18 mo b/p, no contact with victim, up to 80 hrs CSW or 10 days jail, if car caused damage: 90 day ODL suspension, restitution and fines and fees

**2nd Offense:** SAA but up to 15 days jail**,** if car caused damage: 1 year ODL suspension if within 5years

**3rd Offense:** SAA with up to 20 days jail depending on facts, if car caused damage: 3 year ODL suspension if within 5 years

#### 3. Forgery II/FUCC-Misdemeanor/NBC

**1st Offense:** 18 mo b/p, no contact victim/business, fines and fees, 10 days jail or 80 hours CSW, restitution

**2nd Offense:** SAA but 15 days jail

**3rd Offense:** SAA but 30 days jail

**4th Offense:** SAA but 90 days jail

#### 4. Theft II

**1st Offense:** Violation Treatment (if allowed under violation policy guidelines) and Restitution **or** 18 mob/p, fines and fees, restitution, no contact with victim, up to 40 hours CSW

**2nd Offense:** SAA but up to 80 hours CSW

**3rd Offense:** SAA but 10-30 days jail

### vi. Weapons

1. **UPFA/FIPRW/CCW:** 18 mo b/p, forfeit weapon, up to 80 hrs of CSW (if CCH warrants jail time), fines/fees, no weapons

2. **Unlawful Pointing of Firearm:** 18 mo b/p, forfeit weapon, 10 days jail (per ORS 166.090), no contact with victim, no weapons

### vii. Game Cases (see ODFW regulations)

18 mo b/p, restitution for animal taken (ORS 496.705), 3 yr hunt/fish license suspension; 5 year if 2nd offense, permanent if 3rd offense, forfeit gun/tackle, 40-80 hrs CSW or if repeat offender jail time

### viii. Public Order/Law Enforcement

1. **DOC:** 12 mo b/p, up to 80 hrs CSW (if lodged CFTS), fines/fees per court

2. **False Information to a Police Officer:** 18 mo b/p, 5-10 days jail concurrent w/ PV sanction **or** 40-80 hrs CSW, fines/fees per court, 1 year ODL suspension if charged under ORS 807.620

3. **IWPO/Obstructing/Tampering w/ Physical Evidence:** 18 mo b/p, 5-10 days jail, fines/fees per court

4. **Resisting Arrest:** 18 mo b/p, 10-60 days jail depending on facts/CCH, no intox if appropriate, restitution (if any), fines/fees per court

5. **Improper Use 9-1-1/Initiating False Report:** 18 mo b/p, fines/fees per court, restitution (if IFR—cost of investigating report), up to 80 hrs CSW

### ix. OLCC

1. **FATM**

**1st Offense:** violation treatment (for negligent furnish)--$350 fine **or** 12 mo b/p, no contact w/ victim, $500 fine per ORS 471.410

**2nd Offense:** SAA but $1000 fine per ORS 471.410

**3rd Offense:** SAA but $2000 fine and no less than 30 days jail per ORS 471.410

**2. Misrepresentation of Age by Minor, Using Another's License**

**1st Offense:** violation treatment with $250 fine

**2nd Offense:** 12 mo b/p, no intoxicants, 40hrs CSW, fines/fees per court

**x. Drug**

**Misdemeanor Residue Offense:** pre-PTC 12 mo s/p, Any cx or tx, standard drug conditions, fines/fees per court **or** post-PTC 18 mo s/p, Any cx or tx, standard drug conditions16 hrs CSW, fines/fees per court

**Misdemeanor Useable Quantity Offense:** pre-PTC 12 mo s/p, Any cx or tx, 24-40 hrs CSW and/or 5-10 days jail, standard drug conditions, fines/fees per court, ODL suspension if applicable **or** post-PTC 18 mo s/p, Any cx or tx, standard drug conditions 40 hrs CSW and/or 5-10 days jail, fines/fees per court, ODL suspension if applicable

**Felony Offense:** Grid-block sentence

**i. Misdemeanors Treated As Violations**

ORS 161.566 provides that any misdemeanor, other than a misdemeanor under ORS 811.540 (Attempt to Elude) and ORS 813.010 (DUII), may be treated as a violation if the deputy district attorney affirmatively indicates orally or in writing at the first appearance that the case shall proceed as a violation.

One of the goals of this violation policy is to save costs by encouraging defendants to plead guilty at arraignments and by saving the state the cost of court appointed attorneys and jury trials. These goals will best be facilitated if the decision to offer a violation resolution in an offer made available only at first appearance, rather than being used as a negotiating technique after the defendant is arraigned on an information charging a crime. Accordingly, if an offer of a violation is made after first appearance, deputies should consult with the Chief Deputy or the District Attorney.

This violation policy is intended solely for the guidance of prosecutors within the Jackson County District Attorney's office. It is not intended to create substantive or procedural rights or benefits for any person.

**i. General Guidelines:** Misdemeanors may be treated as violations under this policy unless one or more of the following factors are present:

1. Single or aggregate amount of actual financial loss (excluding rental or late fees) exceeds $500.00;
2. Defendant has prior felony convictions within the past five years;
3. Defendant has an extensive prior misdemeanor record;
4. Defendant has similar prior convictions within the past five years;
5. Defendant has similar or multiple pending charges;
6. There are other charges on the same information that do not qualify for violation treatment;
7. The defendant has had a misdemeanor treated as a violation in the last five years; or
8. The defendant's conduct was particularly egregious or outrageous.

ii. **Excluded Charges:** These types of charges are not eligible for violation treatment under the policy:

1. Assault 4 & Assault 4 - domestic violence;
2. Harassment – intimate partner domestic violence;
3. Resisting Arrest;
4. Escape in the Third Degree;
5. Stalking, Violation of Stalking Protective Orders;
6. Sexual Abuse 3;
7. Contributing to the Sexual Delinquency of a Minor;
8. Criminal Mistreatment 2;
9. Official Misconduct;
10. Public and Private Indecency;
11. Prostitution; and
12. BUII (first offense, non-motorized cases are eligible for violation treatment, other cases may be considered for a deferred sentencing program)

## j. Fines, Assessments, and Court Appointed Attorney Fees

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

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

ii. **Negotiated or Requested:** In some circumstances a defendant through his or her attorney may choose to negotiate a fine in lieu of receiving a jail sentence

and/or community service. There may also be situations where a compensatory fine is negotiated to help cover costs not included in restitution.

## k. Civil Compromise Agreements

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

The Oregon State Bar has ruled that it is unethical under certain circumstances for a prosecuting attorney to advise an injured party against opting for civil compromise of a criminal case. However, a defense attorney motioning the court for a civil compromise must put our position in their motion. Therefore, it is the policy of the Jackson County District Attorney's Office to evaluate our position on motions for civil compromise on a case by case basis.

A nonexclusive risk of factors to consider before deciding to oppose or not object to a civil compromise are:

**i.** Defendant's criminal history;

**ii.** Actual monetary loss of the victim;

**iii.** Relationship between the victim and defendant;

**iv.** The continued risk the defendant poses to society; and/or

**v.** Whether or not the compensation for the civil compromise has been fully received by the victim

## l. Conditional Discharge (for cases "initiated" prior to 1/1/20)

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

**i.** **Eligibility**: It is the policy of the Jackson County District Attorney's Office that conditional discharge agreements under ORS 475.245 shall only be offered to persons charged with the crime of possession of a controlled substance pursuant to ORS 475.840(3); or possession of methamphetamine, cocaine, heroin, marijuana or 3, 4-methylenedioxymethamphetamine, pursuant to SB 907, Oregon Laws, 2005. Some persons charged with Tampering with Drug Records under ORS 167.212 may also be eligible for participation in the program at the

discretion of the deputy district attorney. Persons charged with property offenses motivated by a dependence on a controlled substance shall not be eligible for conditional discharge. However, those persons may meet the criteria for participation in the Jackson County Community/Family Court or the adult drug court.

The conditional discharge program is intended as an early disposition program. As such, defendants who seek to enter into the program must agree to waive their right to have the controlled substance(s) tested by the Oregon State Police Forensics Lab and also waive their right to file pre-trial motions to suppress evidence. The decision to enter into the conditional discharge program must be made no later than the time set for the pre-trial conference. Once a trial date has been set, the defendant will no longer be eligible to participate in the conditional discharge program.

**ii. The following factors will <u>exclude</u> a defendant from acceptance into conditional discharge:**

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

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

**3.** Any felony convictions within the last five years.

**4.** Felony convictions entered more than five years prior to the date of the current charge may be considered in determining whether a person is eligible to participate in a conditional discharge program. The deputy district attorney should consider the number, age and severity of any prior charges.

**5.** The deputy district attorney may also consider the likelihood that a person will be successful in a conditional discharge program based on factors such as the defendant's motivation to successfully complete a drug treatment program, previous performance on probation, and other factors

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

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

iii. **Entry into conditional discharge**: Defendant must complete a petition for conditional discharge and affidavit in support of the conditional discharge. If defendant is represented, the defendant's attorney should also complete the attached certificate of counsel. The court will then enter the order on conditional discharge.

iv. **Probationary conditions**: The defendant shall be placed on supervised probation to the Jackson County Community Justice Department for a period of 12- or 18-months subject to all general statutory conditions of probation as set forth in ORS 137.540, and subject to the following special conditions of probation:

1. Defendant shall perform 40 hours of community services within one year;

2. Defendant shall immediately report to Jackson County Community Justice, 1101 West Main Street, Medford, Oregon

3. Defendant shall pay a $107 unitary assessment fee within ninety (90) days of the date of the order on conditional discharge;

4. Defendant shall pay a $40 per month supervision fee;

5. Defendant shall submit to random urinalysis at the direction of the probation officer;

6. Defendant shall not use or possess any controlled substances without a valid prescription;

7. Defendant shall refrain from knowingly associating with persons who use or possess controlled substances illegally, or from frequenting places where such substances are kept or sold;

8. Defendant shall submit to polygraph examination by a qualified polygraph examiner at the direction of a probation officer to determine compliance with the terms of the conditional discharge;

9. Defendant shall neither own, possess nor control any firearm;

10. Defendant shall consent to a search of person, residence, vehicle and property for the detection of controlled substances or other evidence of a probation violation, when a probation officer has reasonable grounds to believe that evidence of such a violation will be found;

11. Defendant shall be subject to the imposition of structured sanctions as set out in ORS 137.595;

12. Defendant shall enroll in, participate in and successfully complete a substance abuse treatment program at the direction of a probation officer, including submitting to any testing deemed necessary by the probation officer;

13. Defendant shall reside in the state of Oregon until such time as the underlying case is dismissed by the court.

14. Defendant shall not reside in an Oregon county other than Jackson County without obtaining prior permission of the probation officer;

15. Defendant shall remain a law-abiding citizen. Any new criminal charges filed during the pendency of the conditional discharge may result in defendant's termination from the program with a resulting conviction for the underlying charge. Defendant agrees to notify defendant's probation officer within 7 days of the time that defendant receives notice of any new criminal charges.

### v. Termination of conditional discharge

Prior to the 18-month pre-trial date, the District Attorney's Office will confer with Jackson County Community Justice to determine if the defendant has successfully completed the terms of the conditional discharge. Community Justice will run a record check to determine that the defendant has not been charged with a new offense, and also check to confirm that the defendant has successfully completed any treatment requirements and has paid all required fees. The District Attorney's Office will check its computer system to confirm that no new charges have been filed. Once it has been determined that the terms of the conditional discharge agreement have been fulfilled, the District Attorney will move to dismiss the case.

If at any time prior to completion of the conditional discharge, the defendant is found to be in violation of the terms of the agreement, Community Justice shall so notify the District Attorney and the District Attorney will move the court to revoke the conditional discharge.

## m. Probation Agreements (for cases "initiated" after 1/1/20)

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

i. **Eligibility**: It is the policy of the Jackson County District Attorney's Office that probation agreements under ORS 475.245 shall only be offered to persons charged with the crime of possession of a controlled substance pursuant to ORS 475.840(3); or possession of methamphetamine, cocaine, heroin, marijuana or 3, 4-methylenedioxymethamphetamine, pursuant to SB 907, Oregon Laws, 2005. Some persons charged with Tampering with Drug Records under ORS 167.212 may also be eligible for participation in the program at the discretion of the deputy district attorney. Persons charged with property offenses motivated by a dependence on a controlled substance shall not be eligible for a probation agreement. However, those persons may meet the criteria for participation in the Jackson County Community/Family Court or the adult drug court.

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

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

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

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

   3. Any felony convictions within the last five years.

4. Felony convictions entered more than five years prior to the date of the current charge may be considered in determining whether a person is eligible to participate in the probation agreement program. The deputy district attorney should consider the number, age and severity of any prior charges.

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

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

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

### iii. Entry into a Probation Agreement

Defendant must complete a petition for a probation agreement and affidavit in support of the probation agreement. If defendant is represented, the defendant's attorney should also complete the attached certificate of counsel. The court will then enter the order for a probation agreement and stay the criminal proceedings.

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

- right to a speedy trial and trial by jury;
- right to present evidence on the defendant's behalf;
- right to confront and cross-examine witnesses against the defendant;
- right to contest evidence presented against the defendant, including the right to object to hearsay evidence;
- right to appeal from a judgment of conviction resulting from an adjudication of guilt entered under ORS 475.245(2), unless the appeal is

based on an allegation that the sentence exceeds the maximum allowed by law or constitutes cruel and unusual punishment;

- stipulates to the fact that the controlled substance alleged in each count of the charging document listed in the probation agreement, is said controlled substance beyond a reasonable doubt; and

- stipulates to the fact that the weight of the controlled substance alleged in each count of the charging document listed in the probation agreement, is said weight beyond a reasonable doubt.

**iv. Probationary conditions**: The defendant shall be placed on supervised probation to the Jackson County Community Justice Department for a period of 12 or 18 months subject to all general statutory conditions of probation as set forth in ORS 137.540, and subject to the following special conditions of probation:

**1.** Defendant shall perform 40 hours of community services within one year;

**2.** Defendant shall immediately report to Jackson County Community Justice, 1101 West Main Street, Medford, Oregon

**3.** Defendant shall pay a $40 per month supervision fee;

**4.** Defendant shall submit to random urinalysis at the direction of the probation officer;

**5.** Defendant shall not use or possess any controlled substances without a valid prescription;

**6.** Defendant shall refrain from knowingly associating with persons who use or possess controlled substances illegally, or from frequenting places where such substances are kept or sold;

**7.** Defendant shall submit to polygraph examination by a qualified polygraph examiner at the direction of a probation officer to determine compliance with the terms of the conditional discharge;

**8.** Defendant shall neither own, possess nor control any firearm;

**9.** Defendant shall consent to a search of person, residence, vehicle and property for the detection of controlled substances or other evidence of a probation violation, when a probation officer has reasonable grounds to believe that evidence of such a violation will be found;

**10.** Defendant shall be subject to the imposition of structured sanctions as set out in ORS 137.595;

**11.** Defendant shall enroll in, participate in and successfully complete a substance abuse treatment program at the direction of a probation officer, including submitting to any testing deemed necessary by the probation officer;

**12.** Defendant shall reside in the state of Oregon until such time as the underlying case is dismissed by the court.

**13.** Defendant shall not reside in an Oregon county other than Jackson County without obtaining prior permission of the probation officer;

**14.** Defendant shall remain a law-abiding citizen. Any new criminal charges filed during the pendency of the probation agreement may result in defendant's termination from the program and the reinitiating of criminal proceedings, in accordance with ORS 475.245. Defendant agrees to notify defendant's probation officer within 7 days of the time that defendant receives notice of any new criminal charges.

### v. Termination of a Probation Agreement

Prior to the 18-month pre-trial date, the District Attorney's Office will confer with Jackson County Community Justice to determine if the defendant has successfully completed the terms of the probation agreement. Community Justice will run a record check to determine that the defendant has not been charged with a new offense, and also check to confirm that the defendant has successfully completed any treatment requirements and has paid all required fees. The District Attorney's Office will check its computer system to confirm that no new charges have been filed. Once it has been determined that the terms of the probation agreement have been fulfilled, the District Attorney will move to dismiss the case.

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

## n. Domestic Violence Deferred Sentencing

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

### i. Eligibility

1. No prior person crimes;

2. No pending charges, including DUII, but excluding all other driving charges;

3. Violence involved in the incident did not exceed Violence Category II on the "Violence of Incident Scale"

    a. Violence Category I—"Consists of those cases involving pushing, shoving, grabbing, and throwing inanimate objects. The conduct may or may not result in physical injury."

    b. Violence Category II—"Consists of those cases involving slapping, biting, kicking, hitting, striking, placing another in fear of substantial physical injury (menacing), and all incidents of Category I violence. With the exception of menacing, Category II violence would result in physical injury."

    c. Violence Category III—"Consists of incidents involving a dangerous or deadly weapon, strangulation resulting in physical injury, menacing with a dangerous or deadly weapon coupled with active use of that weapon, and aggravated acts of Categories I and II violence. With the exception of menacing and some cases of strangulation, Violence Category III violence would result in physical injury."

4. No children were injured during the violence;

5. No prior convictions for domestic violence; and

6. No prior participation in a domestic violence diversion or deferred sentencing program

### ii. Process

1. A deferred offer expires as soon as a trial date is set. As a result, a defendant may request to set the PTC over a few more times than in a typical case.

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

3. The deferred agreement that is prepared by our office should never be modified in any way, ie: different treatment being sufficient or agreeing to modify the no contact order (the Court sometimes does this without our agreement).

## XI. Alternative Sentencing Programs

### a. Drug Treatment Court(s) and Intensive Supervision Programs

Jackson County District Attorney's Office participates in a variety of drug treatment courts and intensive local supervision programs. Each program offers help to a particular segment of the population charged with drug or drug-related crime. The various programs offered through the Circuit Court and Jackson County Community Justice include but may not be limited to: Recovery Opportunity Court, 416 Downward Departure Caseload, Family Sentencing Alternative Program (FSAP), Measure 57 Caseload, and Community Family Court (CFC).

Each court/program provides a unique tailored response to its participants depending on which court/program he/she are placed. The court/program utilize trauma informed, in-house substance abuse treatment and cognitive behavioral programs including: Thinking for a Change, Moving On, Seeking Safety, University of Cincinnati Substance Abuse Disorder Curriculum (UC-SA), University of Cincinnati Core Correctional Practices (UC-CCP), University of Cincinnati Cognitive Behavioral Interventions (UC-CBI), WRAP groups, mental health assistance, and Carey Guides, among others. Other potential resources provided may include education assistance, employment, housing, bus tokens, budgeting, and enrollment in health care.

i. **General Guidelines:** Deputy District Attorneys, defense attorneys, treatment court case managers, probation officers, and judges can refer cases to be reviewed to determine if treatment court/intensive supervision program(s) are an appropriate option. The ultimate decision regarding entry into Recovery Opportunity Court and Community Family Court rests with the Judge(s) assigned to each court.

ii. **Deputy District Attorney Guidelines:** Jackson County Deputy District Attorneys who review a case and believe it may be an appropriate case for treatment court/intensive supervision program(s) should refer the case to the DDA assigned to the Treatment Court/Intensive Supervision program. When it is appropriate the DDA will make a treatment court/intensive supervision offer and refer to Jackson County Community Justice for assessment to determine placement in the correct court/program. Again, the ultimate decision regarding entry into Recovery Opportunity Court and Community Family Court rests with the Judge(s) assigned to each court. In determining if a defendant is appropriate for treatment court/intensive supervision program the DDA should look at:

1. **Eligibility Criteria:**

   **a.** Prior criminal history;

   **b.** Whether the criminal activity is driven by addiction issues;

   **c.** Prior participation in a diversion/deferred Court program;

   **d.** Prior participation in treatment not mandated by the court;

**e.** Number of people victimized by the defendant's criminal conduct in the cases being considered for entry;

**f.** Damages done to the victim(s) in the current cases;

**g.** The victims' position on entry into treatment court/intensive supervision program;

**h.** Facts that suggest the defendant is or is not amenable to treatment; and

**i.** Pending out of county criminal cases.

**2. Excluded Charges:**

**a.** Crime Category "8" and "9" Burglary I;

**b.** Any violent person felonies (excluding Robbery III cases involving minimal force used in a shoplifting scenario);

**c.** Crime Category "9" and "10" Delivery/Manufacture of a Controlled Substance;

**d.** Felon in Possession of a Firearm (if prison eligible);

**e.** Driving Under the Influence of Intoxicants;

**f.** Attempting to Elude a Police Officer—Felony; and

**g.** Any Charges of a Sexual Nature

## b. Mental Health Court

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

In order to implement this multidisciplinary approach, various Jackson County agencies have originated Jackson County Mental Health Court. The Mental Health Court Team meets on a regular basis to evaluate perspective and current participants.

**i. Eligibility Criteria:** To participate in Jackson County's Mental Health Court, individuals must meet the following eligibility criteria:

**1.** Individuals must be 18 years of age or older, or be waived to adult court;

2. Must have a serious and persistent mental illness (SPMI) per the definition of the office of Addictions and Mental Health (AMH) for the State of Oregon, and as determined by a mental health professional, with mental illness appearing to be the primary motivating factor in the person's involvement with the criminal justice system;

3. Must no longer be on active supervision for any sexual offense nor facing any current sexual offense charges;

4. Cannot have any Measure 11 convictions, unless they meet opt out criteria;

5. Individuals with violent offenses may be considered if assessment by the team indicates that they do not pose a significant risk to public safety;

6. Criminal case(s) must originate in Jackson County;

7. Must be legally competent to participate, including being able to demonstrate a basic understanding of the purpose of the court and the expectation of compliance with treatment recommendations;

8. Must be amenable to treatment; and

9. Participation is subject to screening and approval by the Mental Health Court team.

### ii. Referrals

1. **Generally:** A member of the multi-disciplinary team, defense attorney, or defendant can submit the MHC referral form and signed release of information to the Jackson County Mental Health Court Coordinator via email or by dropping those items off to the MHC Office.

2. **Deputy District Attorney:** The Jackson County District Attorney's Office has a DDA assigned to the MHC Team. If a DDA in the office believes he/she has an appropriate candidate for the MHC that DDA should forward a request to the DDA assigned to the MHC Team to review the case. Prior to making a referral or MHC offer the DDA assigned to the MHC Team should make contact with a victim to allow in-put in the disposition.

3. **Availability:** Mental Health Court has limited openings for participants. It is important that DDAs are not making MHC offers without first referring the case to the MHC DDA.

### iii. Mental Health Court Dispositions

1. Entry of plea with sentencing including a reduction of charges upon successful completion of Mental Health Court;

2. Entry of plea with sentencing deferred until successful completion of Mental Health Court, at which time the case is dismissed; or

3. Entry of plea with sentencing, and completion of Mental Health Court is a term of probation

## XII. Motions to Set Aside and Certificates of Good Standing

### a. General Motion to Set Aside

It is standard practice in Jackson County District Attorney's office to review any Motion to Set Aside and file an answer with the court in accordance with ORS 137.225 (as amended by 2021 SB 397). When a Motion to Set Aside is served on the Jackson County District Attorney's Office, the Motion will be entered into data management system by the Legal Assistant designated to handle Motions to set Aside, and will wait for further communication from Oregon State Police.

### b. Victim Notification

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

### c. Confirmation of the Petitioner

Once the defendant has been identified by the Oregon State Police and the appropriate documentation has been returned to the District Attorney's Office, all documentation will be forwarded to the Deputy District Attorney designated to review the motions.

The Deputy District Attorney will make every reasonable effort to review the provided documentation as soon as possible after receipt from the Legal Assistant and come to a decision about whether to object or agree to the motion to set aside based on the requirements set forth in ORS 137.225. When the DDA has an objection, the DDA may make efforts to resolve those issues by communicating with the opposing party before objecting. The DDA will not provide legal advice to anyone who is considering filing a Motion to Set Aside, or who has already moved the court to set aside an arrest or conviction. If the issues are not resolved, the Deputy District Attorney will file an objection to the Motion to Set Aside with the Circuit Court.

When the DDA has prepared an answer, the DDA will have the assigned legal assistant file the answer with the Court. It is the intention of the Jackson County District Attorney's Office to have an answer filed within 120 days of the filing of a Motion to Set Aside in accordance with the statutory timeline.

### d. Certificate of Good Standing

It is the standard practice of the Jackson County District Attorney's Office to review petitions for a Certificate of Good Standing in accordance with the requirements of 2017 SB 690. When a petition for Certificate of Good Standing is served on the Jackson

County District Attorney's office, it will be reviewed by the legal assistant designated to review those petitions to be sure that all required documentation has been submitted. The legal assistant will then run a current criminal history record check on the petitioner and enter it into data management system. The legal assistant will then give the appropriate documentation to the Deputy District Attorney who is assigned to review petitions for a Certificate of Good Standing.

The DDA will review the petition within 30 days of the date of service and make reasonable inquiries to determine whether the petition meets the requirements set forth in 2017 SB 690. If the petition does meet the criteria set forth, the DDA will file a written statement with the Court in support of the petition. When the DDA has an objection, the DDA may make efforts to resolve those issues by communicating with the opposing party before objecting. The DDA will not provide legal advice to anyone who is considering filing a petition, or who has already petitioned the court. If the issues are not resolved, the DDA will prepare an objection and have the assigned legal assistant e-file it with the Court.

A DDA who files a case on a defendant who has a Certificate of Good Standing entered on his/her criminal history is required by 2017 SB 690 to notify the Circuit Court where the Certificate of Good Standing was issued, if the defendant is convicted of a felony or a Class A or B misdemeanor.

**e. Sentencing Reconsideration Review Policies and Procedures (Senate Bill 819—ORS 137.218)**

A prosecutor is tasked with always seeking justice while working a case. When a case concludes with a conviction and sentence the duty to ensure justice does not end. With the passage of Senate Bill 819 (which will be codified into ORS 137.218) in 2021, the Oregon Legislature created a mechanism for prosecutors to review sentences for certain convicted individuals.

With that said, the finality of sentences has been a long-standing and fundamental principle in criminal law and remains a guiding principle for the Jackson County District Attorney's Office. However, the District Attorney's Office is committed to the just exercise of prosecutorial discretion where it advances the legitimacy of the criminal justice system, public safety for victims and their families, and justice for defendants.

The policy below will set out the process and criteria for consideration, in order to ensure the District Attorney's Office exercises the discretion in sentencing reconsideration in a consistent manner.

**i. Eligibility and Qualifying Convictions:**

**1.** ORS 137.218 explicitly excludes misdemeanors, aggravated murder, and convictions eligible for set aside under ORS 137.225;

**2.** Absent extraordinary circumstances that include newly identified evidence that significantly calls into question the integrity of a conviction, the District Attorney's Office will not consider sentencing modifications for any level of homicide, violent sexual offenses, sexual

offenses involving child abuse, solicitation or unlawful depictions of a child, and firearm enhanced sentences;

3. At least 50% of the original imposed sentence must be served by a defendant in order to be consider by the District Attorney's Office;

4. A defendant who has previously requested and been denied a sentencing reconsideration, under ORS 137.218, on the same matter within the previous 24 months will not be considered; and

5. The District Attorney's Office will only consider felony convictions that are no longer eligible for appeal, post-conviction relief, or habeas petition

**ii. Process and Information Necessary for Requesting Sentencing Reconsideration:**

1. The convicted defendant or their attorney should submit the request in writing to the District Attorney's Office via hand-delivery or US Mail to: Jackson County District Attorney's Office, Sentencing Reconsideration, 815 W. 10th Street, Medford, OR 97501;

2. The request must contain the following items:

   a. The specific convictions requested for review (case number, counts, etc…);

   b. Desired outcome of the review (dismissal, conviction different crime, reduction in sentence, or reduction in fine);

   c. Reasons why the original sentence no longer serves the interests of justice;

   d. Information addressing factors listed in ORS 137.218:

      i. Person's disciplinary record in jail/prison and records of rehabilitation;

      ii. Evidence that reflects whether the person's age, time served and diminished physical or mental condition, if any, have reduced the person's risk for future violence;

      iii. The safety of the victim associated with each conviction being reviewed;

      iv. The amount of the original sentence already served by the person; and

      v. Evidence that reflects changed circumstances since the person's original sentencing and shows that the

continued incarceration no longer advances the interests of justice

**e.** Work history since incarceration;

**f.** Vocational, educational, and treatment history while incarcerated and since incarceration;

**g.** Any psychological or medical documentation showing mitigation;

**h.** If restitution was ordered, how much has been paid?

**i.** If incarcerated, a release plan demonstrating re-entry readiness; and

**j.** If incarcerated, a statement from individuals in a support network and plans upon release

**3.** All requests for sentencing reconsiderations and material submitted in those applications will be retained in the Jackson County District Attorney's case file.

**iii. Process and Review Criteria**

**1.** Upon receipt of a defendant's request for sentencing reconsideration the Chief Deputy District Attorney will make an initial determination if the appropriate information is included in the submission and if the conviction qualifies on its face:

**a.** If a request does not pass the initial review, the Chief Deputy District Attorney will send a letter to the defendant or defendant's attorney notifying the reason for denial

**b.** If a request meets the initial criteria to be considered, the Chief Deputy District Attorney will alert the Victim Advocate Program (see below) and determine the appropriate Deputy District Attorney to review the request

**2.** The Chief Deputy District Attorney will alert the Victim Advocate Program of the request for sentencing reconsideration, if it meets the initial submission criteria, and:

**a.** The Victim's Advocate Program will use reasonable efforts to contact and inform, in a trauma informed manner, victims of each conviction being reconsidered;

**b.** When the victim(s) are informed of the request, their opinion should be requested and documented regarding whether the conviction/sentence should be reconsidered; and

**c.** After the initial notification to victim(s), they should be informed regarding the decision to file or not file a petition with the Circuit Court, and if a petition is filed, should be notified at least 30 days prior to the Court hearing on the matter

**3. Criteria for Considering a Request for Resentencing**

The assigned Deputy District Attorney will review the facts of the case, negotiations, the original sentence imposed by the court, the documents/statements submitted by defendant, and solicit input from the victim regarding a request.

After reviewing the items above, the assigned Deputy District Attorney will assess the request looking at this non-exclusive list of criteria:

**a.** Are the interests of justice served in altering the conviction/sentence?

**b.** What is the victim's position regarding the request?

**c.** Is the original sentence consistent with individuals who committed similar offense(s) and have similar criminal histories?

**d.** What is the defendant's criminal history prior to the conviction request under consideration, and after the conviction request under consideration?

**e.** What is the risk of reoffending and causing further harm to the community?

**f.** If restitution was owed, how much has been paid?

**g.** Is the original sentence appropriate under current sentencing laws?

**h.** What steps has the defendant taken to ensure this conduct does not occur again? (ie—employment, education, vocational training, addiction/mental health counseling, etc...)

**i.** If currently incarcerated, what is the re-entry plan look like for housing, support network, employment, and other important factors.

**4. After Assessing a Sentence Reconsideration:**

**a. Denial**

The assigned Deputy District Attorney should discuss their position on the request with the Chief Deputy District Attorney. If it is determined that a sentencing reconsideration should not be

granted, the assigned Deputy District Attorney should prepare a denial letter to send to the defendant or defendant's attorney.

The denial letter should include the reasoning behind the denial based upon the assessed criteria. If the Deputy District Attorney believes there is other information that could be provided by the defendant or defendant's attorney that may change the assessment that request for information should be included in the letter. The letter should be reviewed by the Chief Deputy District Attorney and District Attorney.

**b. Approval**

The assigned Deputy District Attorney should discuss their position on the request with the Chief Deputy District Attorney. If it is determined that the request should be granted, this is only conditional until final approval by the District Attorney.

If a request is to be granted, the reviewing Deputy District Attorney and Chief Deputy District Attorney should decide if the sentencing reconsideration request should be granted as requested by the defendant or defendant's attorney or if the District Attorney's Office is suggesting a different agreement. At this stage of the process, the defendant or defendant's attorney should be contacted and the actual agreement finalized. The possibilities for the agreement are as follows:

**i.** Dismissal of the charge(s);

**ii.** Resentencing for the original conviction (less confinement; less fine; etc…); or

**iii.** Plea to a new alternative offense and sentence

When an agreement is reached, the Deputy District Attorney and Chief Deputy District Attorney should present the reasons supporting resentencing and the agreement to the District Attorney for final approval. If approved the assigned Deputy District Attorney should notify the victim(s), and the assigned Deputy District Attorney should file a petition (a motion for sentencing reconsideration) and any other necessary documents with Jackson County Circuit Court. The petition should state the reasons why the District Attorney's Office believes it is appropriate and also include that this is a joint petition with the defendant and, if applicable, defendant's attorney.

In a case where the District Attorney disagrees with the assessment to petition for resentencing and/or the agreement reached, the assigned Deputy District Attorney will contact the defendant or defendant's attorney to notify them of the decision. The District Attorney will then prepare a denial letter, explaining

the reason for denying resentencing. If the disagreement is with the recommended agreement, the District Attorney will amend the agreement and present to the defendant or defendant's attorney the agreement that is amenable to the District Attorney.

## XIII. Review/Disclosure of Brady Material

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

### a. Brady Committee Composition

The committee will consist of the District Attorney, Chief Deputy District Attorney, and at least two Senior Deputy District Attorneys, preferably all three Sr. DDAs.

### b. Purpose

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

### c. Notice/Awareness of Brady Material

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

*Such materials include not only exculpatory information, but also any findings or substantiated allegations that call into question the credibility of a government witness (impeachment information). With respect to law enforcement officers, the following is considered impeachment information:*

1. *Any findings of misconduct that reflects upon the truthfulness or possible bias of the employee, including dishonesty during an administrative inquiry;*

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

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

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

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

Aside from receiving notice of potential *Brady Information* directly from Law Enforcement Agency Command Staffs, the District Attorney's Office will accept complaints from other officers, attorneys, and/or citizens regarding potential *Brady*

*Information*. However, the District Attorney's Office doesn't have its own investigator to look into complaints or obligation to conduct its own investigation. When a complaint is initiated from a non-Command Staff submittal the District Attorney's Office will reach out to the involved agency to request any material that is relevant to the complaint and review any material submitted by the complaining party.

### d. Brady Information Review

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

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

**a.** Deceptive conduct in a formal setting, ie: testimony, affidavit, police report, official statement, internal affairs investigation;

**b.** Tampering with or fabricating evidence;

**c.** Deliberate failure to report criminal conduct by other officers;

**d.** Willfully making a false statement to another officer on which the other officer relies in an official setting;

**e.** Criminal conduct resulting in conviction that is fraudulent in nature;

**f.** Repeated, habitual or a pattern of dishonesty, however minor, during an internal affairs investigation;

**g.** Repeated and persistent acts/language that demonstrate bias and prejudice against a constitutionally protected class of people;

**h.** Persistent dishonesty following *Garrity* warnings or following administrative action; and/or

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

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

    **a.** A simple exculpatory "no" when faced with an allegation of misconduct;

    **b.** A deceptive statement made in an effort to conceal minor unintentional misconduct;

    **c.** A purely private, off-duty statement intended to deceive another about private matters;

    **d.** An isolated dishonest act that occurred years prior;

    **e.** A spontaneous, thoughtless statement made under stressful circumstances that is later recognized as misleading and is corrected;

    **f.** Isolated "administrative deception" related to minor employment matters (ie: calling in sick when not sick, misleading claim about availability for a shift); and/or

    **g.** Isolated act/language that demonstrates bias and prejudice against a constitutionally protected class of people

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

    **a.** Inaccurate or false statements based on misinformation or a genuine misunderstanding of applicable facts, procedures, or law;

    **b.** Investigatory tactics that are deceptive but lawful;

    **c.** Lies told in jest concerning trivial matters or to spare another's feelings;

    **d.** Negligence in reporting facts or providing misleading information to the public that later turns out to be false; and/or

**e.** Nonmaterial exaggerations, boasting or embellishments in descriptions of events or behaviors of others

### ii. Initial Process/Review

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

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

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

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

It is anticipated that this process will apply to most complaints before the Brady Committee. However, there may be complaints that require a modification of this process. In some situations, the District Attorney and/or the Brady Committee may elect to submit the material to the Jackson County Circuit Court Presiding Judge or Senior Criminal Judge for an in camera review. In this situation the District Attorney's Office is aware that any adverse findings by the judge would be a binding decision on the officer's classification.

### iii. Final Review:

After receiving all the evidence/material in a *Brady* complaint the members of the Brady Committee will meet for a final time to discuss this information. At this time a final vote will be held to determine the status of the person before the committee. The vote will consider whether there was enough evidence to classify the witness as a **Tier I, Tier II, or Tier III** designation or may decide that the information presented did not qualify as Brady material or

meet the burden of ***clear and convincing evidence***, necessary to declare a tier classification. The final vote requires a majority finding, and in the event of a tie, the District Attorney will make the final determination.

#### iv. Notice/Record/Disclosure

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

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

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

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

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

### e. Lack of Confidence in a Professional Witness

**i. General:** The District Attorney maintains the discretion and authority to disqualify a professional witness from testimony based upon a lack of confidence that the witness can withstand the strict scrutiny necessary for law enforcement professionals. While these witnesses may not require Brady disclosure under the law, the District Attorney may decide that their background, criminal behavior, or reputation is such that they cannot be called by the Jackson County District Attorney's Office.

**ii. Process:** In situations where a "lack of confidence" is considered for a professional witness the same process as outlined in section (d)( i-iv) of this chapter should be followed as closely as possible.

iii. **Applicability:** In determining the appropriateness to find a "lack of confidence" in a professional witness, a non-exclusive list of situations to consider, under the totality of the circumstances, are:

1. Witnesses with pending criminal cases;

2. Witnesses with criminal convictions;

3. Witnesses who may have committed a crime but investigation or prosecution is barred (ie—statute of limitations);

4. Scope and seriousness of crime committed or alleged to have been committed (ie—person or bias crimes versus strict liability offenses);

5. Admissibility of crime or bad act;

6. Bias—is there evidence of bias or prejudice contained in more than an isolated complaint, investigation, report, or in social media; and/or

7. Opinions of colleagues ( ie—what would testimony be by others in agency as to the individual's reputation for honesty?).

## XIV. Investigations Involving Law Enforcement's Use of Deadly Force

### a. General

The Jackson County District Attorney's Office understands that an officer's decision to use deadly physical force against another, is a decision that warrants an independent review by a Jackson County Grand Jury. Therefore, in any case involving a law enforcement officer's use of "deadly physical force" (as defined in the Jackson County Deadly Physical Force Plan), the case will be presented, by the District Attorney, Chief Deputy District Attorney, or a designated Deputy District Attorney, to a Jackson County Grand Jury.

### b. Process

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

In all use of deadly physical force cases, any officer fitting the definition of "involved officer" (as defined in the Jackson County Deadly Physical Force Plan) shall be requested to testify before the grand jury. In these cases when there are multiple eye witnesses to the incident, all those witnesses should be subpoenaed to appear before the grand jury and if present allowed to testify.

i. **Corresponding Criminal Case:** In this situation the grand jury will be asked to consider two separate issues. First, whether the action of the involved officer was justified as a lawful use of force, under Oregon Law. The grand jury will be provided Oregon Revised Statute(s) pertaining to the use of deadly physical force to review when answering this question. The second issue for the grand jury, in this situation, is if there is sufficient evidence to hold over the suspect, involved in the incident involving the use of deadly physical force, on the submitted criminal charges.

ii. **No Corresponding Criminal Case:** In this situation the grand jury will be asked to consider a single issue. The question presented will be whether the action of the involved officer was justified as a lawful use of force, under Oregon Law. The grand jury will be provided Oregon Revised Statute(s) pertaining to the use of deadly physical force to review when answering this question. The grand jury proceeding in this situation will be recorded by stenographer and a transcript prepared. In accordance with Oregon law, the District Attorney's Office will request the court grant an order to allow release of the transcript for public review.

# XV. Public Records and Information Security

## a. General Information Security

It is standard practice in Jackson County District Attorney's Office to collect, store, and disseminate information in a manner that maintains security and prevents information from being accessed by unauthorized individuals or organizations. We recognize, and make every effort to maintain, the right of privacy from unwarranted intrusions. Employees of the Jackson County District Attorney's Office should be aware of and follow Jackson County Policy #1-43.

Beyond the basic Jackson County Policy regarding protection of confidential information, employees of the Jackson District Attorney's Office who have special certifications and/or privileges for access into confidential databases should be familiar with and follow each databases specific guidelines.

If an employee is asked to supply information, the person should obtain the requester's identity and purpose for obtaining the information. If in doubt about supplying the information to an entity outside of the office, the employee should seek guidance of a supervisor.

## b. General Public Records

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

## c. Case Notes

Jackson County Deputy District Attorneys are required to document events, decisions, and other work on cases in the appropriate place in the data management system. Professional and appropriate language should be used to document these notes about the case. DDAs should keep in mind that the notes within a case may become public information.

## d. Law Enforcement Agency Reports

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

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

## e. Public Record Requests for District Attorney Records

When the Jackson County District Attorney's Office receives a written/emailed public records request, the request should be forwarded to the District Attorney or the designated Deputy District Attorney assigned to handle public record requests.

When a request is received it will be scanned and saved in the "I-drive" in the folder pertaining to "Public Records Request" and in the file for the appropriate year. The request will be given a file name consisting of the year and the number request for that year, plus the name of the entity making the request. (ie—19RR-02 Jane Doe Request).

The District Attorney or designated DDA will acknowledge receipt of the request within the statutory mandated time. The records will then be collected and reviewed to determine whether to release the information. This decision is will be based upon compliance with ORS 192.311-192.431.

After a final decision is made within the statutory mandated time, the response/denial and records, if disclosed will be sent to the requester. The response/denial and disclosed records (if any) will be saved in the "I-drive" in the folder pertaining to "Public Records Request" and in the file for the appropriate year. The response/denial and disclosed records (if any) will be given a file name consist with the prior request. (ie—19RR-02 Jane Doe Response and Documents).

## f. Appeals From Other Public Entity Denials

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

An appeal of public record denial should be forwarded to the District Attorney or the designated Deputy District Attorney. When an appeal is received it should be scanned and saved in the "I-drive" in the folder pertaining to "Public Record Appeals" and in the file for the appropriate year. The request will be given a file name consisting of the year followed by "a" and the number appeal for that year, plus the name of the entity making the appeal. (ie—19AR-02 Jane Doe Appeal).

The District Attorney or designated DDA will acknowledge receipt of the appeal within the set statutory timeframe and also contact the government entity to request the documents/information for review. The District Attorney or designated DDA will review the documents/information and make a determination on whether or not the documents/information should be disclosed in accordance with Oregon Public Records Laws (ORS 192.311-192.431).

The decision will be documented in an order and saved in the "I-drive" in the folder pertaining to "Public Record Appeals" and in the file for the appropriate year. The request will be given a file name consisting of the year followed by "a" and the number appeal for that year, plus the name of the entity making the appeal. (ie—19AR-02 Jane Doe Order).

## XVI. Records and Evidence Retention

### a. General Internal Case Retention

The Jackson County District Attorney's Office has adopted a schedule for retaining and destroying case records, based on the nature and resolution of a crime, and the document(s) involved. Depending on the year the case record was created, the record may be stored on site at the District Attorney's Office, in the cloud case/data management system, or in the county archive storage warehouse. Ultimately, based on the schedule, paper records are destroyed. If the case record originated after March 2014, the records that were scannable are stored in a cloud-based data management system.

### b. Internal Record Retention/Destruction Schedule

The following records retention schedule adheres at a minimum to Oregon law, and is broken into case type. Case reports submitted to the Jackson County District Attorney's Office after March 2014 are scanned into a cloud-based data management system. Video, audio and photographic (unless submitted as part of the report or in documentary format) evidence is documented as received under the evidence tab in the cloud-based data management system. The custodian of these digital records is the reporting police agency, therefore the copies of these records provided to the Jackson County District Attorney's Office by actual physical disk, flash-drive, digital file, and/or URL link is returned to the agency or destroyed when the case is closed/disposed.

| Case Type | Minimum Retention (OAR 150) | Our Retention |
|---|---|---|
| Misdemeanor Prior To April 2014 | 3 Years After Closed | 3 years After Closed |
| Misdemeanor April 2014 & After | 3 Years After Closed | Permanent—Electronic File |
| Measure 11 Convictions Prior To April 2014 | 3 Years After Sentence Expires | 10 Years After Sentence Expires |
| Measure 11 Convictions April 2014 & After | 3 years After Sentence Expires | Permanent—Electronic File |
| Measure 11 Dismissed Or Not Guilty Prior To April 2014 | 3 Years | 3 Years |
| Measure 11 Dismissed Or Not Guilty April 2014 & After | 3 Years | Permanent—Electronic File |
| Any Other Felony Conviction Prior To April 2014 | 3 Years After Sentence Expires | 4 years After Sentence Expires |
| Any Other Felony Conviction April 2014 & After | 3 Years After Sentence Expires | Permanent—Electronic File |
| | | |
| Any Other Felony Dismissed Or Not | 3 Years | 3 Years |

| | | |
|---|---|---|
| Guilty Prior To April 2014 | | |
| Any Other Felony Dismissed Or Not Guilty April 2014 & After | 3 Years | Permanent—Electronic File |
| Civil Commitment Cases (After April 2014) | 5 Years | Permanent—Electronic File |
| Civil Forfeiture (After April 2014) | 5 Years | Permanent—Electronic File |
| Grand Jury Corrections Reports | 20 Years | 20 Years |
| Grand Jury Logs | 10 Years | 10 Years |
| Grand Jury Recordings | Permanent—Electronic File | Permanent—Electronic File |

### c. General External Evidence Retention:

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

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

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

In any case in which there were co-defendants, property/records personnel should be sure that the necessary time periods have run on all of the defendants before disposing of any of the property. Agencies should also keep in mind that evidence which was seized pursuant to a search warrant requires that a court order be obtained prior to release. The

release of weapons also requires special care, and in many cases, they may not be returned to the defendant.

### d. External Evidence Retention Schedule

#### i. Cases Not Submitted To The District Attorney's Office Because No Suspect Has Been Identified

**1.** Misdemeanor—1 year

**2.** Felonies—3 years

**3.** Measure 11 offenses—5 years, after consulting with the investigating officer

**4.** Homicides—Only after consulting with the officer and the District Attorney

**5.** Sex crimes with extended statute of limitations

Retain until the statute of limitations has run. For victims under 18, the statute runs when the victim reaches the age of 30 on a felony case, and age 22 on a misdemeanor case. Also, if the identity of the perpetrator is established by DNA evidence, prosecution can be commenced up to 25 years after the crime. See ORS 131.125 for specifics on the extended statute of limitations.

#### ii. Cases Submitted to The District Attorney's Office

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

**2.** Cases filed with the court:

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

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

**c.** Cases in which the defendant has pleaded guilty

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

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

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

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

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

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

### iii. Special rules Regarding Blood & Urine Samples Held Subsequent to Testing for Drug and/or Alcohol Content

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

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

**2.** Vehicular assaults/homicides and Measure 11 cases

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

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

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

**2.** In cases of aggravated murder, murder, rape in the first degree, sodomy in the first degree or unlawful sexual penetration in the first degree,

biological evidence must be preserved for 60 years, or until the death of the defendant.

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

4. If no person is convicted or the case is otherwise closed, and the offense is one of those listed in section (2) or (3) above, biological evidence must be retained until the expiration of the applicable statute of limitations. If the offense is not one of those listed in (2) or (3) above, ORS 133.707 does not require extended preservation of the evidence, and sections (i) and (ii) of this external evidence retention schedule should be followed.

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

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

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

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

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

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

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

5. If a victim who did not previously participate with a law enforcement agency in the creation of a report of a sexual assault later participates in

the creation of a report, the sexual assault forensic evidence kit associated with the report must be reclassified as a non-anonymous kit.

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

## XVII. Guidelines for Prosecuting Environmental Crimes

### a. General

In 1993, the Oregon Legislature passed Ch 422, which establishes severe penalties for certain violations of state environmental laws. Any conduct that violates CH422 is also a violation of state regulatory statutes and administrative rules. For many violations, administrative remedies and civil penalties are adequate responses. For some conduct, the bringing of a misdemeanor charge may be appropriate. Bringing felony charges should be reserved for the most serious violations of state environmental laws.

The decision to prosecute an act under the environmental laws is a matter of prosecutorial discretion determined by specific circumstances of each case. No single factor on the list below is controlling and the weight accorded each factor will vary from case to case. The guidelines are intended to promote consistency in the prosecution of environmental crimes and to ensure compliance with the legislative goals. For purposes of the guidelines detailed here, "person" includes corporations.

### b. Factors to Consider in Environmental Crime Prosecutions

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

**i.** 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.

**ii.** 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?

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

**iv.** 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.

**v.** 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.

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

**vii.** 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.

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

**ix.** 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.

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

**xi.** 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.

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

**xiii.** 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.

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

### c. Environmental Crime Prosecution Procedure

Absent extraordinary circumstances, before a felony environmental criminal charge is brought, the investigating law enforcement agency and the regulatory agency shall be consulted. Any Deputy District Attorney interested in bringing such a charge should first prepare a memorandum for the District Attorney and Chief Deputy District Attorney. The memorandum should include a summary and evaluation of the facts and law regarding the case, along with an analysis of the factors listed above. If the District Attorney concludes a felony case should be filed, the District Attorney will prepare a certification approving prosecution.

# XVIII. Asset Forfeiture

## a. Civil

### i. Introduction:

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

### ii. Statutory Basis for Forfeiture

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

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

1. Preponderance of the evidence if the property subject to forfeiture is personal property;

2. Clear and convincing evidence if the property is real property.

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

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

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

### iii. Specific Items Subject to Forfeiture

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

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

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

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

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

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

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

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

v. **Consent Search:** Property that is seized solely on the basis of a consensual search of a motor vehicle is NOT subject to forfeiture UNLESS, before obtaining

consent of a person for the search, the person is provided with written, multilingual notice of the right to refuse consent. See ORS 131A.025.

The notice shall include:

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

### vi. Seizure of Property for Forfeiture

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

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

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

### vii. Forfeiture Procedure

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

Upon seizure of the property, the officer who seized the property shall make an inventory of the seized property. The inventory should include an estimate of the value of the seized property. If the inventory is determined to be substantially incorrect before the commencement of a forfeiture action, the agency shall amend the inventory. The changes must be clearly indicated in the amended inventory and a copy of the original and amended inventory must be served with

any summons and complaint served. If an amendment is necessary after the commencement of the proceedings, the amended inventory must be served on all persons previously served with summons and complaint in the proceeding.

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

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

### viii. Forfeiting Agency

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

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

3. **Forfeiture Trust Account:**

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

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

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

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

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

4. **The Publication:** Seizing agency shall issue a forfeiture notice in a newspaper (Mail Tribune), in accordance with ORCP 7D(6)(b) to (d), that contains a copy of the inventory prepared by the officer; the name of the person from whom the property was seized; the name, address and telephone number of the seizing agency; address and telephone number of the Jackson County District Attorney's Office, 815 W. 10th , Medford, Oregon 97501, 541-774-8181; and a statement in substantially the form listed by the statute. The agency can include as many forfeiture notices as the agency considers convenient in a single publication.

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

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

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

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

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

## ix. Proceeds of Forfeiture

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

The remaining proceeds shall be distributed as follows:

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

## x. Forfeiture Actions

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

### 2. Responsive Pleading or Affidavit

**a.** (1) A person claiming an interest in property that is the subject of forfeiture must file a responsive pleading or affidavit. The pleading or affidavit must be filed within 30 days of service of the summons and complaint. Failure to file will constitute a default.

**b.** (2) The forfeiting agency may file objections to the pleadings or affidavits. Any objection must be filed within 20 days of the filing of the pleading or affidavit. If no objection is filed, the

interest of the party filing the affidavit is conclusively established.

**c.** (3) A response may be filed by the interested party within 5 days of the objection being filed.

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

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

### xi. Forfeiture Deadlines

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

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

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

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

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

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

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

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

## b. Criminal

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

### ii. Statutory Basis for Forfeiture

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

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

### iii. Specific Items Subject to Forfeiture

1. **Money:** All moneys, negotiable instruments, balances in deposit or other accounts or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct or intended to be used to facilitate any prohibited conduct are subject to forfeiture. Criminal Forfeiture will be considered on cash/money seizures of $300 or more, if an officer is requesting criminal forfeiture for a seizure under $300 it requires Deputy District Attorney approval.

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

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

### iv. Procedures Generally Applicable at Initial Seizure

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

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

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

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

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

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

6. Any forfeiture questions should be directed to the deputy district attorney assigned to the case.

### v. Considerations for officers:

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

2. **Investigation:**

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

      i. The suspect(s)' employment status and history,

      ii. How the suspect(s) obtained the property and with what funds, and/or

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

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

**i.** Photograph the property in the location where it was seized;

**ii.** Fingerprint the property; and/or

**iii.** Have the property examined by a drug dog.

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

## XIX. Collateral Challenges to Convictions

### a. State Post-Conviction Relief

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

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

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

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

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

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

### b. State Habeas Corpus Relief

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

State habeas petitions are filed most often in cases involving fugitive complaints. The filing of this writ is generally the last procedural hurdle that a defendant who is wanted in another state is able to raise prior to the issuance of a governor's warrant. County

Counsel handles any state writs of habeas. If a writ is served on the District Attorney's Office, it should be forwarded immediately to County Counsel.

### c. Federal Habeas Corpus Relief

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