



OFFICE OF THE DISTRICT ATTORNEY  
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## District Attorney's Office Policy Handbook

### *Mission Statement*

The Josephine County District Attorney's Office is dedicated to providing; with integrity, courtesy, and respect; the highest quality prosecution services, while responsibly representing the interest of the community and all victims.

### *Overriding Principles*

As the district attorney's office, our overriding principal is simple: To protect the public by delivering justice. This principle governs all of our decision making.

The legislative branch, which is responsible for writing Oregon law, along with the United States Constitution and the Oregon Constitution, and jurisprudence therefrom, are our primary policy manual.

The below outlined provisions are principles to follow, rather than strict edicts, and any below provision that conflicts with our Office's ability to achieve our aim within the parameters of the law, then our Office's pursuit of justice takes precedence.

#### *I. Professionalism and Prosecutorial Ethics*

All employees of this office hold a public trust and represent the Office of the District Attorney. All employees are expected to abide by these principles, are expected to exercise good judgment, common sense, and the upmost professionalism in their dealings with the public, representatives of other departments, agencies, organizations, and amongst themselves.

All employees of this office are expected to maintain the highest ethical standards. Everyone shall remain mindful that public service is a public trust and our job—our obligation as public servants—is to serve with integrity. We are expected to—and must—do the right thing for the right reasons.

As a professional and representative of the Office of the District Attorney, our "job" does not end at the close of the workday. We are responsible for our behavior outside of the organization and must always be cognizant of our duties to represent the public trust with integrity.

All attorneys must be familiar with the canons of professional ethics of the Oregon State Bar and perform their duties consistent with those standards while understanding and complying with all rules of confidentiality. In addition, attorneys within the office shall know and follow all rules promulgated by the Oregon Supreme Court and the Josephine County Circuit Court.

Certified Law Students are welcomed by this Office. They are subject to all of the same requirements as Deputy District Attorneys and additionally will shadow a senior Deputy District Attorney or the District Attorney during their time with the office. The goal of having a law student within the office is to foster growth and provide experience in a practical and real-world setting.

All employees shall be cognizant that our system requires that victims receive justice in a timely fashion. As such, all attorneys shall be familiar with the Crime Victim's Bill of Rights and Article I, Section 42 of the Oregon Constitution.

## *II. Charging Decisions*

All charging decisions shall be made pursuant to and in accordance with protecting the public and obtaining justice. All charging decisions are the responsibility of the District Attorney and the Deputy District Attorneys. All charging decisions shall consider the laws of Oregon, the Oregon Constitution, and the Constitution of the United States.

Deputy District Attorneys shall use their discretion to screen cases that do not justify prosecution, that are constitutionally prohibited from being charged, and in determining what charges best encapsulate the criminal conduct. Deputy District Attorneys may exercise their discretion consistent with these principles to only present those charges that are consistent with the evidence, that are reasonably substantiated by admissible evidence at trial, and in the best interests of justice. Deputy District Attorneys shall consider the criminal conduct, the victim's level of cooperation, and the extent of harm in charging decisions. Deputy District Attorneys shall avoid charging an excessive number of counts or cases in order to leverage or persuade a defendant to enter a guilty plea to one or more charges.

### *a. Driving Under the Influence of Intoxicants*

Deputy District Attorneys shall charge all Driving Under the Influence crimes where there is sufficient admissible evidence to satisfy the state's burden beyond a reasonable doubt. Deputy District Attorneys shall be cognizant of ORS 813.010(5), ORS 813.011, and ORS 813.215 *et seq* in all cases involving allegations of driving under the influence.

b. Crimes constituting Domestic Violence

Deputy District Attorneys shall charge all crimes of violence constituting domestic violence where there is sufficient admissible evidence to satisfy the state's burden beyond a reasonable doubt.

c. Aggregation of Property Offenses

Deputy District Attorneys may aggregate the values as outlined in Oregon law while considering the nature of the evidence, the nature of the offense, and similarly situated people. Deputy District Attorneys shall not aggregate the values for the sole purpose of leveraging or persuading a defendant to enter a plea of guilty.

d. Controlled Substance Offenses

Deputy District Attorneys may charge all crimes involving the possession, delivery, and / or manufacturing of controlled substances where there is sufficient admissible evidence to satisfy the state's burden beyond a reasonable doubt. Deputy District Attorneys shall consider Article I, sec. 9 and the Fourth Amendment in all cases involving the possession, delivery, and / or manufacture of controlled substances.

e. Misdemeanor Crimes

Deputy District Attorneys may charge all misdemeanor crimes where there is sufficient admissible evidence to satisfy the state's burden beyond a reasonable doubt. In lower-level misdemeanor crimes, Deputy District Attorneys may consider office resources, staffing levels, the presence of a victim, and damage to property in determining whether or not to charge a crime.

f. Crimes with Mandatory Minimum Sentences

Deputy District Attorneys may charge all crimes with mandatory minimum sentences where there is sufficient admissible evidence to satisfy the state's burden beyond a reasonable doubt.

g. Seeking the Death Penalty under ORS 163.150

In any potential Aggravated Murder case, the decision to seek and / or present evidence on the death penalty pursuant to ORS 163.150 shall be the decision of the District Attorney or the Chief Deputy District Attorney after considering the facts, circumstances, and egregiousness of the case, the criminal history of the defendant, as well as any other aggravating or mitigating factors specific to the defendant and the case.

h. Innocence of Defendant or Evidentiary issues

Importantly, at any time from charging throughout the pendency of a case, all Deputy District Attorneys shall be alert for cases where the accused is actually innocent or the proof falls below the beyond a reasonable doubt standard. If such a case is discovered, the victim, law enforcement involved, and anyone else involved will be contacted and dismissal will be sought immediately.

III. *Case Management – Plea Offers, Diversion, Compromises, Etc.*

All Deputy District Attorneys shall manage their cases and caseloads in a manner consistent with these principles, the victims' rights, community safety, and justice.

a. Plea Offers

"Truth in Sentencing" is a fundamental value of this office including attempting to ensure that the sentence ordered by the court is fundamentally served. In all cases, Deputy District Attorneys shall engage in negotiations in manner consistent with protecting the public, delivering justice, promoting efficiency in the justice system, and certainty/resolution for the victims. Plea negotiations are not mandatory in criminal cases. Deputy District Attorneys retain the discretion to negotiate dismissals, non-prosecutions, or other sentencing concessions. All negotiations shall be conducted in a professional, nondiscriminatory, and nonpartisan matter and are guided by the relevant constitutional, statutory, and ethical considerations.

In determining whether to offer a plea agreement and the extent of any concessions, our office may consider any of the following:

- Nature of the offense
- Degree of the offense
- Mitigating circumstances
- Age, background, and criminal record of accused
- Age of the victim
- Undue hardship caused to victim
- Expressed wish of the victim
- Relationship between accused and the victim
- Sufficiency of admissible evidence to support a verdict
- Deterrent value of prosecution
- Feasibility of restitution
- Attitude and mental state of the accused at the present time
- Aid to other prosecution goals through non-prosecution
- History of non-enforcement of the involved statute
- Age of case
- Likelihood of prosecution in another jurisdiction
- Appeal issues

In regard to fines, fees, and other assessments, Deputy District Attorneys shall include all "mandatory" fines in plea negotiations as required by law. In regards to discretionary fines, fees, and the imposition of court appointed attorney's fees, Deputy District Attorneys shall consider

whether justice is achieved by recommending a defendant pay financial obligations, whether or not the defendant has—or is likely to gain—the ability to pay, and the length of any incarceration imposed as part of the sentence in determining whether to include financial obligations in negotiations.

In regard to sentencing programs, including alternative incarceration programs (“AIPS”), conditional release, work release, earned sentence reductions, and / or short-term transitional leave (“STTL”), Deputy District Attorneys should consider such factors during plea negotiations. In cases, where AIPS or other sentencing programs are discretionary, the Deputy District Attorney assigned to the case shall consider the circumstances of the defendant including but not limited to substance use issues, prior incarceration cycles, the defendant’s amenability to treatment, and the nature of the criminal conduct.

b. Victim Consultation and Restitution

Consistent with the Oregon Constitution, in all violent felonies, the Deputy District Attorney shall consult with the victim regarding any proposed plea negotiations if our office receives notification from the victim requesting said consultation. In all homicide cases, the Deputy District Attorney shall consult with the family of the deceased regarding any concessions and/or plea negotiations irrespective of the family requesting that right. In all victim cases, the Deputy District Attorney shall be available for any victim questions either directly or through the Victim’s Assistance Department.

In all cases where restitution is sought, any plea negotiations shall include satisfying any pecuniary loss allowed under Oregon law to the victim. If the amount is unknown at the time of sentencing, the Deputy District Attorney shall request the court allow the Victim’s Assistance Office 90 days to finalize the restitution amount.

The Victims’ Assistance Office with the assistance of Deputy District Attorneys shall ensure victims have been provided the “victim packet,” been explained their rights, had an opportunity to finalize any financial losses that are recoverable, and provide any “victim impact statement” for the court. If the amount at issue is not recoverable as restitution, the Deputy District Attorney and/or the Victims’ Assistance Office shall keep the victim apprised of the process, the law, and reasons why not recoverable.

c. Civil Compromises

Under ORS 135.703 and 135.705, civil compromises are authorized in instances in which a defendant is charged with a crime punishable as a misdemeanor. As a general rule, in order to ensure affluence does not dictate disparate treatment in the criminal justice system, our office opposes civil compromises. In order to ensure equal treatment under the law, Deputy District Attorneys may consider a civil compromise on a case-by-case basis, after only first ensuring the victim understands their rights, after considering the criminal history of the defendant, the nature of the incident, and whether justice will be served.

d. DA Diversions

District Attorney's should familiarize themselves with the requirements for a DA Diversion as outlined in ORS 135.886. As with any resolution, Deputy District Attorneys shall consider the nature of the incident, the victim's input including any restitution amount, the defendant's circumstances, prior record, and whether justice will be served in determining whether or not to propose a DA Diversion in either a misdemeanor or a C Felony case.

e. Conditional Discharges

Conditional Discharges are authorized in controlled substances offenses and / or property offenses motivated by substance use as outlined in ORS 475.245. Deputy District Attorneys may propose to resolve either a controlled substance offense or a property crime motivated by substance use disorder via a conditional discharge when doing so furthers justice.

f. Treatment Courts

Josephine County is fortunate enough to have three treatment courts that increase our ability to facilitate justice and community safety: 1) Josephine County Drug Court; 2) Josephine County Mental Health Court; and, 3) Josephine County Recovery Court. A Deputy District Attorney designated by the District Attorney shall be a team member of each of these courts, appearing weekly at staffing sessions, court appearance, and as otherwise reasonably required.

*i. Josephine County Drug Court*

Josephine County Drug Court addresses high risk / high needs offenders by addressing substance use disorder. The assigned Deputy District Attorney should familiarize themselves with all of the Josephine County Drug Court Policies.

As the prosecutor assigned to the team, the Deputy District Attorney is responsible for locating, managing, and evaluating referrals along with drafting offers to offenders in a way that best incentivizes success while simultaneously protecting the community. This dual pronged approach is met by avoiding felony convictions, avoiding Department of Corrections, and/or dismissing charges upon successful completion of the program. In exchange, applicants must plea/admit to all charges where authorized by law.

In determining eligibility for the program, the assigned Deputy District Attorney shall consider the nature of the charges, nature of the offender's history, and the results of the assessment by the treatment provider. Sex Crimes, a history of Sex Crimes, Measure 11 crimes, a history of Measure 11 crimes, and / or violent person felonies are disqualifiers from the program. Firearms offenses generally are considered disqualifiers absent mitigating circumstances where the offender was a minor participant in the offense. Unlawful Delivery and Manufacture of a Controlled Substance charges are also disqualifiers if the offenses involve substantial quantities, constitutes a commercial drug offense, or the facts and circumstances of the incident otherwise evince that the behavior is not substance use driven.

In determining eligibility, applicants must also have or obtain a Josephine County residence to participate in the program. Additionally, charges in another jurisdiction or state are disqualifiers, unless the assigned Deputy District Attorney coordinates with the other jurisdiction to ensure that the charges will not interfere with ability to participate in the program. Lastly, prior graduation from the Josephine County Drug Court is a disqualifier and prior termination from the program is generally a disqualifier absent a change in circumstances, change in assessment, or if justice otherwise requires.

Once in the program, the Deputy District Attorney shall continue to ensure the safety of the community and monitor the offender's progress with the program throughout an offender's participation in the program.

*ii. Josephine County Mental Health Court*

Josephine County's Mental Health Court addresses criminality in Josephine County that is caused primarily by serious and persistent mental illnesses. The assigned Deputy District Attorney should familiarize themselves with all of the Josephine County Mental Health Court's policies.

As the prosecutor assigned to the team, the Deputy District Attorney is responsible for managing referrals, evaluations, and drafting offers to qualifying offenders in a way that best incentivizes success while simultaneously protecting the community. This dual pronged approach is met by avoiding felony convictions, avoiding Department of Corrections, and/or dismissing charges upon successful completion of the program. In exchange, applicants must plea/admit to all charges where authorized by law.

Eligibility for the program is by "open referral" and anybody involved in the system or with the individual may refer the individual to the Mental Health Court Team. Once eligibility is determined, the assigned Deputy District Attorney may evaluate the individual and may make a Mental Health Court offer. In determining eligibility, the assigned Deputy District Attorney shall consider the nature of the charges, natures of the offender's history, and community safety. Sex crimes and other crimes of violence that are not caused by or as a result of the serious and persistent mental illness are disqualified. Firearms and / or cases involving the use or threatened use of firearms are generally considered disqualifiers from the program, but the Deputy District Attorney may consider whether the firearm was used, the nature of the use, and whether or not the individual was a minor participant.

In determining eligibility, applicants must also have or obtain a Josephine County residence to participate in the program. Additionally, charges in another jurisdiction or state are disqualifiers, unless the assigned Deputy District Attorney coordinates with the other jurisdiction to ensure that the charges will not interfere with ability to participate in the program.

Once in the program, the Deputy District Attorney shall continue to ensure the safety of the community and monitor the offender's progress with the program throughout an offender's participation in the program.

*iii. Josephine County Recovery Court*

Josephine County Recovery Court addresses low level and repeated criminal behavior in Josephine County where suspected mental health issues, or a confirmed mental health diagnosis are causing the behaviors. The assigned Deputy District Attorney should familiarize themselves with all of the Josephine County Recovery Court's policies.

As the prosecutor assigned to the team, the Deputy District Attorney is responsible for managing referrals, evaluations, and drafting offers to qualifying offenders in a way that best incentivizes success while simultaneously protecting the community. This dual pronged approach is met by avoiding felony convictions, avoiding Department of Corrections, and/or dismissing charges upon successful completion of the program. In exchange, applicants must plea/admit to all charges where authorized by law.

Eligibility for Recovery Court is determined by Community Corrections staff. Once eligibility is confirmed, the Deputy District Attorney may make a Recovery Court Offer. In determining eligibility, the assigned Deputy District Attorney shall consider the nature of the charges, natures of the offender's history, the offender's level of willingness to cooperate with and abide by the direction of the Recovery Court Team, and community safety.

Once in the program, the Deputy District Attorney shall continue to ensure the safety of the community and monitor the offender's progress with the program throughout an offender's participation in the program.

*g. Pre-Trial Release and Security Amounts*

Deputy District Attorneys shall be familiar with, comply with, and follow the bail schedule as set forth by the Josephine County Circuit Court. Deputy District Attorneys should be familiar with ORS 135.230 through ORS 135.290, Article I, section 14 of the Oregon Constitution, and Article I, section 43 of the Oregon Constitution.

#### IV. *Affidavit of Prejudice Against a Judge*

When a Deputy District Attorney believes that a sitting judge's prejudice against the state is such that in their estimation they should seek to disqualify a judge from hearing a case or cases, then that Deputy shall provide their reasons for their position to a Senior Deputy District Attorney or the District Attorney. Affidavits of prejudice, motions to excuse, or requests for a judge to recuse himself or herself can be filed only with the approval of the District Attorney. Affidavits of prejudice are filed by the Deputy District Attorney or the District Attorney and are typically signed by the judge being recused.

#### V. *Discovery and Record Retention*

##### a. Discovery

The Josephine County District Attorney's Office's discovery obligations are generally established by ORS 135.805 through ORS 135.825, ORS 135.845 through ORS 135.855, *Brady v. Maryland*, 373 US 83 (1963), *Giglio v. US*, 405 US 150 (1970), and Rule 3.8 of the Oregon Rules of Professional Conduct. All employees of the District Attorney's Office shall be familiar with the above obligations as well the judicial interpretations of these laws and how they apply in a specific case.

The Josephine County District Attorney's Office takes our discovery obligations very seriously. In all cases, discovery shall be provided to the defense attorney assigned to the case as soon as reasonably prudent and discovery fees are paid. In cases where the defendant is representing themselves, discovery shall be provided upon receipt of the waiver of counsel and payment of discovery fees. At any time during the pendency of a case, discovery is available for a defendant and / or a defendant's attorney to review by appointment, free of cost.

The District Attorney's Office charges fees to provide discovery in each case. The fees and fee amounts are dependent on the type of discovery, the amount of discovery, and the mediums on which discovery is provided. These fees shall be in line with other discovery fees around the state and a periodic analysis of other District Attorney Office fee schedules is necessary to ensure our fee schedule remains comparable. The fees are flat rate fees rather than per page fees because flat rate fees save staff time as well as defendant/attorney money in larger files.

As standard practice, discovery is provided as soon as reasonably practicable and payment is anticipated/expected within thirty days. However, at the discretion of the Chief Administrative Supervisor based on a defense attorney's history of non-payment, delayed payment, or incomplete payment, the Chief Administrative Supervisor may designate a defense attorney as a "pre-pay" attorney. In all "pre-pay attorney" cases, discovery shall be provided as soon as reasonably prudent after receipt of payment in full.

b. Record Retention

All of the Josephine County District Attorney's Office records must be maintained in compliance with the Records Retention and Destruction Schedule that is published by the Secretary of State and is outlined in OAR 166-150-0095.

As an office dependent on public trust, the Josephine County District Attorney's Office is committed to transparency to the public it serves. As such, Public Records Requests will be processed in a timely and reasonable manner. If the law or a court order necessitates the requested records remaining confidential, the District Attorney or designee of the District Attorney shall ensure that the records remain confidential if and until no longer required.