

# DESCHUTES COUNTY DISTRICT ATTORNEY POLICY MANUAL



Deschutes County District Attorney: Steve Gunnels

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## Introduction

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The primary responsibility of Deputy District Attorneys is to seek justice by fair and equal application of the law with the goal of making our community as safe as possible. This policy manual is intended solely for the guidance of prosecutors in the Deschutes County District Attorney's Office (hereinafter "DA's Office" or DCDA) and is not intended to create substantive or procedural rights or benefits for any person. These policies are intended to supplement the existing rules of ethical conduct and should be construed in such a way that they are consistent with existing law and applicable rules of ethical conduct. Standards, policies and procedures may change by directive of the Deschutes County District Attorney or a member of the District Attorney's Supervision Team at the direction of the District Attorney; any such change will supersede this written document.

These policies are intended to supplement the DCDA procedures and Deschutes County Personnel Rules.

DCDA incorporates and recognizes the Deschutes County values of Integrity, Accountability and Respect, Professionalism in Public Service, Effective and Efficient Use of Resources, Safe and Enjoyable Workspace.

### **DCDA Mission Statement:**

***It is the mission of the Deschutes County District Attorney's Office to seek justice, advance public safety and uphold the law. We strive to maintain public trust and serve the people of Deschutes County with fairness, integrity and honor.***

This mission is enhanced by our commitment to community collaboration. In pursuit of these goals, DDAs are involved with in-service training of law enforcement, review of search warrants prior to execution, and community outreach and education.

## How We Treat One Another

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Deschutes County District Attorney employees are honest, fair and respectful of others. Staff members acknowledge and respect the fundamental rights, dignity and worth of all people. They respect the rights of individuals to privacy, confidentiality, self-determination and autonomy, mindful that legal and other obligations may lead to operational challenges with the exercise of these rights.

Staff are valued and seen as having something important and unique to contribute. We treat all people with kindness, warmth and dignity. We honor and make room for everyone's ideas and opinions and believe every person is equally capable of contributing to the success of the office and our shared mission. When conflicts occur, we attempt to resolve these conflicts and to perform our roles in a responsible fashion that avoids or minimizes harm. We are sensitive to real and ascribed differences in power between ourselves and others, and we do not exploit or mislead other people during or after professional relationships.

## How We Treat Customers

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For the Deschutes County District Attorney's Office, a customer can be considered a defendant, victim, witness, attorney or any other person who contacts the office. We treat customers with kindness, warmth and dignity. We are sensitive to the real and ascribed differences in power between ourselves and others, and we do not exploit or mislead other people during or after professional relationships.

It is important that we provide a positive experience for the customer, when at all possible. When contacting customers, we will be clear and honest in our communication and following through on expectations set. In our work, there are frequent changes. All changes should be communicated with as much advanced notice as possible to respect everyone's schedule.

## Diversity, Equity, and Inclusion

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The Deschutes County District Attorney's Office is committed to diversity, equity, and providing a healthy, productive, safe and inclusive environment for staff and customers alike. The Deschutes County District Attorney's Office shall function with cultural and linguistic competency that responds effectively to the needs and differences of all individuals, based on their race, sex, age, physical or mental status, sexual orientation, gender identity, abilities, immigration status, and ethnic or cultural heritage. We recognize a shared responsibility to create and maintain a respectful environment for the benefit of all customers and staff. We commit to working across differences, dedicate ourselves to continual learning, strive to remove barriers to collaboration and agree to evaluate our progress toward a safe, healthy, and inclusive environment.

## Standards for a Prosecutor

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**Professionalism:** A prosecutor shall conduct themselves with a high level of professionalism and integrity in all professional relationships, both in and out of court. A prosecutor shall comply with the Rules of Professional Conduct adopted under ORS 9.490. Appropriate behavior includes, but is not limited to, the following:

**Candor:** A prosecutor shall act with candor, good faith, and courtesy in all professional relations.

**Confidentiality:** Any employee, contractor, or volunteer at DCDA who accesses or handles confidential information shall maintain confidentiality at all times. Criminal Justice Systems (CJS) or related information (CJI) may not be accessed for any purpose other than the performance of assigned work.

**Integrity:** A prosecutor shall act with integrity in all communications, interactions and agreements with members of the DCDA, opposing counsel, the court, members of the public and law enforcement.

**Discretion:** A prosecutor should not publically express personal animosity toward the judiciary, opposing counsel or law enforcement regardless of personal opinion.

**Respect:** A prosecutor should at all times display proper respect and consideration for the judiciary, the defense bar and law enforcement.

**Punctuality:** A prosecutor should be punctual for all court appearances. When absence or tardiness is unavoidable, prompt notice should be given to the court and opposing counsel. "Punctual" means arriving at least 5 minutes before the start of the scheduled court appearance.

**Dignity:** A prosecutor should conduct himself or herself with proper restraint and dignity throughout the course of all proceedings and contacts related to those proceedings. Disruptive conduct, as well as excessive or unnecessary argument, is always improper. Disruptive conduct includes name calling, profanity, threats, yelling or any conduct unbecoming a prosecutor.

**Consideration:** A prosecutor should treat witnesses fairly and professionally and with due consideration. A prosecutor should not engage in a line of questioning intended solely to abuse, insult or degrade any witness. Examination of the credibility of a witness should be limited to legally permitted impeachment techniques.

**Fairness:** A prosecutor should avoid obstructive and improper tactics. Examples of such tactics include, but are not limited to, knowingly making frivolous objections, or making objections for the sole purpose of disrupting opposing counsel; attempting to proceed in a manner that is obviously inconsistent with a previous ruling of the court; attempting to ask clearly improper questions; attempting to introduce clearly inadmissible evidence; engaging in delay tactics; or creating or taking unlawful advantage of prejudicial or inflammatory arguments or publicity.

**Respect for the Sanctity of the Courtroom:** A prosecutor should appear in court in appropriate attire. Casual clothing and footwear are not permitted for court appearances. A tie is required for men with a blazer or suit jacket. Women may not appear in sleeveless attire. Unless permission is granted by the Presiding Judge, hats shall not be worn in court. Cell phones and electronic devices may only be used in courtrooms for professional purposes with the permission of the court whether or not the prosecutor is at counsel table or in the gallery.

**Responsibilities of the Prosecutor:** A prosecutor is an independent administrator of justice. The primary duty of the prosecutor is to seek justice. A prosecutor shall abide by all applicable provisions of the rules of ethical conduct in Oregon. A prosecutor is obligated to respond to professional misconduct that has the potential to interfere with the proper administration of justice.

**Confidentiality:** A prosecutor shall keep prosecution information confidential and may not access Criminal Justice Information Systems (CJIS) or related information for any purpose other than performance of their assigned work.

**CJIS Compliance:** DDAs shall comply with all CJIS testing and requirements.

**No Conflicts of Interest:** A DDA should not hold an interest in or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of a conflict with the duties and responsibilities of the District Attorney's office.

**Self-Reporting Criminal Conduct:** If a prosecutor has knowledge that they are the subject of a criminal investigation, or they are arrested or cited for any crime, the prosecutor shall immediately report to the DA or a CDDA.

**Observation of Work Hours:** A prosecutor is present for work and engaged in work responsibilities every weekday unless otherwise scheduled.

**Attendance:** A prosecutor is regularly in attendance which is important to keep the team operating effectively, as well as to keep work quality high and consistent. A prosecutor

provides notice as soon as possible of TML requests and considers obligations and impact of schedule before making the request.

**Grooming and Dress:** A prosecutor dresses business casual or in court appropriate attire in accordance with department standards for court and Grand Jury. Prosecutors are required to have court appropriate attire at all times and must be prepared to promptly change and report to court or Grand Jury as needed.

**Compliance with Rules:** Prosecutors are aware of and compliant with all relevant laws, rules, regulations, ethical obligations, policies and procedures.

**Safety Practices:** A prosecutor observes established safety rules and uses common sense and reason, erring on the side of safety, when a specific rule does not apply.

**Co-worker Contacts:** A prosecutor communicates effectively, honestly and professionally with other prosecutors and staff of all levels. A prosecutor is able to work as a member of a group and demonstrate professional respect and discretion. A prosecutor is able to work with a variety of personalities and does not distract others from their work.

**Knowledge of Work:** A prosecutor demonstrates knowledge of policies and procedures and accomplishes their tasks in a satisfactory and timely manner with little direction.

**Work Judgment:** A prosecutor is able to make consistent and reliable judgments without constant supervision and demonstrates the capability of making appropriate decisions independently. A prosecutor uses discretion and common sense in all decision-making.

**Planning and Organizing:** A prosecutor takes time daily to plan and organize tasks to maximize productivity, while maintaining flexibility needed to address urgent matters

**Quality of Work:** A prosecutor's job duties are accurately, thoroughly and timely completed. Work is professional and correct and is consistent with the norms and practices and policy and procedures of the office.

**Volume of Acceptable Work:** A prosecutor demonstrates knowledge of skills and duties required to complete all job tasks, manages and organizes workload to consistently complete job responsibilities, and demonstrates a strong work ethic by staying focused, staying motivated, finishing responsibilities and helping others.

**Meeting Deadlines:** A prosecutor, through organization and planning, completes all assigned duties on time with minimal supervision. A prosecutor assists other prosecutors in meeting difficult deadlines.

**Work Coordination:** A prosecutor maintains a smooth flow of work and coordinates with others as a team, producing reliable work product upon which others may rely. When an obstacle or issue arises, the prosecutor will use common sense to overcome the obstacle or resolve the issue in an effective and timely manner. This may include asking for help or direction from others.

**Accepts Responsibility:** A prosecutor takes ownership in the success of the office and accepts responsibility for oneself and their contribution as a team member, and admits mistakes and informs others when one is not able to meet a commitment.

**Accepts Direction:** A prosecutor respects and acts on direction from the District Attorney, supervisors and team leads; a prosecutor follows policies and procedures, as directed. A prosecutor communicates professionally through appropriate channels and chain of command.

**Accepts Change:** A prosecutor is ready to take on new tasks as needed. A prosecutor supports new ideas, goals and working methods within the office. A prosecutor works respectfully with others and offers support to accomplish desired goals. A prosecutor is open to feedback that ensures better performance in all tasks.

**Effectiveness under Stress:** A prosecutor is able to perform under rapidly changing situations or emergencies without compromising their professionalism or distracting others from their own work. A prosecutor takes advantage of training, support systems and supervisors to seek help when the prosecutor is having difficulty managing stress.

**Reporting Prosecutorial Misconduct:** When a prosecutor has knowledge of misconduct or incompetence by another prosecutor, or themselves, in the Deschutes County District Attorney's Office, he or she shall report that information to a Chief Deputy or the District Attorney. When the misconduct or incompetence involves the conduct of a prosecutor from another prosecutorial entity and it has the potential to interfere with the proper administration of justice, the DDA shall report that information to a Chief Deputy or the District Attorney.

**Opportunity for Interns and Externs:** DCDA recognizes the value of allowing law school, graduate, and college students' access to hands-on learning. To the extent possible, and putting the needs of the office first, DCDA will endeavor to participate in formal and informal intern and extern programs. DCDA will comply with the Fair Labor Practices Act. Externs who receive class credit from their law school will be considered for volunteer or paid positions, depending on the needs of the office. Law students appearing under the Oregon Supreme Court Law Student Appearance rules shall be assigned a supervising attorney by the District Attorney or a Chief Deputy. The



supervising attorney and any prosecutor working with a Law Student shall be familiar with and enforce compliance with the rules of the Law Student Appearance Program as required by Rule 13.30 of the Program. Activities of the law student shall be limited to those allowed by the program.

**Limited Duration and Temporary Policies:** The District Attorney will be required to issue limited duration and temporary policies; those policies will be maintained separately from the Policy Manual unless and until the District Attorney determines it is appropriate to incorporate them into the manual.

**Care and respect for DCDA Resources:** The prosecutor shows respect for the resources provided to the prosecutor to complete their work. The prosecutor demonstrates good judgment by respecting policies and procedures for the use and care of equipment and compliance with CJIS and other rules.

## Relations/Collaboration

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**Other Prosecutorial Entities:** In recognition of their mutual goal of serving the interests of justice, the District Attorney will cooperate with other federal, state, military, tribal and local prosecutorial entities in the investigation, charging, dismissal, or prosecution of cases that may be of common concern to their respective offices and in the interest of justice.

**Information Sharing:** Where practical, lawful and in the interest of justice, the District Attorney will share resources and investigation information with other prosecutorial entities.

**Oregon Attorney General:** The office of the District Attorney and the office of the Oregon Attorney General, while separate and distinct entities, should cooperate whenever practicable in the furtherance of justice.

**Community-Based Programs:** Prosecutors should be cognizant of and familiar with all community-based programs to which offenders may be sentenced, referred as a condition of probation, or referred as a diversionary disposition.

**Law Enforcement:** The District Attorney recognizes the importance of a positive working relationship with Law Enforcement and continues to maintain communications between DCDA and law enforcement agencies. The District Attorney's Office accepts that as part of its role in the criminal justice system, we have a duty to train and advise law enforcement on the law and our expectations for investigations and report writing.

**Jail/Prisons:** Prosecutors should be cognizant of, and familiar with, all penal facilities located within Deschutes County and Oregon. DCDA should be available as a source of information for prisons and jails and their intake divisions. The DCDA should assist in the identification of multiple and career offenders.

**Court and Judges:** Prosecutors are administrators of justice, advocates and officers of the court. As such, the prosecutor shall seek justice, not solely convictions. In court and elsewhere, the prosecutor shall continually seek to reform and improve the administration of justice.

**Courthouse Security:** The District Attorney's Office will work with the Deschutes County Trial Court Administrator to achieve efficiencies with court processes and courthouse security.

**Suspects and Defendants:** A prosecutor should respect a suspect's and defendant's constitutional right to the assistance of counsel. A prosecutor should also take steps to ensure that those persons working at his or her direction respect a suspect's and defendant's constitutional right to the assistance of counsel. Notwithstanding the foregoing: A prosecutor may communicate with, or assist others in communicating with, a defendant or suspect in the absence of his counsel when either (1) counsel has consented to the communication or (2) the communication is authorized by law or court rule or order.

**Social Media:** Prosecutors must be vigilant about their use of social media. Social Media use should be limited to personal time and not used during work hours. Prosecutors should be wary of inadvertent communication with defendants via social media and compliance with CJIS rules, including the posting of images.

**Defense Counsel:** DDAs shall comply with the Oregon Rules of Professional Conduct in their relations with defense counsel at all times. The prosecutor should attempt to maintain a uniformity of fair dealing among different defense counsel. In all contacts with members of the defense bar, the prosecutor should strive to preserve proper relations by responding promptly to communications, and cooperating with defense counsel to the extent possible within the bounds of their respective roles and ethical duties.

**Timeliness:** Prosecutors should respond promptly to voice messages, emails and requests for positions for filing of motions from defense counsel. Compliance with victims' rights and other obligations shall not be compromised for a timely response, but a prosecutor shall advise defense counsel if a delay is expected. The prosecutor shall make timely disclosure of exculpatory or mitigation evidence, as required by law and/or applicable rules of ethical conduct. If a prosecutor is going to be out of the office for more than a

day, a Team Lead or another prosecutor should be identified as a point of contact. The point of contact should be included on the voicemail message and an automated email reply.

**Cooperation with Defense Counsel:** Bearing in mind the adversarial nature of the relationship and the often competing interests of the parties, the prosecutor should cooperate with defense counsel at all stages of the criminal process to ensure the attainment of justice and the most appropriate disposition of each case. The prosecutor need not cooperate with defense demands that are abusive, frivolous, or made solely for the purpose of harassment or delay.

**Criminal Conduct and Ethical Misconduct:** If a DDA develops reasonable suspicion of criminal conduct by defense counsel, the DDA shall report their concerns to the CDDA or DA immediately. When a DDA has knowledge of ethical misconduct by defense counsel that raises a substantial question as to the attorney's fitness to practice law, the prosecutor shall report such conduct to the CDDA or the DA. A prosecutor who has knowledge of ethical misconduct by defense counsel which raises a substantial question as to the attorney's fitness to practice law should report such conduct directly to the Oregon State Bar Association or ensure that the CDDA or the DA has done so. When such misconduct occurs during the course of litigation, the prosecutor should also report it to the judge presiding over the case, and may seek sanctions as appropriate. When the prosecutor reasonably believes that defense counsel has engaged in misconduct, remedial efforts should be directed at the attorney and not at his or her client. The prosecutor should at all times make efforts to ensure that a defendant who is not involved in misconduct is not prejudiced by the unlawful or unethical behavior of his or her attorney.

**Victims:** The District Attorney recognizes the importance of respecting the rights of victims of crime. Equally important, the District Attorney recognizes that providing accurate and timely information to victims and answering victims' questions may assist in reducing the impact and trauma of crime.

**Assisting Victims:** Prosecutors should assist victims, to the extent possible under the law, with the return of property, restitution, coordination of appearance in court with employers and/or school, transportation, and lodging. To the extent possible, DDAs should work to reduce inconvenience and anxiety for victims of crime and provide realistic expectations about the process of criminal prosecution.

**Working with DCDA Victim Advocates:** Victims of crime should be informed of all important stages of the criminal justice proceedings to the extent they request or as

required by law. The DDA shall work with the Deschutes County Victims' Assistance Program to ensure victims' needs are being met in a timely manner. Victim contact, information and notifications should be documented in PbK.

**Defense Investigator Contact with Victims:** The prosecutor shall not advise a witness or victim to decline to respond to inquiries from the defense. The prosecutor may advise a witness that they are not required to provide information to the defense outside of court and the prosecutor may also inform a witness of the implications and possible consequences of providing information to the defense, as well as the ability to have a member of our office present during any discussion with a defense investigator.

**Victims Represented by Counsel:** When the prosecutor is informed that a victim has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of-court contacts with the witness regarding the subject of that proceeding through the attorney representing the witness.

**Compensation of Victims:** DCDA should not compensate a victim for giving testimony, but it is not improper to reimburse an ordinary witness (including a victim) for the reasonable expenses of attendance upon court, attendance for hearings pursuant to statute or court rule, or attendance for pretrial interviews. Payments to a witness may be for transportation and lodging, provided there is no attempt to conceal the fact of reimbursement. Expert witnesses are to be compensated for their time at a rate approved by the CDDA or the District Attorney and the amount of compensation shall not be concealed, but shall be disclosed to defense counsel in a timely manner.

**Victim Safety:** DCDA will work with victims and our community partners to make victim safety a priority. Specifically, the DDA will encourage victims to engage in safety planning with the Victims Assistance Program when appropriate. The DDA shall be mindful of witnesses' safety and sense of security at all times. Necessary accommodations should be made to make witnesses feel safe and secure.

**Witnesses:** The District Attorney recognizes the importance of supporting witnesses of crime. The support of community members who witness criminal conduct in holding offenders accountable is important to the DCDA. Equally important, the District Attorney recognizes the importance of being respectful of witnesses' time, answering their questions and assisting them when possible by accommodating their schedules.

**Informing Witnesses:** The prosecutor should keep witnesses informed of all pre-trial hearings which witnesses may be required to attend, trial dates and the scheduling of witnesses' appearances.

**Witness Safety:** The DDA shall be mindful of the witnesses' safety and sense of safety at all times. Necessary accommodations should be made to make witnesses feel safe and secure.

**Witnesses Represented by Counsel:** When the prosecutor is informed that a witness has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of-court contacts with the witness regarding the subject of that proceeding through legal counsel.

**Witness Rights:** A prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to counsel whenever the law so requires. It is also proper for a prosecutor to so advise a witness whenever the prosecutor knows or has reason to believe that the witness may be the subject of a criminal prosecution in some way implicated by the subject of the witness' expected testimony. However, a prosecutor should not so advise a witness for the purpose of influencing the witness in favor of or against testifying.

**Witness preparation:** The prosecutor shall not advise or assist a witness to testify falsely. The prosecutor may discuss the content, style, and manner of the witness' testimony, but should at all times make efforts to ensure that the witness understands his or her obligation to testify truthfully.

**Witness Compensation:** DCDA should not compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse an ordinary witness for the reasonable expenses of attendance upon court, attendance for hearings pursuant to statute or court rule, or attendance for pretrial interviews. Payments to a witness may be for transportation and lodging, provided there is no attempt to conceal the fact of reimbursement.

**Expert Witnesses:** When a prosecutor determines that the testimony of an expert witness is necessary, the independence of the expert should be respected and if it is determined that a fee be paid to an expert witness, the fee should be reasonable and should not depend upon a contingency related to the outcome of the case. The approval of the CDDA or the District Attorney is required before securing an expert witness.

**Expert Witness Opinion:** A prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, the prosecutor should explain to the expert his or her role in the trial as an impartial expert called to aid the fact finders and the manner in which the examination of witnesses is conducted.

**Expert Witness Fees:** A prosecutor should not pay an excessive fee for the purpose of influencing the expert's testimony or to fix the amount of the fee contingent upon the testimony the expert will give or the result in the case.

**Material Witness Warrant Policy:** ORS 136.608 – 136.614 authorize the arrest and detention of certain witnesses when necessary to secure their testimony at trial. A DDA shall receive permission from a Team Supervisor or Chief Deputy before issuing or declaring their intent to issue a Material Witness warrant. Material Witness warrants will only be approved in cases where the potential for a person not charged with a crime to be detained in-custody is warranted by the severity of the charges, the importance of the witness, the circumstances of the witness, and the risk to community safety if the Material Witness warrant is not sought.

Whenever a material witness warrant is issued at this office's request, the case DDA will closely monitor the case and ensure that he or she is notified by law enforcement when the witness is arrested. Upon the arrest of a witness, the case DDA will promptly update the Supervisor who approved the Material Witness warrant and the CDDAs. At the initial appearance, the DDA will request that counsel be appointed for the witness and that a status hearing be set on docket within 5 judicial days.

If a material witness is held in custody longer than 10 days, the case DDA will send an e-mail to the CDDA and the approving Supervisor.

**Media:** The District Attorney will seek to maintain a relationship with the media that will facilitate the appropriate flow of information to and from the public. An appropriate and professional relationship with the media is necessary to promote public accountability and transparency in government while complying with all legal and ethical obligations.

**District Attorney and the Media:** The District Attorney is the primary point of contact for the media.

**DDA Responsibility:** DDAs shall keep the District Attorney informed of matters they reasonably believe may be of importance to the media and the public. DDAs should defer to the District Attorney when contacted by the media, unless the inquiry is related to the date and time of a future appearance.

**Timeliness:** DDAs shall respond to media requests about court appearances (date and time) in a timely manner. All other inquiries shall be forwarded to the DA and the Executive Assistant to the DA immediately upon receipt.

**Deschutes County Board of County Commissioners & County Administrator:** The District Attorney will cooperate with his or her funding entity, the Deschutes County Board of County Commissioners (BOCC), by providing an assessment of resources needed to effectively administer the duties of the office.

**Primary Point of Contact:** The DA is the primary point of contact for the BOCC and the County Administrator.

**Public/Community Members:** The District Attorney encourages the formation and growth of community-based organizations interested in criminal justice, crime prevention, and the punishment and rehabilitation of offenders.

**Public Records Requests and Records Requests:** The District Attorney or the appointed designee is responsible for reviewing Public Records Requests.

**Non-Governmental Entities:** In all dealings with a non-governmental entity, the District Attorney should place the public interest above all other considerations.

## On-Call Policy

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**Purpose:** This procedure outlines the guidelines and steps that staff members of the Deschutes County District Attorney's Office must follow when they are on-call. The objective is to ensure effective and timely response to emergencies and urgent matters while maintaining a professional and ethical standard of conduct. It is emphasized that during on-call periods, employees must refrain from consuming alcohol while performing on-call duties.

**Scope:** This procedure applies to all personnel within the District Attorney's Office who are designated for on-call responsibilities.

**On-Call Rotation:** On-call staff members will be assigned to rotating on-call schedules as determined by the office management.

The duration of each on-call period and the rotation schedule will be communicated in advance to all staff members involved.

**Contact Information:** On-call staff members, in some rotations, will be provided an on-call phone as their main source of contact. Alternate contact information should be provided in case the on-call staff member becomes unreachable due to unforeseen circumstances.

Those on-call staff members who use alternate forms of communication (e.g. personal cellphones), will provide accurate and up-to-date contact information, including phone

numbers and email addresses.

**Responsibilities and Expectations:** On-call staff members are expected to respond promptly to emergency requests, urgent matters, and any communication from law enforcement agencies, courts, or other relevant parties.

On-call personnel must assess the situation, provide appropriate legal guidance, and determine the necessary course of action in consultation with management if required. During on-call periods, on-call staff members must abstain from consuming alcohol to ensure they are fully capable of responding professionally and effectively to emergencies.

**Communication Protocols:** Law enforcement agencies and other parties requiring assistance during on-call hours will follow established communication protocols to initiate contact with on-call staff members.

If an on-call staff member is unavailable or unreachable, there should be clear guidelines on how to escalate the matter to a designated backup contact.

**Documentation and Reporting:** On-call staff members are responsible for documenting all actions taken, decisions made, and communications during the on-call period. Detailed notes should be kept and entered into Karpel, if applicable, and any significant events or incidents must be reported to the appropriate supervisor or manager as soon as possible.

**Compensation and Reimbursement:** Any compensation or reimbursement for on-call duties, if applicable, will be processed according to the office's and county's established policies and procedures.

**Training and Resources:** On-call staff members will have access to necessary training, resources, and reference materials to support them in effectively handling emergency situations.

The training may include guidance on maintaining professionalism, ethical conduct, and appropriate decision-making while on-call.

**Compliance and Accountability:** Compliance with this on-call procedure is mandatory for all staff members.

Failure to comply with this procedure or engaging in behavior that compromises the ability to perform on-call duties may result in appropriate disciplinary action.

**Review and Revision:** This on-call procedure will be subject to periodic review and revision to ensure its continued effectiveness and relevance.



**Approval and Acknowledgment:** All staff members designated for on-call responsibilities must acknowledge their understanding and agreement to adhere to this procedure.

Supervisors and management will provide the necessary approvals.

By adhering to this on-call procedure, staff members of the Deschutes County District Attorney's Office, including the Victims' Advocate Division, contribute to maintaining the highest standards of professionalism, responsiveness, and ethical conduct while fulfilling their crucial roles during on-call periods.

## DA IT/Information Services

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**Overview:** The purpose of this policy is to establish acceptable and unacceptable use of electronic devices and network resources at the DCDA in conjunction with its established culture of ethical and lawful behavior, openness, trust, and integrity. The DCDA provides computer devices, networks, and other electronic information systems to meet missions, goals, and initiatives and must manage them responsibly to maintain the confidentiality, integrity, and availability of its information assets. This policy requires the users of information assets to comply with DCDA policies and protects the DCDA against damaging legal issues. Attorneys shall comply with the following IT/Information Services Policies: Scope; Personal Incidental Use; Policy Statement; Computing Assets; Network Use; Internet Use; Prohibited Electronic Communications; Information Security; Limits of Acceptable Use; Reference FBI; Enforcement; Definitions; Password Policy; CJIS Policy Compliance; Privacy Policy; Prosecutor by Karpel (PbK) Case Management Policy. The individual DA IT/Information Services Policies are included in the appendix and are incorporated by reference herein. All electronic communications related to DA work must be conducted on DA equipment with DA accounts to maintain the public records of our work.

**Applicability:** It is the policy of the Deschutes County District Attorney's Office that every user who is authorized to access any electronic device within the District Attorney's Office computer systems, hereinafter called Computer Resources, abide by the following policies and procedures.

**Prosecutor by Karpel (PbK) Case Management Policy:** It is the policy of the Deschutes County District Attorney's Office that a single case record exists in PbK for every type of record entered into PbK, to include but not limited to: criminal cases, death investigations, referrals, juvenile matters and civil commitment matters. This practice will ensure an accurate statistical representation of our workload.

**Remote Access Policy:** It is the policy of the Deschutes County District Attorney's Office that all methods of remote access to the information system be managed through

various logging and documentation methods.

**Requirement:** This policy is implemented to meet the compliance requirements of FBI CJIS section 5.5.6 (version 5.9).

**Storage Policy:** Storage of any DCDA data on a non-DCDA owned device is strictly prohibited unless agency has established and documented the specific terms and conditions for system usage. Publically accessible computers are prohibited from both accessing and storage of CJ, including but not limited to: hotel center computers, convention computers, library computers, public kiosk computers, etc. All users are expected to comply with DCDA policies while accessing DCDA systems remotely. Users will only use approved remote access solutions to connect remotely to DCDA systems. All users remotely connecting to DCDA systems shall only utilize the resources for which they have been granted permission and rights to use.

**Enforcement:** Any person found to have violated this policy may be subject to disciplinary action, up to and including termination of employment. Deliberate, unauthorized disclosure of confidential information may result in civil and/or criminal penalties.

**Mobile Devices:** In accordance with policy Area 13 of FBI CJIS (version 5.9), cell phones (i.e. bring your own device [BYOD]) are authorized, they shall be controlled in accordance with this policy and subject to be added to an MDM platform if used to store or transmit agency data.

**Register to be kept (ORS 8.700):** PbK is the primary register of the Deschutes County District's Attorney's Office. All DCDA employees shall comply with PbK policies and procedures. Records delivered to the reception area/front desk will be provided to the District Attorney and log of those items will be maintained by the Executive Assistant to the District Attorney.

**Booking Images:** Booking images are available to view for DCDA in the context of security and prosecution only. Booking photos are not to be accessed, copied or disseminated for any other purpose. Improper access or duplication is prohibited and is inconsistent with the Mission Statement of DCDA.

## Prosecution Involvement in Law Enforcement Investigations

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**Investigations:** The Deschutes County District Attorney has the discretionary authority to initiate investigations of criminal activity in Deschutes County. The exercise of this authority will depend upon many factors, including adherence to our mission statement, what justice requires, adequacy of law enforcement agencies' investigation

in a matter and public safety priorities.

**Law Enforcement:** A prosecutor ordinarily relies on police and other investigative agencies for investigation of alleged criminal acts, but the prosecutor has an affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.

**Responsibility:** A prosecutor is ultimately responsible for evidence that will be used in a criminal case. A prosecutor who knows or who is aware of a substantial risk that an investigation has been conducted in an improper manner, or that evidence has been illegally obtained by law enforcement, must take affirmative steps to investigate and remediate such problems.

**Integrity:** A prosecutor should not knowingly obtain evidence through illegal means, nor should the prosecutor instruct nor encourage others to obtain evidence through illegal means.

**Prohibition of Profiling Policy and Complaint Procedure:** 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. If a member of the public believes that they have been subjected to profiling by any person affiliated with the Deschutes County District Attorney's Office, the member of the public may file a complaint with the Deschutes County District Attorney's Office via the following methods: in person by visiting the main office, 1164 NW Bond St, Bend, OR 97703; or in writing, signed by the complainant, and delivered by hand, postal mail, facsimile ((541)- 330-4691), e-mail ([info@dcda.us](mailto:info@dcda.us) );or by telephone ((541)-385-1717). Telephonic reports may be made anonymously or through a third party. 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](mailto:lecc@psu.edu) ) ATTN: CCJ-JUST P.O. Box 751 Portland, OR 97204. Upon receipt of a complaint alleging profiling, a designated member of the 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*).

**DA Investigator:** The District Attorney's Investigator is a sworn officer with full police power serving only in the interest of protecting the safety of themselves or the public. They may assist with case preparation, supplement law enforcement investigations, conduct original investigations, apply for and execute search warrants, and carry out other duties as assigned by the District Attorney or CDDA.

**Domestic Violence Investigator:** The Domestic Violence Investigator is a sworn officer with full police power serving only in the interest of protecting the safety of themselves or the public. The DVI is a grant-funded position through the Office on Violence Against Women and is available to assist on Intimate Partner related Domestic Violence crimes. Follow-up assistance is initiated through a DVI request form in PbK and may consist of additional interviews of victims/witnesses; follow-up evidence collection and/or photograph documentation, reviewing jail calls, witness/victim location, and other duties as may be assigned within the scope of the grant.

**DDA Assistance:** DDAs may assist in law enforcement investigations and should advise the police on the legal aspects of criminal investigations.

**Applications for Wiretaps:** Prosecutors may further assist in law enforcement in seeking applications for wiretaps to aid an investigation. Only the elected District Attorney may apply for a wiretap order.

**SB111 /Use of Deadly Physical Force Investigations:** The District Attorney takes the lead in officer use of deadly physical force investigation and in doing so, will comply with all of the requirements of Senate Bill 111 and Deschutes County's MOU and standard operating procedures created to comply with this law.

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

## The Charging Decision

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**Policy:** The process of determining and initiating criminal charges is the responsibility of the prosecuting attorney. The prosecuting attorney will determine what charges will be filed, how many charges will be filed, and how charges will be presented.

**Capturing the Nature of the Criminal Conduct:** The prosecuting attorney also has a responsibility to see that the charge selected adequately describes the offense or the offenses committed and provides for an adequate sentence for the offense or offenses. Charging shall be consistent with ethical standards for prosecutors and the duty to seek justice.

**Burden of Proof:** The standard for whether to file criminal charges will normally be based primarily upon the existence of admissible, reliable evidence to prove beyond a reasonable doubt that a crime was committed. Criminal charges will normally be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a conviction by a reasonable and objective fact-finder. This standard is intended to direct the prosecuting attorney to charge those crimes which adequately demonstrate the nature and seriousness of a defendant's criminal conduct.

**Declines:** The prosecuting attorney may decline to prosecute if there is insufficient evidence to sustain a prosecution. A prosecuting attorney may decline to prosecute even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law. The decision to decline a case should be documented with the completion of the case summary and a reason for the decline that provides sufficient information for supervisors, law enforcement, and the public to understand the reasoning. Declines should not be used to circumvent prosecution responsibility or policies and procedures. Cases should not be initiated and filed for the purpose of dismissing them.

**Documentation of Decline:** The DDA should record the reasons for declining a prosecution in PbK.

**Intake Philosophy:** The Deschutes County District Attorney's Office is responsible for enforcing Oregon law in a manner which maximizes public safety, respects individual rights, and serves justice. To that end, we will endeavor to charge and advocate for punishment in a manner which treats similarly situated defendants similarly. As a general rule, charging decisions should be made in a way which emphasizes protection of the community and offender accountability and will promote a just result, consistent with the applicable law. Within that general context we must also consider such things as the strength of the state's case, any aggravating or mitigating information in the defendant's background, input from the victim, input from the investigating agency, and any other appropriate information the assigned prosecuting attorney considers relevant.

**Mental Disease or Defect Defense:** A prosecutor shall not enter into a stipulation finding a person Guilty Except for Insanity (GEI). This policy does not preclude, with the approval of the DA or CDDA, a stipulation to the facts of the case and any medical or psychiatric reports, but the ultimate decision in such a matter shall be made by the trier of fact.

**On-going Obligation:** The prosecutor should attempt to gather all relevant information that would aid in rendering a sound screening decision. We should take steps to ensure that other government and law enforcement agencies cooperate in providing the prosecutor with such information. The prosecutor has a continuing duty to evaluate the case when new information is learned.

**Timely Intake:** The timely review of intake is a priority of the District Attorney.

**Prosecutor responsibilities:** Compliance with PbK Procedures: to ensure consistency and efficiency, DDAs shall comply with the PbK Intake procedures, including correctly identifying victims and witnesses; Entering Prior Convictions (DDAs should not include prior probation violations as these are not “convictions”); Reviewing and updating the case flags; Completing a Case Summary and Release Recommendations; accuracy of charges to include location, modifiers, enhancers, joinder and other factors.

**Re-Issuance of Charges After Dismissal:** A DDA has an on-going obligation to evaluate criminal charges. If a charge is filed after being dismissed without prejudice, the prosecutor shall notify the defendant, or his or her attorney if known, of the charges with a letter to appear unless a letter to appear would be contrary to justice or community safety.

**Prosecutor Not Ready for Trial:** All cases dismissed pursuant to ORS 136.120 (prosecutor not ready for trial) shall be reviewed for re-issuance by the District Attorney, or the Chief Deputy District Attorney. In evaluating whether to re-file previously dismissed charges, the standards set out in this policy for intake of criminal charges shall apply, evaluated in the light of any information learned during the previous pendency of the case.

**Victim Notification:** If there is a victim identified in a case that is declined for prosecution, a decline letter should be created and sent to the victim. The prosecutor should promptly respond to inquiries from those who are directly affected by a declination of charges. The victim notice of decline template is in the filing cabinet.

**Property Crimes General philosophy:** The general intake philosophy set out above is expanded upon in property crimes with the details contained in this section. Aggregation sentencing modifications and enhancements should be avoided if it reduces community protection or offender accountability.

## Charging Theft, Identity Theft and Forgery

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**Theft, Identity Theft and Forgery:** Oregon law provides for various classifications of theft, with both the crime seriousness and the potential punishment reflecting a balancing of numerous public policy considerations.

**Mandatory Minimums:** Oregon sentencing provisions, including the Oregon Sentencing Guidelines and ORS 137.717, recognize the appropriateness of setting offender punishment based upon a variety of considerations, including but not limited to such things as the offender's prior record, the type of property stolen, the status of the victim, the value of the property, any evidence of ongoing theft activity and the victimization of multiple victims.

**Aggregation:** ORS 164.115(5) allows for single theft transactions to be added together if the thefts were committed against multiple victims by similar means within a thirty (30) day period or against the same victim or joint owners within a 180-day period. This provision can, under certain circumstances, increase community safety and offender accountability and punishment. However, under different circumstances aggregation can have the opposite effect. As a general rule, separately chargeable offenses should be aggregated under ORS 164.115(5) only where it increases community protection by increasing potential offender accountability and punishment. Consideration may be given to the Felony Sentencing Guidelines (FSG) thresholds for various levels of Crime Seriousness (CS) based on monetary amounts applicable to different levels of crime seriousness (i.e., less than \$1,000, \$1,000 or more, \$5,000 or more, \$10,000 or more, \$50,000 or more, etc.). Aggregation may provide a more accurate portrayal of the defendant's criminal activity, and its impact on the victim, in a particular time frame than a series of separately charged offenses. Exceptions may be made based on any mitigating factor(s) determined to be credible.

**Aggravated ID Theft:** Oregon law allows for the charging of Aggravated Identity Theft under ORS 137.803 when the offender: (1)(a) commits 10 or more acts of Identity Theft within a 180-day period; (1)(b) has a previous conviction for Aggravated Identity Theft; (1)(c) caused losses incurred in a single or aggregate transactions that are \$10,000 or more within a 180-day period; or (1)(d) has ten or more pieces of personal identification from ten or more different persons. Oregon sentencing provisions, including the Oregon Sentencing Guidelines and ORS 137.717, also recognize the appropriateness of increased punishment for ongoing identity theft activity and identity thefts involving multiple victims. The Aggravated Identity Theft charge can, under some circumstances, increase offender accountability and potential punishment. However, under many circumstances,

the filing of Aggravated Identity Theft will actually reduce offender accountability, punishment, and community protection by reducing the potential sentence available under Oregon sentencing guidelines and ORS 137.717. Accordingly, multiple Identity Theft charges should be aggregated into an Aggravated Identity Theft count only when doing so increases community protection and potential punishment and accountability for the offender, and only when the DDA decides that an enhanced jail or prison sentence is more likely to result in community safety than would enhanced treatment and potential resulting rehabilitation of the offender.

**Aggregation:** Oregon law provides for various degrees of forgery involving checks or credit card purchase slips that are designed to increase the punishment of offenders commensurate with the value these forged instruments. Oregon sentencing provisions, including the Oregon Sentencing Guidelines and ORS 137.717, also recognize the appropriateness of increased punishment for ongoing forgery activity and thefts involving multiple victims. ORS 165.013(2) allows for individual check and credit card purchase slips to be added together if the forgeries were committed against multiple victims by similar means within a thirty (30) day period or against the same victim within a 180-day period. This provision can, under certain circumstances, increase community safety and the accountability and punishment of the offender. However, under different circumstances, aggregation can reduce community protection by reducing the potential sentence for the offender. In general, separately chargeable forgeries should be aggregated under ORS 165.013(2) only when it increases community safety by increasing the potential punishment of the offender, and only when the DDA decides that an enhanced jail or prison sentence is more likely to result in community safety than would enhanced treatment and potential resulting rehabilitation of the offender. Exceptions may be made on any mitigating factor(s) determined to be credible.

**Criminal Possession of Rented or Leased Property:** DCDA will only charge Criminal Possession of Rented or Leased Property when there is evidence of criminal intent and not a mere violation of a commercial lease agreement.

**Metal Theft Policy:** Pursuant to ORS 165.127, within 24 hours of a reported metal theft to a law enforcement agency, the agency taking the report shall provide notice via phone or electronic transmission to the Deschutes County metal recycling businesses.

**Evaluation of all-prison eligible property crime offenders for participation in the Justice Reinvestment Program:** DCDA will strive to evaluate all prison eligible property crime offenders for the Justice Reinvestment Program.



## Charging Crimes Against Persons

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**Crimes Against Persons:** The general intake philosophy set out above is expanded upon in person crimes with the details contained in this section.

**Domestic Violence Cases:** Charges involving Domestic Violence are subject to the same charging criteria as all other cases, capturing the nature of the Criminal Conduct and charges that provide for an adequate sentence for the offense or offenses. Charging shall be consistent with ethical standards for prosecutors and the duty to seek justice.

**Charging Juvenile Offenders with Measure 11 Offenses Policy:** DCDA will follow SB1008 in determining charging and disposition of juveniles who commit Measure 11 offenses. The District Attorney or Chief Deputy District Attorney must approve charging a juvenile with a ballot Measure 11 crime and requesting a waiver hearing to determine if the youth should be prosecuted in adult court, subject to the requirements of ORS 419C.349.

**Juveniles Charged with Measure 11 Sex Offenses:** A non-Measure 11 disposition in adult court will be considered if the following factors outweigh any aggravating factors: The offender has been evaluated by a person trained to evaluate juvenile sex offenders, the evaluation complies with the Oregon Administrative Rules and the juvenile has been determined not to be a sexual predator by a comprehensive evaluation that included a polygraph test if requested; the offender is amenable to sex offender treatment; treatment is available for the offender, and reasonably likely to be successful; and the offense committed was not forcible or violent.

**Second Look:** in making a recommendation at the Second Look hearing, the prosecutor will consider all available reliable evidence that meets the standard of proof, to determine whether or not the person has been rehabilitated and reformed, and if conditionally released, the person would not be a threat to the safety of the victim, the victim's family or the community and that the person would comply with the release conditions.

**Notice of Mandatory Minimums:** The District Attorney's Office will give notice of mandatory minimums when applicable. Mandatory minimums based on the charge itself (e.g. ORS 137.700) are noticed when the charging instrument is provided. Other mandatory minimums (e.g. Denny Smith violations) require notice. Mandatory Minimums will not supersede the discretion of the DDA in negotiations but will be considered and applied when appropriate.

**Sexually Violent Dangerous Offenders:** Sexually Violent Dangerous Offender status will only be sought if all of the requirements of ORS 137.765 are met and with the approval

of the District Attorney or Chief Deputy District Attorney.

**Purchasing Sex with a Minor:** Once a charge of Purchasing Sex with a Minor has been filed, it may not be dismissed, even pursuant to negotiations without the approval of the District Attorney or Chief Deputy.

**On-Going Obligation of Mandatory Reporting:** prosecutors are responsible for complying with mandatory reporting requirements. If cross-reporting has not been documented and the prosecutor cannot confirm it has been completed, the prosecutor shall report suspected instances of child abuse to DHS.

**Crimes involving bias:** If a crime involving any of the factors listed in ORS 166.155 or 166.165 is referred to DCDA for prosecution, the District Attorney shall be advised.

Dismissal of a crime of bias requires approval of the District Attorney.

## Investigative Genetic Genealogy (IGG) Policy

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The Deschutes County District Attorney (DCDA) adopts the United States Department of Justice Interim Policy on Forensic Genetic Genealogical DNA Analysis and Searching (USDOJIP) when working with the FBI and the United States Department of Justice or any other IGG service provider.

The District Attorney or designee must approve the use of IGG as an investigative tool. IGG is limited to unsolved violent crimes with significant public safety implications where all other reasonable investigative leads to solve the case have been pursued.

## Death Penalty Policy

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**Aggravated Murder:** The District Attorney must approve any charge of aggravated murder. Aggravated murder will be charged when the evidence and law support such a charge. The District Attorney will consult with the living victims of the crime of aggravated murder, typically living family members of the murder victim, as well as the assigned prosecutors on the case, and other individuals with relevant input into the decision, and will decide whether the state intends to seek the death penalty in that case. The District Attorney will consider proportionality and equal protection factors when making the decision.

## Charging Traffic Crimes

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**Traffic Crimes:** The general intake philosophy set out above is expanded upon in traffic crimes with the details contained in this section.

**DUI Philosophy:** Driving Under the Influence of intoxicants puts community members and drivers at risk every day. DUI is a public safety and public health issue.

**Consistency:** DCDA will have consistent charging and plea offers with DUIs. DDAs are expected to follow those guidelines but still take into consideration the unique facts and circumstances of each case.

**DUI Charging:** When charging DUI cases DDAs shall comply with ORS Chapter 813; the District Attorney's Office's will focus on community safety in DUI prosecutions.

**Enhancements:** DCDA will include all provable enhancements that exist at the time of the offense.

**DUI Diversion Philosophy:** The Deschutes County DA's Office will follow the law for DUI diversion application and participation as set forth in ORS 813.010-813.270. Diversion is an opportunity for intervention and education. The safety of the community is the priority. If an offender is eligible for diversion and meets all of the statutory criteria, the state will generally recommend Diversion. If there is a basis to object to Diversion, the DDA will document the basis in writing in PbK and oppose the offender's participation.

A deputy district attorney may object to Diversion pursuant to ORS 813.220(1) if the Diversion will not be of benefit to the defendant and the community. An objection may be submitted if one or more of the following factors apply:

- A child or children were in the car at the time of driving
- The driving involved a high risk elude of law enforcement
- The driving was of an exceptionally high risk nature
- A significant crash risking other persons was involved in the incident
- An exceptionally high BAC was involved and one or more the other grounds for objection exists
- Defendant has been ordered to complete treatment within the last 10 years but did not successfully participate
- The offender has an out of state prior DUI conviction within 15 years that would not be statutorily disqualifying under *State v. Rose* due to the inclusion of "actual physical control" of a vehicle

An objection to Diversion on discretionary grounds must be approved by a Supervisor and documented in PbK.

A written objection pursuant to ORS 813.210(6) must be filed with the Court if the objection is based on discretionary grounds.

**DUI Diversion Revocation Policy Exception:** DCDA will file diversion revocation motions in every case in which we have cause to believe a defendant has violated the terms of their diversion agreement. The only time DCDA will exercise our prosecutorial discretion not to file a motion to revoke a defendant's DUI diversion agreement is as follows: we will not file a motion to revoke a defendant's DUI diversion agreement when the alleged basis for the revocation motion was obtained because any person (including the defendant) contacted emergency medical services or law enforcement to obtain medical assistance for any person. However, this exception does not apply if the circumstances of the incident that led to the contact with emergency medical services or law enforcement involved the defendant operating a motor vehicle while impaired.  
(Revised 4.24.23)

**Diversion:** A Defendant may apply to the court for extension of the diversion period for 180 days, if the extension is filed within 30 days prior to the end of the diversion period.

**Operating MV While Using Mobile Electronic Device – Repeat Offenders:** The District Attorney will prosecute offenders who repeatedly drive while using cell phones and other mobile devices, and recognizes that the legislature has enacted a framework of escalating consequences for such behavior. A third or subsequent violation of ORS 811.507 (Operating motor vehicle while using mobile electronic device) within 10 years will be charged as a Class B misdemeanor pursuant to ORS 811.507(5)(d). The plea offer in such a case shall be for a Class B misdemeanor, not a reduction to a violation.

## Charging Other Crimes

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**Other Crimes:** The general intake philosophy set out above is expanded upon with the details contained in this section.

**Animal Abuse and Neglect:** The District Attorney will prosecute offenders who abuse or neglect animals. The first priority will be ensuring that the animals' immediate needs are met to ensure their health and wellbeing while maintaining the integrity of the investigation and evidence. The District Attorney recognizes that the best practices for the prosecution of animal abuse and neglect cases includes the DDA going to the scene if appropriate; identifying animals individually for purposes of charging; evaluating the animal or animals on scene with the assistance of a veterinarian or vet tech when possible; using a scoring sheet and photographs to document the condition of the animal and working with law enforcement and animal rescue agencies to secure forfeiture of the animal(s) when appropriate to expedite the care and well-being of any animals seized. The District Attorney is aware of the availability of Oregon's dedicated Animal Cruelty Prosecutor and may call upon the prosecutor (through the Oregon Department of Justice) for assistance when needed. Civil forfeiture is the responsibility

of the seizing agencies, but the District Attorney's Office will provide assistance and support as appropriate.

**Fish and Wildlife Cases:** DCDA will prosecute offenders that commit crimes against Fish and Wildlife as well as Environmental or Natural Resource Crimes. The District Attorney, or his designee, will work with the Oregon State Police to identify priorities for enforcement action and pursue criminal actions as appropriate. The District Attorney recognizes that these cases have unique enforcement needs and will seek appropriate restitution for the loss to the State of Oregon of illegally taken wildlife if current legal authority allows (see ORS 496.705 and *State v. Shockey, 285 Or App 718 (2017) denying the ability of the State to recover economic damages for illegally taken wildlife under this statute*), hunting and fishing license suspensions as contained in ORS 497.415, and forfeiture of evidence seized and/or used in the commission of these crimes including the firearms or weapons. The District Attorney is aware of the availability of Oregon's dedicated Fish and Wildlife Crimes Prosecutor and may call upon the prosecutor (through the Oregon Department of Justice) for assistance when needed.

**Environmental Crimes Policy:** The 1993 legislature passed Chapter 422 (codified in ORS Ch. 468), which establishes criminal penalties for certain violations of the environmental laws. Because environmental laws are by their very nature broad, the legislature also required that the District Attorney of each county adopt written guidelines for the filing of felony criminal charges. The legislature also set out a list of criteria in ORS 468.961(2) that the District Attorney must consider before bringing a charge.

**Philosophy:** The District Attorney recognizes the value of the natural resources of the State of Oregon and the risks of adverse consequences to the community that may occur by those who commit environmental crimes. As a result, the District Attorney will prosecute those responsible for committing environmental crimes in accordance with the guidelines adopted by the Deschutes County District Attorney. The District Attorney will coordinate and work with local, state, and federal regulatory and enforcement entities to identify environmental cases appropriate for criminal prosecution and seek imposition of penalties appropriate to the type of violation including applicable probationary terms that may include remedial or mitigation measures, prohibitions of related conduct, fines, and/or incarceration. The District Attorney is aware of the Oregon Department of Justice's Environmental and Cultural Resources Enforcement Unit and may call upon that unit for assistance as needed.

**DA Certification:** ORS 468.961(1) requires that the District Attorney must personally certify that he or she has reviewed the case and that the case meets the requirements of the guidelines. The policy of the District Attorney is that the environmental crimes

statute will be used to accomplish the intended goals of the legislature. It is the purpose of these guidelines to make clear that while not every technical violation will be criminally pursued, the most serious conduct will be prosecuted.

**Racketeer Influenced and Corrupt Organizations (RICO):** The District Attorney or CDDA shall personally approve all RICO prosecutions as the RICO statute requires careful and well-reasoned application. Despite the broad statutory language of RICO, it shall be the policy of the DA's Office that the RICO statute be selectively and uniformly used to accomplish its intended goals. It is the purpose of these guidelines to make it clear that not every case in which technically the elements of RICO exist will result in the approval for a RICO charge. Further, it is not the policy of this office to pursue prosecutions under RICO which are not within the legislative purpose for the statute.

**Failure to Appear:** The crime of Failure to Appear will be charged when there is evidence that the defendant knowingly failed to appear and the appearance scheduled was for trial or a hearing with witnesses, or there is another substantial and compelling reason noted by the DDA and prosecution is approved by a CDDA or the District Attorney and documented in PbK. Repeatedly failing to appear or failing to appear on a release agreement may qualify as a substantial and compelling reason.

## Juvenile Delinquency

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**Juvenile Delinquency Referrals:** A prosecutor should appear at all hearings concerning a juvenile accused of an act that would constitute a crime if he or she were an adult. The duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without unduly compromising their primary concern. Formal charging documents for all cases referred to juvenile or adult court should be prepared or reviewed by a prosecutor.

**Remand to Adult Court:** District Attorney or CDDA approval is required before a discretionary decision whether to file a motion to transfer a juvenile to adult court is made.

**Role of Prosecutor:** The prosecutor should take an active role in the dispositional hearing and make a recommendation to the court after reviewing reports prepared by prosecutorial staff, the juvenile department, and others. In making a recommendation, the prosecutor should consider those dispositions that most closely meet the interests and needs of the juvenile offender, provided that they are consistent with community

safety and welfare. At the dispositional hearing, the prosecutor should make the court aware of the impact of the juvenile's conduct on the victim and the community.

## Prostitution

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**Prostitution Cases:** The District Attorney's Office will charge individuals who engage in the crimes of Prostitution (ORS 167.007) and Commercial Sexual Solicitation (ORS 167.008) when it is in the interest of justice to do so. The District Attorney recognizes the dangers that human trafficking pose to the safety and welfare of the community and that these crimes may be linked to that activity. However, when there is an absence of evidence that human trafficking is occurring, our office will use the following criteria when determining whether to file a criminal charge: Whether this is a pattern of behavior or an isolated incident; the amount of limited judicial resources that prosecution of this offense will expend; whether the offender resides in Deschutes County; the availability of appropriate rehabilitative programs or resources.

## Controlled Substance Prosecution

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**Addressing Deschutes County's Drug Crime Problem:** The District Attorney is aware that drug crime, particularly recidivism associated with drug crimes, is having a negative impact on the community. In addition, county residents are also concerned with drug use in the community and its associated criminal activity. The District Attorney's Office will recommend prison sentences, probationary sentences and alternative treatment-based programs when appropriate in response to the drug crimes at issue and in light of the offender's criminal history and demonstrated efforts at rehabilitation or lack thereof. We will make referrals to the United States Attorney's Office in appropriate cases, particularly where we and the United States Attorney determine that the potential penalties in federal court would be more appropriate than the potential penalties available in state court.

**Deschutes County Illegal Marijuana Market Enforcement:** The District Attorney recognizes that marijuana laws were changed to permit adults to possess defined amounts of marijuana for personal use, however, when marijuana laws are violated, the Deschutes County District Attorney's office will not hesitate to hold offenders accountable.

The District Attorney is working with local law enforcement, researchers, and local business stakeholders to focus on the investigation and prosecution of illegal marijuana operations, illegal exportation of marijuana from Deschutes County to other states, and those with connections to other criminal activity.

## Court Imposed Financial Obligations, Court Appointed Attorney Costs, Fines and Fees

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DCDA will comply with request mandatory fees as directed by statute. A DDA may take a position on suspension of fines and fees when in it is in the interest of the purposes sentencing as outlined in OAR 213-002-0001. DDAs do not provide a position on Court Appointed Attorney costs but shall answer any questions put forth to them by a Judge.

## Grand Jury/Preliminary Hearing

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**Grand Jury Function:** Grand jurors are guests of the District Attorney's Office during their term, but they are not part of the District Attorney's Office. Grand juries perform a separate function from the District Attorney's Office and the courts. It is their function to interpose their judgment (and thereby the judgment of the community) between the person accused of crime and the State. Deputy District Attorneys must respect that separate function and treat grand jurors, and their decisions, with respect. If the grand jury makes a request for additional evidence or witnesses, the District Attorney's Office shall accommodate the request, if practicable. If the grand jury renders a decision on a case at odds with the wishes of the Deputy District Attorney, as in a trial before a trial jury, the grand jury should be shown no negative reaction. Any admonishing statement or expression of disagreement must be avoided. Overt displays of anger or upset at a grand jury's decision may be grounds for discipline of the Deputy District Attorney engaging in such conduct.

**Grand Jury Procedure for Felonies:** 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 DA's Office will take all cases to grand jury unless there is a specific evidentiary need, such as eyewitness identification, preservation of testimony, or an evidence admissibility issue that is best addressed by a judge, in an individual case, or because a grand jury proceeding could not be scheduled before a preliminary hearing is set.

## Release Recommendations

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**Least Onerous Conditions:** DDAs shall make a release recommendation that imposes the least onerous conditions reasonably likely to ensure the safety of the public, the victim and the defendant's later appearance.

**Prosecutor's Responsibility to Identify Victims:** The DDA shall, to the best of their ability, identify all victims, designate the person or business as a victim in PbK and request a no-contact condition upon release from custody. The safety and well-being of crime victims should be one of the primary considerations in all cases.

**Pretrial Supervision for Certain Property and Drug Offenses:** the availability of pretrial supervision for certain property and drug offenders may be available under the Deschutes County Justice Reinvestment Program; when supervision is available and deemed appropriate, the assigned DDA should follow the recommendation unless doing so would be manifestly unsafe.

## Discovery and Brady Obligations

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**Discovery Policy:** DCDA will provide discovery when approved reports have been received and the initial investigation has concluded. Discovery will generally be provided at Arraignment on Indictment for in-custody cases. A prosecutor is responsible for compliance with all ethical obligations related to disclosure and discovery. Prosecution supervisors are responsible for complying with all supervisory ethical obligations. Any prosecutor who has a question regarding their obligation to provide *Brady* material shall review the questions with a supervisor. Prosecutors are responsible for complying with the Oregon Rules of Professional Conduct, ORS Chapter 135, the Oregon Constitution, the Federal Constitution, and ABA Standards for the Prosecution Function. Any prosecutor who is aware of a concern, allegation, or commission of a *Brady* violation, in any case filed by DCDA, shall share the concern immediately with a Supervisor.

**Timeliness:** A DDA should, at all times, carry out his or her discovery obligations in good faith and in a manner that furthers the goals of discovery.

**Goals of Discovery:** to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel and comply with the requirements of ORS 135.805-135.873.

**On-going responsibility:** If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or

ordered which is subject to disclosure or inspection, the prosecutor should promptly notify defense counsel and provides the required information.

**Records/data retention:** The District Attorney's Office expects all law enforcement agencies comply with Oregon Administrative Rules on record retention.

**Costs for Discovery:** discovery costs are part of the DCDA fee schedule and published each year. A supervisor may waive discovery costs for indigent defendant's representing themselves within the discretion of the supervisor or in compliance with any court order.

## 2023 Discovery Fee Schedule

When sending discovery, confirm the amount and total cost are correct based on the current discovery flat fees:

- Misdemeanor- \$40
- Contempt- \$40
- Felony- \$60
- Measure 11 Felony- \$75
- Murder- \$200
- Juvenile Delinquency Case- \$40
- Flash Drive Provided by DA's Office- \$40
- Flash Drive Provided by Defense- \$20
- PV Cases- \$15
- Diversion Revocation- \$15
- Revocation of Conditional Discharge- \$15

## Trial

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**Ethical Conflicts:** Any conflicts discovered for a scheduled trial shall be brought to the attention of a CDDA or Supervisor immediately upon discovery. Due to the volume of cases and trials in the office, management relies on the due diligence of the DDAs in screening for conflicts. The District Attorney's Office uses PbK to screen for potential conflicts, but the DDA is ultimately responsible.

**Preparation:** Deputy District Attorneys shall be prepared for trial to the best of their ability. Preparation requires review of the case in advance of trial, the filing of timely motions, preparation of exhibits, review of evidence and compliance with the rules of court.

**Trial Call:** A DDA shall accurately report, to the best of their ability, trial readiness. A case dismissed after a report of "ready" at Trial Call requires the approval of a CDDA or the District Attorney and notation of the reason for the dismissal in PbK.

**Recusal of Judge for Trial:** A motion for recusal of a Judge for trial shall be approved by

a CDDA or the District Attorney before filing.

## Plea Negotiations

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**General Philosophy:** The DA's Office will conduct plea negotiations in a professional manner. Plea negotiations take the following forms: pleas to one or more charges, reduction of charges, sentence negotiation, and the dismissal or non-prosecution of other indicted or unindicted charges. In all plea negotiations, the DA's Office shall be guided by the considerations set forth in ORS 135.405 et seq. and all relevant ethical considerations. It is our goal to characterize the conduct of a defendant by the conviction record. In other words, a burglar should be labeled a burglar and not a trespasser. To this end, this office has established categories in which offers of a charge reduction are not normally allowed, unless required by the specific factors of a case.

**Willingness to Negotiate:** Prosecutors should make it known to the defense attorney that the District Attorney's Office has a policy of willingness to consult with the defense concerning plea negotiations, especially in cases involving the early acceptance of responsibility, and set aside times to meet with defense attorneys for the purpose of discussing cases whether in person or by phone.

**Actual Innocence:** All prosecuting attorneys shall be alert for cases where the evidence indicates that the accused is not provably guilty of the offense charged. If such is discovered, dismissal will be sought immediately of those charges which cannot be proven.

**Pre-Filing Discussions with Defendants:** Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached. However, when the defendant is not represented by counsel, the prosecuting attorney should be careful to comply with ORS 135.405(2) and DR 7-104 (A) (2).

**Victim Considerations:** The prosecuting attorney shall attempt to contact the victims of violent felonies and explain any negotiations. For all other cases involving victims, the DDA should attempt to contact the victim and explain and negotiations. DDAs shall work with the Deschutes County VAP by communicating plea offers, changes in plea offers and make themselves available to speak with victims. The assigned prosecuting attorney should take the victim's wishes into account, but the final decision regarding the disposition of the case needs to be made by the prosecuting attorney, in the exercise of professional judgment.

**Equality of Plea Negotiations:** Similarly situated defendants, as determined by admissible

evidence, level of involvement in the crime, criminal history, cooperation with the state, and other factors, shall to the extent possible be afforded equal plea and sentence agreement opportunities. The choice of defense counsel shall not be a factor in the prosecuting attorney's decision to negotiate with a defendant. A defendant shall not receive an advantage or disadvantage in negotiations based upon past or present relationships between defense counsel and this office.

**Timing of Plea Negotiations:** Plea negotiations shall occur as soon as practicable. Plea offers, absent a documented reason, shall be included with the original charging decision. The PbK plea offer form shall be used for the substantive offer, any changes or modifications may be done via email, but the emails shall be in the physical file and PbK.

**No-Contest Pleas:** a DDA will not oppose a plea of No-Contest in negotiated settlements, unless the following exceptions apply:

- A plea of No-Contest would not further the purposes of ORS 161.025 (Purposes of sentencing); and
- Is inconsistent with or does not further the rights of victims granted by sections 42 or 43 of Article I of the Oregon Constitution.

**Downward Departures:** Community safety is the first priority; the goal is to reduce crime at the community and offender level. Downward departures should be considered when:

- The person was not on probation, parole or post-prison supervision for a crime listed in subsection (1) of this section at the time of the commission of the current crime of conviction;
- The person has not previously received a downward departure from a presumptive sentence for a crime listed in subsection (1) of this section;
- The harm or loss caused by the crime is not greater than usual for that type of crime;
- The offender has been cooperative with investigators and has earnestly undertaken a program of rehabilitation after arrest; and
- A downward departure is not inconsistent with our duty to seek justice given all of the circumstances of which we are aware.

**Reduction of BM 11 Cases:** There will be times when it is necessary to reduce or to dismiss ballot Measure 11 charges. No ballot Measure 11 charge will be reduced to a

non-Ballot Measure 11 charge or dismissed unless the resolution meets the standards of this policy and has the approval of the District Attorney or Chief Deputy District Attorney.

**Homicide Cases:** In all homicide cases, the District Attorney shall be notified of and approve any plea offer involving a reduced charge or any other significant concession to the defendant. The assigned prosecuting attorney shall consult with the District Attorney prior to tendering the plea offer to the defendant. Prior to arriving at a homicide plea offer, the assigned prosecuting attorney should, in all but exceptional circumstances, consult with the primary detectives and the family of the victim so as to hear and consider any opinions or suggestions they may have.

**Domestic Violence Cases:** Domestic violence cases will not normally be subject to dismissal pursuant to plea negotiations in non-domestic violence cases, unless the facts and evidence in the case warrant such an action. The assigned prosecuting attorney handling a domestic violence case needs to obtain the approval of the District Attorney, or his designee, before making an offer in which all domestic violence charges will be dismissed pursuant to a plea to one or more non-domestic violence cases. Domestic violence cases shall be labeled so as to distinguish them from non-domestic violence cases.

**District Attorney Diversion:** The District Attorney's Office does not participate in DA Diversions, but uses the Early Disposition Program, Domestic Violence Deferred Sentencing Program, Mental Health Court, Drug Court, Clean Slate, DA's Veterans program, and the DA's Emerging Adult Program to accomplish appropriate resolutions in appropriate cases. Pre-charge resolutions similar to the type of resolutions that would be achieved by a DA's Diversion are permitted in appropriate cases with the approval of the District Attorney or a supervising attorney.

**Civil Compromise Agreements:** The District Attorney's Office will consider a civil compromise when it is allowed by statute and meets the District Attorney's goals of public safety, justice and respect for the law.

**PbK Criminal History Worksheet:** Only criminal convictions that comply with the OARs on calculating Criminal History shall be listed on the Criminal History Worksheet. Other convictions, probation violations, infractions and violations may be taken into consideration by the DDA even if they are not listed on the Criminal History Worksheet.

**Fair Sentencing:** The District Attorney's Office will recommend sentences that are lawful, in the interest of justice and promote public safety.

**Sentencing Input:** The District Attorney's Office will consider input as to sentencing from victims, witnesses, community partners (including law enforcement) and others impacted. Ultimately, however, it is the responsibility of the assigned DDA to make the sentencing recommendation to the court based on their knowledge of the case, the applicable law and the goals and mission of the District Attorney's Office. Sentencing input that is subject to disclosure shall be provided to the defense in a timely manner.

**Victim Participation:** The District Attorney Office shall comply with the Constitutional and Statutory requirements for victim participation. On occasion, due to a mistake, a DDA may inadvertently fail to comply with their obligations. If that occurs, the DDA shall personally attempt to contact the victim and explain what occurred and if appropriate, advise the victim of their rights. The DDA shall also keep the assigned Victim Advocate up to date on the status of the case and document important information in PbK.

## Probation Violations

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**Motions to Revoke Probation:** Will be filed if the DDA believes revocation is appropriate.

**Consideration of the Recommendation of the Supervising Probation Officer:** The District Attorney's Office will consider the position of the Probation Officer before making the decision to file a motion to revoke probation. Even when a defendant is on supervised probation and the probation officer decides to impose a structured sanction, a DDA may file a motion to revoke probation and objection to the structured sanction within 4 judicial days after receiving notice of the sanction to object. (ORS 137.599)

## Specialty Programs

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**Specialty Courts:** The District Attorney supports Deschutes County Specialty Courts and court programs, in addition to DCDA specialty programs when the programs have clearly established guidelines, are administered fairly and impartially and are subject to evaluation using generally accepted evaluation techniques.

**Domestic Violence Deferred Sentencing (DVDSP):** The District Attorney's Office supports the Domestic Violence Deferred Sentencing Program and supports the Charter of the

Program. DVDSP rules are to be followed and no DV cases should be adjudicated outside of the program to avoid the rules and requirements of the program.

**Mental Health Court:** The District Attorney's Office supports the Mental Health Court Program and will assign a knowledgeable prosecutor to be the assigned DDA to Mental Health Court. Mental Health Court is a voluntary diversion program with the goal of increasing access to and engagement in treatment for persons with an eligible mental illness who have been charged with a crime.

**Adult Treatment Court:** Deschutes County Adult Treatment Court is part of the Drug Court Program, an internationally recognized and empirical, evidence-based justice system strategy addressing drug addicted defendants. It is a specialized court program that is designed to use the authority of the court to keep addicted individuals in treatment long enough for it to work. In Deschutes County, the focus will be on the offender with children. The District Attorney's Office will participate fully in Adult Treatment Court and assign the District Attorney, a DDA, or CDDA as the primary representative for the office.

**Veterans Intervention Strategy (VIS):** The VIS program provides veterans involved with the criminal justice system an alternative to redirect their life and address the mental health and/or substance use disorders that are a direct result of their service, and are a factor for their criminal activity. Veterans create individualized treatment plans, engage in services, participate in treatment, and report progress to the VIS Inter-agency team, which is led by the DA's Office.

Any cases, pre or post charge for which a DDA learns the defendant is a veteran, should be referred to the internal VIS team for VIS eligibility review. If the case is accepted into the program the VIS team will manage the case and will track the veteran's progress through the program. If the case is not eligible, it will be returned to the original DDA for prosecution.

**Emerging Adult Program:** The Emerging Adult Program (EAP) is a pre-charge diversion program for young adults (18 to 24-year-olds). Young adult cases referred to the EAP team and deemed eligible for the program (chargeable case, live in Deschutes County and no prior adult criminal history) are invited to an EAP orientation. During the orientation, the young adults learn about the program from an EAP-DDA and have a private conversation with a defense attorney.

Those that are interested in enrolling in the program engage in a restorative justice circle with three volunteer community facilitators and a victim advocate to develop a personalized intervention plan that amends for their actions and helps them get their life

back on track. The young adults work with a Thrive Central Oregon (Thrive) case manager who provides support and resources to assist them in successfully completing their intervention plans. The young adults also meet with the community facilitators an additional three times to report on their progress and challenges. At the end of six months, if the young adults have completed their intervention plans and have not been cited for a new crime, their case is dismissed. Young adults who do not successfully complete program requirements are revoked from the EAP and their cases is handed off to a non-EAP DDA for charging.

The EAP is a pilot program for 13 young adults that is being operated between July 2021 to December 2022. The pilot program is no longer accepting new participants, but DCDA, in partnership with Thrive and Community Solutions of Central Oregon has applied for grant funding in hopes of relaunching and expanding the EAP initiative later in 2022.

**Appeals/Post-Convictions Relief:** Notice of Appeals and Post-Conviction relief shall be entered into PbK and a copy of the notice in the file. Upon notice, the location of any exhibits and evidence shall be noted in the notes section of PbK and all items should be secured and marked.

**Unanimous verdicts:** DCDA supports the unanimous verdict requirements; all post-conviction unanimity issues will be resolved by Oregon’s Attorney General and the Oregon Department of Justice.

**Requests from Innocence Project:** At the direction of the District Attorney, the Oregon Innocence Project may be asked to review closed cases if there is a concern regarding the integrity of the conviction. The District Attorney will consider the finding of the Innocence Project, but will conduct his or her own review and will make the final decision for the District Attorney’s Office as to what action if any to take as a result of the review.

## SB819 Conviction Reconsideration

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A prosecutor’s ethical duty is to achieve justice at all stages of prosecution, including after a judgment is entered. If we become aware of an injustice related to a case we previously prosecuted, or that current circumstances justify modifying the previously imposed sentence and there is a legal means available to us to do that, it remains our duty to do so. The Oregon Legislature passed Senate Bill 819 in the 2021 legislative session (Codified at Oregon Revised Statute 137.218) in order to facilitate the modification of previously imposed sentences under these circumstances.



ORS 137.218 authorizes a person convicted of a felony crime in Deschutes County, and the Deschutes County District Attorney, to jointly petition the Deschutes County Circuit Court for reconsideration of a conviction or sentence.

If a petition is submitted, ORS 137.218 grants the court the authority to dismiss the conviction, to resentence a person to a lesser sentence for the same crime of conviction, or to sentence a person for a new crime (if the DA files a new charging document and the defendant pleads guilty).

This document sets forth the Conviction Reconsideration process in the Deschutes County District Attorney's office.

**A. Eligible Convictions:**

- ORS 137.218 explicitly excludes misdemeanors, aggravated murder, and convictions eligible for set aside pursuant to Oregon's set aside statute (ORS 137.225).
- The Deschutes County District Attorney's policy is to exclude the following convictions: Any case involving any level of homicide; any case involving any level of first-degree rape, sodomy, and unlawful sexual penetration; any case involving child abuse or domestic violence.
- Our office will consider requests for conviction and sentence reconsiderations for all eligible crimes that are not currently on direct appeal.

**B. How to Initiate a Request for Conviction Reconsideration:**

Our office does not have a specific form that must be filled out in order for a request for Conviction or Sentence Reconsideration to be considered. Requests should be submitted via our website at: <http://www.dcds.us/c5/services/SB819> or via US Mail to: Deschutes County District Attorney, Conviction Reconsideration, 1164 NW Bond Street, Bend, OR, 97703.

To maximize chances of receiving a favorable decision, requestors should address the following:

- The conviction(s) underlying the sentence for which the requestor seeks a conviction or sentence reconsideration.
- Whether the conviction is on direct appeal (if it is, the case is ineligible for consideration).
- Reasons why the original sentence no longer serves the interests of justice.
- The requestor's desired result: No conviction at all? Conviction of a different crime? Reduction of prison sentence? Reduction of fine? Etc.

- Information that addresses the considerations listed in ORS 137.218:
  - The requestor's disciplinary record in jail or prison (if applicable) and record of rehabilitation while incarcerated.
  - Evidence that reflects whether the requestor's age, time served in-custody, and diminished physical or mental condition, if any, have reduced the requestor's risk for future violence.
  - The future safety of the victim of the crime(s) for which the requestor seeks conviction or sentence reconsideration.
  - The amount of the original sentence already served by the requestor.
  - Evidence that reflects changed circumstances since the requestor's conviction and shows that the requestor's sentence no longer advances the interests of justice.
  
- Information that addresses whether a requestor's case satisfies the District Attorney's Office's priorities in Conviction and Sentence Reconsideration cases. Those priorities are as follows:
  - Oregon law relevant to the crime of conviction, the circumstances of law enforcement interaction with the suspect, and/or the sentence imposed, has changed in a significant way since the conviction.
  - The defendant was a survivor of sexual or physical violence at the time they committed the act that resulted in their conviction; or,
  - Felony driving while suspended convictions, when the basis for the suspension was other than a homicide, and when the only felony conviction(s) on the defendant's criminal record is felony driving while suspended.

**C. Victim Notification and Input:**

- Our Victims Advocate Program uses all reasonable efforts to contact and inform, in a trauma-informed manner, victims of crime associated with each conviction or sentence reconsideration request that is deemed eligible by the District Attorney or his designee. When we inform victims of crime of conviction or sentence reconsideration requests, we solicit their opinion regarding whether the conviction or sentence should be reconsidered.

- Victim notification will only occur if the application will be screened by the Committee for consideration.
- After initial notification to victims of crime, they are kept apprised of the reconsideration process, including being notified at least 30 days prior to any court hearing in the matter as required by ORS 137.218.

**D. Conviction and Sentence Reconsideration Committee:**

- A committee reviews all conviction and sentence reconsideration requests submitted to our office that are eligible for consideration (prior to submission to the committee, DA staff will screen out requests for reconsideration of convictions outside of Deschutes County, misdemeanors, aggravated murder, and felonies eligible for set aside, any case involving any level of homicide; any case involving any level of first-degree rape, sodomy, and unlawful sexual penetration; any case involving child abuse or domestic violence).
- Committee members include a person who has been a victim of a crime of violence, a person who has served time in prison, a current or former criminal defense attorney, and a Deschutes County deputy district attorney. Conflict protocols are in place that prohibit committee members participating in the review of cases that they were personally involved in.
- The committee reviews information submitted by requestors, and asks requestors to supply additional information if the committee deems it necessary for their review.

After obtaining all the information they deem necessary for their review, the committee applies the criteria set forth in section B, above, and considers the input of the victim of the crime of conviction, if submitted. The committee then forwards their recommendation to the District Attorney regarding whether the District Attorney should join in a petition to the court for conviction or sentence reconsideration. In their submittal to the District Attorney, if the recommendation is not unanimous, the committee will include the viewpoint(s) of the dissenting committee members

The committee does not have the authority to deny a request or to grant a request. If the committee unanimously agrees that a request should not be granted, the committee forwards their recommendation to the District Attorney, with their reasoning for recommending the request be denied. Likewise, if the committee unanimously agrees that a request should be granted, the committee forwards their recommendation to the District Attorney, with their reasoning for recommending the request be granted. If the committee is divided on whether a request should be granted or denied, the District Attorney is provided with the viewpoints of all committee members.

- If the committee recommends that the District Attorney join in a petition to the court for conviction or sentence reconsideration, the committee recommends what the District Attorney should request (complete dismissal/conviction of a different crime/same crime of conviction, but a specific lesser sentence/etc.).
- The committee meets at least quarterly to review and consider requests.
- The District Attorney reserves the right to deny an application for reconsideration without committee consideration.

#### **E. District Attorney Decision**

- The District Attorney considers committee recommendations, conducts an independent assessment, and then makes the final decision whether to join in a petition to the court for conviction or sentence reconsideration.
- The District Attorney is likely to grant requests with unanimous committee approval recommendations and to deny requests with unanimous committee denial recommendations, but reserves the right to approve requests with unanimous denial recommendations and to deny requests with unanimous approval recommendations.
- The District Attorney's decision is communicated in writing to requestors, and in a trauma informed way to victims of crime.

#### **F. Disclaimer**

- No portion of this document is intended to, and does not, create a right or benefit, whether substantive or procedural. Similarly, the State's decision to petition or not to petition for resentencing under ORS 137.218 is not intended to, and does not, create any rights, benefits, or harms for which a requestor can seek legal redress. Further, nothing in this document is intended to be enforceable at law by a party in litigation within the County or the State.

## U-Visa

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**U-VISA Applications:** Applications for U-VISAs shall be reviewed for compliance with the law by the District Attorney or the designee of the District Attorney. The District Attorney's Office will respond in a timely manner and provide all relevant information. The application for, or the intent to apply for, a U-Visa shall immediately be disclosed to any defendant who is charged with a crime against the person who is the subject of the U-Visa application.