Washington County
District Attorney's Office
Policy Manual

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MISSION STATEMENT OF THE DISTRICT ATTORNEY

The mission of the Washington County District Attorney's Office is: *Seeking justice and protecting our community.*

Seeking justice means ensuring that every decision made and every action taken meets the highest legal and ethical standards to promote justice. Protecting our community means ensuring that decisions and actions promote public safety.

Washington County is the safest urban county in Oregon and one of the safest urban counties on the west coast. All members of the Washington County District Attorney's Office should act with this mission statement as their guiding principle.

PURPOSE AND SCOPE OF THIS POLICY MANUAL

This policy manual is intended to provide guidance and direction for Washington County District Attorney's Office personnel. Whenever this manual uses the terms "employee" or "personnel," those terms include all attorneys, non-attorneys, law clerks, volunteers and any other individual acting on behalf of the District Attorney's Office.

This manual should be used in conjunction with direction from DA's Office managers and supervisors along with all relevant supervisory, legal and ethical authorities. These authorities include, but are not limited to, the following:

- Applicable state and federal statutory and case law (including applicable ORS and OARs)
- Washington County Circuit Court policies, orders and supplemental rules
- Uniform Trial Court Rules (UTCRs)
- Oregon Supreme Court Chief Justice Orders
- Oregon Rules of Professional Responsibility
- Washington County personnel and administrative policies
- Oregon Government Ethics Law

If any aspect of this policy manual conflicts with other relevant legal or ethical authority, the legal or ethical authority should control. Additionally, this policy manual is evolutionary in nature and aspects of this manual may need to be flexible or change over time and as new circumstances arise.

All DA's Office employees and volunteers are expected to use this policy manual in conjunction with their judgment, experience and training and to evaluate individual cases and situations to ensure that all actions advance the mission of this office while complying with legal and ethical authorities.

GENERAL ADMINISTRATIVE POLICIES

Adherence to County Policies

In addition to those policies contained in this manual, all DA's Office employees are required to be familiar with and adhere to all Washington County personnel and administrative policies (available on Horizons), including but not limited to the Harassment Free Workplace policy, the Electronic Information policy, the Drug Free Workplace policy, the Social Media Policy and the various policies relating to confidentiality. Violation of any policy may result in employee discipline, up to and including termination of employment.

If a circumstance gives rise to a perceived conflict between the county and DA's Office policy, the DA's Office policy will control and the employee should alert their supervisor for further direction.

Office Report and Supervision Structure

A copy of the most current DA's Office organizational chart is maintained by the DA's Office Administrative Manager. Employees are expected to understand and adhere to the appropriate hierarchy. However, if an employee judges a directive from a supervisor to be contrary to law, ethics or the mission of the DA's Office, that employee should immediately raise the issue with another supervisor, a Chief DDA, or if appropriate the District Attorney.

Regular Meetings

There will be a monthly all-attorney meeting and a monthly non-attorney staff meeting. Other departmental, unit and team meetings will be scheduled by supervisors as necessary. Attendance at all such meetings is mandatory. Employees who are unable to attend shall notify their supervisor prior to the meeting and shall review any meeting minutes and documents distributed at the meeting.

Workday and Workweek

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

Accrued Leave (vacation, sick, administrative, and other leaves)

The public service DA's Office personnel perform is often difficult, stressful and emotionally taxing. Therefore, it is important that DA's Office personnel practice self-care to protect their personal health and avoid burnout. Employees are encouraged to take advantage of the resources offered by the county in this regard, including use of accrued leave time.

Employees seeking to take time off should submit a request by email in advance, with as much notice as reasonably possible. This will allow supervisors to determine whether to approve the request and to make appropriate staffing adjustments if necessary. Employees are expected to be familiar with and follow

county policies regarding attendance, as well as the “Office Leave Request Procedures” guide in Appendix A.

Employees who need to report that they are sick for the day must contact their supervisor as soon as possible to inform the supervisor of their sick status. Contact should occur in a manner to ensure the supervisor is aware of the sick employee’s status as soon as possible (e.g. phone call, email or text message as directed by supervisors). Voicemail should be avoided. If the employee is not able to contact their supervisor directly, the employee should notify another person directly and follow-up with their supervisor at the next opportunity. The purpose of this requirement is to ensure that staffing coverage can occur without delay and that the supervisor is aware of the absence.

Requests for leave without pay are disfavored and must be approved in advance and in writing by the District Attorney or designee.

For DA’s Office Management, Administrative, and Professional Personnel System (MAPPS) personnel, in recognition of the professional and salaried nature of these positions and the reality that work often occurs outside of regular office hours, the Washington County MAPPS Leave Policy applies. Generally, DA’s Office MAPPS personnel who are on leave or absent for less than four hours (for full time employees) are not required to use accrued leave. As with all types of leave, DA’s Office MAPPS employees should ensure their supervisor is aware of the use of leave (in advance whenever possible), especially when the leave is in excess of one hour or may interfere with court or other DA’s Office obligations.

The use of non-sick accrued leave during the November and December holiday season must be approved in advance by supervisors. Every effort will be made to ensure leave is granted in a fair and equitable manner while ensuring the office is able to meet its mission. For DDA employees only, use of non-sick accrued leave during the summer ODAA conference week is not permitted unless approved by a supervisor.

On-Call policy

The purpose of on-call duty is to respond to questions from law enforcement and to review warrant applications. On-call DDAs are expected to be readily available by phone 24 hours per day and 7 days per week, to have access to e-mail, and to document as appropriate calls received.

There shall be a regular assignment of on-call duty for DDAs. Separate on-call schedules will be assigned by supervisors of the Misdemeanor Unit, the Felony Unit, the Child Abuse Team, and the Crash Analysis Reconstruction Team (CART). Washington County Consolidated Communications Agency (WCCA) will maintain the DDA on-call schedule.

Law Clerk Policy

The Washington County DA's Office employs and utilizes law clerks to assist with the prosecution of cases. Generally, each year a number of second-year ("2L") and third-year ("3L") law students are employed in this role. Law clerks work under the direction of the Misdemeanor Unit Supervisor and the Misdemeanor Unit Coordinator. The responsibilities of law clerks include the following:

2L Clerks

- 2L clerks will assist DDAs with various trial and case preparation tasks and conduct legal research and writing projects
- 2L clerks may not appear in court

3L Clerks

- 3L clerks must be certified to appear in court under Oregon's law student appearance rule and will have the primary responsibility of appearing in court
- 3L clerks may represent the state in arraignments, probation violation hearings, misdemeanor case management and final resolution conferences, misdemeanor pre-trial evidentiary hearings, contempt hearings, and trials
- 3L clerks may represent the state in misdemeanor trials only, except they generally will not represent the state in person misdemeanor and DUII cases
- With the approval of the Senior DDA supervising the misdemeanor unit, a 3L clerk may second-chair a person misdemeanor or DUII case alongside a DDA. In exceptional circumstances where the 3L clerk has significant trial experience, has demonstrated the appropriate level of skill and has the approval of a Chief DDA, a 3L clerk may try a person misdemeanor or DUII cases in a first-chair capacity

Special Prosecutors

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

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

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

Occasionally a Washington County DDA may be assigned to act as a special prosecutor for another Oregon DA's Office. In such instances, the Washington County DDA functions primarily as a special DDA for the host jurisdiction. Nevertheless, the Washington County DDA is expected to comply with the legal and

ethical requirements articulated in this policy manual while also complying with the logistical requirements of the host jurisdiction.

A record of all special prosecutor cases shall be maintained by the DA's Office Administrative Manager.

Office Security

The District Attorney's Office handles sensitive and confidential matters and is therefore a highly secured area. To protect against unauthorized access to confidential information, the following restrictions are in effect:

- All visitors must be escorted and monitored while present in the DA's Office by a DA's Office employee. Exceptions may be made for county personnel or contractors such as janitorial, IT, mail and maintenance staff
- Active law enforcement may be present unescorted with the permission of a DDA or staff manager
- Former employees of the DA's Office may not enter the office without permission from a supervisor

Digital Device Policy

The use of digital devices such as cellular phones, computers, and laptops to conduct DA's Office business should be conducted on county-issued digital devices and comply with all applicable public records laws and county policies. Refer to Appendix B for the full Cellular Telephone Policy.

ETHICS AND PROFESSIONALISM

Professional Conduct

Employees are expected to be knowledgeable of and in compliance with all applicable professional and ethical standards. Employees must possess and use professional and ethical judgment and skill at all times.

DDAs must be familiar with all rules, laws and guidelines that govern the practice of law and the prosecutorial professional. These include, but are not limited to, the following:

- Applicable state and federal statutory and case law (including applicable ORS and OARs)
- Washington County Circuit Court policies, orders and supplemental rules
- Uniform Trial Court Rules (UTCRs)
- Oregon Supreme Court Chief Justice Orders
- Oregon Rules of Professional Responsibility
- Washington County personnel and administrative policies

Personal Conduct

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

Personal conduct that brings discredit upon the District Attorney's office is prohibited and may result in disciplinary action up to and including termination of employment. This conduct includes, but is not limited to, conduct online and social media as well as conduct which results in criminal investigation, arrest, or prosecution.

Anti-profiling policy

Pursuant to ORS 131.915 and 131.920, under no circumstances should decisions made by any District Attorney's Office employee be based upon a person's real or perceived age, race, ethnicity, color, national origin, language spoken, sex, gender identity, sexual orientation or identity, political affiliation, religion, homelessness, or disability. All actions made by DA's Office employees must be consistent with this policy manual and office mission statement.

If any DA's Office employee is aware of a violation of this anti-profiling policy, that employee is required to report the information to a supervisor without delay. A complaint of a violation of this anti-profiling policy may be made by any means, including, but not limited to, in person, in writing, or by phone. Any complaints of a violation of this anti-profiling policy will be received, documented, and investigated, and in each complaint, a response will be provided to the complaint within a reasonable period of time. Furthermore, a copy of such complaint will be forwarded to the law-enforcement contacts policy data review committee.

Justice for All

The mission of the Washington County District Attorney's Office is: *Seeking justice and protecting our community.*

Essential to this mission is ensuring justice for all members of our community, regardless of skin color, race or ethnicity, national origin, sex, sexual orientation, religion, native language or any other classification. We oppose all forms of racism, bias, and discrimination.

A significant way we promote justice for all is by serving crime victims and engagement with the Washington County community.

Professional Development

The Washington County District Attorney's Office is committed to maintaining a high level of professionalism. The Professional Development program provides Deputy District Attorneys and DA's Office employees regular opportunities to advance their professional skills through informal guidance and formal training and continuing legal education (CLE) presentations. Within the District Attorney's Office, CLE presentations and trainings will occur and will include a focus on prosecutorial ethics, fairness, and justice. Additionally, Deputy District Attorneys will have opportunities to attend conferences and continuing legal education events through the Oregon District Attorney's Association, the National District Attorney's Association, the Oregon Department of Justice, and other organizations.

The DA's Office Mentorship Program pairs newly-hired and newly-promoted DDAs with a more experienced DDA, with the goal of improving acclimation, professional development, respect and collegiality. Participation by DDAs in professional development programming is mandatory.

Acceptance of Gifts

All DA's Office employees are expected to comply with Oregon's government ethics laws, as described in the publication, "A Guide for Public Officials."

In addition to the requirements of Oregon's government ethics laws, District Attorney's Office employees may not accept gifts of any value from a victim or other individual associated with a case without approval from a supervisor. *De minimis* gifts of appreciation after the conclusion of a case such as flowers, a cup of coffee, or baked goods will typically be approved.

Bar Complaints

As discussed previously in this policy manual, DDAs are expected to comply with all legal and ethical rules and authorities, including the Oregon Rules of Professional Conduct.

Occasionally a complaint may be made to the Oregon State Bar (OSB) regarding the conduct of a DDA. Upon receipt of such a complaint, the DDA shall notify their supervising DDA and a Chief DDA. DDAs are required to cooperate fully with any OSB investigation and shall provide their supervising DDA and Chief DDA with

routine updates regarding the status and copies of all correspondence with the OSB. Complaints and final OSB decisions will be forwarded by the DDA to the DA Office Administrative Manager to maintain a record.

Occasionally a DDA may initiate an OSB complaint regarding another attorney or may be involved as a witness to the subject matter of an OSB complaint. In either scenario, the DDA is required to provide regular updates to their supervising DDA and Chief DDA.

If a DDA wishes to initiate an OSB complaint or a Judicial Fitness Commission Complaint, the DDA shall provide advance notice to a Chief DDA and the District Attorney.

Law Enforcement Contact and Conflicts of Interest

DA's Office employees are responsible for alerting their supervisor if they learn of a current or potential conflict of interest relating to an investigation, case or other matter that involves or may be likely to involve the DA's Office.

DA's Office employees are required to report to their supervisor any non-work-related contact between law enforcement and the employee or the employee's family or household member. Depending on the nature of the contact and the circumstances involved, additional analysis of the situation may be necessary to avoid conflicts of interest within the DA's Office.

Reports to supervisors must be made as soon as practicable, but not later than one business day after the contact with law enforcement occurs or the employee learns of the issue.

"Family or household member" includes an employee's spouse, former spouse, significant other, persons closely related by blood, marriage or adoption, siblings, and persons who live in the employee's home.

"Contact" with law enforcement occurs if any person is a reporting party, a witness, is investigated, arrested or cited, or is otherwise involved in a criminal case or investigation. A routine traffic or parking ticket does not constitute contact.

DA's Office employees shall not associate with persons involved in illegal or criminal activity and if such association occurs, it must be reported to a supervisor without delay.

Examples of potential conflicts of interest include, but are not limited to, the following:

- a victim is a friend, family member, partner or other close associate of a DA's Office employee
- a suspect or defendant is a friend, family member, partner or other close associate of a DA's Office employee

- a current or former DA's Office employee, or a family or household member of a current employee, is a suspect, defendant, or victim in a case referred to the DA's Office

- a DA's Office employee has a close personal relationship with a person involved in gang or other criminal activity

Subpoena, Lawsuit, or Other Service

Any employee who is served with a subpoena, lawsuit, tort claims notice, ethics complaint, or other legal document or service that is related to the business of the District Attorney's Office shall immediately notify his or her supervisor, who shall notify a Chief DDA or the District Attorney.

Subpoenaing an Attorney or Judge

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

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

Search Warrants for Sensitive Locations

A DDA shall not prepare, authorize or approve a search warrant for a sensitive location without prior approval of a Chief DDA or the District Attorney. Sensitive locations include:

- Office of an attorney (See ORS 9.695)
- Office of a judge or other elected official
- Place of worship or religious institution such as a church, mosque or synagogue
- Location where multiple individuals may have privacy interests such as a medical facility or a school administration location

Requests for Change of Judge

Affidavits of prejudice, motions for change of judge, or requests for a judicial recusal must comply with the requirements of Oregon law and be approved in advance by a Chief DDA or the District Attorney.

Outside Employment and Activities

Employees who wish to engage in off-duty employment must follow Washington County's general policy and obtain written authorization from the District Attorney before engaging in such employment. Employees shall not engage in any type of outside work or activity that potentially conflicts with the operation and function of the District Attorney's office or which would cast discredit upon this office.

Attorney Referral Policy

The District Attorney (and all DDAs) represents the State of Oregon. The District Attorney does not represent Washington County, police agencies or officers, victims or witnesses.

Under Oregon's crime victim rights laws, there are times when the District Attorney is obligated to inform victims of their rights and to help ensure those rights are enforced in court. During the course of a criminal prosecution, it may become apparent to a DDA or a Victim Advocate (VA) that a crime victim is in need of legal representation for a related matter. In these circumstances, either a DDA or VA may refer a crime victim to an established legal aid firm (such as the Oregon Crime Victim Law Center) or the Oregon State Bar attorney referral program.

If a referral to an individual attorney or non-legal aid firm is appropriate, such a referral should only be made by the DDA with advance notice to the supervising Senior DDA. In those instances, the DDA may provide at least three names to the victim and should state that the DDA is not recommending any specific attorney or providing any legal advice.

Confidential Information

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

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

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

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

For additional direction related to disclosure of information, see also *Discovery and Exculpatory Evidence* section.

Substance Abuse Policy

The Washington County District Attorney's Office is an alcohol and drug-free workplace. The intent of this policy is to assure Washington County citizens that

they can depend on this office to provide quality service, and to assure the employees of this office that they can work in an alcohol and drug-free environment. Employees are required to comply with all state and federal laws.

The following conduct is prohibited: being under the influence of alcohol or a controlled substance while performing duties of the office; having a noticeable odor of alcohol or a controlled substance on breath or clothing while at work; any use of alcoholic beverages on or off office premises during business hours (including lunch and breaks); any unlawful possession, use, manufacture, or distribution of controlled substances (which includes a prohibition on the possession or use of marijuana or cannabis) regardless of whether such activity occurs during business hours.

If reasonable cause exists to believe that an employee has violated the substance abuse policy, the employee may be required to take a blood, urine, or breathalyzer test. Penalties for violating the substance abuse policy include a variety of disciplinary actions up to and including termination or criminal prosecution.

Any employee with a substance-abuse issue is encouraged to contact Washington County's confidential Employee Assistance Program. Attorneys may also contact the Oregon State Bar's Attorney Assistance Program.

Attire and Appearance

DA's Office employees are ambassadors of the DA's Office when they interact with our community in and around the courthouse complex.

All DA's Office employees are expected to dress and groom in a professional and business-like manner during business hours. Additionally, all DDAs are required to dress in courtroom-appropriate attire, regardless of whether the DDA is scheduled to appear in court. Employees are required to maintain appropriate attire standards when they are in and around the courthouse vicinity throughout the workday (e.g. traveling to/from work and during breaks). Employees should generally refrain from wearing perfume, cologne, or any other noticeable odors in the workplace.

Exceptions to this policy during breaks or outside of normal business hours include: wearing athletic attire to walk or work-out, wearing comfortable shoes, wearing weather-appropriate attire to be outside during inclement weather, or wearing alternative attire to participate in a DA's Office sanctioned event (such as a BBQ or other community event). Other exceptions will be addressed on a case-by-case basis.

DA's Office employees may wear appropriate DA's Office branded attire within and outside of the office. While wearing DA's Office branded attire, all employees are ambassadors of the DA's Office, regardless of whether they are otherwise engaged in work activity and must conduct themselves in a professional manner in compliance with all applicable policies.

Employees should keep their offices, cubicles and workspaces maintained in a professional, orderly and businesslike manner. Personal items such as

photographs, drawings, or other decorations may be displayed within the interior of an employee's personal workspace. The exterior of an employee's workspace (e.g. door, wall, nameplate, cube wall, etc.) should remain free of personal items. Temporary exceptions for commonly celebrated holiday decorations (e.g. Halloween, winter holidays, Independence Day, etc.) will be made. The display of political or issue-advocacy items is not permissible, unless the issue-advocacy item is the official position of the DA's Office (such as a sign saying "support crime victims").

Firearms and Weapons

Unless approved in writing by the District Attorney, DA's Office employees are prohibited from possessing weapons or firearms within the DA's Office and the Justice Services Building.

Any consideration of whether an employee may possess a weapon or firearm will take into account applicable laws, rules and authorities, including Washington County General Policy 505, Washington County Presiding Judge orders, and all applicable Oregon laws. If an employee is allowed to possess a weapon or firearm, appropriate and safe storage and handling of the weapon or firearm is mandatory.

This policy does not prevent the possession of weapons or firearms as necessary to present evidence for the prosecution of a criminal case, provided appropriate safeguards and chain-of-custody measures are taken.

Child and Elder Abuse Reporting

It is the policy of the DA's Office that all employees shall follow the requirements for "mandatory reporters" as defined by Oregon's mandatory reporting laws for child abuse (ORS 419B.005) and elder abuse (ORS 124.060) and must comply with mandatory reporter reporting obligations.

As described in ORS 419B.005 (child abuse) and ORS 124.060 (elder abuse), any DA's Office employee who has reasonable cause to believe that such abuse has occurred is required to make a report. This requirement applies regardless of whether the employee possesses the information on or off duty.

Criminal Activity by State-Licensed Professionals

In the course of performing DA's Office duties, if a DA's Office employee becomes aware that a member of a profession or occupation licensed by a state regulatory agency is under investigation or has been charged with a crime in Washington County, this information must be reported to a Chief Deputy. If such an individual is charged with a crime, the regulatory agency shall be notified. Common examples of this may include teachers, nurses, accountants, lawyers, private investigators, or doctors.

Political Activity

Generally, DA's Office employees have a right to participate in political activities, such as campaigns and ballot measures. However, there are several restrictions and limitations that may apply to such activity.

Oregon law places restrictions on political activity by public employees. For example, DA's Office employees may not use office resources such as computers, phones or office supplies to work on a campaign or ballot measure. Any such work must be done outside of work hours and in a private (non-official) capacity. The Secretary of State provides several manuals that contain helpful guidance. *See* ORS 260.432

Occasionally, a DA's Office employee may wish to endorse a candidate for a political office. Any such endorsement may only be made in a personal capacity and may not reference the DA's Office or the endorser's employment as a member of the DA's Office, unless otherwise approved by the District Attorney.

The DA's Office frequently engages the public and the legislature on policies and legislative bills. Oregon law allows public employees, including DA's Office employees, to use office resources, office time or official title to engage the public and the legislature on certain policy and legislative bills. While individual employees have a right to express opinions in their personal capacity, no employee may use DA's Office resources, office time, official title, or affiliation with the DA's Office in connection with a policy or legislative bill without approval of the District Attorney.

ICE Communication Policy

Every member of Washington County community has the right to live, work and raise a family in safety. An essential aspect of being safe is feeling safe and having access to justice. Our community is safer when community members, regardless of citizenship status, report crimes, testify in court and access the judicial system so that criminals can be arrested and prosecuted.

The DA's Office is not involved in the enforcement of federal immigration law and therefore does not regularly interact with Immigrations and Customs Enforcement (ICE). However, in rare situations it may be necessary for DA's Office personnel to communicate with ICE.

Generally, it is the policy of the DA's Office to not communicate with ICE except in the very limited circumstances allowed by HB 3265 (2021). Those circumstances are limited to (a) compliance with a judicial subpoena or other court-issued legal process, and (b) under circumstances where the information is available to the general public, and the communication is deemed necessary for public safety. However, communication with ICE will not occur regarding victims, witnesses or their family members.

In the very limited circumstances in which it is permissible for the DA's Office to communicate with ICE, that communication shall occur through a Chief DDA, who is the designated ICE point of contact. Unless otherwise authorized, no other DA's Office employee shall communicate with ICE. If a DA's Office employee receives an inquiry or other communication from ICE, that employee should refer ICE to the designated Chief DDA. The designated Chief DDA shall ensure that all documentation and reporting requirements, if any, related to the communication occur pursuant to HB 3265 (2021).

The purpose of this restriction is to ensure all communication complies with applicable Oregon law and DA's Office policy.

See ORS 181A.820 (providing structure regarding how and when law enforcement may interact with immigration officials); *see also* HB 3464 (2017) and HB 3265 (2021) (limiting what information a public body may provide relating to the enforcement of federal immigration laws).

A limited exception to this policy exists for Child Support Enforcement attorney personnel who may need to contact ICE in order to obtain information necessary to determine how to proceed on pending child support cases.

Out-of-State Assistance

It is the policy of the Washington County DA's Office to assist out-of-state law enforcement agencies and prosecuting offices upon request and when such assistance complies applicable legal and ethical authorities and the pursuit of justice. For example, this includes assistance with out-of-state subpoenas or extraditions. However, if an out-of-state law enforcement agency or prosecuting office requests assistance on a matter where such assistance conflicts with legal or ethical authorities or the pursuit of justice, the Washington County DA's Office will refrain from providing such assistance.

The Washington County DA's Office will not assist an out-of-state agency or prosecuting office for a criminal investigation or action related to abortion. Under Oregon law, district attorneys are not involved and cannot be involved in matters related to abortion.

DISCOVERY

Discovery and Exculpatory Evidence

The Washington County District Attorney's Office maintains a broad discovery policy, in compliance with all state and federal authority and the Oregon Rules of Professional Conduct. Oregon's discovery statutes (ORS 135.815 *et seq*.) provide direction regarding the state's discovery obligations including scope, timing, and protective orders.

The DA's Office will produce copies of discoverable material to the defense in a timely and appropriate manner as required by law. Generally, this will occur as soon as practicable following the filing of an indictment, district attorney's information, or misdemeanor complaint. In circumstances where state or federal law does not allow for duplication (such as material that contains depictions of sexually explicit conduct involving a child) the defense will have an opportunity to inspect the materials. The DDA assigned to a case is primarily responsible for ensuring appropriate discovery production occurs. Exculpatory material or information within the possession or control of the state will be produced to the defense as soon as practicable in accordance with state and federal law and the Oregon Rules of Professional Conduct.

Process for Obtaining Discovery

It is a priority of the Washington County District Attorney's Office to ensure that timely and complete discovery production occurs in all cases. The DA's Office makes discovery available in a variety of manners depending on the case and material. The following discovery production methods will commonly be used:

- Production of copies will be shared electronically via a link to a cloud-based server for secured, direct download. Evidence & discovery will be available to download for 30 days before the link expires. If items were not downloaded prior to expiration of the link, a new discovery request must be submitted, and the discovery fee will be charged again to cover the labor and cloud storage costs incurred by reproducing discovery.
- Digital item download (e.g. body-worn camera or digital recordings and images);
- Opportunity to inspect discovery in possession of the state (e.g. material that contains depictions of sexually explicit conduct involving a child).

Discovery request forms are available on our website through the following link: DA Discovery Request Form

Requests for Discovery and billing questions may be emailed to: DADiscovery@washingtoncountyor.gov

Requests for discovery may also be made in writing to:
Washington County District Attorney's Office
Attention: Discovery Request
150 North 1st Avenue, Suite 300
Hillsboro, OR 97124-3002.

Digital Evidence requests and questions may be submitted to:
DADigitalEvidenceTeam@washingtoncountyor.gov

Discovery Fees

The DA's Office charges a discovery fee associated with the cost to produce discovery in criminal cases. This longstanding practice has been in effect since 1984 and the fee amount is pursuant to a published fee schedule approved annually by the Washington County Board of Commissioners. Generally, the defense will be invoiced at the time discovery is provided. Invoices for discovery fees must be paid monthly. In all cases it shall be a priority to ensure that timely and proper discovery production occurs in advance of trial, regardless of ability to pay.

The current fee schedule is available on the Washington County website through the following link: Fee Schedules.

MEDIA AND PUBLIC RECORDS

Media Policy

The Washington County DA's Office places a priority on openness, cooperation and transparency with the media, while also protecting the integrity of ongoing criminal investigations and complying with requirements set by Oregon law, court protective orders and the Oregon Rules of Professional Responsibility.

Any DA's Office employee who interacts with the media regarding a criminal case is expected to be aware of and in compliance with all applicable Oregon laws, court protective orders and Oregon Rules of Professional Responsibility. Specifically, Rule 3.6 (titled "Trial Publicity") prohibits certain "extrajudicial statements by attorneys or staff that might be disseminated by public communication that the attorney or staff person knows or reasonably should know will have a substantial likelihood of materially prejudicing the legal proceedings." *See* Appendix D.

Media inquiries and interview requests should be directed to the Public Information Officer (PIO) who will coordinate an appropriate response. Generally, in coordination with the PIO a DDA may speak to members of the media regarding a case the DDA is handling or supervising. Any media inquiry or release regarding a policy or legislative matter should be coordinated with a Chief DDA or the District Attorney.

Written press releases, website updates, and social media posts will be disseminated by the PIO or, in the PIO's absence, a Chief DDA or designee.

Public Records

It is the policy of the Washington County DA's Office to comply fully with Oregon's public records laws. These laws and associated requirements are described in detail in the Attorney General's Public Records and Meetings Manual.

It is the responsibility of all DA's Office employees to ensure compliance with Oregon's public records laws, including ensuring appropriate retention of public records such as emails, documents generated, and notes in the case management system (PbK).

Public records requests are subject to strict timelines and requirements. If a DA's Office employee receives a public records request in any form (email, fax, hardcopy, etc.), the request should be forwarded without delay to the District Attorney's Executive Assistant for processing in coordination with the Public Records DDA. Information to the public regarding the submission of a public records request is available on the DA's Office website.

CASE CHARGING POLICIES

Assignment and Review of Cases

When cases are submitted to the DA's Office for review, a file should be created in the DA's case management system (PbK) as soon as practicable. Following the creation of a file, the case will be assigned to a DDA. Occasionally, a police officer may submit a case directly to a DDA to handle. When this occurs, the DDA should ensure a file is created and that the supervising attorney is aware and approves the DDA to be assigned to that case. Reassignment of a case from one DDA to another should be done with supervisor approval.

Assigned DDAs are responsible for ensuring a timely review and charging decision occurs. Generally, for cases referred without a court date (commonly called "incident reports"), charging decisions should occur within 30-60 days of intake. A decision not to file charges (commonly referred to as a "no complaint") should be documented on the "charging decision" form via PbK. All charging decisions will be reviewed by a Senior DDA.

Assigned DDAs are responsible for reviewing the file and determining whether any aspects of the case require supervisor attention. A non-exclusive list of types of cases that require supervisor attention include: potential conflict of interest based on the suspect; cases involving a police officer as suspect; cases involving a person in a fiduciary capacity as a suspect (i.e. coach, pastor, teacher, DHS caseworker, etc.); cases involving potential public attention or media interest. The supervisor will review the file to determine what additional steps are appropriate (e.g. notification to the Chief DDA or District Attorney, sealing of the file to ensure confidentiality, reporting to appropriate licensing agencies, etc.).

No more than one DDA should have an open case on a single defendant. For example, if a felony DDA has an open case against a defendant, any misdemeanor cases should also be assigned to the felony DDA. Exceptions to this policy may be made by a supervisor.

Generally, DDAs will be assigned to prosecute cases that fall within their area of assignment (e.g. misdemeanor DDAs will be assigned misdemeanor cases, Child Abuse DDAs will be assigned child abuse cases, etc.). Exceptions to this policy may be made by a supervisor.

General Case Charging Policy

Charges in a criminal case should promote the mission of the Washington County DA's Office of "seeking justice and protecting our community."

Generally, charges in a criminal case should apply the relevant criminal laws in a manner that accurately reflects the criminal conduct that occurred. In making a

charging decision, DDAs should consider a variety of objectives including, but not limited to, the following:

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

All cases are unique and a variety of additional factors will necessarily impact charging practices, such as the strength of a case, the completeness of an investigation, credibility of witnesses, amount and nature of corroboration, provability issues, relevant input from the victim and available resources. DDAs should rely on evidence which they reasonably anticipate will be admissible at trial and should not make charging decisions based on inadmissible or not sufficiently reliable evidence (e.g. polygraph results, facial recognition software, artificial intelligence, etc.).

DDAs shall exercise appropriate discretion and judgment in making charging determinations. Commonly this is achieved through case staffing coordination with other DDAs and consultation with supervising attorneys.

This charging policy applies to all felony and misdemeanor criminal cases, including but not limited to controlled substance crimes, DUII ORS 813.010 or 819.011, domestic violence, crimes which require mandatory minimum sentences, and to the aggregation of property offenses under 164.043, 164.045, 164.055, 164.057, 164.061, 164.098, 164.125, 164.140, 164.367, 165.013, 165.055, 165.694, and 165.803.

Grand Jury Policy

Cases Presented

Generally, the following categories of cases will be presented to a grand jury:

- Cases containing one or more felony charges
- Failure to Appear cases
- Official Misconduct cases
- Cases with complex, sensitive, or other special circumstances for which a felony supervisor has authorized presentation to the Grand Jury.

Exceptions may be made by a supervising attorney.

Defendant Testimony

Certain defendants have a statutory right to appear before the grand jury as a witness upon request. ORS 132.320(12)(a) states the following:

A defendant who has been arraigned on an information alleging a felony charge that is the subject of a grand jury proceeding and who is represented by an attorney has a right to appear before the grand jury as a witness if, prior to the filing of an indictment, the defense attorney serves upon the district attorney written notice requesting the appearance. The notice shall include an electronic mail address at which the defense attorney may be contacted.

When a defendant is entitled to a court-appointed attorney, but the court fails to make an appointment in time for the defendant to serve notice as required by ORS 132.320(12)(a), it is policy of the WCDA Office to provide an opportunity for the defendant to appear before the grand jury as a witness as though notice had occurred in a timely manner.

This will generally be accomplished by extending the term of the grand jury when the circumstances described above occur. Upon appointment of counsel, if the defendant serves the required notice within 5 judicial days after the appointment occurs, the assigned DDA will arrange for the defendant to testify before the same grand jury panel that originally issued the true bill so that the grand jury may consider charges. The WCDA Office will abide by the results of the grand jury. If the grand jury issues a no true bill, the case will be dismissed. If the grand jury issues a true bill on the same charges or different charges, a superseding indictment reflecting the charges and additional grand jury appearance will be filed.

The purpose of this policy is to balance the interests of public safety, defendant rights, and victim rights. The Oregon Constitution requires that a “fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal proceedings.” Art. 1 §42(1) and §43(1). A defendant has a statutory right to testify before the grand jury. ORS 132.320(1). A victim has both a statutory and constitutional right to be reasonably protected and to receive prompt restitution. Oregon Constitution, Art. 1 §42(1) and §43(1); ORS 144.750; ORS 137.106.

Exceptions may be made by a supervising attorney.

Weapons Cases

In recognition of the danger that exists when crimes are committed with a weapon, the policy of the District Attorney is to prosecute vigorously all crimes involving the possession or use of a firearm or other deadly weapon.

A DDA handling a firearm or deadly weapon case should always request at the sentencing phase for the court to order that the weapon illegally possessed, carried, or used in commission of the crime be confiscated and destroyed as part of the

sentence imposed. See ORS 166.297. Except as described below, DDAs shall not agree to a resolution of a criminal case that returns the weapon to a defendant.

An exception to this policy applies in the case of a stolen weapon. In a stolen weapon case, a DDA may agree to a resolution in which the stolen weapon is returned to the rightful owner, as determined by the court or the investigating police agency. If there is a dispute regarding the rightful owner of a stolen items, such as a stolen weapon, the DDA is not authorized to resolve that dispute and must defer to the court or the investigating police agency.

Domestic Violence

Domestic violence (DV) cases are complicated, require specialized expertise and present a significant threat to vulnerable victims and community safety. Additionally, DV cases present significant lethality concerns as a significant number of homicides involve DV factors. In recognition of these considerations, the DA's Office takes a strong and aggressive approach to DV cases.

The DA's Office maintains a Domestic Violence (DV) Team, which is primarily responsible for the prosecution of misdemeanor and felony intimate partner DV crimes and restraining order violations. The DV team is managed by a Senior DDA. In most circumstances, DV cases should be handled by a member of the DV team.

An unfortunate reality of DV cases is that some DV victims may become unsupportive of a prosecution, often due to pressure from their abuser. Generally, a DV case will not be charged, declined or dismissed solely at the request of a DV victim. DV cases may be charged and tried even if a DV victim is uncooperative or must be personally served with a subpoena in order to compel an appearance in court. In circumstances when a witness has been personally served with a subpoena and fails to appear in court, the "Guidance for Issuance of Charges and Arrest Warrant for Personally Served Witnesses" in Appendix E shall be followed.

A conviction for a crime arising out of domestic violence may include firearm restrictions for the defendant. All DDAs are expected to be familiar with and follow applicable Oregon law and to consult with the DV team supervisor with questions. See "Firearm Dispossession Policy" in Appendix F.

Juvenile Prosecution

The DA's Office juvenile prosecutors handle delinquency and dependency cases in partnership and collaboration with the Washington County Juvenile Department and other key stakeholders.

Delinquency cases are cases where a person under the age of 18 is charged with committing a crime. While some violent crimes and traffic crimes may be handled in regular Circuit Court, the vast majority of cases with juveniles are addressed in the juvenile system. Generally, the DDA role is to advise Washington County Juvenile Department staff about whether charges are appropriate under Oregon law. If

charges are filed, the DDA acts in a manner similar to a traditional prosecutor to protect the community's safety and prevent the youth from reoffending. This can sometimes mean placing the youth in a juvenile detention or correctional facility, but often involves diversionary programs (such as Juvenile Drug Court) or participation in services while on probation.

In circumstances where a juvenile has committed a Measure 11 crime, the determination whether to seek a waiver into circuit court shall occur as outlined in DA's Office SB 1008 policy. See Appendix G.

In circumstances where a juvenile has committed a traffic offense, the determination whether to proceed in juvenile or circuit court shall occur as outlined by Washington County Circuit Court General Order No. 137.

Dependency cases are cases where a child's welfare is seriously endangered, and the Department of Human Services (DHS) has petitioned the court for temporary legal control of the child. In these cases, the juvenile DDA represents the State of Oregon and works closely with DHS and other stakeholders to advocate for the best interests of the endangered child.

Child Abuse

Child abuse cases are complicated, require specialized expertise and present a significant threat to vulnerable victims and community safety. Many child abuse cases involve a delayed disclosure of abuse and a corresponding lack of available forensic evidence. Therefore, child abuse cases often rely heavily on the testimony of a child victim. In recognition of these factors, the DA's Office takes a strong and aggressive approach protecting children and prosecuting their abusers.

The DA's Office maintains a Child Abuse Team (CAT), which is responsible for the prosecution of crimes against children. CAT is comprised of DDAs and victim advocates and managed by a Senior DDA.

Additionally, the CAT also exercises a leadership role in the Washington County Child Abuse Multidisciplinary Team (MDT). Pursuant to ORS 430.739, the District Attorney designates the CAT Senior DDA as the chair of the MDT and a CAT victim advocate as the MDT coordinator. The Washington County Child Abuse MDT Protocol provides a guide for the handling of child abuse investigations and prosecutions by the MDT member agencies. A copy of the protocol is maintained by the MDT coordinator.

Human Trafficking

Human Trafficking is present in our community and a threat to vulnerable victims and public safety. The Human Trafficking Senior DDA is responsible for the oversight of human trafficking prosecution in the DA's Office.

The Human Trafficking Senior DDA also serves as the chair of the Washington County Human Trafficking Task Force (HTTF). The HTTF Protocol provides a

guide for the investigation and prosecution of these cases. A copy of the protocol is maintained by the MDT coordinator.

Vulnerable Adults policy

Protecting victims who are vulnerable due to their age or disability is a priority. As our population ages and includes persons with various disabilities, the need to ensure protection for vulnerable adults increases.

The Vulnerable Adults Senior DDA is responsible for the oversight of prosecutions involving vulnerable adult victims in the DA's Office. Additionally, the Vulnerable Adults Senior DDA also serves as the chair of the Washington County Vulnerable Adults Multidisciplinary Team (MDT) (formerly known as the "Elder Abuse MDT"). The Vulnerable Adults Protocol provides a guide for the investigation and prosecution of these cases. Generally, these cases will be assigned to select DDAs in the felony and misdemeanor unit who have the specialized expertise and ability required for these complicated and serious cases. A copy of the protocol is maintained by the MDT coordinator.

Adult Sexual Assault policy

Adult sexual assault cases are complicated, require specialized expertise and present a significant threat vulnerable victims and community safety. Sexual assaults are crimes of violence that create traumatic and lasting injuries to the victims. In recognition of these factors, and the prevalence and impact of sexual violence in our community, the DA's Office is committed to an aggressive approach to these cases.

The Adult Sexual Assault Senior DDA is responsible for the oversight of adult sexual assault cases in the DA's Office. Generally, these cases will be assigned to select DDAs in the felony and misdemeanor unit who have the specialized expertise and ability required for these complicated and serious cases.

The Adult Sexual Assault Senior DDA serves as the chair of the Washington County Sexual Assault Response Team (SART). The SART works with community partners to ensure effective, consistent, comprehensive and collaborative response to sexual assault. The SART Protocol provide a guide for the investigation and prosecution of these cases. A copy of the protocol is maintained by the MDT coordinator.

Controlled Substance Case Charging Policy

Generally

The illegal use of controlled substances has negative effects on personal health, community safety and wellbeing. The DA's Office supports a comprehensive response to illegal controlled substances, depending on the circumstances of the defendant and the case. In many instances, a treatment-focused approach is the most successful way to address the illegal use of controlled substance. Aspects of this comprehensive and treatment-focused response include, but are not limited to,

the following: use of treatment and specialty courts (e.g. IRISS, FSAP, Adult Recovery Court, Veterans Treatment Court), select deflection and diversion programs, various probation drug treatment programs, and, when appropriate in light of community safety and wellbeing factors, incarceration.

The DA's Office will charge drug possession, drug delivery/trafficking and drug manufacture cases consistent with our general charging principles.

Police Officer Cases

Any case involving a current or former police office as a suspect should be brought to the attention of a Chief DDA and the District Attorney as soon as practicable.

Any use-of-force criminal cases will be assigned to a Major Crimes Team DDA with administrative support provided by the DA's Executive Assistant. The assigned DDA shall ensure that the investigation and DA's file include any victim medical records and a use-of-force expert opinion from an expert not employed by the suspect's agency. Any charging decision must be approved by the District Attorney.

Environmental Crimes Policy

Environmental crimes have the potential to negatively affect personal health and community wellbeing. ORS 468.961(2) requires the district attorney of every county to adopt written guidelines for filing felony criminal charges relating to environmental crimes to promote consistency in charging cases. ORS 468.961(2) further identifies the factors that must be considered in determining whether to file criminal charges. To fulfill this responsibility, this office adopts the Oregon Department of Justice's Model Guidelines for Prosecution of Environmental Crimes (OAR Chapter 137, Division 95) pursuant to ORS 468.961 (3).

No person shall be charged with a felony environmental crime without the personal approval of the District Attorney pursuant to ORS 468.961 (1).

PLEA NEGOTIATIONS

Plea offer policy

General philosophy

The mission of the Washington County District Attorney's Office is to seek justice and protect our community. When engaging in a plea negotiation, deputy district attorneys should be guided by this mission as they consider relevant factors such as the seriousness of the crime, the defendant's criminal history, input from the crime victim, how the DA's Office has treated similarly situated defendants, and other mitigating or aggravating factors that may be present.

In many felony cases, this analysis may result in a plea offer that is consistent with the sentencing guidelines. In all cases, plea offers shall take into account aggravating and mitigating circumstances.

It is the policy of the DA's Office to recognize truth in sentencing as a core principle that protects public confidence in the justice system and recognizes crime victims who are constitutionally guaranteed the right to accurate information about a criminal sentence. (Oregon Constitution Art. I Sec. 42). In plea negotiations and sentencing circumstances, DDAs shall be aware of the impact any sentencing or time reduction programs have on the total sentence served and should provide accurate sentencing information to the court, the parties, the victim and the public. When possible and appropriate, DDAs should state on the record the actual amount of time the defendant is anticipated to serve in custody.

Senate Bill 1002

Effective January 2, 2020, SB 1002 amended ORS 135.405 to place additional restrictions on plea offers. Simply put, plea offers and plea agreements may not contain provisions restricting a defendant's eligibility for reduction in sentence, leave or release from custody of any type or any program (aka "no program" offers).

All DDAs are expected to be aware of the restrictions of SB 1002 and all applicable laws in order to ensure compliance in the course of plea negotiations.

Note: SB 1002 does not impact plea offers and agreements to crimes subject to mandatory sentences or where eligibility for time reduction or transitional leave is restricted by statute or Oregon Administrative Rule.

Scenarios

The following hypothetical scenarios demonstrate how SB 1002 applies:

1. A DDA **cannot**:
   - Make plea offers with limitations on time reduction programs or transitional leave (aka "no program" offers)
   - Suggest that a defendant make a "no program" offer to the deputy district attorney
   - Accept a "no program" made by a defendant.

2. A DDA **can**:
    - Recommend that a judge impose a sentence with no time reduction programs after a trial or in any "open sentence" situation
    - Take into account the impact of time reduction programs on a defendant's total sentence when crafting a plea offer or deciding to reach a plea agreement.
    - Make a "no program" offer when a defendant is convicted of a crime subject to a mandatory sentence or where eligibility for time reduction or transitional leave is restricted by statute or Oregon Administrative Rule.

In order to ensure an accurate record is made regarding plea negotiations, whenever possible plea negotiations and agreements should be documented in writing and DDA plea offers should be conveyed on the DA's Office plea offer official form. In many circumstances it may also be advisable to make a clear record in court regarding plea negotiations and agreements.

Ballot Measure 11 policy

All cases containing at least one Measure 11 charge (ORS 137.700) shall be staffed prior to resolution of any type (e.g. trial, plea, or dismissal), regardless of whether a plea negotiation occurs.

A "staffing" is a detailed discussion and analysis of a case with the Measure 11 committee. The discussion will include a review of the following: charges, the facts of the case, defendant's criminal history, victim input, mitigating or aggravating factors, assessment of legal or factual issues, defendant's plea offer and any other relevant considerations. At the conclusion of the Measure 11 staffing, a file note will document persons present and the decision of the committee.

For general Measure 11 cases, the Measure 11 committee is comprised of the District Attorney, Chief DDAs, and Senior DDAs. A quorum exists when at least three members are present, at least one of whom is the District Attorney or Chief DDA.

For CAT cases, the CAT Measure 11 committee consists of a Chief DDA, the CAT and juvenile DDAs. A quorum exists when at least four members are present, including at least two of the following: A Chief DDA, the CAT Senior DDA, or a Senior DDA with CAT experience.

Occasionally, last-minute re-staffing may be necessary when resolving Measure 11 cases prior to or during trial. When this occurs, reasonable efforts should be made to assemble a quorum of the applicable Measure 11 committee. If this is not possible, efforts to do so shall be documented in the file.

In any case involving the potential for a sentence of 300 months or more, in addition to the required Measure 11 staffing and prior to making or accepting a plea offer or resolving the case, the assigned DDA shall also staff the case directly with the District Attorney. This will commonly occur in sex crime prosecutions involving mandatory minimums or presumptive life sentences (e.g. Jessica's Law (ORS

137.700(2)(b)(D-G), “3 strikes” presumptive lifetime prison (ORS 137.719), and “major felony sex crime” cases (ORS 137.690)).

For murder and manslaughter, those cases shall be staffed directly with the District Attorney and such staffing may also include DDA members of the Major Crimes Team.

In all Measure 11 cases, the District Attorney retains the authority to modify staffing procedures and make decisions independent of the staffing process.

Crash Analysis Reconstruction Team cases

Vehicular cases involving the Crash Analysis Reconstruction Team (CART) involve significant public safety considerations. Therefore, the procedures outlined above relating to Measure 11 staffing will apply to CART cases, regardless of whether the case includes a Measure 11 charge.

The CART committee consists of the District Attorney, a Chief DDA, and the DDA members of the Crash Analysis Reconstruction Team (CART). A quorum exists when at least two of the following persons are present: The District Attorney, a Chief DDA, the DDA assigned to oversee the CART.

Downward Departure and Optional Probation Cases

If a DDA seeks to resolve a presumptive prison felony case for either a downward departure to probation or to a stipulated reduction from the presumptive grid-box sentence length, the DDA must staff the case first with a supervising Senior DDA or a Chief DDA. This includes “optional probation” cases.

For downward departure and optional probation cases in which a probation violation (PV) is alleged and the potential exists for a prison sentence, the original assigned DDA should review and prepare the file prior to any PV hearing. Additionally, the original assigned DDA should make every effort to handle the PV hearing personally or to ensure that arrangements are made for another DDA to handle the hearing if there is a scheduling conflict.

Substantial Quantity and Commercial Drug Offense Offers

Drug dealers and traffickers who engage in substantial quantity and commercial drug offense crimes present a significant risk to community safety. Therefore, plea offers on these cases should be the presumptive guideline prison sentence. Exceptions to this policy are disfavored but may occur on a case-by-case basis if approved by a supervising Senior DDA or a Chief DDA. Factors to consider may include the facts of the underlying case, the defendant’s criminal history, law enforcement cooperation and any relevant mitigating circumstances.

Pre-Trial Release and Security (Bail)

A person accused of a crime is presumed innocent until proven guilty. However, Oregon law recognizes that in order to ensure the safety of the victim and public and to ensure the future appearance of the accused person, certain safeguards are often necessary. These safeguards may include the use of security, release conditions, or pretrial detention in jail.

Oregon laws regarding pre-trial release are generally located at ORS 135.230 *et. seq.* (incorporating SB 48 (2021)).

Preventative Detention

Under Oregon law, in "violent felony" cases, a judge may hold a defendant in jail on preventative detention pursuant to ORS 135.240(4)(a) if the following factors are proven by clear and convincing evidence:

- Defendant is charged with "violent felony" (felony sex offense or felony with actual/threatened serious physical injury to victim), and
- There is a danger of physical injury or sexual victimization to the victim or member of the public if defendant is released.

Given the significant safety concerns and flight risks associated with violent felony cases, it is the policy of the Washington County DA's Office that a preventative detention motion *shall presumptively be filed* on:

- All felony sex cases listed in 137.700 (M11)
- All class A felonies listed in 137.700 (M11)
- Any person felony subject to ORS 161.610 (use or threatened use of firearm)
- Any domestic violence person felony in which SPI is caused or threatened

A preventative detention motion *may be filed* on any person felony which, in the judgment of the charging DDA, meets the requirements of 135.240(4)(a) and there is a compelling public safety consideration. Common examples may include crimes of Assault II, Robbery II, DV Felony Assault IV, Sex Abuse II, Luring a Minor, and non-firearm UUW; especially if there were particular threats made or there is a concerning history.

A decision *not to file* a preventative detention motion on one of the above cases should be staffed with a supervisor.

A decision *to file* a preventative detention request on a non-presumptive case should be staffed with a supervisor.

Arrest Determinations

Oregon law allows a police officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed a qualifying offense. ORS

133.310. The decision whether to arrest a person based upon a probable cause determination should be made by a police officer. Generally, DDAs should not advise an officer whether probable cause exists to make an arrest as the officer is responsible for making that determination.

Oregon law also allows a police officer to arrest a person pursuant to an arrest warrant. ORS 133.220(1). In circumstances where an arrest warrant exists, a DDA may be asked by defense counsel about the existence an arrest warrant, the existence of a secret indictment, or whether arrangements can be made for a defendant to turn him or herself in to the authorities. Generally, DDAs shall not provide this information or make arrangements for a defendant to turn him or herself in to the authorities. There are significant issues that must be considered in these situations (such as community safety, officer safety, evidence destruction, flight to avoid arrest, laws requiring confidentiality of an indictment, etc.) and DDAs are not generally well-positioned to weigh these issues. For these reasons, logistics surrounding the arrest of an individual should be made by the appropriate law enforcement agency charged with making the arrest. Exceptions to this policy may be made with the approval of a supervising attorney.

Requests for the imposition of fines and fees

DDAs should generally request that the court impose standard and appropriate fines and fees, as required by the applicable ORS, including attorney fees and extradition costs. However, a DDA may use judgment based on the circumstances of an individual case to agree to reduction or waiver of legally reducible fines and fees if the DDA determines such a reduction is in the interests of justice. Generally, DA's Office plea offers should not be conditioned upon the payment of fines and fees (except for restitution or compensatory fines for victims). Ultimately, the decision whether to waive fines, fees and costs must be made by the court with appropriate findings.

If a victim seeks restitution, a DDA should always present that request to the court so that it may be ordered as part of the defendant's sentence. Imposition of a compensatory fine may be appropriate in some circumstances. However, generally a DDA should not agree to imposition of a compensatory fine in exchange for a reduction in a jail or prison sentence.

Collateral Consequences of Conviction

Collateral consequences to a conviction are those events that occur as a result of a conviction that are separate from those which are directly related or legally required. For criminal defendants, collateral consequences may include consequences that impact employment, housing, education, immigration status or other opportunities. For example, a convicted identity thief may find certain employment fields difficult or a convicted sex offender may have difficulty finding housing.

The commission of a crime also results in collateral consequences to the defendant's family, the victim and victim's family, and the community as a whole.

For example, according to the Centers for Disease Control, children who are exposed to traumatic events such domestic violence in the home are more likely to suffer from collateral consequences such as chronic health problems, substance abuse issues and missed educational or employment opportunities as adults.

DDAs should be aware of the collateral consequences of convictions and the underlying criminal behavior. When handling a case, DDAs may take into consideration the presence of collateral consequences and its impact on the defendant, victims and their family members, and the community.

The voluntary decision of a defendant to engage in criminal behavior is the root cause of collateral consequences. Unlike the victim or the public, neither of whom choses to engage in the criminal conduct, the defendant bears primary responsibility for the direct and collateral consequences arising out of the criminal behavior. The impact of such collateral consequences on a defendant is often unavoidable and while a DDA may take such consequences into account when making charging, resolution or other decisions, it will often be beyond the responsibility or ability of the DDA to mitigate fully.

Victim Engagement and Involvement

Victims in Oregon have rights that are guaranteed by both statute and the Oregon Constitution. These rights include, but are not limited to, the right to play a meaningful role in the process, the right to be treated with dignity and respect, the right to fair and impartial treatment, and the right to reasonable protection from the offender. *See* Oregon Constitution Art. §42 and §43; *see also* ORS 147.405 *et seq.* (further describing victim rights).

It is the policy of the DA's Office to comply with and honor all victim rights. DDAs and victim advocates are responsible for knowing the statutory and constitutional provisions relating to victim rights and for working to ensure compliance with these requirements throughout the criminal process. Additionally, the DA's Office Victim Assistance Program provides support for crime victims in a culturally competent manner.

Victim input regarding the progression of a criminal case at critical stages is important and should be appropriately considered by the assigned DDA. There will be times when victim input may help a DDA determine the best course of action in a case. However, there will also be times when the action taken by the DDA differ from the wishes of the victim. Ultimately, while a DDA should seek out and consider the wishes of a victim, the DDA must make independent decisions in criminal cases that are grounded in the law, ethics and DA's Office policy.

Civil Compromise

Civil compromise is a useful mechanism to assist in resolving lower-level cases that do not present a significant threat to public safety. A civil compromise may be beneficial to victims and defendants in certain circumstances. Therefore, when the

statutory requirements of a civil compromise are met, the DA's Office will generally not object to such a resolution.

However, the DA's Office will object to civil compromises in the following circumstances:

- ❖ When the crime is not eligible for compromise under ORS 135.703;
- ❖ When the crime involves a breach of trust or fiduciary duty (e.g. employee theft case);
- ❖ When the defendant has previously had a case dismissed pursuant to a civil compromise;
- ❖ Any child abuse case;
- ❖ When the circumstances of the case are aggravated and a supervising attorney has approved an objection
- ❖ When the defendant has prior criminal conviction(s). However, if the conviction(s) are for misdemeanors, are more than 10 years old and are of a different type of crime than the present charges, the DA's office will generally not object to civil compromise. Any crime involving theft or fraud-related activity will be considered the same type of crime.

DDAs may provide information to crime victims regarding a civil compromise, but shall not provide legal advice or otherwise advise a victim whether to agree to a civil compromise. It is nevertheless appropriate for a DDA to provide factual information to a victim regarding what will occur as a result of a civil compromise (e.g. that if such compromise is reached, the criminal case will be dismissed with prejudice regardless of whether the defendant follows through with payment or other promised consideration).

Death Penalty cases

Following the 2019 legislative session and SB 1013, the death penalty in Oregon is limited to a very narrow category of cases that qualify as Aggravated Murder.

When a person is indicted for Aggravated Murder and the case proceeds to trial, it is the general policy of the DA's Office, in accordance with Oregon law, to allow the jury to determine whether the appropriate punishment should be life imprisonment with the possibility of parole, life imprisonment without the possibility of parole, or death.

Plea offers on Aggravated Murder cases will be staffed with the District Attorney in compliance with the DA's Office plea offer policy, as described above.

Conviction Integrity

Ensuring the integrity of the criminal justice process is an essential aspect of the DA's Office mission. It is the responsibility of every DA's Office employee to comply with the highest legal and ethical standards. The DA's Conviction Integrity Committee (CIC) helps ensure we meet these standards. The duties of the CIC include, but are not limited to, the following:

- Review of prior convictions or sentences;
- Review of Brady issues associated with state representative witnesses;

- Ensuring training related to ethics occurs on a regular basis for personnel;
- Reviewing issues related to conviction integrity in office policies or procedures.

Review of prior convictions or sentences

If a defendant requests a review of a prior conviction and/or sentence and the request is made based on a claim of actual innocence, wrongful conviction, or other manifest injustice, the request may be made at any time for any prior conviction or sentence and will be reviewed by the CIC, and the original DDA if appropriate, with a recommendation regarding disposition to be made to the District Attorney.

If a defendant requests a review of a prior conviction and/or sentence and the request is made for reconsideration pursuant to SB 819 (2021), the defendant must submit a SB 819 Reconsideration Application. Completed applications will be reviewed by the CIC, and the original DDA if appropriate, with a recommendation regarding disposition to be made to the District Attorney.

Convictions and sentences for misdemeanor crimes and for the crime of aggravated murder are statutorily ineligible for SB 819 reconsideration. Convictions and sentences for any level of murder or first degree rape, sodomy and unlawful sexual penetration are presumptively ineligible for SB 819 review pursuant to this policy. Convictions and sentences for a crime under ORS 137.700 (Measure 11) or a crime involving child abuse or domestic violence will only be eligible for SB 819 reconsideration in rare circumstances.

The following criteria will make an application presumptively ineligible for SB 819 review:

- Application is incomplete or includes false or misleading information
- Defendant's case is eligible for a set aside pursuant to ORS 137.225 or has a pending set aside motion with the court
- Defendant's case is currently pending appeal, post-conviction relief, or federal habeas
- Defendant owes outstanding victim restitution
- Defendant has not served at least 50% of the original sentence
- Defendant has been convicted of a criminal offense in any jurisdiction after the crime in which reconsideration is being sought
- Defendant has pending charges in any jurisdiction
- A request from the same defendant was denied in the last 36 months
- The petitioner has applied for any form of executive clemency in the last 36 months
- If sentenced to probation, defendant has not successfully completed probation or was revoked

The District Attorney reserves the right to deviate from this policy when the District Attorney determines a deviation is in the interests of justice.

Review of Brady issues associated with state representative witnesses

The CIC assists in ensuring compliance with all discovery and disclosure obligations associated with Brady issues and state representative witnesses. When the DA's Office becomes aware of potential Brady information regarding a state representative witness, the CIC will review and make a recommendation to the District Attorney regarding how to proceed. The District Attorney will make the final decision regarding how to proceed. The full Brady Review of State Representative Witness policy is in Appendix C.

Extradition Policy

It is the policy of the Washington County DA's Office (WCDA) to seek extradition when doing so is authorized by law, funded by the State of Oregon, and promotes our mission of seeking justice and protecting our community.

The governor's Arrest & Return Guideline policy controls which extraditions are funded by the state. Pursuant to that policy, generally class A & B felonies are eligible for state funding for nationwide extradition whereas class C felonies are eligible for "shuttle area" only extradition. The governor's office may make exceptions on a case-by-case basis, depending on available funding and factors enumerated in the governor's Arrest & Return Guideline policy.

When the WCDA prepares an arrest warrant for the court based upon an indictment, the WCDA shall presumptively designate the arrest warrant as "nationwide" for all class A & B felonies and for any class C felonies that include the factors enumerated in the governor's Arrest & Return Guideline policy. Those factors include:

a. The crime is a sex crime.
b. The crime is Criminal Nonsupport.
c. The fugitive has a substantial prior criminal record including Class A or Class B felonies. (Please note that a lengthy record of Class C felonies will not in itself be sufficient to justify the extradition of a particular individual. The criminal record should reflect a history of more serious offenses.)
d. The fugitive's criminal conduct is such that he or she could have been charged with a Class A or Class B felony, even though the pending charge is a Class C. This would include cases in which the fugitive pleaded down from a Class A or B, or cases in which the charge will likely be increased to a Class A or B if the fugitive is returned.
e. The fugitive is likely to make substantial restitution for the crime if extradited.
f. The fugitive's offense was extraordinary, and the fugitive will likely be incarcerated for a substantial length of time if he or she is returned.
g. Likelihood that the court grants pretrial release.

All other felony arrest warrants shall be presumptively designated as "shuttle area."

DDAs shall use their judgment to determine whether the circumstances of individual cases justify an exception to this policy and, when appropriate, shall staff that decision with their supervisor. The rationale supporting the designation of a C felony warrant as nationwide or an exception to this policy should be documented in the WCDA case management system. Ultimately, the final determination regarding warrant designation is made by the judge who signs the arrest warrant.

When the WCDA learns that a defendant has been arrested outside of Oregon based on an Oregon arrest warrant and is pending extradition, the WCDA will review the case to ensure compliance with this policy and to confirm that the governor's office will authorize state funding to accomplish extradition.

WITNESSES

Material Witness Warrants

Applications for Material Witness Warrants must be approved by a Chief DDA.

Witness Travel Expenses

The DA's Office will reimburse or pay for reasonable travel expenses for necessary witnesses and victims to appear for court in compliance with county travel policies.

The DDA assigned to a case, in cooperation with the assigned victim advocate, should ascertain well in advance of the court appearance whether a victim or witness needs travel assistance. If assistance is necessary, the DDA should first obtain approval from the supervising Senior DDA and then work with the appropriate staff person to make travel arrangements. If the criminal case results in a conviction, the DDA should generally request the court to order the defendant to reimburse the necessary witness travel costs.

Expert Witnesses

If a DDA believes it is necessary to retain an expert witness in connection with a case, the DDA should staff that issue with a Chief DDA well in advance of the time when the expert is needed. If the decision to retain an expert witness is made, the DDA will work with the appropriate staff person to ensure the necessary county contracting paperwork is completed, which can often be a time-consuming process.

U Visa Policy

Federal law allows crime victims to submit an application for a U Visa certification to the DA's Office. Generally, the DDA who was assigned to the case involving the victim will be asked to review the certification request. All personnel shall be familiar with and follow the "Immigration Relief Certification Standards and Procedures" section in Appendix H.

Safe Leave Oregon Policy

Oregon law allows qualifying crime victims to receive paid leave from an employer to participate in qualifying activities such as medical treatment/counseling, victim services, or relocation to a safe home because of the victimization. The application process for Safe Leave Oregon allows for DDAs to complete certification documentation. All personnel shall be familiar with and following the "Paid Leave Oregon Standards and Procedures" section in Appendix K.

Seeking Arrest Warrants for Witness

When an uncooperative victim or witness who has been personally served with a subpoena does not appear in court, the "Guidance for Issuance of Charges and Arrest Warrant for Personally Served Witnesses" in Appendix E shall be followed.

Out of State Subpoena for Witness

When a DDA wishes to issue an out-of-state subpoena for a witness to attend a court hearing, the DDA should staff that decision with the supervising Senior DDA for approval well in advance of the hearing date. If approval is provided, the DDA

should coordinate with the DA's Executive Assistant for necessary travel arrangements and court filings. See ORS 136.623.

Running Criminal History for State's Witnesses

ORS 138.815(1)(e) provides the statutory requirements regarding disclosing prior criminal convictions of persons whom the district attorney intends to call as a witness at trial. The statues states:

> *(1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney:*
> *****
>
> *(e) If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.*

DDAs shall make a good faith effort to determine whether witnesses the DDA intends to call at trial have prior impeachable criminal convictions. Generally, this will mean that DDAs should ensure a criminal history check is completed for most witnesses. However, criminal history checks may not be required for certain professional or other witnesses when the DDA does not have a good faith basis to believe the witness is likely to have a prior impeachable conviction. Common examples of this might include:

- ❖ The witness is a juvenile
- ❖ The witness is a police officer
- ❖ The witness is a Department of Human Services (DHS) employee;
- ❖ The witness is an Oregon State Police Crime Lab or Medical Examiner's Office employee; or
- ❖ The witness is a similar professional or other individual where the DDA has a good faith basis to believe that he/she would not have an impeachable conviction.

The procedure for obtaining criminal history checks is as follows:

- Attorneys will check the box on the subpoena worksheet, indicating to staff when to run a criminal history check.
- Staff will run criminal history checks after the final resolution conference (FRC). FRC is the point in time when there is good reason to believe the case is likely to proceed to trial and there is still enough time to run a criminal history and provide it to the defense prior to trial. There will be exceptions when it might need to occur prior to FRC. Attorneys will use discretion on this issue and be aware that the increase in criminal history checks will create a significant strain on our staff.
- Upon learning of an impeachable offense for a trial witness, the attorney will notify the defense by completing a "Witness Impeachable Form" in PbK and either sending it by email or by providing it through the discovery production process.
- Attorneys will document the form was sent to the defense (either via email or discovery production) so there is a clear record that the information was

disclosed. Due to confidentiality rules, the LEDS printout document for a witness is not released to the defense.

MENTAL HEALTH AND SPECIALTY COURTS

The DA's Office supports a wide variety of programs and initiatives that promote the rehabilitation of those who commit crimes so they can become responsible law-abiding members of our community. While the criminal justice system emphasizes personal accountability and responsibility for actions, in many circumstances there are also opportunities to address underlying issues that may play a role in the commission of crimes. Examples of these underlying issues can include addiction, mental health, and prior trauma including Adverse Childhood Experiences (ACEs) trauma. It is the policy of the Washington County DA's Office to promote appropriate opportunities to address root causes of criminal behavior while ensuring fundamental principles of accountability and public safety.

Early Case Resolution (ECR) program

The Washington County Early Case Resolution (ECR) program, established in 2007, is a collaborative partnership involving the court, the DA's Office and the defense bar. The purpose of ECR is to provide an efficient and fair resolution of select misdemeanor and lower-level felony criminal cases and certain probation violation matters. The ECR program accomplishes its goal of "same justice sooner" by consolidating several aspects of the court process that ordinarily occur over the span of several months into a single court appearance. Ultimately this works to the benefit of the defendant, the victim and the entire system.

Generally, the DA's Office will assign a felony-level DDA as the ECR DDA for an extended period of time in order to promote consistency and stability of the ECR program. Additional details regarding the ECR program, including procedures and eligibility requirements, are contained in Appendix I.

Diversion Early Case Resolution (DECR) program

The Washington County Diversion Early Case Resolution (DECR) program is an extension of the ECR program and a similar collaboration involving the court, the defense bar and the DA's Office. DECR allows eligible defendants without a prior criminal history an opportunity to have criminal charges dismissed if they successfully complete a one-year diversion program. For DECR-eligible cases, the DA's Office will notify the defendant at arraignment of eligibility and the defendant must then choose at that time or within a specified period of time after arraignment whether to plead guilty and enter the DECR program. During the one-year DECR program, defendants must remain crime free, refrain from contact with the victim, complete required community service and pay all court ordered financial obligations, including restitution, in full.

The assigned ECR DDA will also function as the DECR DDA. DECR eligibility requirements and eligible crimes are contained in Appendix J.

DUII Diversion

The Driving Under the Influence of Intoxicants Diversion (DUII Diversion) program is a specialty diversion program designed for eligible impaired drivers who are willing to take responsibility for their crime early in the criminal process. If a defendant meets eligibility criteria, the defendant may enter the program. At the conclusion of the DUII Diversion, if conditions are successfully met, the court will dismiss the DUII charge.

In order to enter DUII Diversion, a defendant must take accountability by entering a no contest or guilty plea. Once in the program, the defendant is required to complete drug or alcohol treatment, abstain from alcohol and drugs, remain crime free, and complete a class about the impact of driving under the influence on victims and the community. If the defendant fails any of the DUII Diversion requirements, a DDA will request that the defendant be revoked from the program and sentenced for the crime. A misdemeanor-level DDA will be assigned to be the DA's Office regular representative at the DUII Diversion docket.

DUII Diversion is administered pursuant to ORS 813.200 *et seq*.

Domestic Violence Deferred Sentencing (DVDS)

Domestic Violence Deferred Sentencing (DVDS) is a criminal court program designed for first-time domestic violence offenders who are willing to take responsibility for their crime early in the criminal process. If a defendant meets the eligibility criteria, the defendant is given the option to enter DVDS. If the defendant successfully completes DVDS the court will dismiss the charge(s).

In order to enter DVDS, a defendant must plead guilty and make a statement to the court describing their actions that demonstrate guilt for the crime. Once in the program, a defendant is required to complete various requirements including completing a qualified domestic violence treatment program, remaining crime free, abstaining from alcohol and drugs, completing an alcohol, drug, or parenting program if applicable, and having no contact with the victim until allowed by the court. If the defendant successfully completes the requirements, the court will dismiss the charges. If the defendant fails any requirement, a DDA will request that the court revoke the defendant from the DVDS program and sentence the defendant for the crime.

Information regarding eligibility standards and data may be found on the DA's Office website.

Adult Recovery Court (fka Adult Drug Court)

Washington County's Adult Recovery Court (ARC) is a criminal court program was established in 2005 and designed for the county's most seriously drug-involved offenders. ARC is a collaboration between a wide variety of partners including the court, the DA's Office, the sheriff's office, public defender's office, health and human services, community corrections, and the Washington County treatment community. The mission of ARC is to change people's lives, break the cycle of addiction, reunite families and promote community safety.

ARC participants are non-violent defendants who have committed a property or drug crime in which drug addiction was a significant factor. A defendant must take accountability for their conduct by entering a guilty plea. Once in the program, a defendant is required to complete appropriate treatment, abstain from alcohol and drugs, remain crime free, pay any owed restitution, and attend regular court appearances. A defendant who fails any of the requirements may be revoked from the program and sentenced for their crime.

Information regarding eligibility standards and data may be found on the DA's Office website.

Mental Health Court

The Washington County DA's Office participates in several initiatives designed to address the challenges of mental health in the criminal justice system. These initiatives include Mental Health Court, Rapid Fitness to Proceed Program, and ongoing training/education for DDAs regarding mental health issues.

The Washington County Rapid Fitness to Proceed Program is a collaborative team of professionals who work to make the court fitness to proceed process as efficient and quick as possible. The objective of the program is to shorten the amount of time defendants are housed at the jail pending fitness to proceed determinations. The program was created through the collaboration the sheriff's office, the defense bar, mental health services, the court, and the DA's Office.

The Washington County Mental Health Court is a post-conviction program focused on non-violent offenders with mental health issues. Mental Health Court is a collaboration between a wide variety of partners including the court, the DA's Office, the public defender's office, community corrections, the sheriff's office, Washington County adult mental health services, and mental health specialists throughout the county. The goal of Mental Health Court is to assist non-violent offenders who have been diagnosed with a mental illness in successfully completing their probation.

Mental Health Court places a strong emphasis on connecting participants to mental health and addiction treatment, completing all of the conditions of supervision including restitution payment, remaining crime free, completing community service and engaging in positive activities such as work or school.

The DA's Office will assign a felony-level DDA to appear in Mental Health Court. Eligibility for mental health court is determined by the Court's Mental Health Court team and the assigned Mental Health Court judge.

Guilty Except Insanity Dispositions

Guilty Except Insanity (GEI) dispositions are controlled by ORS 161.295 et seq. DDAs shall be familiar with all applicable law and procedures regarding GEI.
Generally, DDAs shall refrain from stipulating that a defendant is GEI as this issue is best determined by the court. In cases where the defense raises a GEI defense and the DDA determines there is sufficient evidence to proceed in that regard, the DDA may enter into a stipulated facts trial, with stipulations regarding the facts of the case, the

sufficiency of evidence supporting a conviction, and any related medical records. However, the ultimate determination regarding whether the defendant is GEI shall be made by the court.

Exceptions to this general policy may occur with approval from a SDDA or CDDA.

Veterans Treatment Court

The Washington County Veterans Treatment Court (VTC) is a hybrid deferred sentencing and post-conviction program designed to treat the needs of military veterans who are in the criminal justice system. In order to participate in VTC, a defendant must be a military veteran whose honorable military service is linked to the criminal conduct (e.g. a wounded warrior who subsequently develops an addiction to opiates and commits a non-violent crime related to the drug addiction). The goal of VTC is to emphasize accountability while treating the underlying cause of a veteran's criminal conduct (e.g. PTSD, TBI or another service-related condition), so that the veteran can return to being a productive member of our community.

Veterans Treatment Court is a collaborative effort involving the court, community corrections, the Washington County Department of Disability, Aging and Veteran Services, the Portland VA health care system, the Oregon Defense Attorney Consortium (ODAC), and the Washington County treatment community. Additionally, the Salvation Army provides significant community-based support.

Information regarding eligibility standards and data may be found on the DA's Office website.

Integrative Re-Entry Intensive Supervision Services

Integrative Re-Entry Intensive Supervision Services (IRISS) is a Justice Reinvestment Initiative (JRI) funded program. IRISS seeks to divert non-violent offenders from prison to enhanced community supervision.

Prior to sentencing, select non-violent drug and property crime defendants may be referred for an IRISS assessment with the consent of the court, the DA's Office and the defense attorney. The IRISS assessment is completed by the community corrections department. If a defendant enters IRISS, the defendant will receive enhanced supervision and services including mentoring, housing, employment, substance abuse and cognitive behavioral therapy.

Information regarding eligibility standards and data may be found on the DA's Office website.

Family Sentencing Alternative Pilot

The Family Sentencing Alternative Pilot (FSAP) is a state-funded pilot program. FSAP is designed to work with non-violent property and drug crime defendants who are parents or legal guardians at the time of their crime and are facing a potential

prison sentence. One of the goals of FSAP is to keep children of parents who are offenders from entering into foster care.

Prior to sentencing, select non-violent drug and property crime defendants may be referred for an assessment with the consent of the court, the DA's Office and the defense attorney. The FSAP assessment is completed by the community corrections department. If a defendant enters FSAP, the defendant will receive enhanced supervision and services including mentoring, housing, employment, substance abuse and cognitive behavioral therapy.

Information regarding eligibility standards and data regarding FSAP may be found on the DA's Office website.

APPENDICES

APPENDIX - A

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OFFICE LEAVE REQUEST POLICY & PROCEDURES

The following policies and procedures apply to all MAPPS and non-MAPPS DA's Office employees unless otherwise designated as non-MAPPS only.

Office Hours

All office functions must be fully operational Monday through Friday between 8am and 5pm. For that reason, staff schedules are specified in writing to ensure sufficient coverage. Supervisors may designate lunch shifts to ensure continuous operations and coverage during the workday.

Meal Periods & Breaks (non-MAPPS only)

For each 8 hour work period employees must take two 20-minute paid rest breaks and one 30-60 minute unpaid meal break (depending on approved work schedule). Refer to the BOLI breaks and meals chart if the work period is longer or shorter than 8 hours to determine required minimum break periods.

Meal Periods

Meal periods of at least 30 minutes must be taken by non-exempt employees who work 6 or more hours in one work period. For example, employees with a standard, 8hr work schedule, typically take their meal break between 11 AM and 2 PM, unless otherwise approved, and may take their meal break at the end of their shift, only if they have preapproved leave for the last two hours.

Rest Periods

Rest periods are to be taken approximately in the middle of each four hour (or major part thereof) segment. The rest period may not be added to the usual meal period or deducted from the beginning or end of the work period to reduce the overall length of the total work period.

Leave Request Submittals

All employees must submit a leave request by email to their supervisor when requesting approval for time off. Requests must be submitted regardless of the leave type being used (sick, vacation, flex, etc.). Supervisors or their designee will respond to employee's leave requests by email and will copy the payroll clerk. All leave approvals must be

obtained by the employee's direct supervisor or their designee. Supervisors must inform employees and the payroll clerk in writing who the appropriate designee(s) are for their unit. Leave approvals will not be recognized unless granted by the direct supervisor or their authorized designee(s). MAPPS employees may refer to the MAPPS leave policies for use of MAPPS leave.

Except for unanticipated sick leave requests, all leave requests must be submitted in writing and approved before the leave time is used. Leave requests not submitted in accordance with DA Leave Request Procedures or the County's Personnel Policies and Regulations will be denied, unless otherwise required by law. Employees must accrue the leave category they are requesting prior to submitting a leave request. Exceptions to this may be pre-approved by an employee's supervisor in limited circumstances.

Recording Approved Leave

All employees must review their assigned Shared Leave Calendar prior to submitting a leave request in order to ensure adequate coverage is available on the date/time they are requesting.

Upon approval, employees must add their leave to the assigned shared Leave Calendar indicating the date and time of day they will be out of the office. Supervisors will use shared leave calendars to make workload and schedule assignments.

Flextime / Overtime Accrual (non-MAPPS only)

Flextime is a flexible hours schedule that allows employees to adjust their standard work schedule to avoid accruing overtime or using leave within the same workweek.

Staff must obtain written, prior approval before flextime credit or overtime may be accrued. Overtime requests must be submitted to the supervisor and approved by the District Attorney. Blanket flextime credit approvals are prohibited. Blanket flextime credit refers to scenarios where an individual submits a single request for flextime, which may be credited periodically for a recurring work task.

Flextime must be used within the same work week it is accrued. It cannot be offset against time off in another week. If flextime is accrued on a Friday, it must be used the same day or overtime must be requested and approved. Generally, days off and holidays will not affect the same-week deadline.

In some situations, prior approval may not be feasible (i.e. court ran long). When this occurs, staff must email their direct supervisor no later than the close of business the following business day. The email should include:

- Why prior approval was not feasible.
- The amount of flextime or overtime credit requested.
- The proposed date and time any approved flextime credit will be applied.

The email notification to your supervisor does not constitute approval of the flextime or overtime credit.

Flextime or overtime requests not submitted in a timely manner or in accordance with the outlined procedures may be denied or result in disciplinary action. This policy applies to non-MAPPS employees only.

APPENDIX - B

WASHINGTON COUNTY DISTRICT ATTORNEY'S OFFICE CELLULAR TELEPHONE POLICY

Generally

It is the policy of the Washington County DA's Office to comply with all state public records laws and county administrative policies regarding the use of technology including computers and cellular telephones ("cell phones"). These laws and policies may be found at the Attorney General's Public Records and Meetings Manual and the Washington County's administrative policies website.

The use of cell phones is a necessary component for the work of the DA's Office. It is the expectation that DDAs, managers, and certain members of the support staff will need to utilize cell phones to perform their duties. Employees who use a cell phone to conduct DA's Office activity are responsible for ensuring compliance with all laws, administrative rules, and this policy.

Means for Official Cell Phone Communications

Employees for whom a cell phone is required to conduct DA's Office communications will receive a county-issued cell phone. Any DA's Office cell phone communications must be conducted using the county-issued cell phone with county-approved applications.

It is the responsibility of the employee to ensure that county-issued cell phones are properly used, secured, and maintained. Lost county-issued phones must be reported immediately pursuant to county policy. County-issued cell phones remain the property of Washington County and are subject to monitoring and full inspection at any time. Employees must also ensure that county-issued phones are updated with the most current software and operating systems.

County-issued cell phones may be used incidentally for personal communication purposes but should be used primarily to conduct DA's Office business.

The installation and use of unapproved applications, including but not limited to social media applications (e.g. Facebook, Instagram, etc.), third-party communications applications (e.g. TextNow, Telegram, etc.), and entertainment applications (e.g. Netflix, videogames, etc.) is prohibited.

Text Message Communications Limitations

The use of cell phones to communicate via text message should be done with caution and with full awareness of all public records and discovery obligations.

Text message communication with witnesses and victims is highly discouraged, but permissible when there are no other reasonable means of communication. It should be limited to non-substantive subjects (e.g. scheduling, requests for a phone call, etc.).

Text message communications with professional witnesses such as investigators may occur, but should also be limited to non-substantive subjects (e.g. scheduling, requests for a phone call, etc.).

Archiving Communications for Public Records Retention

All communications via county-issued cell phones will be archived at the carrier level. County ITS will coordinate with the approved county service provider to automatically archive text communications. Call logs will remain available through the service provider. Physical devices remain subject to administrative inspection in addition to archived records.

Exceptions to this policy

Due to the unpredictable nature of DA's Office activity and technology, there may be circumstances when an employee must conduct DA's Office communications but cannot do so using a county-issued cell phone. For example, this may include circumstances where a battery dies, reception is poor, or the county-issued cell phone is not with the employee after-hours. In such a circumstance, it is acceptable for the employee to use another means of communication provided the employee makes all reasonable efforts to comply with state public records laws and county policies.

Additional exceptions to this policy may be granted on a case-by-case basis in writing by a Chief Deputy DA or the District Attorney.

APPENDIX - C

WASHINGTON COUNTY DA'S OFFICE
BRADY REVIEW OF STATE REPRESENTATIVE WITNESS POLICY

It is the mission of the Washington County DA's Office to seek justice and protect our community. Consequently, an essential aspect of the DA's Office mission is ensuring the integrity of the criminal justice process.

DDAs are responsible for ensuring appropriate and timely discovery and disclosure occurs in every case. The scope of discovery and disclosure is governed by legal and ethical authorities, including but not limited to, the following: Oregon Revised Statutes, state and federal case law, the Oregon and United States Constitution, and the Rules of Professional Conduct.

In the majority of cases, the discovery and disclosure obligations are straightforward and obvious and the assigned DDA is responsible for acting accordingly. However, there are instances when an individual DDA may not be personally aware of the existence of material or information that may need to be discovered or disclosed on a particular case or when additional guidance may be helpful. Specifically, such issues may arise in relation to State Representative Witnesses.[1] Therefore this policy exists to ensure conviction integrity and compliance with discovery and disclosure obligations.

Generally

The DA's Office has directed police agencies and employers of State Representative Witnesses to provide any material or information that may be subject to the discovery and disclosure obligations discussed above. If the DA's Office possesses such material or information regarding a State Representative Witness, that information will be referred to the CIC[2] for consideration. If the material or information also relates to a DA's Office case (pending or closed), it may also be referred to the assigned DDA for consideration.

If the DA's Office becomes aware that an official investigation of a State Representative Witness is imminent or has been initiated (but there is not yet a final disposition), individual DDAs will be notified to contact the CIC for determination regarding how to proceed if the State Representative Witness is required to testify. Notification will be provided by the DA's office case management software with the message: "See CIC." The "See CIC" designation will remain until a final determination is made. In some circumstances, the "See CIC" designation may remain indefinitely if there is a need to ensure CIC review prior to testimony on future cases.

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[1] State Representative Witnesses may include police officers, unsworn employees of police agencies, Department of Human Services (DHS) personnel, crime lab personnel, and parole/probation personnel.

[2] Note: previous versions of this policy referred to the acronym "DDAC," which was the prior name for the CIC. For purposes of this policy, the acronyms DDAC and CIC are used interchangeably.

The CIC shall consist of members appointed by the District Attorney. The CIC is responsible for reviewing potential discovery and disclosure information regarding State Representative Witnesses and making a recommendation to the District Attorney regarding how to proceed given that information. The CIC is an advisory committee and may consider information from any source, giving appropriate consideration and weight to information depending on the source. If it is necessary for the CIC to determine the existence of a disputed fact to perform its function, the CIC will consider whether there is a colorable claim that the disputed fact exists.

The recommendation by the CIC to the District Attorney may be one of the options listed below. The CIC may make other recommendations as it sees fit.

(1) No further action needed
(2) Recommend further investigation
(3) Recommend "Additional Discovery Notice" status for witness
(4) Recommend "Alert" status for witness
(5) Recommend remain "See CIC" status

"Additional Discovery Notice" Designation

The designation "Additional Discovery Notice" means that the District Attorney has determined the State Representative Witness is associated with information or material that may need to be discovered or disclosed to the defense. This designation is not a prohibition on the witness being called to testify.

If the assigned DDA on a criminal case has knowledge that a State Representative Witness with this designation is associated with the criminal case, the DDA shall consult with a supervising attorney. The ultimate decision whether to discover or disclose information or material will occur on a case-by-case basis with consultation between the DDA assigned to the case, supervising attorney, and when appropriate the CIC.

"Alert" Designation

The designation "Alert" means that the District Attorney has decided that, given the information or material known at the time of the designation, the State Representative Witness will not be called to testify. The District Attorney retains the ability to make an exception to this decision in rare circumstances on a case-by-case basis.
If the assigned DDA on a criminal case has knowledge that a State Representative Witness with "Alert" designation is associated with the criminal case, the DDA shall consult with a supervising attorney. It may be the State Representative Witness is also associated with information or material that may need to be discovered or disclosed regardless of whether the State Representative Witness is called to testify. The ultimate decision whether to discover or disclose information or material will occur on a case-by-case basis with consultation between the DDA assigned to the case, supervising attorney, and when appropriate the CIC.

Internal Notification

The DA's office will maintain documentation of State Representative Witnesses with the designations "See CIC," "Additional Discovery Notice" and "Alert." The DA's Office case management software will create an internal notification when a State Representative Witness with a designation is associated with a case so that any DA's Office employee accessing the software will be on notice as to the designation of the State Representative Witness.

Notice to State Representative Witness

When appropriate, notice shall be given to the State Representative Witness regarding CIC consideration. In no situation will the District Attorney assign the "Alert" designation to a State Representative Witness without providing notice and opportunity to present information to the CIC.

Storage and Dissemination of CIC Materials

Information or material associated with the State Representative Witness will be maintained in a secure manner in the DA's Office so that it is accessible when needed for discovery or disclosure. A protective order may be used at the discretion of the DA's office prior to discovery or disclosure of information or material.

External Notification and Transparency

To the extent allowable by law, the work of the CIC shall be transparent and maintained as a public record. The DA's Office will maintain a record of those witnesses who have undergone a CIC review for the appropriate records retention period. Additionally, if a determination is made to designate a state witness as "alert" status, written notification of that determination shall be sent to the head of the agency employing the witness (e.g. chief, sheriff, director, etc.) and, in the case of a police officer, to DPSST.

Conclusion

The DA's Office, using the resources and procedures outlined above, will review any information or material made known to it regarding State Representative Witnesses. If new information or material is provided to the DA's Office regarding a State Representative Witness, the CIC may re-evaluate its recommendation or the District Attorney may re-evaluate the designation.

The DA's Office anticipates the procedures described in this policy will apply in the majority of circumstances. However, the DA's Office reserves the right to deviate from this policy on individual cases when necessary to ensure that appropriate and timely discovery and disclosure occurs, and that justice is done.

APPENDIX – D

ORPC RULE 3.6: TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step-in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

i the identity, residence, occupation and family status of the accused;

ii If the accused has not been apprehended, information necessary to aid in apprehension of that person;

iii the fact, time and place of arrest; and

iv the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may:

(1) reply to charges of misconduct publicly made against the lawyer; or

(2) participate in the proceedings of legislative, administrative or other investigative bodies.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(e) A lawyer shall exercise reasonable care to prevent the lawyer's employees from making an extrajudicial statement that the lawyer would be prohibited from making under this rule.

Adopted 01/01/05 Defined Terms (see Rule 1.0): "Firm" "Knows" "Matter" "Reasonable" "Reasonably should know" "Substantial" Comparison to Oregon Code Paragraph (a) replaces DR 7-107(A). Paragraph (b) has no counterpart in the Oregon Code. Paragraphs (c)(1) and (2) retain the exceptions in DR 7- 107(B) and (C). Paragraph (d) applies the limitation of the rule to other members in the subject lawyer's firm or government agency. Paragraph (e) retains the requirement of DR 7-107(C).

APPENDIX - E

GUIDANCE FOR ISSUANCE OF CHARGES AND ARREST WARRANT FOR PERSONALLY SERVED WITNESSES

GENERALLY

When a personally served witness does not appear in court as required, Oregon law allows for a district attorney to file contempt charges and to seek an arrest warrant. The following document provides guidance.

CRITERIA FOR FILING CHARGES AND SEEKING AN ARREST WARRANT FOR FAILURE TO APPEAR:

1. The witness must have been personally served for the court appearance date.
2. The nature and circumstances of the case must justify filing charges and seeking an arrest warrant for a witness. The assumption is that charges and a warrant will not be issued for all witnesses that fail to appear as required.
3. The following list of non-exclusive factors may justify filing charges and seeking a warrant:
    A. Prior allegations of domestic violence (charged or uncharged)
    B. Defendant has a prior criminal record
    C. Defendant has had a protective order against him/her by anyone at some previous time
    D. Weapons used or threatened
    E. Level and nature of physical injury
    F. Victim has not taken significant steps to make self and children safe from defendant
    G. Children witnessed the incident
    H. Reasonable potential for future harm to victim
    I. In the case of a grand jury appearance, the DDA should, prior to seeking a warrant, determine whether the witness will voluntarily accompany the officer to grand jury and consider the feasibility and appropriateness of rescheduling the grand jury to a new date.
    J. The case cannot be proven without participation of the witness, i.e. using admissible hearsay, other witnesses, or admissions/confessions.
    K. Other concerning factors identified by the assigned DDA
4. Approval by supervising attorney (SDDA or higher) and documentation in file.

PROCEDURES

Before Case Assignment, if it is anticipated that a witness may not appear, the DDA should consider the above factors and, if appropriate, staff the case with a supervisor to make a preliminary decision regarding how to proceed should the witness not appear.

On the day of trial, the DDA should, prior to seeking a warrant, ask the judge for an opportunity to have officers check witness' home to determine whether or not the witness will voluntarily accompany the officer to court. The DDA should also consider the feasibility and appropriateness of seeking a reset to a new court date.

When the witness is arrested:

1. We will generally not object to the witness's release from jail, pursuant to a release agreement which includes a requirement to appear in court on date of defendant's trial. Decisions to object to release must be staffed with a supervisor and should be based on a significant likelihood of the witness failing to appear, and/or on the factors listed in section (3) above.
2. The contempt proceeding dates should be scheduled to occur after the defendant's trial. Following the defendant's trial, the assigned DDA should staff the contempt case with a supervisor to determine appropriate disposition, such as dismissal.

APPENDIX – F

2020 DV – FIREARM DISPOSSESSION POLICY

CRIMINAL CONVICTIONS

I. Charging DDA must determine at the point of charging whether any charge in the complaint is a qualifying crime.

II. If one of the charges is a qualifying crime, language appropriate qualifying firearm language must be added to the charging document to reflect the nature of the charge.

III. Determine which cases must receive mandatory gun prohibition and dispossession.

A. Crime of Stalking – ORS 163.732 – no relationship requirement

B. Qualifying misdemeanor crimes of domestic violence – "Any misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon."

I. Crimes: reasonably and commonly charged as:

- Assault IV*
- Strangulation*
- Harassment
- Pointing a Firearm at another
- Unlawful Use of a Weapon
- Criminal Mistreatment in the First Degree*

*NOTE: Includes C Felonies that likely and commonly reduced to a misdemeanor

II. Relationship:

- Spouses and Former Spouses
- Adult persons related by blood or marriage
- Persons cohabitating or who have cohabitated with each other
- Persons who have been in a sexually intimate relationship
- Unmarried parents of a minor child
- A parent or guardian of the victim of the offense

IV. Ensure cases are correctly labeled as "Qualifying misdemeanor crime of domestic violence."

A. Caption in the Title of the charge (select in PbK):

I. "Qualifying Misdemeanor Crime of Domestic Violence",
Example: "*Assault in the Fourth Degree – Qualifying Misdemeanor Crime of Domestic Violence"*

II. Stalking – Firearm Prohibition

B. Add to the body of the charge in complaint: *"Any misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon."*

C. Select in a drop down PbK menu: specific relationship (see list above).

5. Add to the bottom left hand corner of charging instrument:

A. "DVDS ELIGIBLE/NOT ELIGIBLE

B. INTIMATE/NOT INTIMATE – QM/NOT QM"

NOTE: This information is important to the court for proper scheduling/routing

6. DA to create specific "DV plea offer" to send to defense attorney:
   A. Plea offer to require defendant stipulate to conviction being a qualifying misdemeanor.
   B. Plea offer to require efiling of firearm dispossession declaration prior to or immediately preceding the entry of conviction - courtesy efile/serve copy to DDA.
7. DDA to mark qualifying counts of conviction on DA file "PG – QM" so that data entry will flag case as a gun prohibition/dispossession case in PbK.
8. In the case of a felony conviction (ie: Assault IV, Strangulation, Criminal Mistreatment I) include in plea offer that "findings made by the court that will require firearm prohibition and dispossession per ORS 166. 255 if this conviction is ever reduced to a misdemeanor."
9. Court to create "ORDER OF FIREARMS PROHIBITION AND DISPOSSESSION"
   Note: copy to be served on defendant with the judgment.
10. Order to be entered into Odyssey and sent to WCSO Records to be entered into LEDS/NCIC.
11. Defendants must efile copy of completed firearm dispossession with the court within 2 judicial days of receiving the order (to be done at the time of conviction). Efiled copy to be courtesy efiled with the District Attorney's Office as well.
12. P.O. to confirm when defendant first checks in for intake that firearm declaration properly filed with Odyssey – if not, probation violation - detainer
13. District Attorney's Office to create internal system to track compliance with the requirement to efile the firearm dispossession declaration within 2 judicial days of conviction and then review case to file Contempt charges when declaration is not filed by the deadline.

QUALIFYING PROTECTIVE ORDERS

(1) Court identifies which civil protective order cases meet legal criteria as a "Qualifying Protective Order" per ORS 166.255 – this is already being done with state-wide protective order forms.

(2) Timelines for triggering date (when respondents are required to dispossess & file declarations):
   A. Order MUST be served – otherwise not in effect/no dispossession requirement
   B. Trigger date depends on:
      I. If respondent does NOT request a contested hearing:
         - Trigger date is 30 days from service of RO
      II. If respondent requests a contested hearing and order upheld:
         - Trigger date is the date of the hearing – regardless of whether a hearing actually occurs or respondent attends the hearing
      III. Dispossession must occur within 24 hours and declaration must be efiled with the court (and Courtesy efile to DA) within 2 business days

(3) WCSO is providing packet of information to respondents when served with orders that explains legal requirements for gun dispossession, where and how to dispossess and blank copy of firearm dispossession declaration.

(4) Court to provide weekly list of Protective Orders that hit the trigger date to: DV_DV_Team@co.washington.or.us

(5) District Attorney's Office to create internal system to track compliance with Firearm Declaration filings within 2 judicial days of trigger date:
   A. DA office receives weekly copy of triggered protective order cases
   B. DV team to coordinate with law clerks to put into spreadsheet
   C. DV team/law clerks to check each case with Odyssey filings to see if declaration filed as required
   D. DV team to develop protocol for charging Contempt on cases in which the defendant is out of compliance with firearm dispossession declaration order by court

(6) If protective order ever dismissed a copy of the order to go to WCSO records so that firearm prohibition can be removed from LEDS/NCIC

APPENDIX - G

SB 1008 POLICY

Washington County's Juvenile Prosecution Unit will conduct initial review of any investigation where a suspect's criminal activities fall within the exclusive jurisdiction of the juvenile delinquency court and either of the following are true:

1. The investigation surrounds an act committed by a suspect 15 years of age or older that, if committed by an adult, would constitute aggravated murder under ORS 163.095, murder under ORS 163.115, or any crime listed in ORS 137.707;
2. The investigation surrounds an act committed by a suspect 14 years of age or younger that, if committed by an adult, would constitute aggravated murder under ORS 163.095 or murder under ORS 163.115.

In any case where the assigned DDA believes waiver into adult criminal court is appropriate that decision shall be staffed by the appropriate Measure 11 staffing committee and/or the District Attorney (or if unavailable his designee).

In deciding whether it is appropriate to seek waiver to circuit court, the following should be taken into consideration:

1. The ages of the suspect and victim
2. Any social or familial relationship between the suspect and victim
3. The number of victims
4. The number of criminal acts
5. The nature, severity, and longevity of the criminal acts
6. The suspect's criminal and/or juvenile history
7. Any unique vulnerabilities of the victim
8. Any known cognitive or developmental disabilities of the suspect
9. Any pertinent input, considerations, or perspectives provided by the named victim or the victim's legal guardian
10. The enumerated factors listed in ORS 419C.349(2)(b)(A)-(H)
11. Any other relevant factors

Where a suspect's criminal activities fall within the exclusive jurisdiction of the juvenile delinquency court and constitute crimes not specifically enumerated above that are nonetheless subject to waiver under ORS 419C.349 or ORS 419C.352, the Juvenile Prosecution Unit will conduct initial review and staff the issue as described above.

APPENDIX –H

WASHINGTON COUNTY DISTRICT ATTORNEY'S OFFICE IMMIGRATION RELIEF CERTIFICATION STANDARDS AND PROCEDURES

Victims of criminal activity may qualify for certain immigration relief designed to encourage victims to report crimes and cooperate with law enforcement regardless of immigration status. Immigration assistance may be available through the U Visa, T Visa, VAWA, or Asylum petitions.

The U Visa is most commonly seen by this office and was established by Federal Statute in 2000. It was created as relief for a vulnerable population and it provides legal status to victims of certain qualifying crimes who have suffered substantial physical or mental abuse and can document helpfulness to law enforcement.

To be eligible, the crime victim must:

- have suffered substantial physical or mental harm from the crime;
- have information about the qualifying criminal activity; and
- have been helpful, be helpful or be likely to be helpful to the investigation or the prosecution of the qualifying crime or criminal activity

There are also other immigration resources beyond the U Visa for which a victim may be eligible. For ease of reference, this document will refer to the U Visa. However, the policies and procedures discussed herein are intended to apply when appropriate to any similar immigration resources (e.g. T Visa, VAWA, Asylum petitions, etc.).

This document is intended to set forth standards and procedures which will guide Deputy DAs in their review of such applications for immigration relief certification and to identify disclosure obligations to defense counsel. These standards and procedures may be modified with the approval of a supervising attorney, when appropriate and given the facts of an individual case.

LEGAL CRITERIA GOVERNING CERTIFICATION OF U VISA

All Deputy DAs reviewing applications for certification of a U Visa shall be familiar with the applicable law summarized below.

Qualifying Crimes

Qualifying crimes include one or more of the crimes listed below or any similar activities in violation of federal, state, or local criminal law of the United States. They also include any attempt, conspiracy, or solicitation to commit any qualifying crime.

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Felonious Assault
- Being Held Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes

Similar Activities

The term "any similar activities" refers to criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.

Victim

A "victim" is someone who has suffered direct or proximate harm as a result of the commission of the qualifying criminal activity.

Substantial Physical or Mental Abuse

"Physical or mental abuse" means injury or harm to or impairment of the emotional or psychological soundness of the victim.

Whether abuse is "substantial" is based on a number of factors, including but not limited to the following:

- the nature of the injury inflicted or suffered;
- the severity of the perpetrator's conduct;
- the severity of the harm suffered;
- the duration of the infliction of the harm;
- the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions.

No single factor is a prerequisite to establish that the abuse suffered was substantial. The existence of one or more of the factors does not automatically create a presumption that the abuse suffered was substantial. A series of acts taken together

may be considered to constitute substantial physical or mental abuse even where no single act alone rises to that level.

Helpful to the Investigation or Prosecution

"Helpful" means that the victim has been helpful, is being helpful or is likely to be helpful in the investigation of a qualifying criminal activity (see list above). This includes being helpful and providing assistance when reasonably requested.

For purposes of determining victim helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of a qualifying criminal activity if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement officials.

DISCLOSURE OBLIGATIONS OF THE DEPUTY DA AND VICTIM ADVOCATE

Deputy District Attorneys

Pending cases (before entry of judgment)

In the course of a pending prosecution (before entry of judgment), a Deputy DA may learn that a victim has submitted an application for a U Visa certification. This information may come from a variety of sources including the applicant, a victim advocate, a police officer, or other person. If the Deputy DA learns of such information, he or she shall do the following:

(1) Provide to the defendant's attorney written notification of the application. A template for such written notification exists on PBK (document titled: *U Visa Additional Information Letter*).

(2) If the victim has provided a copy of U Visa application material to the DA's Office, the Deputy DA shall make that material available to the defense attorney for inspection only in the DA's Office. In recognition of the confidential nature of the U Visa material and the victim's constitutional right to be reasonably protected, a copy of the U Visa material may be provided to the defense attorney with a protective order from the court and appropriate redactions (if any) made. In the course of a pending prosecution, a Deputy DA may learn that a victim has inquired about a U Visa but has not submitted a formal application. If the Deputy DA learns of such information, he or she shall do the following:

A. Provide to the defendant's attorney written notification of the victim's U Visa inquiry. A template for such written notification exists on PBK (document titled: *U Visa Additional Information Letter*)

B. Provide any information regarding immigration resources/information provided to the victim by our office. In most cases, this will include the *Immigration Services: Information for Crime Victims* document.

Closed Cases (after entry of judgment)

After a case has concluded and is no longer pending, it is possible that victims may either submit an application for certification of a U Visa or inquire about a U Visa. In such cases, the Deputy DA shall do the following:

(1) Provide to the defendant's last known attorney written notification of the victim's

U Visa inquiry or application. A template for such written notification exists on PBK (document titled: *U Visa Additional Information Letter*). If the Deputy DA possesses any documentation (such as a U Visa application or other materials), the written notification shall state that such documents exist but are not provided at the present time.

(2) For such closed cases, in addition to providing written notification of the inquiry or application, it may also be appropriate to provide copies of the U Visa materials in a manner consistent with the process for pending cases discussed above. That decision will be made on a case-by-case basis with approval from the Deputy DA's supervisor and, to the extent possible, will include the use of protective orders and redactions where appropriate.

Victim Advocates

DA Victim Advocates may frequently work with victims who may qualify for a U Visa. DA Victim Advocates shall not initiate conversation with victim about a U Visa or otherwise affirmatively promote it as a resource. If the victim raises the subject with the advocate, the advocate should tell the victim that the District Attorney's Office cannot give the victim legal advice and suggest that the victim seek advice from an immigration attorney. The advocate may give the victim the "Immigration Services: Information for Crime Victims" fact sheet.

The advocate shall inform the Deputy DA of the substance of the discussion he or she has with a victim concerning the U Visa process and about any materials provided to the victim. This notification shall occur as soon as reasonably possible and shall include the creation of the PBK document, "*U Visa Additional Information Letter*". PBK will immediately notify the Deputy DA that the document has been created. The Deputy DA shall then provide written notification to the defendant's attorney as discussed above. It shall be the Victim Advocate's responsibility to follow up with the Deputy DA to ensure that the Deputy DA is personally aware of the *U Visa Additional Information Letter*.

Interns/volunteers shall be trained in the above procedures and directed to seek assistance from a staff victim advocate if any of the circumstances described above occur.

Working with Police Agencies and DHS

Police agencies and DHS may also be requested to certify a victim's application for a U Visa. This may occur in both pending cases and in closed cases. It is the responsibility of police agencies and DHS to establish procedures to ensure that the District Attorney's Office is notified of :

(1) U Visa applications or inquires in pending cases and

(2) U Visa applications or inquires in closed cases.

Upon receipt of this information, the Deputy DA shall follow the defense attorney notification procedures discussed above.

THE CERTIFICATION PROCESS AND DECISION

When an application for U Visa Certification is received, it will be directed to the responsible staff person. The responsible staff person will do the following:

(1) Review the application for factual accuracy and eligibility;

(2) Prepare a draft certification if appropriate; and,
(3) Provide the application, draft certification, U Visa DDA checklist, and DA file to the assigned Deputy DA for review and certification, if appropriate.

Except under circumstances in which there is good cause for delay, the decision whether to grant or deny a request for certification shall occur within 90 days of the date of the certification request or within 14 days of the date of the certification request if the victim is in removal proceedings.

The certifying form must include details of the nature of the qualifying criminal activity investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness. The Deputy DA shall review the materials for accuracy, completeness, and applicant eligibility. If the Deputy DA concludes the application should be certified, he or she shall sign the certification and return it to the responsible staff person for processing.

If the Deputy DA concludes the application should not be certified, he or she shall staff that decision with a senior level Deputy DA or higher and then communicate the decision to the responsible staff person. The Deputy DA shall in writing notify the petitioner or the petitioner's attorney of the reason for the denial. This denial notification must contain the following information; an internal case number, the date of the denial, and the reason for the denial (document titled: *U Visa Victim Attorney Completion Letter*). A copy of the denial notifications shall be kept in the criminal file for the retention period associated with the underlying case.

All felony attorneys (level DDA 3 and above) are designated supervisory attorneys for the purpose of possessing the authority to sign a U Visa certification. This authority is distinct from a Deputy DA's supervising attorney or supervisor, referenced elsewhere in this document.

The Deputy DA shall base his or her certification decision on the statutory requirements discussed above. The following applicants are presumptively ineligible for certification:

(1) Individuals who have been convicted of a crime or adjudicated of a crime as a juvenile.
(2) Individuals who are criminally culpable in the activity being investigated or prosecuted or, otherwise, criminally involved.
(3) Individuals with a criminal history or other factors that raise a concern regarding community safety.
(4) Individuals who do not meet the legal criteria for U Visa certification. Additionally, the Deputy DA may exercise his or her discretion notwithstanding the presumptions discussed above in order to promote the goals of protecting vulnerable victims and promoting community safety. In this regard, the Deputy DA should consider the facts and surrounding circumstances of each case in assessing whether to certify the application and, as discussed above, shall staff any denial of certification with a senior level Deputy DA or higher.

APPENDIX – I

EARLY CASE RESOLUTION [ECR] PROCEDURES & ELIGIBILITY REQUIREMENTS

The deputy district attorney who charges the case should determine ECR eligibility for that case and document that decision on the charging instrument. Deputy district attorneys should submit an ECR plea offer with the charging instrument. Outside of the Diversion Early Case Resolution (DECR) program, no specialized or standardized policies exist with respect to ECR plea offers. In making ECR offers, deputies should follow all existing office plea-offer policies. ECR plea offers should always contain a recommendation for the resolution of any tracking probation-violation cases.

The following items disqualify a case from the ECR program:

- The defendant's presumptive sentence is more than one year in the DOC.
- The defendant is on a probation (in any county) that carries a potential DOC sentence of more than one year if revoked.
- The defendant has an additional, open case that is not eligible for ECR.
- The defendant has an additional, open case where the ECR offer has previously been rejected.
- The defendant has a tracking probation file that must go to a specialty court (e.g., Domestic Violence, Adult Recovery Court, Mental Health Court, DUII Enhanced Bench). However, an existing DUII diversion case will not exclude a defendant from ECR.
- The charging instrument contains a non-ECR-eligible charge.
- The case is likely to result in a civil compromise (e.g., a FPDD case where the defendant has no prior criminal convictions).
- The allegations in the case are relate to domestic violence.
- The defendant's status at the jail precludes early resolution of the case. For example, the defendant has been classified by the Sheriff's Office as a significant security risk ("8Max") or the defendant is refusing to come to court.
- Any case involving a gun.

In addition to considering the presumptive ECR disqualifiers, deputy district attorneys should use judgment and discretion when determining whether we can deliver the "same justice faster" through the ECR program. The following non-exhaustive list of factors may indicate that a case is not appropriate for ECR.

- The case involves multiple victims.
- The case involves an unknown, but potentially-large, restitution amount.
- The defendant has mental-health issues.
- The defendant presents an unusual or heightened threat to the safety of the public or the victim.
- The defense attorney is unable to communicate effectively with the defendant at the ECR court appearance.

ECR Eligible Crimes

All Violations and Traffic Infractions*	
All Wildlife Misd /Violations*	496.162
Attempt to Elude M/F	811.540
Burglary 2	164.215
Carry Concealed Weapon**	166.240
Criminal Mischief 3	164.345
Criminal Mischief 2	164.354
Criminal Mischief 1	164.255
Crim. Poss. Rented Prop. M/F	164.140
Criminal Trespass 2	164.245
Criminal Trespass 1	164.255
Cut/Transp. Spec. Forest Prod	164.813
DCS Imitation Cont. Sub.	475.912
DCS-Marijuana—Misd Only	475.860
Deposit Trash Near/In Water	164.775
Disorderly Conduct 2	166.025
DWS/DWR M/F	811.182
Failure to Appear 2	162.195
Fail to Appear 1	162.205
Fail to Appear on a Cite	133.076
Fail to Carry/Present ODL	807.570
Fail. Reg. Sex Offender M/F	181.599 & 811.700
False Application ODL	807.530
Falsification Financial Resp.	806.050
False Info Police—Traffic	807.620
False Info Police—Cite/Warrant	162.385
False Info Police—Liability Ins.	806.055
False Swearing to Receive License	807.520
Falsify Drug Test Records	475.918
Felon Poss. Rest. Weapon**	166.270
Forged Title or Registration	803.230
Forgery 2	165.007
Forgery 1	165.013
Fraud Use of Credit Card M/F	165.055
Freq. Place Cont. Sub. Used	167.222
Furn. Liquor Minor/Intoxicated Person	471.410
Harassment—Non DV	166.065
Identity Theft	165.800
Improper Use 911	165.570
Initiate False Report	162.375
Interfere w/ Peace Officer	162.247
Interfere w/Public Trans.	166.116
Lend ODL to Another	807.590
Mail Theft	164.162
Metal Property Offenses	165.118
Misrep. Age by Minor	165.805
Misuse ID card	807.430
Negotiate Bad Check M/F	165.065
Obtain Cont. Sub. Unlawfully	475.916
Offensive Littering	164.805
PCS—Cocaine	475.884
PCS—Ecstasy	475.874
PCS—Heroin	475.854
PCS—Hydrocodone	475.814
PCS—Marijuana	475.864
PCS—Methadone	475.824
PCS—Methamphetamine	475.894
PCS—Oxycodone	475.834
PCS—Schedule 1 to 5	475.752(3)
Place Off. Subs. Water/Hwy	164.785
Poss. Burglary Tools	164.235
Poss. Forged Instrument 2	165.017
Poss. Forged Instrument 1	165.022
Poss. Forgery Device	165.032
Poss. Stolen Vehicle	819.300
Prostitution—selling	167.007
Prostitution—buying	167.008
Prov. Drug Test Falsify Equip	475.920
Reckless Drive	811.140
Reckless Endangering	163.195
Resisting Arrest	162.315
Serve Alcohol w/o Permit	471.405
Tampering w/ Drug Records	167.212
Theft 3	164.043
Theft 2	164.045
Theft 1	164.055
Theft of Services M/F	164.255
Throw Lighted Material	476.715
Unauthorized Departure	162.175
Unauth. Entry Motor Vehicle	164.272
Unauth. Use Motor Vehicle	164.135
Unlawfully Use Inhalants	167.808
Unlawfully Apply Graffiti	164.383
Unlawfully Poss. Graffiti Imp.	164.386
Unlawfully Obt. Pub. Assist.	411.630
Unlawfully Poss. Fict. ID	165.813
Unlawfully Trans. Metal Prop.	164.857
Unlawfully Use Computer	164.377
Unlawfully Use Food Stamps	411.840
Use Another's ODL	807.600
Use Invalid License	807.580

Notes

*Accompanying ECR crimes only. Standalone infractions and violation are not ECR because the defendant does not have a right to counsel.

**No guns in ECR

FTAs do not disqualify a defendant from ECR, unless the defendant previously declined the offer and is being re-arraigned on the FTA warrant.

New arrests for ECR eligible crimes do not disqualify from ECR. Multiple open ECR cases may be resolved with a global plea offer.

DUII Diversion does not disqualify from ECR.

Updated 02/04/2020

APPENDIX - J

DIVERSION ECR [DECR]
ELIGIBILITY, REQUIREMENTS & ELGIBLE CRIMES

ORS 137.533 permits the District Attorney's Office to administer a diversion program for certain crime-free defendants charged with qualifying crimes.

DECR QUALIFYING CRIMES	
Criminal Mischief 2 ORS 164.354	**Theft 2 ORS 164.045**
Criminal Mischief 3 ORS 164.345	**Theft 3 ORS 164.043**
Disorderly Conduct 2 ORS 166.025	**Theft of Services (misdemeanor only) ORS 164.255**
Interfering with Public Transportation ORS 166.116	

DECR ELIGIBILITY & REQUIREMENTS

To qualify, a defendant cannot:

1. Have been in a prior diversion under statute ORS 135.881.
   Note: *a prior DUII Diversion does not exclude a defendant from DECR.*
2. Have been convicted of any criminal offense in any jurisdiction.
3. Have taken advantage of a conditional discharge under ORS 475.245.
4. Have had a prior violation on a crime of a similar nature.
5. Have had a prior civil compromise of any crime.
6. Have failed to appear (FTA) at arraignment or at the DECR set over appearance.

The DDA must further find that disposition under this section would be in the interest of justice and of benefit to the defendant and the community after considering the factors listed in ORS 137.533(3)(a)-(i). The charging DDA will make the determination of eligibility at the time of intake and the "DECR eligible" designation will appear on the charging instrument and at the bottom of the physical file.

All DECR plea offers should include the $100 program fee mandated by ORS 137.533. In addition, offers should generally include a choice of a fine or community service as follows:

Class A Misdemeanor	$480 or 48 hours
Class B Misdemeanor	$320 or 32 hours
Class C Misdemeanor	$160 or 16 hours

DECR PROGRAM TERMS

- The defendant must swear to eligibility at the time of entry into diversion.

- The defendant must plead guilty to the DECR eligible crime and sign a plea petition and a separate DECR petition
- The length of the diversion is one-year and all requirements must be completed within ten months. This time frame cannot be shortened or lengthened
- If the terms of the program are not completed, or if the defendant does not remain crime-free during the term of diversion, the case will proceed to sentencing
- At the time of diversion entry, the court will set a status hearing approximately eleven months out. The court will review the case after ten months to ensure that the defendant has completed all terms of the DECR program
    - ❖ This includes a review of payment of court ordered financial obligations
    - ❖ Completion of community service hours
- If the terms are not met, the defendant will need to appear for the status hearing, and the court will issue a notice to show cause why DECR should not be revoked.
- In other cases, the court will notify the DA's Office that the case should be dismissed as successful and status hearing will be canceled
- The assigned DDA will conduct a criminal history check and review the case. If the DDA agrees that the defendant was successful on diversion, the DDA will file a motion & proposed judgment to dismiss at the end of the twelve-month diversion period

APPENDIX - K

WASHINGTON COUNTY DISTRICT ATTORNEY'S OFFICE
PAID LEAVE OREGON STANDARDS AND PROCEDURES

Paid Leave Oregon serves most employees in Oregon by providing paid leave for the birth, foster care placement, or adoption of a child, a serious illness of an employee or a loved one, or *if the employee or their minor child, experience sexual assault, domestic violence, harassment, bias crimes, or stalking.*

Oregon law requires employers to allow domestic violence, sexual assault, stalking, and bias crime victims to take reasonable time off from work to undergo medical treatment or counseling for themselves or a minor child, obtain victim services for themselves or a minor child, or relocate to a safe home as a result of their victimization. ORS 659A.272. Employers do not have to pay the employee for that time off, but if the employee has accrued vacation, sick or other leave offered by the employer, they may elect to use that time off to be paid. ORS 659A.285(1),(2).

In addition, the Safe Leave Program provides pay for time off taken under Section 659A.272. The money comes from Oregon's Family and Medical Leave Insurance Fund. An employee must have made contributions to the Paid Family and Medical Leave Insurance Fund within the past year to receive these funds. ORS 657B.430.

To apply for benefits under the state plan – Victims will need at least one of the following:

- A copy of a police report
- A formal Complaint to a school's Title IX coordinator
- A copy of a protective order
- Other evidence from a court, administrative agency school's Title IX coordinator, or attorney
- Other documents from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy or victim services provider.
- A signed copy of the Safe Leave Verification Form

I. LEGAL CRITERIA GOVERNING CERTIFICATION OF SAFE LEAVE

All Deputy DAs reviewing applications for certification of Safe Leave Oregon shall be familiar with the applicable law summarized below.

Qualifying Crimes

Qualifying crimes include one or more of the crimes listed below. They also include any attempt, conspiracy, or solicitation to commit any qualifying crime.

- Domestic Violence
- Stalking
- Bias crime
- Sexual Assault
- Harassment

Victim

A "victim" is someone who has suffered direct or proximate harm as a result of the commission of the qualifying criminal activity.

The term Victim includes the legal guardian of a child or dependent person.

II. DISCLOSURE OBLIGATIONS OF THE DEPUTY DA AND VICTIM ADVOCATE

DEPUTY DISTRICT ATTORNEYS

Pending cases (*before entry of judgment*)

In the course of a pending prosecution (before entry of judgment), a Deputy DA may learn that a victim has submitted an application for Safe Leave. This information may come from a variety of sources including the applicant, a victim advocate, a police officer, or other person. If the Deputy DA learns of such information, he or she shall do the following:

(1) Provide to the defendant's attorney written notification of the application. A template for such written notification exists on PBK (document titled: Safe Leave Defense Attorney Letter)

(2) If the victim has provided a copy of the *Safe Leave Verification Form* to the DA's Office, the Deputy DA shall make that material available to the defense attorney for inspection only in the DA's Office. In recognition of the confidential nature of the Safe Leave Verification material and the victim's constitutional right to be reasonably protected, a copy of the Safe Leave material may be provided to the defense attorney with a protective order from the court and appropriate redactions (if any) made. In the course of a pending prosecution, a Deputy DA may learn that a victim has inquired about Safe Leave but has not submitted a formal application. If the Deputy DA learns of such information, he or she shall do the following:

   i. Provide to the defendant's attorney written notification of the victim's Safe Leave inquiry. A template for such written notification exists on PBK (document titled: *Safe Leave Defense Attorney Letter*)

   ii. Provide any information regarding Safe Leave resources/information provided to the victim by our office. In most cases, this will include the *Safe Leave Oregon Verification Form* document.

Closed Cases (after entry of judgment)

After a case has concluded and is no longer pending, it is possible that victims may either submit an application for Safe Leave or inquire about Safe Leave. In such cases, the Deputy DA shall do the following:

- Provide to the defendant's last known attorney written notification of the victim's Safe Leave inquiry or application.
- A template for such written notification exists on PBK (document titled: *Safe Leave Defense Attorney Letter*)

- If the Deputy DA possesses any documentation (such as a *Safe Leave Verification Form* or other materials), the written notification shall state that such documents exist but are not provided at the present time.

For such closed cases, in addition to providing written notification of the inquiry or application, it may also be appropriate to provide copies of the Safe Leave materials in a manner consistent with the process for pending cases discussed above. That decision will be made on a case-by-case basis with approval from the Deputy DA's supervisor and, to the extent possible, will include the use of protective orders and redactions where appropriate.

VICTIM ADVOCATES

DA Victim Advocates may frequently work with victims who may qualify for Safe Leave. If Safe Leave is discussed, the DA Victim Advocate may share factual information about it but remain neutral (neither promoting nor discouraging it as a resource). If the victim raises the subject with the advocate, the advocate should tell the victim that the District Attorney's Office cannot give the victim legal advice. The advocate may direct the victim to the Paid Leave Oregon website, to any Paid Leave Oregon informational literature, or suggest the victim seek advice from outside counsel. The advocate may assist the victim with the Safe Leave Oregon Verification Form. The advocate shall notify the victim that we will notify the defense attorney about the inquiry as part of the DA's office discovery obligation. A template for such written notification exists on PbK (document titled: *Safe Leave Victim Notification Letter*)

The advocate shall inform the Deputy DA of the substance of the discussion he or she has with a victim concerning the Safe Leave process and about any materials provided to the victim. This notification shall occur as soon as reasonably possible and shall include the creation of the PBK document, titled: *Safe Leave Defense Attorney Letter*) PBK will immediately notify the Deputy DA that the document has been created. The Deputy DA shall then provide written notification to the defendant's attorney as discussed above. It shall be the Victim Advocate's responsibility to follow up with the Deputy DA to ensure that the Deputy DA is personally aware of the document titled: *Safe Leave Defense Attorney Letter*)

Interns/volunteers shall be trained in the above procedures and directed to seek assistance from a staff victim advocate if any of the circumstances described above occur.

WORKING WITH POLICE AGENCIES AND DHS

Police may also be requested to certify a victim's Safe Leave Verification Form. This may occur in both pending cases and in closed cases. It is the responsibility of police agencies to establish procedures to ensure that the District Attorney's Office is notified of (1) Safe Leave applications or inquires in pending cases and (2) Safe Leave applications or inquires in closed cases.

Upon receipt of this information, the Deputy DA shall follow the defense attorney notification procedures discussed above.

III. THE CERTIFICATION PROCESS AND DECISION

When a Safe Leave Verification Form is received, the DA Victim Advocate will do the following:

(1) Review the form for factual accuracy and eligibility;
(2) Prepare a draft certification letter if appropriate; and,
(3) Provide the verification form and draft certification letter to the assigned Deputy DA for review and certification, if appropriate.

Except under circumstances in which there is good cause for delay, the District Attorney shall grant or deny a request for verification 10 business days of the date of the certification request.

The verification form must include the First and Last Name of the claimant, the claimant's Social Security Number or Individual Taxpayer Identification Number, the claimant's date of birth and whether the leave is for the claimant or for a child or dependent person. The Deputy DA shall review the materials for accuracy, completeness, and applicant eligibility. If the Deputy DA concludes the application should be certified, he or she shall sign the certification and return it to the DA Vitim Advocate for processing.

If the Deputy DA concludes the application should not be certified, he or she shall staff that decision with a senior level Deputy DA or higher and then communicate the decision to the DA Victim Advocate. The Deputy DA shall in writing notify the claimant or the claimant's attorney of the reason for the denial. This denial notification must contain the following information; an internal case number, the date of the denial, and the reason for the denial (document titled: *Safe Leave decline to Certify Letter*).
A copy of the denial notifications shall be kept in the criminal file for the retention period associated with the underlying case.

All attorneys (level DDA 1 and above) are authorized to sign *Safe Leave Verification Forms*.

Effective date: January 1, 2025