

JEFFERSON DISTRICT ATTORNEY POLICIES

OVERIDING PRINCIPLES

The Jefferson County District Attorney's office's primary goal is: **To protect the public, by delivering justice.** Ultimately, that is the overriding principle that governs our decision-making. The legislative branch is responsible for writing law. Ultimately, the laws they write are our primary policy manual. If any specific policy provision below conflicts with our ability to achieve our aim within the parameters of law, then pursuit of our stated aim will take precedence over any specific policy provision below. These policies are to be viewed as principles to follow rather than as strict edicts.

Professionalism and Prosecutorial Ethics

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

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

It is important to remember that, as a professional, your job does not end at the close of the workday. You are responsible for your behavior outside of the organization and need to be aware that public perception can be a powerful influence. We have a responsibility to perform our duties as public servants with integrity and to serve the public trust.

All employees will be familiar with the canons of professional ethics and rules of professional conduct of the Oregon State Bar and perform their duties in a manner consistent with those standards. In addition, attorneys are expected to know and follow all rules promulgated by the Oregon Supreme Court and by the Circuit Court of Jefferson County.

Pursuing Just Outcomes

Justice Delayed

To maintain ordered liberty for a free society, it is essential that society have confidence in its laws to produce justice for aggrieved persons, i.e.: crime victims. Inefficiency and excessive delay in our system erodes confidence that our system can produce justice. It is a legal maxim that justice delayed is justice denied. Deputy District Attorneys have a duty to ensure that society, and specifically victims, receive justice in a timely fashion. A thorough and complete investigation is the first step to an efficient process as such an investigation will assist in the resolution of a case.

Charging Decisions

All charging decisions are to be made pursuant to the aim of protecting the public by delivering justice. Deciding if criminal charges should be filed and initiating the charging process is the responsibility of Deputy District Attorneys. Screening is the process by which a determination is made whether to initiate or pursue criminal charges. Deputy District Attorneys should use discretion in screening to eliminate cases in which prosecution is not justified. Deputy District Attorneys also have the responsibility to see that charges selected adequately describe the offense(s) committed and the charges provide for an adequate sentence for the offense(s). Deputy District Attorneys are not obligated to file all possible charges that the evidence might support. The prosecutor may properly exercise discretion to present only those charges which are consistent with the evidence and in the best interests of justice.

In making the charging decision, Deputy District Attorneys shall file only those charges which are reasonably substantiated by admissible evidence at trial. Deputy District Attorneys shall also avoid charging an excessive number of counts, indictments, or informations merely to provide sufficient leverage to persuade a defendant to enter a guilty plea to one or several charges.

Aggregation of Value in Charging Property Crimes

Oregon law allows the state to aggregate the value of losses in certain property crimes cases when there are multiple violations against the same or multiple victims. See e.g. ORS 164.115(5), 164.125(4), 164.367.

It is the policy of the Jefferson County District Attorney's Office that in property crimes cases subject to aggregation, the charging Deputy District Attorney shall aggregate individual incidents in such a way as to maximize the number of available felony charges. If uncharged incidents are still available that do not meet the felony threshold amount, then the charging deputy shall aggregate in such a way as to maximize the available number of A misdemeanor charges.

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

Innocence and Evidence

All Deputy District Attorneys shall be alert for cases where the accused is innocent or proof falls below the beyond a reasonable doubt standard of the offense(s) charged. If such is discovered, the victim and police investigator will be contacted and then dismissal will be sought immediately.

Plea Offers

"Truth in Sentencing" is a fundamental value of this office, which includes attempting to ensure that the sentence ordered by the court is fundamentally served. Ultimately, negotiations should be made with an eye toward what we aim for: protecting the public by delivering justice. Plea offers are not mandatory to make in criminal cases. They are to be provided to defendants

pursuant to promoting efficient yet just outcomes. Deputy District Attorneys will retain the discretion to negotiate dismissals, non-prosecution, and sentencing recommendations in all cases subject to the general standards for plea agreements.

The Jefferson County District Attorney's Office will conduct its plea negotiation efforts in a professional, nondiscriminatory, and nonpartisan manner. In no instance shall a plea offer be crafted or extended based on political pressure, media pressure, pressure from special interest groups, or pressure from any individual or group not a party to the case. All plea negotiations this office shall be guided by the relevant constitutional, ethical, and statutory considerations. Deputy District Attorney shall stay advised of all sentencing programs to include but not limited to alternative incarceration programs, conditional release, work release, earned sentence reductions and short-term transitional leave. To accomplish truth in sentencing, it is vital to know how sentencing programs impact a sentence.

The following are some of the factors to take into consideration in deciding whether a plea or sentencing negotiation is warranted: nature of the offense; degree of offense charged; mitigating circumstances; age, background, and criminal record of the accused; age of the victim; undue hardship caused to the victim or the accused; expressed wish of the victim; relationship between the accused and the victim; sufficiency of admissible evidence to support a verdict; deterrent value of prosecution; feasibility of restitution being made; attitude and mental state of the accused at the present time; aid to other prosecution goals through non-prosecution; consequences to a defendant or victim; history of non-enforcement of the statute involved; age of the case; likelihood of prosecution in other jurisdictions.

Victim Input and Consultation

Consistent with the Oregon Constitution and the philosophy of the Jefferson County District Attorney's office, the assigned Deputy District Attorney shall solicit input from the victim and consult with the victim during the plea negotiation process where required by law. In the exercise of the discretion to negotiate, the Deputy District Attorney in charge of the case should strongly consider the victim's wishes but shall not abdicate his/her decision-making authority to the victim.

Crime Victim's Rights

The Jefferson County District Attorney's Office makes every effort to ensure crime victims have a meaningful role in the criminal and juvenile justice system. Victims shall be treated with dignity and respect. Every effort is made-to provide victims with as much input as possible in each phase of a criminal case. Deputy District Attorneys shall familiarize themselves with the Crime Victims Bill of Rights as well as with Article 1, Section 42 of the Oregon Constitution, the Crime Victim's Rights Amendment. The interests of the victim should be kept in mind when setting hearing/trial dates and during plea negotiations in any felony involving a person.

Victim Restitution

It is the Jefferson County District Attorney's Office's policy to seek restitution equaling the amount of pecuniary loss for victims of all types of crimes. Seeking such restitution in no way supersedes or obviates any civil claims a victim might make against the defendant. Deputy District Attorneys should inform Victims Assistance of pending criminal cases. Victim Advocates shall supply victims with financial loss forms to facilitate restitution. Victim

Assistance will then take responsibility tracking these forms, communicating with the victim(s) and Crime Victim Compensation. The financial loss documents will include monies paid or pending to be paid by victim insurance companies. After completion, the loss forms shall be put in the case file prior to the appropriate court date of case disposition. During the sentencing hearing, Deputy District Attorneys should refer to the completed loss forms to request that restitution be made part of the sentence. Restitution should be ordered based on the loss to the victim, not the offender's ability to pay at the time of sentencing. In cases in which more than one defendant is held responsible for a criminal act, causing a pecuniary loss, this office views all defendants as being jointly and severally liable for paying restitution. As a result, Deputy District Attorneys should request that judges pronounce sentence in such a way that leaves all defendants jointly and severally liable for the victim's losses and equally responsible for the expenses incurred by all parties as a result of their criminal actions (ORS 147.005 –147.365). When restitution is legally unattainable as no pecuniary loss is provable, Deputy District Attorneys should consider alternative options such as compensatory fines or community service.

Homicide Cases

Prior to arriving at a homicide plea offer, the trial Deputy District Attorney should, in all but exceptional circumstances, inform and consult with the primary detectives and the family of the victim as to the appropriateness of the offer and any opinions or suggestions they may have.

Before any plea offer is extended in any homicide case, the case Deputy District Attorney and the Chief Deputy District Attorney must meet with the District Attorney. During this meeting the case Deputy District Attorney will present a factual summary of the case and review the mitigating and aggravating factors in the case.

Decision to Pursue Death Penalty

All attorneys responsible for the prosecution of aggravated murder cases must consider the law and evidence of each case and decide as to whether seeking the death penalty would be a just outcome. This determination is to be made in consultation with the District Attorney and the Chief Deputy District Attorney.

Mandatory Sentence Cases

All plea offers on felony cases with minimum sentences, including but not limited to, Ballot Measure 11, Ballot Measure 57, Ballot Measure 73, Aggravated Vehicular Homicide per ORS 163.149, Gun Minimums under ORS 161.610, and Dangerous Offender under ORS 161.725 et seq., will be reviewed with the Chief Deputy District Attorney or the District Attorney prior to plea or trial. These case reviews will examine the strength of the case, the victim's concerns and opinions, any mitigating factors, and any aggravating factors.

Fines, Fees and Taxpayer Reimbursement

In some instances, justice is best achieved by recommending that a defendant pay fines or fees. Deputy District Attorneys may recommend payment of fines and fees in those instances where doing so will serve to protect the public and deliver justice.

Dignity increases whenever a defendant pays back to society what resources he or she has taken from society. Deputy District Attorneys look for appropriate instances to recommend that defendants pay for some or all their court appointed attorney costs.

Sentence Reduction Provisions

Deputy District Attorneys are careful to advocate that sentence provisions which reduce the initial sentence declared by the judge are only given after all required legal findings are made. (i.e. ORS 137.751 for AIPs.)

Civil Compromise

Civil compromises are available under Oregon law (ORS 135.703 and ORS 135.705) in instances in which a defendant is charged with a crime punishable as a misdemeanor. The injured party may seek to handle the matter as a civil proceeding. The Court, on payment of costs and expenses incurred, may order the complaint dismissed. As a policy principle, **the Jefferson County District Attorney's Office generally opposes civil compromises**. Civil compromises, if used frequently, tend to favor affluent criminals and provide them with more lenient treatment within the criminal justice system. Treating an accused more leniently because of their affluence is inappropriate. In the interest of justice and in the interest of protecting community safety, this office believes that criminal acts should be handled in criminal court.

The Oregon State Bar has ruled that it is unethical under certain circumstances for a prosecuting attorney to advise an injured party against opting for a civil compromise of a criminal case. Accordingly, this office does not advise victims as to whether or not they should engage in the negotiation of a civil compromise, we only advise victims as to the outcome of that process.

Conditional Discharge User Possession Drug Offenses

User amount drug offenses, defendants may be offered a conditional discharge opportunity that requires them to complete drug court or an appropriate treatment program approved by the District Attorney. However, a conditional discharge offer may not be appropriate in instances where the defendant already has an extensive criminal history. Deputy District Attorneys work with the court and parole and probation to ensure proper monitoring and compliance with conditional discharge agreements. Conditional discharges are strict compliance agreements.

Drug Court

The Adult Drug Court is an intensive program designed to assist drug addicted individuals to overcome their addictions. Drug courts require resources from several agencies and are expensive to maintain. Deputy District Attorneys have a duty to ensure the careful use of this resource. In accordance with best practice standards of the National Association of Drug Court Professionals, Drug Court should be reserved for offenders in need of a full range of interventions offered by the Drug Court. It is for high risk, high need offenders. A high-risk high need offender is addicted to or dependent on illicit drugs and is at high risk to continue their drug use in less intensively supervised treatment programs. The District Attorney is the gatekeeper for entry into this program.

The Deputy District Attorney assigned to the Drug Court team works to ensure that the limited seats in Drug Court are occupied by individuals who are serious about overcoming their addiction. The Drug Court Deputy also works to ensure that participants who continue to victimize society are terminated from the program. This clears the way for other offenders who are more serious about overcoming their addiction, to participate in this intensive program.

Fast Track Disposition Program

Oregon law allows early disposition for first-time offenders who are charged with nonperson offenses. The legislature has termed this “Fast Track Disposition”. The goal of this program is to save indigent defense costs; hold offenders accountable for their actions; ensure prompt resolution of criminal matters; protect the rights of the public and the offender; get the most out of community resources to provide alternative sanctions to criminal behavior; and reduce the costs of the criminal justice system.

In carrying out Fast-Track Disposition, the Jefferson County District Attorney’s Office shall identify, at intake, crimes eligible for Fast Track Disposition. At the defendant’s first appearance, the defendant should be advised that she or he is eligible for the program and informed of the offer. If the defendant refuses the plea offer, the offer immediately expires. The plea offer shall not be renewed in ensuing proceedings.

Diversion

This program is eligible to all defendants charged with “B” and “C” misdemeanors. There is a \$150.00 fee plus any court fees. Specialized conditions shall be negotiated with the defendant. Upon completion of the conditions and the term of diversion, the case shall be dismissed with prejudice. Failure to complete the condition results in the case being returned to court for a sentence. Domestic violence and official misconduct cases are not eligible for diversion.

Pre-Arrest Diversion Programs

There is no formal pre-arrest diversion program in this jurisdiction.

Pre-trial release

The following provisions directly govern pre-trial release in Oregon:

- Article I, § 14 of the Oregon Constitution;
- Article I, § 43 of the Oregon Constitution; and
- ORS 135.230 – ORS 135.290.

All Deputy District Attorneys are expected to be familiar with these laws and to advocate for implementation of their provisions.

Discovery

The discovery obligations of the Jefferson County District Attorney’s Office are generally established by ORS 135.805 – 135.825; ORS 135.845 – 135.855; Brady v. Maryland, 373 US 83 (1963); Giglio v. United States, 405 US 150 (1972) and Rule 3.8 of the Oregon Rules of Professional Conduct. To meet discovery obligations in each case, prosecutors must be familiar with these authorities and with the judicial interpretations that discuss or address the application of these authorities to particular facts. In addition, it is important for prosecutors to thoroughly consider how to meet their discovery obligations in each case and consult with their supervisors for guidance whenever appropriate.

It is the practice of this office to disclose appropriate police reports and other discoverable materials to defense counsel at the earliest opportunity once a case is filed. Our office has an open file policy. All discovery contained in our criminal files is open and available at the

Jefferson County District Attorney's Office for defendants and their attorneys to review, by appointment, free of cost. Copies of discovery materials are also available to defendants and their attorneys once payment for the same has been made in full. Fees for discovery copies are set by the Jefferson County Commissioners in compliance with the Jefferson County Code.

All written agreements entered between Jefferson County District Attorney and law enforcement agencies that relate to data retention and data sharing will be open and available to inspection by the public.

Record Retention

All Jefferson County District Attorney's Office records must be maintained in compliance with the Records Retention & Destruction Schedule published by the Secretary of State or by state law.

Transparency and Confidentiality

This office is committed to transparency to the public it serves. Public records requests made to the Jefferson County D.A.'s office will be processed in a timely and fiscally reasonable manner. If a law or court order requires that information possessed by this office be kept confidential, then the Jefferson County District Attorney's Office will ensure that such laws or orders are complied with (e.g. child abuse investigations, juvenile files, victim information, medical files, personnel files, or matter).

The Use of Certified Law Students

The Jefferson County District Attorney's Office does not have a budget to support a Certified Law Student Program.

Motions to Disqualify a Judge

Oregon law allows that when any party or attorney believes that such party cannot have a **fair** and impartial trial or hearing before a judge, counsel may file a motion supported by affidavit in accordance with procedures established in ORS 14.260. The Jefferson County District Attorney's Office's interpretation of the word "fair" includes both "unbiased" and "reasonable and appropriate under the circumstances". Given the extraordinary trust that society and victims place in the District Attorney's Office, particularly when disclosing violent and intimate crimes committed against them and seeking justice for those offenses, it is the duty of the District Attorney's Office to ensure that any judge assigned to those serious cases is sufficiently knowledgeable and experienced to preside over those cases in order to guarantee that the case is competently managed and that any hearings or trials are conducted in a manner that secures a fair trial for all parties and minimizes any risk of error that would result in unnecessary trauma to the victim, delay in the proceedings, or retrial of the proceedings. When a Deputy District Attorney believes that a sitting judge's knowledge and experience is insufficient to ensure that all parties will receive a fair trial, then that Deputy shall provide their reasons for their position in writing to the Chief Deputy District Attorney or the District Attorney. Motions to Disqualify may be filed only with the documented approval of the District Attorney. Motions to Disqualify are filed by the assigned Deputy District Attorney with the presiding Circuit Court judge. A copy is provided to the judge who is the subject of the motion.

Prohibition of Profiling

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

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

1. In person by visiting the office, 129 SW "E" Street, Suite 102, Madras, Oregon 97741;
2. In writing, signed by the complainant, and delivered by hand, postal mail, facsimile –541-475-4512, or email: SLeriche@jcda.us; or
3. By telephone 541-475-4452. Telephonic reports may be made anonymously or through a third party.

iii. Complaint Investigation: Upon receipt of a complaint alleging profiling, a designated member of the Jefferson County District Attorney's management team shall conduct a thorough investigation of the complaint. The investigation will be conducted within 60 days of the filing of the complaint. At the conclusion of the investigation, the report containing findings regarding the complaint, along with any recommended actions, will be forwarded to the District Attorney. Copies of the report will be forwarded to the Law Enforcement Contacts Policy Data Review Committee and to the original complainant (unless the complaint was made anonymously).

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

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