Prosecution Standards and Office Policy

Office of the
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Curry County District Attorney's Prosecution Standards and Office Policy
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1.0 Introduction

These standards and office policy are intended solely for the guidance of prosecutors and office staff in Curry County, Oregon and are not intended to create substantive or procedural rights or benefits for any person.

1.1 Office Mission

To uphold the United States Constitution and the Constitution and laws of the State of Oregon, to preserve the safety of the public, to protect the rights of crime victims, and to pursue justice for all citizens with skill, honor and integrity.

1.2 Personnel Rules

The policies included in the District Attorney's Prosecution Standards are intended to supplement the county Personnel Rules and the terms of the SEIU Collective Bargaining Agreement. In the event that any provisions in these Standards conflict with any applicable Personnel Rules or the SEIU Collective Bargaining Agreement, any applicable Personnel Rules or an applicable SEIU Collective Bargaining Agreement will take precedence.

1.3 Ethics

Prosecutors must represent integrity, fairness, morality and honesty in their personal life, workplace and community. Recognizing that the District Attorney's Office professional success is directly related to its ethical reputation in the legal and larger community, any behavior constituting illegality, dishonesty, immorality or hypocrisy will not be tolerated. Toward that end, Curry County District Attorney employees are encouraged to speak up if they feel an activity undertaken by this office has an effect on the department's integrity.

Pursuant to Oregon Rule of Professional Conduct 3.8, any attorney in this office shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause and make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

All attorneys in this office shall be familiar with the canons of professional ethics of the Oregon State Bar and perform their duties in a manner consistent with those standards. Attorneys are expected to know and follow all rules promulgated by the Oregon Supreme Court and by the 15th Judicial District.

1.4 Confidentiality

Although the District Attorney's Office is a "public" organization, the information contained in our files and records or otherwise obtained by virtue of our employment is strictly confidential. Employees are strongly admonished against discussing or providing written or verbal information on any aspect of a pending or closed case or internal procedures and operations with or to any person unless such information has proceeding or a proper request under the Oregon Public Records Act. Employees are only to share internal confidential information with colleagues who have a professional "need-to-know."

Requests for information contained in our files or records should be made in writing, unless the release is made to defense counsel through the normal discovery process that we follow in our pending criminal cases. Any questions on this policy and all written requests for information under the Public Records Act shall immediately be directed to the District Attorney for consideration. The District Attorney has only seven days to respond to a public records request, and therefore, must view them the same day they are received by office staff.

Under no circumstances are employees of the District Attorney's Office to provide "inside information" or other "sensitive" information to any person outside our organization or within the prosecutor's office unless a colleague has a legitimate and professional "need-to-know." Failure to strictly adhere to this policy will result in immediate disciplinary action, including termination.

1.5 Acceptance of Gifts and Favors

The practice of District Attorney employees accepting gifts, gratuities or favors is not only unnecessary, but also contrary to the public interest and law. Therefore, all employees are prohibited from soliciting or accepting gifts, gratuities or favors from firms, organizations, their employees, agents or other individuals who may or do conduct business with this office. All attempts to provide gifts, favors, personal advantage, services or other things of value to employees of the District Attorney's Office shall immediately be reported to the District Attorney.

In place of a gift or favor, it is recommended that a Letter of Commendation be sent to the District Attorney, which details the exceptional service or conduct of a District Attorney's Office employee. An exception to the rule prohibiting acceptance of gifts, such as flowers or a box of candy shared by the entire office, may be approved by the District Attorney.

1.6 Subpoenas Set within 48 Hours of Trial Setting

Recognizing that the local court rules require that a motion to continue a trial be filed no later than two weeks after a case is set for a trial, Deputy District Attorney's must issue subpoenas in a timely manner. A witness list shall be submitted to the legal secretary and subpoenas issued within 48 business hours of trial setting.

1.7 Adherence with ORS 131.915 and ORS 131.920

Pursuant to ORS 131.915 and ORS 131.920, under no circumstances should decisions made in the Curry County District Attorney's Office be based upon a person's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness, or disability. All decisions by this office should be based upon the facts of each case, the criminal history of each defendant, and the input and advice of the crime victims in each case.

Any complaints of a violation of this policy will be received, documented, and investigated. In each complaint, a response will be provided to the complainant within a reasonable period of time. Pursuant to ORS 131.920, a copy of each such complaint shall be forwarded to the Law Enforcement Contacts Policy Data Review Committee.

2.0 Prosecution Decision

Screening is the process by which a determination is made to initiate or pursue criminal charges. Except for decisions by the grand jury, the decision to initiate or pursue criminal charges lies solely within the discretion of the prosecutor. Whether screening takes place before or after the formal charging, it must be done pursuant to established guidelines.

2.1 Avoiding Improper Discrimination

A prosecuting attorney shall not base the decision to initiate or decline prosecution upon factors legally recognized to be invidious discrimination, insofar as those factors are not pertinent to elements of the crime.

2.2 Police Investigation

2.2.1 The prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation that serves as a basis upon which to make the charging decision. In ordinary circumstances the investigation should include the following:

a. The interviewing of all material witnesses, together with the obtaining of written statements, whenever possible;
b. The completion of necessary laboratory tests; and
c. The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

2.2.2 If the procedural status of the case permits, the complete investigation should be submitted to the District Attorney's Office and reviewed before the charging decision is made. In cases in which the charging decision must be based upon preliminary information, such as that contained in probable cause affidavit, the Deputy District Attorney handling the case will endeavor to see that the police agency completes the appropriate follow-up investigation in a timely manner.

2.2.3 If the investigation is incomplete, a prosecuting attorney may require further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

2.2.4 Special Investigative Techniques: The prosecutor should be fully advised of any special investigative techniques that were used in the investigation, including:

a. Polygraph testing;
b. Hypnosis;
c. Electronic surveillance; and
d. Use of informants

2.3 The Charging Decision

The process of determining and initiating criminal charges is the responsibility of the District Attorney or designee. The attorney will determine what charges will be filed, how many charges will be filed, and how charges will be presented. The attorney also has a responsibility to see that the charges selected adequately describe the offense or the offenses committed and provides for an adequate sentence for the offense or offenses.

An Attorney should seek to review police reports for newly assigned cases as soon as possible, but no later than 30 days of being assigned to the case. If factors exist creating

some urgency (violent offenses, child victims), such newly assigned cases should be reviewed immediately.

The standard for whether to file criminal charges will normally be based primarily upon the existence of admissible, reliable evidence to prove that a crime was committed. Criminal charges will normally be filed if sufficient admissible evidence exits, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective finder. This standard is intended to direct prosecutors to charge those crimes, which adequately demonstrate the nature and seriousness of a defendants' criminal conduct. Crimes that arise from the same or repeated course of conduct do not have to be charged. When determining how many charges of the same or similar conduct should be filed, the prosecutor should bring as few charges as are necessary to ensure that justice will be accomplished.

A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law.

The express philosophy of this office is to hold accountable those who violate the law and attain justice for victims and the community. Defendant accountability will vary from the extremes of referral to a pre-trial diversion program for select offenders to the aggressive and tenacious prosecution of violent and habitual criminals focused toward their long-term incarceration.

It is neither our mission nor philosophy to play at legal technicalities nor create imaginary problems and barriers to justice. This office has the responsibility of charging the guilty with crimes and precluding the innocent for wrongful accusations. Our job is to do justice.

2.4 General Case Evaluation Factors

The following general factors should be considered in making the charging decision:

1. Doubt as to the guilt of the offender;
2. Probability of conviction;
3. Sufficiency of admissible evidence to support the case;
4. Availability of essential witness;
5. The nature or degree of the offense;
6. The age of the case;
7. Attitude, physical and mental state of the offender;
8. The use of a weapon, or threats to the victim;
9. The age, background, characteristics, and criminal history of the offender;
10. Likelihood of prosecution on other charges;
    - i. It may be proper to decline further prosecution because the offender has been sentenced to, or is pending prosecution, on another charge carrying a lengthy period of confinement, and;
    - ii. Conviction of the current offense would not merit any additional direct or collateral punishment;
    - iii. Conviction in the other prosecution is complete or imminent;

iv. The current offense is not particularly aggravated;
v. Conviction of the current offense would not serve any significant deterrent purpose; or
vi. Conviction of the new offense would not have any effect on the offender's criminal history calculation in future cases sentenced under Oregon's Sentencing Guidelines, or Oregon Statutes.

11. Any injury or harm suffered by the victim;
12. Age of victim;
13. The interests and desires of the victim;
14. The expressed desire of the victim not to proceed with the prosecution or appear to testify; care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the offender;
15. Likelihood of harm to victim by being required to testify;
16. Relationship between offender and victim;
17. Improper motives of the victim or witness;
18. Any provisions for restitution;
19. Adequate Civil Remedy; the victim has an adequate civil remedy and the pursuit of this remedy would be more appropriate than criminal prosecution, because prosecution would serve no public interest or deterrent purpose;
20. A history of non-enforcement of the applicable statute;
21. Deterrent value of prosecution;
22. Excessive cost of prosecution in relation to seriousness of the offense; it may be proper to decline prosecution if the cost of locating or transporting witnesses, or the burden on prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be highly limited to minor cases and should not be relied upon in serious cases.
23. Recommendations of law enforcement agencies;
24. Immunity; it may be proper to decline prosecution if immunity is to be given to an offender. See section 10.0 on granting immunity.
25. The availability of suitable diversion programs; and
26. Any other circumstances or factors unique to the case.

2.5 Juvenile Measure 11 Offenses – Waiver to Adult Court

As a result of the passage of HB 1008 during the 2019 legislative session, automatic waiver into adult court for Measure 11 crimes is no longer possible. This policy is written to address how juvenile cases, mostly Measure 11 crimes, will be handled.

In general, the factors to consider when seeking to prosecute a juvenile offender in adult court are:

(A) The seriousness of the offense;
(B) The opinion and position of the victim(s);
(C) Protection of the community;
(D) Whether, in the interests of justice, the potential punishments are proportional to the offense;

(E) The criminal history of the juvenile offender, including whether or not the juvenile offender has consistently demonstrated that the unique jurisdiction of the juvenile court and programs can ameliorate their criminal behavior; and
(F) Whether or not the juvenile justice system, due to possible alternative and less punitive alternatives being available, is more or less likely to achieve rehabilitation of the offender than the adult system.

The process for making these determinations is as follows:

When a case referral is received from law enforcement and/or the Curry County Juvenile Department for crimes enumerated in ORS 137.707 (Measure 11), the District Attorney will review the case and determine the appropriate charging decision, including whether or not to initially seek waiver into adult court. Given juvenile statutes set stringent time limits for these cases, initial decisions about charging and waiver must be made expeditiously. Any initial decision to not seek waiver can be reconsidered at a later date if further facts or circumstances develop.

Under HB 1008 and ORS 419C.349, there are two categories of cases that may be waived into adult court by the juvenile court. Category 1 crimes fall under ORS 419C.349(1)(a) and include crimes numerated under ORS 137.707 (Juvenile Measure 11 crimes) and aggravated murder. Category 2 crimes fall under ORS 419C.349(1)(b) and are the lesser included offenses of Juvenile Measure 11 crimes not specifically enumerated in ORS 137.707(4). Crimes under ORS 137.712 (Ballot Measure 11 Lite), including Class A and Class B felonies and certain Class C felonies are included.

Category 2 crimes will generally remain in juvenile court. In certain exceptional cases it may be necessary for the protection of the public or in the interest of justice (proportional punishment) or if the juvenile offender has consistently demonstrated that the unique jurisdiction of juvenile court and its programs will not ameliorate their criminal conduct.

Case referrals under ORS 419C.352 allegedly committed by juveniles under 15 years of age shall be subject to review by the District Attorney.

2.6 Documentation of Reason not to Prosecute

If a Deputy District Attorney declines prosecution in a particular case, the Deputy District Attorney will state the reasons for declination in a prosecution decline memorandum. This document, in addition to providing a case screening record for our office, is utilized to notify law enforcement of the decision. Deputies should be aware that the prosecution decline memorandum is a public record.

3.0 Joinder

Whenever it is practical to do so, the prosecutor should utilize provisions authorizing the joinder of charges and defendants. Joinder is in the best interest of the community in that it maximizes he efficiency of the court system and minimizes the ordeal of criminal proceedings on victims.

The assigned deputy district attorney should move to consolidate charges and an indictment if the deputy knows that offenses are joinable under ORS 132.560.

There are occasions where joinder of defendants is not appropriate, i.e..60-day problem if defendants were tried together. In these cases where no objection to severance is contemplated, the deputy should seek approval from the District Attorney before a final decision is made.

4.0 Grand Jury/Preliminary Hearing

4.1 Procedure:

In order to insure that the choice between indictment and information is made according to consistent criteria and that the privilege of either a grand jury indictment or a preliminary hearing is equally available to all, this office will take all felony cases to grand jury unless there is a specific evidentiary need, such as eyewitness identification or preservation of testimony, in an individual case, or because a grand jury proceeding could not be scheduled before a preliminary hearing is set. If a defendant waives his/her right to a preliminary hearing, there will no longer be the need to take the case before the grand jury.

4.2 Grand Jury Subpoenas and Procedures:

Every matter presented to a grand jury should be recorded on a Grand Jury Docket, either by case name, or for subpoenas, by a subpoena number.

If a law enforcement agency requests a grand jury subpoena to obtain records, duces tecum, the subpoena will issue by the District Attorney. However, the records must first be presented to the grand jury by a sworn witness to provide information to the Grand Jury that reveals the nature of the investigation and the reason for seeking the records before being released to law enforcement.

5.0 Plea/Sentence Negotiations

5.1 General Philosophy:

The Curry County District Attorney's Office will conduct plea negotiations in a professional and nonpartisan manner. Plea negotiations take the following forms: pleas to one or more charges, reduction of charges, sentence negotiation, and the dismissal or non-prosecution of indicted or unindicted charges. In all plea negotiations, this office shall be guided by the considerations set forth in ORS 135.405 et seq. and all relevant ethical considerations.

Traditional plea negotiation involves the reduction of a charge to a less serious charge in exchange for a plea. It is our goal to characterize the conduct of a defendant by the conviction record. In other words, a burglar should be labeled a burglar, not a trespasser. In addition, some crimes are so heinous or detrimental to public safety, that they should not be dismissed. To this end, this office has established categories in which offers of a charge reduction or dismissal is not normally allowed, unless required by the specific factors of the case.

5.2 Actual Innocence

All deputies shall be alert for cases where the evidence indicates that the accused is innocent of the offense charged. If such is discovered, dismissal will be sought immediately.

5.3 Pre-Filing Discussions with Defendants

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached. However, when the defendant is not represented by counsel, the prosecutor should be careful to comply with ORS 135.405(2) and any applicable ethical rules. The prosecutor shall not discuss a criminal case with an unrepresented defendant unless that defendant has signed a knowing and voluntary waiver of counsel on the record in open court.

5.4 Victim Considerations and Involvement

Deputy District Attorney's should attempt to contact the victims through the victim advocate and explain any negotiations. The deputy assigned to the case should take the victim's wishes into account; however the final decision regarding the disposition of the cases needs to be made by the deputy, in the exercise of professional judgment.

In some circumstances the victim will need to be consulted about a charging decision. However, the ultimate decision whether to charge a defendant is made by the prosecutor, in the exercise of professional judgment.

The assigned deputy should consider the circumstances and attitude of the victim and witnesses, including the following:

1. The extent of injury to the victim;
2. Economic loss incurred by the victim;
3. Victim/witness availability;
4. Victim/witness physical or mental impairment that would affect his or her testimony;
   and
5. Impact on the victim of being required to testify.

A primary concern of this office is that victims of crimes receive fair and compassionate treatment within the criminal justice system. To this end, every effort should be made by all members of our staff to maximize victim involvement at every possible stage of the criminal case:

1. When a new charge is filed, the Legal Secretary will add the case name and type of charge(s) to the case list.
2. The Victim Advocate will print the Case List at least once per week and review if for new cases involving a victim. This is a secondary check for the victim notification system outlined below.
3. All new files should be placed in the Victim Advocate's box immediately after arraignment.

4. The Victim Advocate shall immediately send a letter and restitution/sentencing request form to the victim at the victim's address as listed in the police report or PC affidavit. The Victim Advocate should also attempt to make telephone contact with the victim at this time.
5. After the Victim Advocate has sent the required letter and has attempted telephone contact, the Victim Advocate will put a green dot on the file. All staff should notice and look for a green dot on files prior to putting a file away. If the file does not have a green dot and is the type of charge with a named victim, it should be placed in the Victim Advocate's box rather than putting it on the filing shelf in the main office.
6. The Victim Advocate must inform the attorney handling the case if the victim wishes to be consulted regarding plea negotiations involving any violent felony. If the victim does wish to be consulted, the Deputy District Attorney must consult with the victim prior to making an offer on a violent felony case.
7. Deputy District Attorneys must make all offers in writing.
8. When a Deputy District Attorney makes a written plea offer, the Deputy District Attorney will put the offer on the top of the file and give the file to the Victim Advocate.
9. The Victim Advocate, upon receiving a copy of a written plea offer, will inform the victim in the case that an offer will be made. If the victim does not respond within 24 business hours, the file will be returned to the secretary to send to defense counsel. The Victim Advocate will then inform the victim of the offer made if contact is made.
10. The Victim Advocate will each day review the court docket for the following day and note any cases set for plea, sentencing, or pretrial conference. The Victim Advocate will review the case files for such hearings and determine 1) if a written offer is in fact in the file and 2) whether the victim has been notified of the offer/possible sentencing time. The Victim Advocate should review any such files with the Deputy District Attorney assigned to the case and alert the Deputy District Attorney to any issues that suggest that sentencing should not proceed the following day.
11. After the victim in the case has been informed of the plea negotiation and advised of the sentencing time, the Victim Advocate shall write on the outside of the file that the victim was notified of sentencing on a specific date. The writing will be initialed by the Victim Advocate who notified the victim, and be dated with the date that the notification was made.
12. The District Attorney, or designee, at the time a plea is entered will review the file and determine if there is a victim and if so, if the victim has been notified of sentencing. If the victim has not been notified, the District Attorney, or designee, will inform the Court and request a set-over to allow for victim notification.
13. The Victim Advocate will keep a log of conversations and writings sent to victims, specifying the subject of the communication and the date it occurred, and any other pertinent information obtained from the victim regarding requests for information, restitution, or hearing notification. Any statements pertaining to the case that is written down by the Victim Advocate should be placed on top of the file and given to the assigned attorney. The assigned attorney must comply with discovery rules regarding any such statements.

5.5 Equality of Plea Negotiation

Similarly situated defendants, as determined by admissible evidence, level of involvement in the crime, criminal history, cooperation with the State, and similar factors, shall to the extent possible be afforded equal plea and sentence agreement opportunities. The choice of defense counsel shall not be a factor in a deputy's decision to negotiate with the defendant. A defendant shall not receive an advantage or disadvantage in negotiations based upon past or present relationships between defense counsel and this office.

5.6 Timing of Plea Negotiations

Plea negotiations for defendants not in custody will generally be made prior to the status hearing that occurs before the case is set for trial. No plea offers shall be made after a case is set for trial, without the approval of the District Attorney.

5.7 Criteria for Determining Appropriateness of Plea Negotiations

An examination of the offense and the offender, and an evaluation of the strength of admissible evidence, shall guide negotiations. The general case evaluation factors listed in Section 2.4 will be considered during the evaluation.

In addition to the non-reducible charges listed below, if a defendant is charged both with offenses involving a victim and offenses not involving a victim, negotiations should be made whereby the defendant pleads to the person offenses.

In other words, the offenses naming a particular victim should not be dismissed in exchange for a plea to non-person offenses, absent extenuating, mitigating circumstances.

5.8 Non-reducible Felony Charges

Except as set forth in 5.16, the following adult felony crimes will not be the subject of charge reduction or dismissal offers. (Note: Measure 11 Offenses are discussed separately in section 5.10):

1. Burglary 1;
2. Felon in Possession of a Firearm, if the underlying felony is a crime of violence;
3. Felony DUII;
4. Assault on a Public Safety Officer;
5. Commercial drug offenses;
6. Child Neglect in the First Degree;

5.9 Non-Reducible Misdemeanor Crimes

Except as set forth in 5.16, the following misdemeanor crimes will not be subject to plea-bargaining by charge reduction or dismissal:

1. Resisting Arrest;
2. Endangering the Welfare of a Minor;

3. Driving Under the Influence of Intoxicants
4. Child Neglect in the Second Degree;

As set forth in 5.16, it may be appropriate in certain circumstances to dismiss a non-reducible charge, except for a DUII, for a plea to another charge. In such cases, the crime pleaded to must accurately reflect the danger which the defendant poses to the community and carry adequate sanctions.

5.10 Domestic Violence Charging and Plea Policy

As domestic violence cases are received by the Curry County District Attorney's Office from law enforcement they should be forwarded to the Deputy District Attorney in charge of domestic violence crimes. If there is no Deputy District Attorney in charge of domestic violence crimes at any time, domestic violence cases should be forwarded to any Deputy District Attorney 2 or above in the office.

When a police report of a domestic violence crime is received, the assigned Deputy District Attorney shall determine whether the case should be prosecuted. All cases should be forwarded to the Victim Advocate no later than directly after the defendant is arraigned. The Victim Advocate should attempt to contact the victim and provide information to the victim about whether charges will be filed and explain the resources available to the victim.

Before entering into plea negotiations with a domestic violence defendant, the Deputy District Attorney should consult the victim or learn the victim's thoughts through the victim advocate. The victim's opinions should be given significant weight in developing the terms of the negotiations.

In most cases, probation recommendations should include:

(A) No contact with the victim if appropriate;
(B) Entry into, and completion of, the Domestic Violence Intervention Program;
(C) Alcohol or drug package if appropriate;
(D) Restitution to appropriate parties; and
(E) All general conditions of probation.

Jail or Prison Recommendations in Domestic Violence Cases:

The following factors should be considered in making a recommendation for jail or prison in a domestic violence case:

(A) Offender's criminal history and whether there are prior arrests or convictions for domestic violence crimes;
(B) Whether the present offense involves the use of a weapon;
(C) Severity of injury to the victim;
(D) Whether there existed a potential for injury to children or whether the offense occurred in the presence of children;
(E) Concerns of the victim; and
(F) Whether the defendant sought appropriate treatment prior to entry of a plea.

5.11 DUII Charging and Plea Policy

When a police report of Driving Under the Influence of Intoxicants is received, the assigned Deputy District Attorney shall determine whether the case should be prosecuted. Under no circumstances shall a DUII charge be reduced or dismissed in plea negotiations. The only reason to dismiss a DUII is due to a lack of evidence.

5.12 Aggregation of Property Offenses

The Deputy District Attorney in charge of any property offense enumerated in ORS 164.043 (Theft 3), ORS 164.045 (Theft 2), ORS 164.055 (Theft 1), ORS 164.057 (Aggravated Theft 1), ORS 164.061, ORS 164.098 (Organized Retail Theft), ORS 164.125 (Theft of Services), ORS 164.140 (Criminal Possession of Rented or Leased Personal Property), ORS 164.367 (Determining Value of Damage; Aggregation), ORS 165.013 (Forgery 1), ORS 165.055 (Fraudulent Use of a Credit Card), ORS 165.694 (Aggregation of Claims), or ORS 165.803 (Aggravated Identity Theft) shall decide based on admissible evidence whether it is in the interest of justice to aggregate the charge(s).

The Deputy District Attorney may use the aggravating and mitigating factors enumerated below in 5.15.3 and 5.15.4 when making the decision whether to aggregate property crimes.

5.13 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. (ie: ORS 137.751 for AIPs.)

5.14 Pretrial Release

The following provisions directly govern Oregon's scheme for pretrial release:

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.

Factors to be considered in a bail recommendation are:

- The nature of the charge;
- Whether the defendant poses a continuing threat of harm to the victim or community;
- Defendant's criminal history; and
- The flight risk posed by the defendant.

5.15 Ballot Measure 11 Plea Policy

5.15.1 Philosophy:

The philosophy underlying our Ballot Measure 11 plea policy is as follows: 1) that defendants who commit violent, dangerous, or exploitive Ballot Measure 11 crimes will receive the sanctions intended by that measure; and 2) that some defendants who commit certain Ballot Measure 11 offenses may be more appropriately punished by a non-Measure 11 or ORS 137.712 disposition, where mitigating factors clearly outweigh aggravating factors and the public is adequately protected.

5.15.2 Adults Charged with Ballot Measure 11 Crimes:

A defendant charged with Murder, Attempted Murder, Attempted Aggravated Murder, Manslaughter in the First or Second Degree, Arson in the First Degree, Rape in the First degree, Sodomy in the First Degree, Unlawful Sexual Penetration in the First Degree, Assault in the First Degree, Kidnap in the First Degree, Robbery in the First Degree, or Using a Child in a Display of Sex Act, will not be allowed a resolution outside Ballot Measure 11, absent substantial evidentiary problems that impede our ability to obtain a conviction.

In addition to the statutory escape from Measure 11 treatment for certain offenses provided by ORS 137.712, a defendant charged with Assault in the First Degree, Kidnap in the Second Degree, Rape in the Second Degree, Robbery in the Second Degree, Sexual Abuse in the First Degree, Sexual Penetration in the Second Degree, Sodomy in the Second Degree, or Compelling Prostitution, may be allowed a non-Ballot measure 11 disposition only if Mitigating Factors clearly outweigh Aggravating Factors.

5.15.3 Aggravating Factors:

a. Extensive criminal history;
b. Use of firearm or knife to intimidate the victim;
c. Deliberate cruelty to a victim;
d. Permanent injury to a victim;
e. Multiple victims or incidents;
f. Offender violated a public trust or professional responsibility;
g. Persistent involvement in similar offenses or repetitive assaults;
h. Threats of or actual violence towards witness or victim;
i. Offender exploited a particular vulnerability of the victim;
j. Degree of harm or loss was significantly greater than typical;
k. Offender motivated in part by victim's race, color, religion, ethnicity, national origin, or sexual orientation;
l. Offender exploited a position of trust or authority;
m. The victim is under 12 years of age;
n. In non-forcible, non-violent sex offenses, there is more than an eight year age difference between offender and victim;
o. Public not adequately protected by a non-Ballot Measure 11 disposition;
p. Organized criminal operation;

q. Offender on probation/post-prison supervision at the time of commission of current offense;

5.15.4 Mitigating Factors:

a. The offender's criminal history is minor with no prior felony convictions or misdemeanor person crimes as an adult or juvenile;
b. The offender acted under a form of duress or compulsion;
c. The offender's mental capacity was or is diminished (excluding diminished capacity due to voluntary drug or alcohol use);
d. The degree of harm or loss was significantly less than typical;
e. The offense was principally accomplished by another;
f. The behavior of the victim substantially contributed to the offense by precipitating the attack;
g. The offender is cooperating with the State, beyond merely a confession or admission;
h. In non-forcible, non-violent sex offenses, there were a limited number of sexual contacts that did not involve intercourse, sexual penetration or sodomy;
i. In non-forcible, non-violent sex offenses, the difference in the age and maturity levels between the defendant and the victim are not substantial;
j. In non-forcible, non-violent sex offenses, the crime was first reported by the offender in circumstances in which a report by another was not imminent; the defendants' motivation in coming forward was primarily to stop the sexual offenses; and the defendant cooperated fully with law enforcement;
k. Collateral consequences to the offender.
l. The offender is of advanced age, with deteriorating mental faculties, and the public can be adequately protected by an alternative to a Measure 11 disposition.

5.15.5 Juveniles Charged with Ballot Measure 11 Crimes:

Persons under 18 who are charged with Ballot Measure 11 crimes will normally not be allowed to plead to a substituted offense in juvenile court unless the juvenile has no significant prior criminal record and the public interest would clearly be promoted by a juvenile court disposition. Such a juvenile court disposition will require the express approval of the District Attorney.

In Ballot Measure 11 prosecutions of a juvenile, the presence of any Aggravating factor listed in Section 5.10.3 will normally require a Measure 11 disposition, although the presence of Mitigating Factors listed in Section 5.10.4 that outweigh any Aggravating Factors may permit a non-Measure 11 disposition.

In the case of a juvenile charged with a measure 11 sex offense, a non-Measure 11 sex offense, a non-Measure 11 disposition in an adult court will be considered if the following factors clearly outweigh any aggravating factors listed in Section 5.7.1:

1. The offender has been evaluated by a person trained to evaluate juvenile sex offenders and has been determined not to be a sexual predator, by a comprehensive evaluation that included a polygraph test if requested;
2. The offender is amendable to sex offender treatment;

3. Treatment is available for the offender, and reasonably likely to be successful; and
4. The offense committed was not forcible or violent.

5.15.6 Ballot Measure 11 Case Reviews:

In order to be sure that our office is handling the disposition of Measure 11 cases consistently and in accordance with the spirit of the ballot measure, our office will conduct at least one review of each Measure 11 case and an additional review before a non-Measure 11 disposition is offered or agreed to by any deputy.

The review team will include the District Attorney, the assigned Deputy District Attorney, and the Victim Advocate, to review the facts and admissible evidence in the case and discuss what offer or proposed disposition should be made in the case.

In addition to this internal review, the assigned deputy must make sure that our office has complied with the request of any victim to be consulted about plea negotiations before making a binding offer or acceptance on any violent felony.

5.15.7 Decision Whether to Seek Death Penalty

The decision whether to seek the death penalty for any Aggravated Murder conviction shall be in the sole discretion of the District Attorney.

5.16 Special Considerations

Deputies will retain the discretion to negotiate dismissals, non-prosecutions, and sentencing recommendations in all cases subject to the general standards for plea agreements and the standards set forth in this policy.

Any case may be dismissed or reduced if there are substantial evidentiary problems that impede our ability to obtain a conviction. These concerns about the sufficiency of admissible evidence to support a verdict include, but are not limited to the following areas:

1. Victim's ability and willingness to testify;
2. Admissible statements of child to other persons;
3. Suspect's statements;
4. Physical corroboration;
5. Witness corroboration;
6. Availability of expert witness;
7. Potentially exculpatory evidence discovered by the State or provided by the defendant;
8. Legal impediments to the admission of evidence, e.g., unlawful search or seizure, Miranda violations.

There will be times when it is necessary to reduce or to dismiss Ballot Measure 11 charges. No Ballot Measure 11 charge will be reduced to a non-Ballot Measure 11 charge or dismissed unless the resolution meets the standards of this policy and has the approval of the District Attorney.

There will be times when it is necessary to reduce or to dismiss non-reducible charges. Such a reduction or dismissal must be approved by the District Attorney.

Domestic violence cases will not normally be subject to dismissal pursuant to plea negotiations, unless the facts and evidence in the case warrant such an action. The deputy handling a domestic violence case needs to obtain the approval of the District Attorney before making an offer in which all domestic violence charges will be dismissed pursuant to a plea on one or more non-domestic violence cases.

5.17 District Attorney Diversion & Deferred Sentencing Agreements

Only in unusual circumstances should a deputy enter into a District Attorney's Diversion under ORS 135.881, et. seq, and then only with the express consent of the District Attorney.

Deferred sentencing may be offered to first-time, domestic violence offenders with no prior convictions for crimes of violence, and no prior arrests for domestic violence. Deferred sentencing may also be offered to first-time offenders if the prosecutor believes the interest of justice would be served by offering a deferred sentencing agreement.

5.18 EDP

I. Introduction:

Legislation found in ORS 135.941, referred to as **Early Disposition Programs**, requires there be established a system which will allow for the early disposition of cases for first time offenders who have committed nonperson offenses, as well as for persons charged with probation violations.

II. Purpose:

A. Bring swift justice for the offender
B. Relieve docket pressure from those cases that should resolve quickly and without investing significant DA or Court resources.

III. Criteria for Eligible Cases:

A. Lower level, non-violent cases
B. Conditional discharge drug offenses
C. First-time offenders
D. Victimless / minor restitution offenses
E. State, Court, defense bar familiar with the range of likely outcome for type of crime

IV. Non-exclusive list of usually eligible crimes:

A. PCS
B. DUIII
C. DWS
D. Other non-injury traffic crimes

E. Disorderly Conduct
F. Fish & Wildlife crimes
G. Negotiating a Bad Check
H. Offensive Littering
I. Shoplift thefts

V. Procedure:

A. Written Offer or Reduction at time of charging:

When it is apparent to the District Attorney at the time of filing a criminal case that the case can be resolved by the entry of a plea contingent on the Court imposing sentence according to the recommendation of the District Attorney pursuant to ORS 135.390(3)(a), the District Attorney will write an offer and prepare discovery at the time the charging instrument is filed. The offer and discovery will be provided to the defendant at the time of arraignment.

Any EDP offer must first seek justice and secondly seek prompt resolution.

In all cases where it is possible to discern the Court's likely sentence of the defendant based on the Court's past practice in similar cases, the District Attorney's Office shall make an offer that in their judgment approximates the defendant's sentence. Nothing in the early disposition program shall prevent the District Attorney from leaving one or more terms of the sentencing to the discretion of the Court.

The District Attorney shall provide a discovery packet to the defendant at arraignment. In all cases the District Attorney's Office makes a standing request that the cost of discovery be added to the defendant's court obligations. The discovery packet shall contain the police report if available, but at a minimum any probable cause statements.

Where the District Attorney believes justice will be rendered by reducing an offense to a violation, the District Attorney will make that reduction at the time of charging by stamping any such charging instrument as a "violation." The District Attorney will continue to seek restitution for violations under ORS 137.106(1).

A. Victim Notification:

When a defendant is charged with a crime that involves a discernable victim, the District Attorney's Office shall make efforts to notify the victim and determine whether they wish to appear at sentencing. If the District Attorney's Office has not contacted the victim, or if the victim wishes to appear, the District Attorney will ask that the case be set over for 48 hours.

B. Defense Counsel:

The court will notify each defendant of the right to counsel and secure a written waiver if the defendant elects to proceed without counsel.

The court will allow all defendants, indigent or not, to discuss their case with appointed counsel in attendance to facilitate early resolution. The defendant may leave the courtroom with counsel and return before the court adjourns the session to resolve the case as offered.

Should a defendant desire additional time to consult with counsel, the EDP offer will remain open for no more than two weeks, and the defendant will be ordered to return to court at such time for plea and sentencing.

VI. Evaluation Criteria:

A. Cost avoidance by fewer court appearances
B. Cost savings of court-appointed counsel
C. Outcomes measured by the criteria of ORS 135.946
1. Number of offenders offered participation
2. Number of offenders who accepted
3. Number who successfully completed required conditions
4. Amount of costs avoided

NON-EXCLUSIVE EARLY DISPOSITION SUGGESTIONS:

I. 1st DUII (non-diversion eligible)
***24 months probation**
***No alc/eval/tx/VIP**
***48 hrs jail (30 days/28 suspended)**
***Applicable fine & license suspension**

II. 2nd DUII
***24 months probation**
***10-30 days jail**
***No alc/eval/tx/VIP**
***Applicable fine & license suspension**

III. 3rd DUII
***Minimum 30 days jail**
***No alc/eval/tx/VIP**
***Applicable fine & license suspension**

IV. DWS/Minor Traffic/Disorder Conduct/Criminal Trespass II/Shoplift
***Violation Treatment**

V. PCS – 1st drug offense or property crime motivated by dependence on controlled substance
***Conditional Discharge**

5.19 Reduction to Violation

Only non-person, Class "B" or "C" misdemeanors should be reduced to violations when appropriate. Class "A" misdemeanors may be reduced to violations if the prosecuting

attorney finds that the interests of justice will be served. The attorney reducing such a charge should still request restitution be paid to the victim.

5.20 Civil Compromise

Oregon law provides that when a defendant is charged with a crime punishable as a misdemeanor and the person injured by the act constituting a crime has a civil remedy, the crime, with certain exceptions, may be compromised. The injured party must acknowledge in writing satisfaction of the injury. Then the court may order the complaint dismissed pursuant to ORS 135.703 and 135.705.

The Oregon State Bar has ruled that it is unethical under certain circumstances for a prosecuting attorney to advise an injured party against civilly compromising a criminal case. See ethical opinion No. 303. Nevertheless, the civil compromise process is one open to abuse. Generally, if the crime is one that may be compromised, we will not oppose a motion for a civil compromise if it is based on the affidavit of satisfaction of the victim. However, opposition to a motion for civil compromise is appropriate if:

1. The defendant has an extensive criminal history;
2. There are multiple victims;
3. The nature of the offense suggests that the defendant is involved in organized criminal activity; or
4. There is other egregious conduct.

Finally, it is the obligation of all Deputy District Attorneys to fully advise victims of the ramifications of a civil compromise; specifically, to point out to them that if obligations undertaken by the defendant as a part of a civil compromise agreement are not met, the criminal case cannot be re-filed.

5.21 Guilty Except for Insanity Plea Policy

Deputy District Attorneys shall be familiar with ORS 161.295 et seq. and the applicability of GEI will be analyzed on a case-by-case basis in accordance with the remainder of these policies.

5.22 Discovery

The discovery obligations of the Curry 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. In order to meet discovery obligations in a given 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 the District Attorney for guidance whenever appropriate.

Except as otherwise provided in ORS 135.855 and ORS 135.873, The District Attorney's Office shall provide the defendant the following material and information within the possession or control of the district attorney:

(A) The names and addresses of persons whom the district attorney intends to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons.

(B) Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one.

(C) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which the district attorney intends to offer in evidence at the trial.

(D) Any books, papers, documents, photographs or tangible objects;

a. Which the district attorney intends to offer in evidence at the trial; or
b. Which were obtained from or belong to the defendant.

(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.

(F) All prior convictions of the defendant known to the state that would affect the determination of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Commission.

(G) Any material or information that tends to:

a. Exculpate the defendant;
b. Negate or mitigate the defendant's guilt or punishment; or
c. Impeach a person the district attorney intends to call as a witness at the trial.

The disclosure required by subsection (G) shall occur without delay after arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If the existence of the material or information is not known at that time, the disclosure shall be made upon discovery without regard to whether the represented defendant has entered or agreed to enter a guilty plea.

Nothing in subsection (G):

1. Expands an obligation under a statutory provision or the Oregon or United States Constitution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement officers.
2. Imposes any obligation on the district attorney to provide materials or information beyond the obligation imposed by the Oregon and United States Constitutions.

Each deputy district attorney has a duty to review their files and disclose any material that is clearly exculpatory or favorable, and material to the defendant.

Discovery should not be released to the defendant's attorney until after arraignment. Discovery can be released to defendant's attorney prior to arraignment only if authorized by a prosecutor and the release is in the best interests of justice or aids in the efficient resolution of the criminal case. Discovery will be released to unrepresented defendants only after the defendant has been arraigned, has waived his/her right to counsel in court

and only after the cost incurred in supplying the discovery has been paid or with approval of the District Attorney.

Every effort should be made to assure the defendant receives a fair trial. A history of all information provided to a defense attorney should be documented in writing and placed in the file.

5.23 Process for Obtaining Discovery

The Curry County District Attorney's Office receives all discovery from each individual agency by hand, email, mail, or fax. Our office requires a notice of representation prior to providing discovery to any defense attorney. All unrepresented defendants can request discovery from our office after arraignment.

All materials: reports, disks, USB, photographs, etc. will be numbered, copied and made available for each attorney to pick up from our office. A log will be kept in each case file noting the date discovery is provided, the number of pages and disks provided and the cost.

5.24 Costs Charged for Discovery Materials

A fee schedule for all discovery is maintained and updated by the Curry County District Attorney's Office and is adopted by the Curry County Board of Commissioners. The fee schedule is available upon request. Discovery is billed on the first of each month to Oregon Public Defenders Services and all privately retained attorneys. Payment is due within 30 days of receiving an invoice. All unrepresented defendants must pay for discovery at the time it is provided.

6.0 Weapons Charges and Destruction of Weapons

6.1 Policy

It shall be the policy of the District Attorney's Office to vigorously prosecute all crimes involving the illegal possession and use of a firearm.

6.2 Issuing

The District Attorney's Office will file criminal charges in any case where there is a prosecutable case involving a weapon. In addition, the District Attorney's Office will plead mandatory minimums and sentencing guideline subcategories whenever applicable.

6.3 Forfeiture

A prosecutor will seek forfeiture of a weapon possessed or used illegally whenever possible.

7.0 Controlled Substance Offenses

Controlled substance offenses shall be vigorously prosecuted. First-time offenders of possession of a controlled substance or a property crime related to a drug addiction should be offered a "conditional discharge."

The Deputy District Attorney assigned to any given controlled substance crime shall use their prosecutorial discretion to determine whether a charge should be filed.

PCS Misdemeanor Treatment Guidelines

Pursuant to HB 2355 (2017), the following are guidelines that must be considered, uniformly, when a Deputy District Attorney in this office is evaluating whether to elect to treat a felony drug possession charge as a misdemeanor. In making such a decision, the DDA must consider the following factors, however, this list is not exhaustive and any DDA is encouraged to use their prosecutorial discretion. The factors include:

(H) The nature and circumstances of the underlying crime, but not limited to the quantity of drugs. A person in possession of a substantial quantity of drugs would not be eligible for misdemeanor treatment.

(I) A defendant's criminal history. The DDA should specifically focus on the number of convictions, the type of convictions, the age of the convictions, and the outcome. A defendant convicted of any violent crime or person felony crime would not be eligible for misdemeanor treatment.

(J) A defendant who committed the new possession of drug crime who was on probation at the time of the commission of the new crimes would not be eligible for misdemeanor treatment.

(K) The defendant's willingness to engage and complete substance abuse treatment and whether the defendant has entered and/or completed treatment in the past.

In applying these guidelines, the DDA will ultimately determine, based on these factors and other relevant factors, to elect to treat a felony possession of drug charge as a misdemeanor when that attorney believes that it would be unduly harsh to convict the defendant of a felony.

The recent passage of Measure 110 (2020) will also have an impact on how drug crimes are evaluated and prosecuted by the District Attorney's Office. Refer to the District Attorney for guidance regarding Measure 110 policy.

7.1 Drug Free Workplace & Employee Policy

The District Attorney's Office and the citizens of this community have a vital interest in maintaining a safe, healthy, effective and efficient workplace for all employees. An employee, being under the influence of alcohol or illicit drugs in the workplace, can pose safety and health risks, not only to the user, but to all of those who work with the user. Additionally, in accomplishing our professional mission, it's critically important that we maintain the integrity and trustworthiness of the District Attorney's Office as an institution of our criminal justice system. Outside the workplace, an employee's illegal use of drugs or

inappropriate or excessive consumption of alcohol can, likewise, degrade, demean, and debase the professional reputation of the District Attorney's Office and its entire staff.

The illegal possession, use, abuse or delivery of any legal or illegal drug, controlled substance or alcohol in the workplace poses an unacceptable risk to the safe, healthful and efficient performance of our mutual job responsibilities and the integrity and reputation of this office. Such misconduct is expressly prohibited. Likewise, the illegal possession, use, abuse or delivery of any legal or illegal drug, controlled substance or alcohol outside the workplace is a violation of law and is expressly prohibited. Any such misconduct by an employee of the District Attorney's Office diminishes the efficiency, effectiveness, public trust and reputation of both our organization and staff. A violation of this policy will result in discipline: including termination of employment.

By law in Oregon, the District Attorney's Office is the Chief Law Enforcement Official of each county. It is therefore incumbent upon the organization and its personnel to be above reproach in both their personal and professional conduct. Therefore, all prospective employees (including Interns and Volunteers) shall submit to a pre-employment drug and alcohol screening test prior to commencement of their official employment or association with the District Attorney's Office. The successful completion of such a screening test is a prerequisite to employment or association with this office.

Additionally, any employee (including Interns and Volunteers) who, in the evaluation of the District Attorney, as indicated by behavior, job performance or other relevant indicators or evidence, has violated this policy may be required by the District Attorney to immediately submit to a drug and alcohol screening test. Participation in testing under this policy is a condition of initial and continued employment. Failure to immediately submit to such a test when directed by the District Attorney or her designee shall be considered misconduct by the employee and subject them to discipline; including termination.

The District Attorney's Office recognizes the physical and psychological health of its employees is critical to its success. Accordingly, it is the right, obligation and intent of the District Attorney's Office to maintain a drug free, safe, healthful and efficient working environment for all of its employees and to protect the office's and employee's reputation, integrity, property, equipment and operations.

The District Attorney's Office maintains and supports an Employee Assistance Program which provides help to employees who seek assistance for drug or alcohol abuse and other personal or emotional problems.

8.0 Guidelines for Prosecution of RICO Cases in Curry County

Utilization of the RICO statute requires careful and well-reasoned application. Despite the broad statutory language of RICO, it shall be the policy of the District Attorney's Office that the RICO statute be selectively and uniformly used to accomplish its intended goals. It is the purpose of these guidelines to make it clear that not every case in which technically the elements of RICO exist will result in the approval for a RICO charge. Further, it is not the policy of this office to pursue prosecutions under RICO, which are not within the legislative purpose for the statute.

8.1 Authorization of Prosecution

The District Attorney shall personally approve all RICO prosecutions.

The following factors, which are not intended to be exclusive, should be considered before bringing a RICO prosecution:

1. The feasibility of prosecuting the defendant for the underlying crimes, taking into account evidentiary considerations. Occasionally an enterprise will commit a large number of frauds on certain vulnerable victims in the community. The enterprise may look legitimate and in individual cases the victimization may look like a civil matter until the cases are viewed together such that the larger pattern of illegal activity becomes clear.

2. Applicability of other remedies. In these cases, traditional methods such as civil lawsuits, injunctions and restraining orders have been tried but have failed to alleviate the problem.

3. Whether the predicate crimes provide sufficient punishment for defendant's activities. Sometimes criminal activity will involve relatively low-level offenses perpetrated on a grand scale. In those cases the sentence that the defendant would presumptively receive under sentencing guidelines may be out of proportion to the seriousness of the offense. In those situations, RICO prosecution might be justified.

4. The nature of the defendant's conduct. Sometimes the underlying charges are as serious as RICO. For example, if a defendant is involved in a series of Class A felonies that can be proved independently without reference to each other and are patently criminal in and of themselves, a RICO prosecution may not be necessary.

5. The number of victims. With the exception of drug and vice related crimes, generally there should be at least five victims. However, there may be cases with fewer victims if there are substantial losses to those persons.

6. The relationship of the defendant to the enterprise. The defendant should be associated in fact with a group of people engaged in an outgoing enterprise. Generally, we should not prosecute under RICO an individual who is engaged in a series of crimes unless these crimes have some association with an enterprise that is larger than the particular individual.

7. The history of the activity. If an organization or enterprise has been operating for a substantial period or is extremely complex, both factors weigh in favor of RICO prosecution.

8. The economic gain of the enterprise or organization. If the criminal enterprise has obtained substantial economic wealth, then the RICO prosecution may be warranted both from the criminal and civil standpoint.

9. The chances of a successful prosecution. The RICO prosecution should never be instituted with the idea of using the RICO as a bargaining tool. Before the charge

is brought there should be a good likelihood that the state will be successful in its prosecution.

10. Number of predicate offenses. The RICO statute requires that there be at least two predicate offenses. Unless there are compelling reasons, seldom is a prosecution justified if only two offenses can be proven. Generally, there should be evidence of at least five offenses at different times within the statutory period. Generally, at least two of the predicate offenses should be felonies.

8.2 Special Cases

In those cases that fall outside the general guidelines, a memorandum shall be prepared and presented to the District Attorney demonstrating the need for RICO prosecution. The District Attorney will weigh the legislative purpose for the RICO statute, the protection of the community, and the reasons why a RICO prosecution should be brought. If the District Attorney concludes that the legislative intent is not violated, that the public is best protected, and that there are compelling reasons, the District Attorney will then authorize the bringing of the RICO charge.

8.3 Recovery of Property

It shall be the policy of the District Attorney's office that if assets are seized and forfeited, any recovery should fist go to repay innocent victims. The remainder shall then be distributed to law enforcement agencies for their costs.

8.4 Civil Cases

The guidelines enumerated above are not intended to apply to civil cases.

9.0 Guidelines for prosecution of Environmental Crimes

9.1 Background and Purpose

The 1993 legislature passed Ch 442, which establishes criminal penalties for certain violations of the environmental laws. Because environmental laws are by their very nature broad, the legislature also required that the District Attorney of each county adopt written guidelines for the filing of felony criminal charges. The legislature also set out a list of criteria that the District Attorney must consider before bringing a charge. The law requires that the District Attorney must personally certify that he or she has reviewed the case and that the case meets the requirements of the guidelines.

The policy of the District Attorney is that the environmental crimes statutes will be used to accomplish the intended goals of the legislature. It is the purpose of these guidelines to make clear that while not every technical violation will be criminally pursued the most serious conduct will be prosecuted.

9.2 General Principles

Any conduct that is in violation of Ch 722 is also a violation of a regulatory statue and/or an administrative rule. For many violations, administrative remedies and civil penalties are adequate responses. For some conduct, the bringing of a misdemeanor charge may be appropriate. Bringing felony charges should be reserved for the most serious conduct.

9.3 Applying the Guidelines

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

9.4 Specific Factors

1. The complexity and the clarity of the statute or regulation violated. If the regulation is very complex and difficult to understand, the likelihood increases that a person could violate a statute or regulation despite making a good faith effort to comply with the law. Such circumstances will normally diminish the necessity for prosecution.
2. The actions and the mental state of the actor. Was the violation inadvertent, or was it so egregious that, despite the complexity of the statute or regulation, the person should have known that the person's action was unlawful or the person's conduct was nonetheless reckless as to the consequences for human health or the environment? Did the actor know that his or her actions were in violation of the law and consciously disregarded the law?
3. The extent to which the person was or should have been aware of the requirement violated. Does the person engage in a heavily regulated occupation or industry, so that knowledge of environmental requirements in an elementary part of doing business? Has the person made a good faith effort to determine whether the conduct violated the law? Is the general practice of the occupation or industry to hire or consult with environmental consultants or for regulatory agencies to offer technical assistance or to publish guidance? Has the person had contact with the regulatory or enforcement agency? Has the agency clearly defined the conduct that would violate the law or regulation? Did the person know that the conduct was a violation?
4. The existence and effectiveness of a person's program to promote compliance with environmental regulations. The existence of a bona fide effective compliance program may weigh against the need for criminal prosecution. Where such a program is in place, it suggests that the violation may be isolated and inadvertent, and that the person has means in place to prevent or detect future violations before they result in substantial harm to human beings or the environment. Theses inferences, however, will not be true in every case; the existence of an effective compliance program will not negate prosecution if there is evidence that shows that the person knowingly violated the law or caused substantial harm.

5. The magnitude and probability of the actual or potential harm to humans or to the environment. Protection of public health and safety and the protection of the environment is the stated goal of the environment statutes and is a central consideration for the District Attorney.

   Considerations here will typically include the nature of the waste, its toxicity, and the known or suspected health risks associated with it.

   The greater the probability and magnitude of harm, the greater the need for criminal sanctions. In considering the magnitude of harm, the District Attorney will consider whether the harm is long lasting or can be remedied promptly. If the person's conduct created a great risk of substantial harm, the fact that little or no harm actually occurred may be irrelevant.

6. The need for public sanctions to protect human health and the environment or to deter others from committing similar violations. A person's persistent and willful violation that causes a great risk of substantial harm to human beings or the environment will generally justify prosecution. This action is necessary to protect human health and the environment from the person's criminal activity.

   If the violation applies to many others, publicity concerning its enforcement may also deter others from similar activities. In addition, the prosecution may create general deterrence against violations of other environmental laws in addition to the specific statute or regulation that was violated in the particular case.

7. The person's history of repeated violations of environmental laws after having been given notice of those violations. Repeated violations after notice shows both intentional and knowing criminal conduct, which makes criminal sanctions particularly appropriate. The repeated violations also demonstrate the fact that prior civil/administrative remedies were inadequate to deter misconduct.

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

9. The person's cooperation with regulatory authorities, including voluntary disclosure and prompt subsequent efforts comply with applicable regulations and to remedy harm caused by the violations. Generally, bona fide voluntary disclosure and prompt efforts to remove violations and remedy harm will not result in criminal prosecution.

10. The likelihood of a successful affirmative defense. The law provides for an affirmative defense for a defendant who (1) did not cause or create the condition or occurrence constituting the offense, (2) reported the violation promptly to the appropriate regulatory agency, and (3) took reasonable steps to correct the violation. Similar conditions apply to the affirmative defenses of "upset" and "bypass". If an affirmative defense clearly applies, criminal prosecution is not appropriate.

11. The appropriate regulatory agency's current and past policy and practice regarding the enforcement of the applicable environmental law. If the regulatory agency does not enforce a regulation, rule or law, criminal prosecution under the regulation, rule, or law would generally be inappropriate.

If the regulatory agency having jurisdiction has determined that a violation is not serious enough to merit civil or administrative enforcement, criminal sanctions would usually be disproportionate to the severity of the violation and, therefore, prosecution would be inappropriate.

Absent extraordinary circumstances, the District Attorney's Office will communicate with the regulatory agency and will consider that agency's recommendations regarding criminal prosecution. If the regulatory agency does not recommend or concur with prosecution, unless special circumstances exist, prosecution may not be inappropriate.

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

13. The person's underlying conduct that leads to the violation was criminal in nature. If the conduct that lead to the violation was criminal, then prosecution is generally appropriate; e.g., manufacturing of controlled substances (meth labs), dumping hazardous waste containers on other people's property.

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

9.5 Procedures

Absent extraordinary circumstances, before a felony environmental criminal charge is brought, the investigating law enforcement agency and the regulatory agency shall be consulted. Any Deputy District Attorney interested in bringing such a charge should provide a memorandum outlining the need for prosecution, including (1) a case summary and evaluation, and (2) an analysis of the factors listed above to the District Attorney. The District Attorney must approve of filing the charge before the matter is set for Grand Jury.

Once the filing of an environmental crime has been authorized by the District Attorney, it is the duty of the Deputy District Attorney to keep the District Attorney apprised of the current status of the case.

10.0 Grants of Immunity

In order to secure a conviction, it is sometimes necessary to grant immunity to people who are participants in criminal activity. The granting of immunity should be done carefully

and cautiously. This is a very serious matter in which the need for the testimony must be balanced against a reduced plea or dismissal. Before offering anyone immunity, the following procedures must be considered.

10.1 Statutory Immunity and Compelled Testimony

ORS 136.617 and ORS 136.619 set forth the only statutory basis for compelling testimony in Oregon. It was an attempt by the legislature to codify State v. Soriano, 68 Or App 642 (1984), affirmed 298 Or 392 (1985). The statutes provide the witness with transactional (complete) immunity as opposed by testimonial or use immunity.

Authorization for formal grants of immunity is reserved by statute to the District Attorney. Only under limited circumstances will the District Attorney grant a person statutory immunity for crimes they commit. All inquiries concerning these matters should be directed to the District Attorney. Such a request should be presented at the earliest possible time.

A deputy requesting an authorization of statutory immunity must prepare the following information, which will be provided to the District Attorney:

1. The prior record of the person to be granted immunity;
2. Identify the precise transaction for which immunity will be requested;
3. The necessity for granting immunity, including exhaustion of other remedies available to obtain testimony;
4. A sample draft of the immunity motion and order; and
5. An outline of the benefits to be obtained from the witness's testimony.

Once a given immunity order has been signed, copies of the motion and order shall be given to the District Attorney. A copy shall be placed in the criminal file.

10.2 Contractual or Informal Immunity

Contractual or informal immunity occurs when a person agrees to testify at grand jury, trial, sentencing, or other proceedings in return for a Deputy District Attorney's promise to dismiss, to not bring charges, to allow a plea to a reduced charge, or allow a plea and/or dismissal of other charges. Contractual immunity is binding on the prosecution. When the agreement becomes binding on the prosecution depends upon the terms of the contract. Absent extraordinary circumstances, it should only be binding on the State when the witness has fulfilled his or her obligations.

The advantage of contractual immunity is that the deputy can control the understandings and obligations. The deputy is expected to control the understandings and obligations forming the basis of the contractual immunity. The agreement must be in writing and precisely state the agreed upon conditions. Ambiguities must be avoided as the terms of the agreement will be strictly construed against the State.

For all crimes, before agreeing to any contractual immunity agreement a deputy must receive approval from the District Attorney. A copy of the informal immunity agreement must be provided to the District Attorney. A copy will also be placed in the criminal file.

The following is a list of conditions that generally will be included in a contractual immunity agreement:

1. A statement that it only covers those crimes specifically listed.
2. A statement that everything, including changes, must be in writing and signed by all parties. It should state that it is the "exclusive recital of the terms."
3. The specific nature of the information and crimes that the witness agrees to provide.
4. A statement that the witness is subject to perjury.
5. The circumstances under which the agreement will be deemed to have been breached. Included in this should be new crimes, perjury, and failure to completely satisfy every requirement of the agreement (substantial compliance is not acceptable).
6. A statement as to who will determine whether there has been a breach. Absent compelling reasons, this should be reserved to the District Attorney.
7. A statement as to the duration of the agreement. Normally, this will include trial, appeals, post-conviction, and re-trials.
8. If a plea bargain is part of the contract, the agreement should set out its terms. In addition, the agreement should be very specific about the effects of a breech by the defendant.
9. A statement of the specific obligations of the witness. Examples are:
    a. To truthfully provide complete and detailed information.
    b. To provide all information known.
    c. To name names.
    d. To make and record phone calls.
    e. To wear recording devices.
    f. To introduce informants or undercover officers to other suspects.
    g. To cooperate, use best efforts, and testify.
    h. To take, complete, and pass a polygraph that will be given by the police.

10.3 Factors to Consider Before Granting Immunity

The District attorney's Office will evaluate a proposed contractual agreement applying these non-exclusive factors:

1. Is the witness necessary to obtain a conviction against another defendant?
2. Are there other means of securing the information?
3. The witness's role in the offense compared to other participants.
4. The witness's prior criminal record and criminal activity in comparison to other defendants.
5. The witness's cooperation and willingness to aid early in the investigation and/or prosecution.
6. The witness's willingness to give full disclosure of the present offense and other related criminal activity.
7. The witness's believability and willingness to take, complete, and pass a polygraph examination on the information he or she provided.
8. The witness's willingness to provide a truthful sworn statement prior to the grant of immunity.

9. If the witness was not involved in the present offense, the District Attorney will consider the seriousness of the present offense in comparison to those offenses that will be dismissed or reduced.
10. Any other relevant factor that warrants the granting of immunity.

11.0 Stipulated Facts Trial

The following rules apply to stipulated facts trials:

A. Always agree to a stipulation to allegations contained in the Information or Indictment.
B. Remember that a stipulated trial is a trial for purposes of double jeopardy. If the conviction is reversed or the Court allows a new trial, you can only proceed on the charge or charges for which the defendant was found guilty.
C. You must always have a written jury trial waiver.
D. Never allow the defense to put on any evidence.
E. Consider a no-contest plea; especially where the defendant is likely to tell the Court that they are innocent.
F. Be aware of Steward v. Cupp, 12 Or App 167 (1973), which holds that if the plea later falls apart on appeal or post-conviction relief, you may be barred from bringing back the charges you dismissed pursuant to any agreement. Therefore, for both stipulations and pleas, you should be aware of the consequences of reducing or dropping other charges. In those cases, you can get a waiver, but it must be done at the time the plea is entered.

12.0 Mental Disease or Defect Defense

A deputy should not enter into a stipulation that a person is guilty except for insanity. This policy does not preclude, with approval of the District Attorney, a stipulation to the facts of the case and any medical reports, but the ultimate decision in such a matter is to be made by the judge.

Exceptions to this rule may exist, but District Attorney approval is required.

13.0 Child Support

It is the policy of the District Attorney's Office to file criminal charges when a person fails to fulfill child support obligations despite a clear ability to do so.

If a person has failed to pay child support for three consecutive months, the case shall be given to the child support Deputy District Attorney for review.

The Deputy District Attorney shall first attempt to contact the obligor to notify him or her of possible criminal proceedings.

The Deputy District Attorney shall follow-up with a judgment debtor exam and, if the obligor continues to criminally disregard the obligation, shall present the matter to the Grand Jury for indictment on a charge of criminal non-support.

14.0 Polygraph Policy

The polygraph is a scientific instrument which is utilized as an investigative device to measure deception. The polygraph's reliability is conditioned upon several factors including the examiner's expertise and the examinee's physical and psychological state. The accuracy of the polygraph has been subjected to considerable debate. Research estimates of the polygraph's accuracy range from 70-90% reliability.

It is the policy of this office to consider the polygraph only as an investigative tool. The polygraph is not to be used as a substitute for our independent judgment nor the criminal justice system. We will not enter into agreements conditioned upon the results of a polygraph examination, eg., not charge a suspect or dismiss a pending criminal case. Rather, we will consider the polygraph as additional evidence in individual cases and give it the appropriate weight it deserves.

The polygraph can play an important role in the charging function. There are situations where the statement of a victim or witness does not comport with other known facts or physical evidence. In these situations, the polygraph may be a deciding factor. Likewise, the refusal to take a polygraph test can also provide an indication of credibility.

It is not the policy of this office to require a polygraph examination on all victims or witnesses. However, a request for a polygraph test can be made when there is some evidence which calls a person's credibility into question. There must be more than mere suspicion or conjecture. There must be evidence. A victim of a sexual assault shall never be requested to submit to a polygraph exam.

A polygraph examination is an exacting time consuming and costly process. It entails pre-test review of the case, pre-test interview of the test subject, the actual polygraph test and post-test analysis of the charts and a closing interview. A routine polygraph test can take two hours. Therefore, it becomes imperative that we only request polygraph examinations from the police when absolutely necessary. It may take only moments for you to make the request, but it can take several hours of an examiner's time to conduct the actual examination.

A polygraph request from this office should detail the precise issues to be tested. Be as specific as possible. It is not adequate to merely request that the witness be given a polygraph. You must review each case and frame the specific areas and issues upon which you would like the examiner to focus.

It is the express policy of this office to support a polygraph examination of all felony suspects and defendants who profess their innocence. However, this policy is governed by the following guidelines:

A. Police Polygraph: A polygraph examination conducted by a police agency will only be requested by this office in those cases where the evidence or facts which might support a defendant's claim of innocence. If there is no reasonable basis for such claim, then we will not request a police polygraph.
B. Private Polygraphs: If a defendant has retained counsel then they presumptively can pay for the services of their own polygraph examiner. In these cases, we will consider the qualifications and professional reputation of

the private examiner in determining if there are now facts or evidence supporting the defendant's claim of innocence. If the defendant has court appointed legal counsel, we will oppose a defendant's motion for funds for a private polygraph examination when there are no facts or evidence to support such an assertion.

All defendant requests for a polygraph examination must be timely in nature and generally not and after a trial date has been set. In misdemeanor cases, decisions must be made on a case-by-case basis, taking into account the cost of the examination, nature of the crime, and other applicable factors.

This office will never enter into a pre-polygraph agreement whereby we agree to the admissibility of polygraph test results in a court proceeding or to a specific case disposition if a defendant "passes" a polygraph test; however, once a polygraph is administered, we will consider the test results as one of many factors in determining a proper and just disposition of that particular matter.

15.0 News Media Policy

It is the intent of the District Attorney's Office to make public information available to the news media without undue delay, while at the same time, insuring that any "official" statements from the prosecutor's office be handled from a central point and accurately represent the views of the organization and the elected District Attorney. It is our ethical responsibility to avoid prejudicial pre-trial publicity. In order to accomplish the above objectives, all employees shall abide by the following guidelines:

1. All requests from the news media, for information regarding ongoing (open) cases or the disposition of cases shall immediately be forwarded to the District Attorney.
2. In dealing with the news media, staff members shall adhere to the following standards regarding the release of information regarding impending criminal cases:

From the time initiation of prosecution to the final disposition of a criminal case, no staff member shall make or authorize the release of any extra-judicial statement regarding:

A. The character, credibility, reputation or criminal record of a suspect, defendant or witness or the identity of a witness or the expected testimony or a witness.
B. The possibility of a plea or the existence or contents of any admission, confession or statement given by a suspect or defendant or that person's refusal to make a statement.
C. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test or the identity or nature of physical evidence expected to be presented at a trial.
D. Any personal opinion as to the guilt or innocence of a suspect or criminal defendant.
E. Information that a prosecutor employee knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial.

F. The prior criminal record (including arrests, indictments or other charges of crimes) or the character or reputation of a subject or defendant.
G. Staff members shall not make any policy statements as to what the District Attorney's Office will or will not do unless such decision has previously been made by the elected District Attorney and announced. Policy decisions will only be made and communicated by the District Attorney.

3. Although staff and deputies should not speak directly with the press or issue press releases, they should still be familiar with the Bar-Press Guidelines to avoid any public comment that could jeopardize a case.

16.0 Giving Legal Opinions and Advice to Police and Citizens

The legal duty of the District Attorney is to represent the People of the State of Oregon in areas specifically provided by the law.

Police: In limited situations, the District Attorney can provide legal advice to the police. However, each local police agency has its own legal advisor who can normally act in the capacity of a Police Legal Advisor.

The police do not work for the District Attorney. They do not work at our direction. We have no supervisory control over the police. We do not make decisions for the police. We do not tell them when they have neither "warrantless probable cause to arrest nor warrantless probable cause to search & seize." Those are police decisions. We do not answer hypothetical questions for the police or give legal opinions based upon hypothetically assumed fact situations.

The United States Supreme Court has recognized that a prosecutor has quasi-judicial immunity from civil liability for all acts and decisions made during the "initiation and presentment" of a criminal prosecution. The decision to charge a crime is part of the "initiation" of a prosecution. See: Imbler v Pachtman, 424 U.S. 409, 96 S. Ct. 984 (1976). But, the US. Supreme Court has also ruled that giving legal advice and direction to the police during an investigation does not fall under the definition of "initiating" a prosecution and is therefore not accorded quasi-judicial immunity. In Burns v Reed, 500 U.S. 478,111 s.ct. 1934 (1991), the U.S. Supreme Court held that when prosecutors engage in activities which are properly within the police function, the prosecutors will be treated as police officers as regards to immunity from civil liability. They may only assert "good faith" immunity as contrasted with the greater prosecutor "quasi-judicial" immunity.

However, we do have the responsibility to inform the police of the current state of law. If the police request assistance in finding a specific law or details about it, we will provide such help. An officer requesting such information should submit the request in writing whenever possible. The request should be thoroughly researched, and response submitted in writing.

Citizens: We do not give legal opinions or advice to private citizens…not under any circumstances. By law, we are not a source of free legal advice to the public.

17.0 Affidavits of Prejudice

Affidavits of prejudice, motions to excuse, or requests for a judge to recuse themselves shall not be filed unless approved by the District Attorney. Any prosecutor having information that they believe reflects a sitting judge's prejudice toward the state shall inform the District Attorney in writing. Any filing of an affidavit of prejudice, motion to excuse or request for a judge to recuse themselves will occur as soon as practicable given the circumstances of the case.

18.0 Requests for the Imposition of Fines and Fees

Historically, the judges in Curry County have not inquired about a defendant's ability to pay fines and fees or appointed attorney fees. The Curry County District Attorney's Office will not make it a practice to ask for those fees since the court has not shown a willingness to impose them. In the future, if the court changes its practice or there is a change to the bench, this office will reassess the current policy.

19.0 Use of Certified Law Students

Whenever possible, law students interested in pursuing a career in prosecution shall be allowed to gain experience as Certified Law Students in the Curry County District Attorney's Office. The law students shall comply with all requirements of the Oregon State Bar's Law Student Appearance Program.

Any Certified Law Student will be supervised at all times by the District Attorney or one or more Deputy District Attorney's in the office. Any Certified Law Student can appear in court without a supervising attorney for any hearing except for any criminal case in which the defendant may be subject to a felony conviction, any juvenile case where the act committed by the juvenile if committed by an adult would have been considered a felony, or in any commitment proceedings. The extent of any law student's involvement in any case shall be determined by the supervising attorney, giving consideration to the nature of the case, the ability and experience of the student and the complexity of the factual and legal issues involved. Before any Certified Law Student appears in court, the supervising attorney and the judge of the court must consent to the appearance.

Any Deputy District Attorney who supervises an eligible law student who does any of the things permitted by the Law Student Appearance Program assumes personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

20.0 Dress Policy

All employees shall be appropriately attired and well groomed for representing the State of Oregon in all judicial proceedings and in carrying out their official duties.

Employees are expected to exercise good judgment, and dress and groom in a neat, clean and businesslike manner. Clothing should be clean, pressed and in good repair.

While professional business attire is considered appropriate during working hours, there are several items that are not considered appropriate. For example: Jeans, athletic

clothing, Hawaiian shirts, cargo pants, bibbed overalls of any fabric, leggings worn as slacks, T-shirts with slogans or advertisements, shorts, cutoffs, halter tops or crop tops. In addition, athletic shoes, hiking boots, thongs and flip-flops are not considered appropriate footwear. Tennis shoes may be considered acceptable for health or safety reasons and each case will be considered individually. Shoes must be worn at all times in the District Attorney's Office and the Curry County Courthouse.

Jeans may be worn by non-attorney office staff on Fridays. The above dress guidelines apply during working hours, Monday through Friday from 8:00AM-5:00PM.

21.0 Illness, Medical Appointments

If you are ill and intend to use sick leave, you should call the District Attorney or Office Manager as early as possible.

If you have a medical appointment scheduled, you should complete the vacation/sick leave form as early as possible and forward it to the Office Manager.

22.0 Flex Time for Non-Union Employees

The District Attorney recognizes that non-represented positions cannot accrue comp time, although persons holding those positions may be required to work extra hours to complete assigned tasks in a timely manner and prepare for trials. Non-union employees are encouraged to keep a log of extra hours worked including not only the date and time such extra hours were worked, but also what work was performed (case name, trial prep., etc.). The District Attorney may, at their discretion, allow a "casual day" in recognition of extensive service performed.

23.0 Jury Duty

The District Attorney encourages employees to report for jury duty when they are called.

- All staff are granted leave with full pay in lieu of jury fees when they are required to report for jury duty.
- All District Attorney Office employees shall surrender all jury fees and witness fees, with the exception of mileage reimbursement, to Curry County.
- If you are excused from jury duty early for the day, you should contact the District Attorney or Office Manager to determine whether you are to return to work for the remainder of the business day.
- In the event you are selected for a criminal case, do not return to the office or discuss the case with anyone in the office until the case is completed.

24.0 Use of Personal Cell Phones

Personal use of cell phones should be kept to a minimum during working hours. Personal cell phones shall not be used in the courtroom unless for the purpose of legal research or other essential, time-sensitive, work-related matters.

25.0 Employee Disciplinary Action

Employees and volunteers of the Curry County District Attorney's Office are expected to conduct themselves in a manner that reflects favorably on this office. Conduct that is determined to be detrimental to the reputation of the District Attorney's Office and the good order and operation of this office may result in disciplinary action. This conduct includes, but is not limited to, an activity by an employee that results in arrest, prosecution, or conviction of a crime. Deputy District Attorneys are "at will" employees.

All disciplinary actions involving union personnel are consistent with the policies and procedures set down in the collective bargaining agreement.

Disciplinary action can result in a wide range of outcomes, up to termination.

26.0 Acknowledgement & Acceptance of Personnel Polices

This Personnel Policy Manual is intended as a guide for policies, benefits and/or general information. These guidelines are **NOT** and should **NOT** be constructed as a contract. The District Attorney reserves the right to make any changes in these policies, benefits or guidelines and their application as deemed appropriate. These changes may be made without notice.

Your signature below certifies that you have read this Personnel Policy Manual and that you understand, accept and will abide by the provisions stated in the manual.

(Signature)_____

(Printed Name)_____

(Date)_____