

All policies of the Lane County District Attorney require following or enforcing the Constitutions of the United States and Oregon, the Oregon Revised Statutes, the opinions of the Appellate Courts and the Code of Professional Responsibility.

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

All employees of this office hold a public trust and represent the Office of the District Attorney. Employees are expected to abide by the principles of the Lane County District Attorney, the policies of Lane County, federal, state and local laws, and the rules of ethics. All employees are expected to exercise good judgment and common sense in their everyday dealings with the public, representatives of other departments, agencies, organizations, and each other.

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

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

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

### **II. Discovery**

It is the policy of LCDA to follow the rule of law, both Federal and State, regarding discovery and ethics.

Data retention regulations are governed by the Oregon Administrative Rules. It is the policy of LCDA to follow the Oregon Administrative Rules on records retention.

#### **A. How to Request Discovery –**

[https://lanecounty.org/UserFiles/Servers/Server\\_3585797/File/REQUEST%20FOR%20DISCOVERY.docx.pdf](https://lanecounty.org/UserFiles/Servers/Server_3585797/File/REQUEST%20FOR%20DISCOVERY.docx.pdf)

#### **B. Discovery Fees –**

[https://lanecounty.org/UserFiles/Servers/Server\\_3585797/File/Discovery%20Fees.pdf](https://lanecounty.org/UserFiles/Servers/Server_3585797/File/Discovery%20Fees.pdf)

### **III. Transparency and Confidentiality**

This office is committed to transparency to the public it serves. Public records requests made to the Lane County D.A.'s office will be processed in a timely and fiscally reasonable manner. If a law or court order requires that information possessed by this office be kept confidential, then the Lane County District Attorney's Office will ensure that such laws or orders are followed by LCDA staff.

LCDA maintains confidentiality in compliance with our Criminal Justice Information System contract, all federal regulations, state statutes, and administrative rules regarding confidentiality of child support program information, Juvenile files, victim information, medical files, personnel files or matters, and Oregon Public Records law.

#### **IV. Charging Policy**

It is the policy of the District Attorney that criminal charges will be filed based only upon the evidence. In recognition of the value of early acceptance of responsibility and early disposition of cases, an initial charging document may not reflect all charges supported by the evidence but will include consideration of all those impacted by the criminal conduct. If a case is presented to the Grand Jury, all charges supported by the evidence may be considered by the Grand Jury for determination of Indictment.

This policy applies to all crimes, whether felony or misdemeanor, and includes those crimes for which there is a mandatory minimum sentence.

#### **V. Plea Offer Policy**

##### **A. General Sentencing Philosophy**

The mission of the Lane County District Attorney's Office is to seek justice and protect our community. When engaging in a plea negotiation, deputy district attorneys should be guided by this mission as they consider relevant factors such as the seriousness of the crime, the defendant's criminal history, input from the crime victim, how our office has treated similarly situated defendants, and other mitigating or aggravating factors that may be present. In many cases, this analysis may result in a plea offer that is consistent with the sentencing guidelines. In cases where mitigating factors or circumstances are present, it may result in a lesser plea agreement such as a downward departure. In cases where aggravating factors or circumstances are present, it may result in a longer plea agreement such as an upward departure. It is the policy of this office to recognize truth in sentencing as a core principle that protects public confidence in our justice system and recognizes crime victims who are constitutionally guaranteed the right to accurate information about a criminal sentence. (Oregon Constitution Art. I Sec. 42). In plea negotiations and sentencing circumstances, deputy district attorneys should be aware of the impact any sentencing or time reduction programs have on the total sentence served and should provide accurate sentencing information to the court, the parties, the victim and the public as that information is available. When possible and appropriate, deputy district attorneys should state on the record the actual amount of time the defendant is anticipated to serve in custody based upon the calculations previously provided.

##### **B. Senate Bill 1002**

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

program” offers). All deputy district attorneys are expected to be aware of the restrictions of SB 1002 and all applicable laws in order to ensure compliance in the course of plea negotiations. Note: SB 1002 does not impact Measure 11 plea offers and agreements. Scenarios The following hypothetical scenarios demonstrate how SB 1002 will apply: 1. Deputy district attorneys cannot: - Make plea offers with limitations on time reduction programs or transitional leave (aka “no program” offers) Patricia W. Perlow Lane County District Attorney LANE COUNTY DISTRICT ATTORNEY’S OFFICE 125 EAST 8th AVENUE, ROOM 400 EUGENE, OREGON 97401-2926 FAX ONLY (541) 682-3890 (541) 682-4261 - Suggest that a defendant make a “no program” offer to the deputy district attorney - Accept a “no program” made by a defendant. 2. Deputy district attorneys can: - Recommend that a judge impose a sentence with no time reduction programs after a trial or in any “open sentence” situation. - Take into account the impact of time reduction programs on a defendant’s total sentence when crafting a plea offer or deciding to reach a plea agreement. - Make a “no program” offer when a defendant is convicted of a Measure 11 charge. Documentation In order to ensure an accurate record is made regarding plea negotiations, whenever possible plea negotiations and agreements should be documented in writing and district attorney plea offers should be conveyed on the DA Office plea offer official form. It is understood that negotiations occur during court proceedings and in many circumstances it may be advisable to make a clear record in court regarding plea negotiations and agreements.

#### **C. Mandatory Sentence Cases**

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

#### **D. Fines, Fees and Taxpayer Reimbursement**

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

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

### **VI. Victim’s Rights**

#### **A. Victim Input and Consultation**

Consistent with the Oregon Constitution and the philosophy of the Lane County District Attorney’s office, the assigned Deputy District Attorney shall solicit input from the victim and consult with the victim during the plea negotiation process where required by law. In the exercise of the discretion to

negotiate, the Deputy District Attorney in charge of the case should strongly consider the victim's wishes.

#### **B. Crime Victim's Rights**

The Lane County District Attorney's Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice system. We treat them with dignity and respect. We make every effort to provide victims with as large a part as possible in each phase of a criminal case. Deputy District Attorneys shall familiarize themselves with the Crime Victims Bill of Rights as well as with Article 1, Section 42 of the Oregon Constitution, the Crime Victim's Rights Amendment. The interests of the victim should be kept in mind when setting the hearing date and during plea negotiations in any felony involving a person.

#### **C. Victim Restitution**

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

#### **D. Homicide Cases**

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

Before any plea offer is extended in any homicide case alleged to have been committed knowingly or intentionally, the case Deputy District Attorney and a supervising attorney must meet with the District Attorney. During this meeting the case Deputy District Attorney will present a factual summary of the case and review the mitigating and aggravating factors in the case.

### **VII. The Use of Certified Law Students**

LCDA contracts with the University of Oregon Law School to provide a Prosecution Clinic for second and third year law students. Students are provided classroom and courtroom experiences. All courtroom experiences are governed by the local and state Trial Court rules and Oregon State Bar rules. All certified law students are supervised by a full time deputy district attorney.

#### VIII. **Affidavits of Prejudice Against a Judge**

Any motion to disqualify a judge must be authorized by the District Attorney based upon an affidavit supporting the belief that a sitting judge's prejudice against the State is such that, in their estimation, the State cannot receive a fair trial. An affidavit of prejudice will be filed with the presiding judge and a copy provided to the judge who is the subject of the affidavit.

#### IX. **Pre-trial Release**

Pretrial release is a function of the Court. Security amounts are set by the Court and warrant requests are based upon the schedule set by the Court, as well as Article I, sec. 14 of the Oregon Constitution; Article 1, sec. 43 of the Oregon Constitution; and ORS 135.230-290 . All deputy district attorneys are expected to be familiar with these laws and to advocate for implementation of their provisions in the interest of public safety and justice.

#### X. **GUIDELINES FOR DISCLOSURE AND REPORTING OF INFORMATION ON CRIMINAL PROCEEDINGS**

It is generally appropriate to disclose or report the following:

1. The arrested person's name, age, residence, employment, marital status and relevant biographical information.
2. The charge.
3. The amount of bail and/or release conditions.
4. The identity of and age of both complaining party and victim. Specific information about sexual assault or hate crime victims should be disclosed only when the public's right to know clearly outweighs the victim's or the complaining party's right to privacy or safety.
5. The identity of the investigating and arresting agency and the length of the investigation.
6. The circumstances of arrest, including time, place, resistance, pursuit and weapons used.

It is not appropriate to disclose for publication or to report prior to the trial the following:

1. The contents of any admission or confession, or the fact that an admission or confession has been made.
2. Opinions about an arrested person's character, guilt or innocence.
3. Opinions concerning evidence or argument in the case.
4. Statements concerning anticipated testimony or the truthfulness of prospective witnesses.
5. The results of fingerprints, polygraph or mental health examinations, ballistic tests or laboratory tests.
6. Precise descriptions of items seized or discovered during investigation.
7. Prior criminal charges and convictions.
8. Evidentiary details that were excluded in prior judicial proceedings in the same case.

**SPECIAL STATEMENT**

1. The above Guidelines are supplemental to and should be interpreted with the Oregon Bar/Press/Broadcasters Joint Statement of Principles.
2. The Guidelines are cautionary, not mandatory. They do not prohibit release of, or publication of, information needed to identify or aid in the capture of a suspect or information required in the vital public interest after arrest. Neither do they proscribe publication of information which is already in the public domain.