



**OFFICE OF THE DISTRICT ATTORNEY
FOR LINCOLN COUNTY**

225 WEST OLIVE STREET, ROOM 100
NEWPORT, OREGON 97365
541-265-4145, FAX 541-265-3461
www.co.lincoln.or.us/da/

JONATHAN CABLE
District Attorney

BRIAN GARDNER
Chief Deputy District Attorney

Policy Manual Lincoln County District Attorneys Office per HB 3224

1. *Pretrial Discovery:*

Copies of all reports, audio/video recordings, photographs and any other discovery will only be provided upon a written request to the District Attorney's Office. The request must include the Court case number and the defendant's full name and must be submitted in person or by mail to the above listed address. Most discovery will be provided by an email, paper copies are only available upon special request.

2. *Compliance with Discovery Obligations:*

It is the policy of the Lincoln County District Attorney's Office to follow all State and Federal rules regarding discovery and ethics.

3. *Existing agreements with law enforcement agencies on data sharing:*

All local law enforcement agencies share reports, videos, and photos through Evidence.Com with the District Attorney's Office. We follow the Oregon Administrative Rules regarding record and file retention.

4. *Cost for Discovery Materials* (subject to change):

CDs/DVDs: \$15 dollars each

Duplication of Photographs: actual cost

Links to reports on Evidence.com: all cases \$10 per link

Felony and Misdemeanor cases: \$35 dollars up to 100 pages and an .25 cents for each additional page

Violation cases: \$10 flat fee

Thumb Drives: \$15 up to 32gb, \$30 for a 64gb or 128gb

5. *Prosecutorial ethics:*

All attorneys will comply with the Oregon Rules of Professional Conduct, ORS 9.490, and all additional State and Federal Rules. All attorneys will comply with the required ethics MCLE credit hours required by the Oregon Bar.

Any bar complaint, Tort Claim, or lawsuit received by any staff attorney shall be promptly reported to the District Attorney. Attorneys shall consult on any dilemmas with the District Attorney or Chief Deputy.

6. *Confidentiality:*

All attorneys and staff shall comply with all rules regarding confidentiality, including compliance with our Criminal Justice Information System contract regarding handling of criminal histories, all Federal and State Statutes and administrative rules particularly those involving child support enforcement, juvenile cases, victim information and health information per HIPPA and will fully comply with Oregon Public Records laws.

7. Use of Certified Law Students:

The use of third year certified law students is beneficial to the student and people of Lincoln County. They will only work under the supervision of supervising attorney on specific cases. The student will comply with all the requirements of Rule 13 of the Oregon State Bar.

8. Charging Decisions:

All charging decisions are made with the ultimate goal of protecting the public. The State is required to prove cases beyond a reasonable doubt and all charging decisions should be based on whether that standard can be met in a particular case. Each attorney is responsible for evaluating the evidence to determine the appropriate charges in a given case. All prosecutors have the discretion to decline prosecution in cases in which prosecution would serve no identifiable purpose. All questions on handling a particular matter should be discussed with the District Attorney or Chief Deputy. This applies to all possible criminal charges including but not limited to Driving Under the Influence of Intoxicants, Controlled Substance Crimes, and crimes involving Domestic Violence.

9. Aggregation of Property Offenses:

Oregon law allows several thefts against multiple victims within a 30 day period or against the same victim over a 180 days to be charged as a single offense. The punishment may vary greatly if charged as multiple thefts or one larger theft. As a general rule separately chargeable offenses should be aggregated under ORS 164.115(5) only to improve judicial efficiency and when the State is ensured the defendant receive and adequate sentence for the conduct involved in the offenses. There is a preference for charging individual counts for individual victims to reflect the harm caused to each.

10. Mandatory Minimum Sentences:

Cases involving Mandatory Sentences: under Measure 11, Measure 57, Measure 73, Aggravated Homicide per ORS 163.149 or involving mandatory Firearm Minimums under ORS 161.610, and Dangerous Offenders under ORS 161.725 will be reviewed with the appropriate supervising attorney in consideration of the strength of the case, the victim's concerns and opinions, any mitigating factors, and any aggravating factors. Such charges should only be filed when they fit the facts in evidence, not for the purpose of negotiation.

11. Decision Whether to Present Evidence for Purposes of Seeking the Death Penalty:

The death penalty will only be sought when there exist sufficient evidence beyond a reasonable doubt on the penalty phase questions. The decision shall be made personally by the District Attorney upon following the requirements of ORS 163.150.

12. Plea Offers:

Plea offers are made by the attorney handling the case and are made in accordance with Oregon Law. Plea offers will be made withing a reasonable amount of time. All negotiations are at the discretion of the attorney handling the case with the approval of the District Attorney.

13. Civil Compromises:

Civil compromises are available for certain offenses per ORS 135.703 and ORS 135.705. Whether to agree to a civil compromise is within the discretion of the attorney assigned the case if the victim has

agreed and a civil compromise would be in the interest of justice. The final determination is up to the Court.

14. *Diversion Programs:*

Diversion is available for those charged with Driving Under the Influence of Intoxicants that meet the statutory requirements. The District Attorney's Office will object in cases involving a extreme Blood Alcohol Content of .20% or higher. The state will also object in cases of injury, or a minor being in the vehicle. The attorney handling the case has discretion to object to diversion if does not meet the interest of justice.

Diversion is available in some cases involving allegations of Domestic Violence. The defendant must not have prior DV related arrest or convictions. The decision to allow Diversion is only made in consultation with the victim when it is in the interest of Justice and would benefit the community. The program requires regular appearances in Domestic Violence Court, a year of Domestic Violence Classes, No contact unless lifted by the Court, and any other conditions including but limited to Parenting Classes, Drug and Alcohol Treatment, and other conditions the state feels necessary.

15. *Fines, Fees, and Attorney Fees:*

Attorneys may advocate for imposition of fines, fees, court cost, and attorney fees when in the interest of justice. The recovery of cost and attorney fees should be pursued where the defendant has an ability to pay to lessen the burden on taxpayers. Restitution will always be sought in full for victims of crime.

16. *Treatment Courts:*

The Lincoln County District Attorneys office participates in several treatment court programs that hold offenders accountable and treat underlying issues that lessen recidivism and in turn increase community safety.

- A. Drug Court: The defendant must be approved by the Lincoln County Drug Court Team. The goal is to decrease substance abuse and provide support services in an effort to reduce recidivism and increase community safety. To be eligible they must be 18 years old, and a resident of Lincoln County. The program last at least a year with treatment, regular drug test, the requirement to obtain a GED, and to pay any restitution owed in full.
- B. Hope Court: Hope Court requires approval by the Lincoln County Hope Court Team. It is a program allowing downward departure from presumptive prison sentences primarily for those that have committed repeat property crimes due to drug addiction. The eligibility requirements are the same as those for Drug Court. A person who is unsuccessful will face a prison sentence.
- C. Mental Health Court: is intended for those with untreated mental health issues that have caused criminal conduct. To be eligible the person must be a Lincoln County resident with a Mental Disorder. Entry requires approval by the Mental Health Court team after evaluating the case.

17. *Pre-arrest Diversion:*

The District Attorneys office is part of the LEADS program with local law enforcement agencies which is overseen by the Lincoln County Sheriff's Office. The program allows officers to work with defendants to seek treatment for mental health and drug issues to avoid being charged with a minor crime. If the person

fully complies they will avoid being charged with a crime. Those charged with person crimes are not eligible.

18. *Collateral Consequences of a Convictions:*

Collateral consequences of a conviction may be given consideration by the attorney assigned a case in regards to plea negotiations. Immigration status will not generally be considered by the District Attorneys office as an aggravating or mitigating factor. All in like circumstances should be treated the same.

19. *Sentencing Programs:*

On January 2, 2020 the law in ORS 135.405 was amended to place restrictions on plea offers so that eligibility for Alternative Incarceration Programs or other early leave or release from custody are no longer included. All attorneys are expected to be aware of the restrictions of SB 1002.

20. *Victim's Rights:*

All attorneys and staff are expected to comply with all the statutory and constitutional rights of crime victims. We will work to let be victims be heard and to consider their wishes regarding the disposition of the case. We will keep them informed about the progress of the case at all stages. Ultimately it is up to the attorney handling the case to make all charging decisions and plea offers in consultation with the victims.

21. *Affidavits against a Judge:*

Any motion to disqualify a Judge per ORS 14.260 must be approved by the District Attorney. The attorney must prepare an affidavit supporting a belief that the Judge prejudice against the state is such that that the state cannot receive a fair trial. An affidavit of prejudice will be filed with the presiding judge and a copy of the affidavit will be provided to the judge who is the subject of the affidavit.