



Lincoln County District Attorney's Office Policy Manual

MISSION STATEMENT OF THE DISTRICT ATTORNEY

The mission of the Lincoln County District Attorney's Office is: *Pursing justice through accountability and rehabilitation.*

All members of the Lincoln County District Attorney's Office should act with this mission as their guiding principle.

PURPOSE AND SCOPE OF THIS POLICY MANUAL

This policy manual is intended to provide guidance and direction for Lincoln County District Attorney's Office personnel. Whenever this manual refers to an "employee" that term includes all attorneys, non-attorneys, law clerks, volunteers and any other individual acting on behalf of the District Attorney's Office.

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

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

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

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

GENERAL ADMINISTRATIVE POLICIES

Compliance to County Policies

In addition to those policies contained in this manual, all DA's Office employees are required to be familiar with and adhere to all Lincoln County personnel and administrative policies. Violation of any policy may result in employee discipline, up to and including termination of employment.

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

Office Report and Supervision Structure

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

Regular Meetings

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

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

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

Employees seeking to take time off should submit a request by email in advance, with as much notice as reasonably possible. This will allow supervisors to determine whether to approve the request and to make appropriate staffing adjustments if necessary. Employees are expected to be familiar with and follow Page 7 of 44 Rev 6-11-24 county policies regarding attendance, as well as the “Office Leave Request Procedures” guide in Appendix A.

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

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

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

Special Prosecutors

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

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

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

Occasionally a Lincoln County DDA may be assigned to act as a special prosecutor for another Oregon DA’s Office. In such instances, the Lincoln County DDA functions primarily as a special DDA for the host jurisdiction. Nevertheless, the Lincoln County DDA is expected to comply with the legal and ethical requirements articulated in this

policy manual while also complying with the logistical requirements of the host jurisdiction.

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

Office Security

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

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

Digital Device Policy

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

ETHICS AND PROFESSIONALISM

Professional Conduct

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

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

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

Personal Conduct

Employees shall conduct themselves in a professional and appropriate manner at all times, both in and outside of the DA's Office. All DA's Office employees are public

servants and entrusted with public safety. Employees shall refrain from any conduct which may interfere with the mission statement of the District Attorney or public trust.

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

Anti-profiling policy

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

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

Reporting Status of Non-US Citizens Charges with a Crime

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

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

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

ensure all communication complies with applicable Oregon law and DA's Office policy. See ORS 181A.820 (providing structure regarding how and when law enforcement may interact with immigration officials); see also HB 3464 (2017) and HB 3265 (2021) (limiting what information a public body may provide relating to the enforcement of federal immigration laws). A limited exception to this policy exists for Child Support Enforcement attorney personnel who may need to contact ICE in order to obtain information necessary to determine how to proceed on pending child support cases.

Furthermore, the DA's Office, and by extension its employees and volunteers, cannot actively hinder federal law enforcement authorities from executing their jobs in any way.

Equity and Justice

The mission of the Lincoln County District Attorney's Office is: Seeking justice through accountability and rehabilitation. Essential to this mission are the fundamental principles of equity and justice.

The Lincoln County District Attorney's Office is dedicated to serving all members of our diverse community, regardless of skin color, race or ethnicity, national origin, sex, sexual orientation, religion, native language or any other classification. We are committed to the fight against all forms of racism, bias and discrimination.

Acceptance of Gifts

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

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

Law Enforcement Contact and Conflicts of Interest

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

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

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

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

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

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

- a victim is a friend, family member, partner or other close associate of a DA’s Office employee
- a suspect or defendant is a friend, family member, partner or other close associate of a DA’s Office employee
- a current or former DA’s Office employee, family or household member of an employee is a suspect, defendant or victim in a case referred to the DA’s Office

Subpoena, Lawsuit, or Other Service

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

Subpoenaing an Attorney or Judge

A DDA may not issue a subpoena for an attorney or judge without approval of a supervisor and advance notice to a Chief DDA or the District Attorney. Generally, prior to the issuance of such a subpoena, every effort should be made to determine whether the testimony of the attorney or judge is necessary, to secure an agreement to appear voluntarily, and to document such efforts in writing. Additionally, if the testimony of an attorney is necessary for the crime of Failure to Appear, the requirements of ORS 162.193 also apply.

Requests for Change of Judge

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

Confidential Information

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

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

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

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

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

Child and Elder Abuse Reporting

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

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

DISCOVERY

Discovery and Exculpatory Evidence

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

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

Process for Obtaining Discovery

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

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

Discovery request forms are available at the front desk of the District Attorney's Office.

Requests for Discovery and billing questions may be emailed to:

dareception@co.lincoln.or.us.

Requests for discovery may also be made in writing to: Lincoln County District Attorney's Office Attention: Discovery Request 225 W Olive Street, #100, Newport, Oregon 97365.

Discovery Fees

The DA's Office charges a discovery fee associated with the cost to produce discovery in criminal cases. This longstanding practice and the fee amount is pursuant to a published fee schedule approved annually by the Lincoln County Board of Commissioners. Generally, defense attorneys will be invoiced at the time discovery is provided. Invoices for discovery fees must be paid monthly. Payment at time of discovery production may be required for discovery if there is a history of nonpayment, late payment, or for pro se defendants. However, in all cases it shall be a priority to ensure that timely and proper discovery production occurs in advance of trial, regardless of ability to pay.

The current fee schedule is available on the Lincoln County website.

MEDIAL AND PUBLIC RECORDS

Media Policy

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

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

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

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

Public Records

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

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

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

Records Retention / Destruction Schedule

The following Records Retention Schedule shows (1) the minimum retention period, by case type, required by Oregon law; (2) the current retention period; (3) and whether or not the records are scanned into an online record system.

RECORDS RETENTION SCHEDULE			
CASE TYPE	MINIMUM RETENTION (OAR 150)	CURRENT RETENTION	SCANNED
Homicide, guilty	60 years	Permanent	Yes
Homicide, not guilty	3 years	Permanent	Yes

CASE TYPE	MINIMUM RETENTION (OAR 150)	CURRENT RETENTION	SCANNED
Class A felony, guilty	60 years	Permanent	Yes
Class A felony, not guilty	3 years	Permanent	Yes
Class B felony, guilty	3 years after sentence expires	Permanent	Yes
Class B felony, not guilty	3 years	Permanent	Yes
Class C felony, guilty	3 years after sentence expires	Permanent	Yes
Misdemeanor	3 years after closed	Permanent	Yes
Public Records	2 years after request	Permanent	Yes
Support Enforcement	2 years after all support paid	Permanent	Yes
Juvenile Delinquent Case Files, Adjudicated (formal and informal)	Unless expunged, until the individual turns 27 years of age and the case has been closed for 3 years	Permanent	Yes
Juvenile Detention Use Reports	Until the individual is 27 years of age	Permanent	Yes
Juvenile Court Records (2.240)	Unless expunged, 75 years from the individual's date of birth	Permanent	Yes
Sealed juvenile court expunctions (2.513)	75 years after the order is granted	Permanent	Yes
Mental Commitments	5 years	Permanent	Yes
Civil Forfeiture	5 years	Permanent	Yes
Grand Jury Logs	20 years	Permanent	Yes

CASE CHARGING POLICIES

Assignment and Review of Cases

When cases are submitted to the DA's Office for review, a file should be created in the DA's case management system (PbK) as soon as practicable. Following the creation of a file, the case will be assigned to a DDA. Occasionally, a police officer may submit a

case directly to a DDA to handle. When this occurs, the DDA should ensure a file is created and that the supervising attorney is aware and approves the DDA to be assigned to that case. Reassignment of a case from one DDA to another should be done with supervisor approval.

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

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

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

Generally, DDAs will be assigned to prosecute cases that fall within their area of assignment. Exceptions to this policy may be made by a supervisor.

General Case Charging Policy

Charges in a criminal case should promote the mission of the Lincoln County DA’s Office of “seeking justice through accountability and rehabilitation.”

Generally, charges in a criminal case should accurately reflect the criminal conduct that occurred. In making a charging decision, DDAs should consider a variety of objectives including, but not limited to, the following:

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

All cases are unique, and a variety of additional factors will necessarily impact charging practices, such as the strength of a case, the completeness of an investigation, credibility of witnesses, amount and nature of corroboration, provability issues, relevant input from the victim and available resources.

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

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

Weapons Cases

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

A DDA handling a firearm or deadly weapon case should always request at the sentencing phase for the court to order that the weapon illegally possessed, carried, or used in commission of the crime be confiscated and destroyed as part of the sentence imposed. See ORS 166.297. Except as described below, DDAs shall not agree to a resolution of a criminal case that returns the weapon to a defendant.

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

Domestic Violence

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

An unfortunate reality of DV cases is that some DV victims may become unsupportive of a prosecution, often due to pressure from their abuser. Generally, a DV case will not be charged, declined or dismissed solely at the request of a DV victim. DV cases may be charged and tried even if a DV victim is uncooperative or must be personally served with a subpoena in order to compel an appearance in court. In circumstances when a

witness has been personally served with a subpoena and fails to appear in court, the assigned DDA must consult with the Chief DDA or District Attorney before moving forward in the case.

A conviction for a crime arising out of domestic violence may include firearm restrictions for the defendant. All DDAs are expected to be familiar with and follow applicable Oregon law and to consult with the District Attorney with questions.

Juvenile Prosecution

The DA's Office handles delinquency cases in partnership and collaboration with the Lincoln County Juvenile Department and other key stakeholders.

Delinquency cases are cases where a person under the age of 18 is charged with committing a crime. While some violent crimes and traffic crimes may be handled in regular Circuit Court, the vast majority of cases with juveniles are addressed in the juvenile system. Generally, the DDA role is to advise Lincoln County Juvenile Department staff about whether charges are appropriate under Oregon law. If charges are filed, the DDA acts in a manner similar to a traditional prosecutor to protect the community's safety and prevent the youth from reoffending. This can sometimes mean placing the youth in a juvenile detention or correctional facility, but often involves diversionary programs (such as a Deferred Adjudication Disposition Agreement) or participation in services while on probation.

In circumstances where a juvenile has committed a Measure 11 crime, the determination whether to seek a waiver into circuit court will be made by the District Attorney.

In circumstances where a juvenile has committed a traffic offense, the determination whether to proceed in juvenile or circuit court shall occur as outlined by Lincoln County Circuit Court General Order.

Child Abuse

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

Additionally, the District Attorney's Office also exercises a leadership role in the Lincoln County Child Abuse Multidisciplinary Team (MDT). Pursuant to ORS 430.739, the District Attorney is the chair of the MDT and Children's Advocacy Center is the MDT coordinator. The Lincoln County Child Abuse MDT Protocol provides a guide for the handling of child abuse investigations and prosecutions by the MDT member agencies. A copy of the protocol is maintained by the MDT coordinator.

Vulnerable Adults policy

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

An assigned DDA is responsible for the oversight of prosecutions involving vulnerable adult victims in the DA's Office. Additionally, the assigned DDA also serves as the chair of the Lincoln County Elder Abuse Multidisciplinary Team (MDT). The Elder Abuse MDT Protocol provides a guide for the investigation and prosecution of these cases.

Generally, these cases will be assigned to select DDAs in the felony and misdemeanor unit who have the specialized expertise and ability required for these complicated and serious cases. A copy of the protocol is maintained by the MDT coordinator.

Adult Sexual Assault policy

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

Generally, these cases will be assigned to the District Attorney or select DDAs in the felony and misdemeanor unit who have the specialized expertise and ability required for these complicated and serious cases.

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

PLEA NEGOTIATIONS

Plea Offer Policy

General Philosophy

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

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

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

Collateral or Immigration Consequences

It is the policy of the Lincoln County District Attorney's Office that DDAs are to consider the immigration consequences to a defendant in resolving cases, to the extent they are aware of them, and, if appropriate, take reasonable steps to seek an immigration-neutral resolution once informed that such consequences may exist. This policy is intended to reflect the DA's Office commitment to the safety and dignity of all our community members, regardless of immigration status.

This policy is not meant to convey that non-citizens should be given more lenient sentences, but instead that prosecutors should strive to avoid the imposition of disproportionate consequences whenever possible to the extent consistent with public safety and the safety of the victim. Any offer renegotiated in order to avoid immigration consequences should be proportionate to the severity of the conduct alleged.

This policy applies to situations where the potential immigration consequences of a particular resolution are disproportionate to the crime of conviction.

Potential immigration consequences vary based on a number of factors, including but not limited to the person's current immigration status, length of presence in the U.S., family ties, and prior criminal history. DDA should be aware that a disposition that may be acceptable to all parties in one case may be severely damaging in another, depending on differences in the above factors, and that even small details in the specific language of an indictment can carry significant consequences. DDA's should not assume that a disposition that is immigration neutral in one case will be immigration neutral in another.

The DDA should allow a defendant a reasonable opportunity to determine the immigration consequences of any proposed plea offer. If a DDA is unable to provide an offer that limits potential immigration consequences in the manner requested, the reasons underlying that decision should be conveyed to and explained to the defense

Senate Bill 1002

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

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

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

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

Ballot Measure 11 policy

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

A "staffing" will include a review of the following: charges, the facts of the case, defendant's criminal history, victim input, mitigating or aggravating factors, assessment of legal or factual issues, defendant's plea offer and any other relevant considerations.

Downward Departure and Optional Probation Cases

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

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

CASE MANAGEMENT POLICIES

Pre-Trial Release and Security (Bail)

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

Oregon laws regarding pre-trial release are generally located at ORS 135.230 et. seq. (incorporating SB 48 (2021)). The District Attorney's Office typically will not request a specific amount of security but instead leaves that to the discretion of the court.

Preventative Detention

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

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

Given the significant safety concerns and flight risks associated with violent felony cases, it is the policy of the Lincoln County DA's Office that any preventative detention request will be staffed with the Chief DDA or District Attorney prior to arraignment. Preventative detentions should primarily be limited to:

- Felony sex cases listed in 137.700 (M11)
- Class A felonies listed in 137.700 (M11)
- Person felony subject to ORS 161.610 (use or threatened use of firearm)
- Domestic violence person felony in which SPI is caused or threatened

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

Victim Engagement and Involvement

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

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

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

Civil Compromise

Civil compromise is a useful mechanism to assist in resolving lower-level cases that do not present a significant threat to public safety. A civil compromise may be beneficial to victims and defendants in certain circumstances. Therefore, when the statutory requirements of a civil compromise are met, the DA's Office will generally not object to such a resolution.

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

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

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

WITNESSES

Material Witness Warrants

Applications for Material Witness Warrants must be approved by a Chief DDA or the District Attorney.

Witness Travel Expenses

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

The DDA assigned to a case, in cooperation with the assigned victim advocate, should ascertain well in advance of the court appearance whether a victim or witness needs travel assistance. If assistance is necessary, the DDA should first obtain approval from the Chief DDA and then work with the appropriate staff person to make travel arrangements.

Expert Witnesses

If a DDA believes it is necessary to retain an expert witness in connection with a case, the DDA should staff that issue with the District Attorney well in advance of the time when the expert is needed.

Seeking Arrest Warrants for Witness

When an uncooperative victim or witness who has been personally served with a subpoena does not appear in court, the DDA shall consult with the Chief DDA or District Attorney prior to seeking an arrest warrant.

Out of State Subpoena for Witness

When a DDA wishes to issue an out-of-state subpoena for a witness to attend a court hearing, the DDA should staff that decision with the Chief DDA for approval well in advance of the hearing date. If approval is provided, the DDA should coordinate with the DA's Executive Chief for necessary travel arrangements and court filings. See ORS 136.623.

Running Criminal History for State's Witnesses

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

- (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney:

- (e) If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.

DDAs shall make a good faith effort to determine whether witnesses the DDA intends to call at trial have prior impeachable criminal convictions. Generally, this will mean that DDAs should ensure a criminal history check is completed for most witnesses. However, criminal history checks may not be required for certain professional or other

witnesses when the DDA does not have a good faith basis to believe the witness is likely to have a prior impeachable conviction. Common examples of this might include:

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

DIVERSION, SPECIALTY AND TREATMENT COURTS

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

DUII Diversion

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

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

DUII Diversion is administered pursuant to ORS 813.200 et seq.

Domestic Violence Deferred Sentencing (DSA)

Domestic Violence Deferred Sentencing Agreement (DSA) is a criminal court program designed for first-time domestic violence offenders who are willing to take responsibility

for their crime early in the criminal process. If a defendant meets the eligibility criteria, the defendant is given the option to enter DSA. If the defendant successfully completes the DSA, the court will dismiss the charge(s).

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

Law Enforcement Assisted Diversion (LEAD)

LEAD seeks to reduce future criminal behavior by homeless and addicted individuals who commit low-level offenses in our community.

LEAD is a pre-charging diversion program, which means that some individuals may avoid having charges filed altogether if they enter and complete the program. The program pairs participants with LEAD case managers who act as brokers of services for the participant and connect them with services the client needs and is ready for, including addiction treatment, medical care, housing, and job placement.

There are two paths into LEAD:

- When a law enforcement officer investigates an individual for a low-level offense, such as trespass or small theft, and the officer determines that the individual is eligible for the LEAD program, the individual will not be taken to jail. Instead, the officer will 'hand off' the individual to an on-call social services caseworker/case manager.
- A LEAD partner will refer an individual into the program without a specific criminal charge to be diverted. Here the LEAD partner determines that the individual fits the criteria: he or she is affected by drugs or alcohol, experiencing or facing homelessness, and is involved in the criminal justice system. If the LEAD team determines that the individual would benefit from participation and that the quality of life of our community would be improved by a reduction in future criminal activity by that candidate, the candidate is brought into LEAD.

Deflection and Conditional Discharge

The Lincoln County DA's Office partners with public safety agencies and community-based treatment and recovery providers to implement the Oregon Drug Intervention Plan.

The Oregon Drug Intervention Plan, enacted pursuant to HB 4002 and 5204 (2024), offers four pathways for qualifying individuals to engage in treatment instead of the traditional criminal process: pre-court diversion (deflection), court diversion (conditional discharge), formal probation supervision, and probation revocation with early release to treatment opportunity.

The Lincoln County Deflection Program allows eligible persons who are cited or arrested for qualifying charges to avoid prosecution without going to court if they successfully engage in recommended substance use treatment. Deflection is a collaborative program, operated in partnership with Reconnections Counseling, Phoenix Wellness Center, the Confederated Tribes of Siletz Indians, and local law enforcement agencies.

The Lincoln County Conditional Discharge Program allows eligible persons who are cited or arrested for qualifying charges to participate in the court process and avoid criminal convictions if they successfully engage in recommended substance use treatment. Conditional discharge is a collaborative program primarily administered by Lincoln County Community Justice.

Drug Court/Hope Court

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

The Deputy District Attorney Assigned to the Drug Court team works to ensure that the limited seats in Drug Court are occupied by individuals who are serious about overcoming their addiction. The Drug Court Deputy also works to ensure that participants are not allowed to re-victimize society by continuing their criminal behavior.

Mental Health And Wellness Court (MHWC)

Mental Health Court (MHWC) is designed for those who have committed a crime and are diagnosed with a major mental illness such as schizophrenia and bipolar disorder, among others.

MHWC is a collaboration between the District Attorney's office, probation, the court, the local defense bar and the county's Behavioral Health Unit. It provides a wrap-around treatment team to help a participant manage their mental illness — whether that be providing support with their medication, drug treatment, weekly group counseling sessions, and/or housing.

Participants must be a Lincoln County resident, willing to comply with the rules of the program, and not pose a significant public safety risk.

MHWC often provides participants with the incentive of a reduction in jail or prison time, while affording our community the benefit of intense treatment supervision the participant might not otherwise receive. Depending on the nature of the charges or their criminal history, a participant may be eligible for a deferred sentencing program which would result in their case being dismissed upon successful completion of the program.

Family Support Court (FSC)

Family Support Court (FSC) serves children, parents and families involved in the child welfare system and criminal justice system due to parental substance use as a contributing factor to child abuse or neglect. The purpose of a family treatment court is to protect child safety, ensure a permanent care-giving environment and promote children's well-being through family recovery. FSCs provide intensive judicial monitoring and equal access to family-focused interventions, services and supports using a multidisciplinary approach to meet the comprehensive needs of these families. These courts operate collaboratively, drawing on community partners' expertise in child welfare, substance use disorder treatment and other community services to address the needs and build on the strengths of each family member.

Participants must be a Lincoln County resident, willing to comply with the rules of the program, and not pose a significant public safety risk.

Guilty Except Insanity Dispositions

Guilty Except Insanity (GEI) dispositions are controlled by ORS 161.295 et seq. DDAs shall be familiar with all applicable law and procedures regarding GEI.

Generally, DDAs shall refrain from stipulating that a defendant is GEI as this issue is best determined by the court. In cases where the defense raises a GEI defense and the DDA determines there is sufficient evidence to proceed in that regard, the DDA may enter into a stipulated facts trial, with stipulations regarding the facts of the case, the sufficiency of evidence supporting a conviction, and any related medical records. However, the ultimate determination regarding whether the defendant is GEI shall be made by the court.

Exceptions to this general policy may occur with approval from the Chief DDA or District Attorney.

Decision to Pursue Death Penalty

All attorneys responsible for the prosecution of aggravated murder cases must consider the law and evidence of each case and make a determination as to whether seeking the death penalty would be a just outcome. This determination is to be made in consultation with the District Attorney and at least one other supervising attorney.

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.

Attorney fees will be left to the discretion of the court.

Affidavit and Motion for Change of Judge

When a DDA believes that a sitting judge's prejudice against the state is such that in their estimation they should seek to disqualify a judge from hearing a case or cases, then that DDA shall provide their reasons for their position in writing to the District Attorney. Affidavits of prejudice, motions to excuse, or requests for a judge to recuse himself or herself can be filed only with the written approval of the District Attorney. Affidavits of prejudice are filed by the District Attorney with the presiding Circuit Court judge. A copy is provided to the judge who is the subject of the affidavit.

Use of Certified Law Students

Internships in our office can provide educational opportunities for future attorneys and others. Internships also expose interns to the efforts we take to protect the public and deliver justice. In return, the district attorney's office receives legal assistance at a reduced cost to taxpayers. To ensure proper supervision and successful internships, all legal interns will be supervised by a full-time deputy district attorney.