



POLICY MANUAL

Multnomah County District Attorney's Office

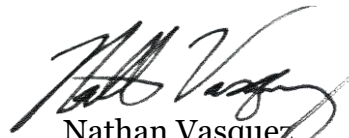
Nathan Vasquez, District Attorney

Introduction

In putting out this administration's policy manual, significant time has gone into bringing policies that existed only in emails or dusty memos into the light, evaluating them on their merits, and then making a choice to include them or not include them as official policy of this office.

My goal is that policies applicable to each employee of this office are readily located in one place. This will both simplify our day-to-day operations and hold us accountable to the public for how and why we do the work that we do. I want us and our community to be proud of how we conduct ourselves and the standards we hold ourselves to. Full transparency as to the rules by which we operate is an important step on that path.

As you read through this manual, please let your immediate supervisor know if it raises questions or presents ambiguities as to what I expect of you at your particular desk. You can expect more frequent revisions of this document moving forward. As new circumstances require new policies, those will rapidly be incorporated so that you may always turn to this document for the most current guidance on expectations and requirements for the important mission that we all have the privilege to share.



Nathan Vasquez
District Attorney

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1. General Policies

1.1. Definitions

As used in this policy manual the phrases below have the specific meanings attached:

“Case Management System” - The computerized case management system used by MCDA. This is currently “Prosecutor by Karpel” (PbK). Prior to June 2024, we used CRIMES, references to which may appear in various older policies and practice guides.

“Immediate family” - parents, spouse, domestic partner, brother, sister, children, grandparents, and any individual where the relationship is close or intimate.

“Local 88” - AFSCME Local 88; the labor union representing non-management staff other than deputy district attorneys.

“Management attorney” - The District Attorney, First Assistant to the District Attorney, General Counsel, and the three Chief Deputy District Attorneys.

“Administrative Management” - all management attorneys as well as the Chief of Staff, Chief Investigator, Equity Manager, Information Technology (IT) Manager, Human Resources (HR) Manager, and Finance Manager.

“MCPAA” - Multnomah County Prosecuting Attorneys Association; the labor union representing the non-management deputy district attorneys in the office.

1.2. Applicability of County Policies

In the absence of a policy in this manual, or a negotiated term of a labor agreement, directly on point and to the contrary, Multnomah County personnel rules of general applicability govern the conduct of employees of this office.

1.3. Professional Ethics

All employees of the Multnomah County District Attorney's Office (MCDA) are expected to maintain the highest possible level of 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.

Attorneys are expected to maintain the highest ethical standards of the legal profession. They should be familiar with, and their performance should be consistent with the Oregon Rules of Professional Conduct. In addition, they are expected to know and follow all rules promulgated by the Oregon Supreme Court, and the Supplementary Local Rules promulgated by the Multnomah County Circuit Court. Deputy District Attorneys (DDAs) are also encouraged to read and apply the principles stated in

National Prosecutions Standards, published by the National District Attorneys Association.

All employees are responsible for adherence to the Multnomah County Code of Ethics and the Multnomah County Personnel Rules.

It is not possible to anticipate every situation that you will encounter in your work in the District Attorney's Office. Therefore, not every conceivable situation is included in this policy manual. You should always consult your immediate supervisor or a manager if you are unclear how to handle a particular issue.

Please remember, all of you hold a public trust, you represent the Office of the District Attorney. You are expected to exercise good judgment and common sense in your everyday dealings with the public, representatives of other departments, agencies and organizations, and each other.

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

1.4. Professionalism

A prosecutor owes to the administration of justice personal dignity, integrity, and independence. We must always strive to adhere to the highest principles of professionalism. Those principles must be applied to our dealings with the public, defense attorneys, judges, law enforcement officials, professionals, and with each other. It means being respectful, being on time, scrupulously observing all agreements, being honest, following through, being courteous, candid, and cooperative. It includes, in normal circumstances, simple things like returning phone calls and e-mails promptly.

1.5. Constitutional Discovery - *Brady* Obligations

1.5.1. Statement of Policy

It is imperative that all prosecutors strictly adhere to the provisions described in this policy. All prosecutors have a constitutional and statutory duty to disclose exculpatory information including potential impeachment information to the defense. As noted below, bias or interest (OEC 609-1) of a witness is recognized impeachment evidence. This includes racism, racial bias, and hatred based on a person's perception of another's national origin, sexual orientation, color or other recognized class. Prosecutors who believe that a government witness is racially biased, or that a member of law enforcement's conduct toward an individual was inappropriately motivated, in part or in whole, by that individual's race, gender, sexual orientation, or any other protected class

under state or federal law, shall make a report to their SDDA or a management attorney promptly for appropriate action in compliance with this policy. Non-lawyer staff who develop such a belief should provide that information to the DDA assigned to handle the involved case.

In order to maintain the highest possible ethical standards and to adhere to the constitutional principles announced in *Brady v. Maryland* and its progeny including *Giglio v. United States* and *Kyles v. Whitley*, it is necessary for the Multnomah County District Attorney's Office to develop and maintain policy, protocol and a uniform computerized system to ensure compliance with the relevant rules. All Multnomah County DDAs are required to know and follow the policy, protocols and procedures described herein and the relevant law concerning obligations arising from the decision in *Brady*.

To ensure the fair administration of justice, prosecutors have an affirmative obligation in all cases to disclose potentially exculpatory information to a charged defendant. Compliance with the constitutional mandate set forth in *Brady* is also an ethical requirement for Oregon prosecutors, ORPC 3.8(b), and a statutory requirement, ORS 135.815(1)(g).

1.5.2. DAVAP/Administrative Contact with Witnesses

Prosecutors are obligated to disclose to the defense any evidence or information known to them that tends to negate the guilt of the accused or mitigates the offense. As a matter of law, any information that is known by any member of the District Attorney's Office is considered to be "known by the prosecutor," and the prosecutor can face ethical and professional consequences for failing to disclose that information. Any information obtained by any employee of MCDA which might be construed to cast doubt on a defendant's guilt, or mitigate their offense in any way, must immediately be called to the attention of the DDA assigned to the case in order for them to make a legal determination of whether the information should be disclosed to the defense. If the communication from the victim or witness is in writing, it must be retained until the DDA has made a determination of whether the material is discoverable. The prosecutor is responsible for retaining the communication after it is furnished.

All members of the office should err on the side of caution when considering whether a statement should be called to the attention of the DDA. If any MCDA staff member receives information from a witness that is related to the facts of the case or the character of the defendant or witnesses on the case, the information received shall be reduced to writing by the recipient and that writing shall be forwarded to the assigned DDA as soon as practicable. This includes any statement in which a person suggests that they were previously dishonest or contradicts a statement they previously made.

1.5.3. Potential Impeachment Disclosure Index

Certain information regarding state witnesses which may be discoverable as impeachment evidence will be maintained in the Potential Impeachment Disclosure Index (PID Index). State witnesses in the PID Index may include members of law enforcement, personnel employed by the Oregon State Police Forensic Laboratory, DHS caseworkers and members of the Oregon State Medical Examiner's Office who are likely to testify in a Multnomah County grand jury or trial.

The PID Index acts as a centralized repository for potentially discoverable impeachment information about state witnesses in possession of the District Attorney's Office. The goal is to allow all prosecutors in all divisions to have access to this material when needed on a case by case or institutional basis while at the same time respecting the privacy and personal interests of the state witnesses and agencies involved. By utilizing a central computerized database, with automatic notification to case prosecutors, lapses in discovery obligations will be prevented that might otherwise be caused by factors such as the passage of time and reassignment of case prosecutors and investigators.

The inclusion of information about a witness in the PID Index is not a determination that MCDA will never call that witness to testify. Some witnesses in the PID will always be called as witnesses. Others will be assessed on a case-by-case basis depending on the nature of the information, the role of the witness in a particular prosecution, and the character of that prosecution.

The decision to include or remove a state witness from the Multnomah County District Attorney's Office PID Index is made by committee members selected by the District Attorney based on their experience or expertise with *Brady* related issues. The purpose of the committee is to screen relevant information received from all sources for legitimate *Brady* impeachment material. This committee will meet at least quarterly to consider any candidates for inclusion or elimination from the PID Index. The committee may meet more frequently as needed. Committee members may consider oral, written, or other relevant evidence in reaching their decisions.

A majority of the current membership of the PID committee constitutes a quorum. Any decision regarding inclusion or exclusion of a person from the PID may be made by the majority of committee members present. In the event of a tie, the committee may reconsider the matter upon the subsequent presence of all committee members, or the District Attorney may determine the matter.

The following process is followed in each case by the PID Index Committee, excepting cases involving the existence of a criminal conviction or a pending criminal matter against a witness:

- State witnesses will receive written notice that they are the subject of a pending review;
- State witnesses will have the opportunity to provide materials for consideration by the PID Index Committee and to appear before the committee;
- State witnesses who are placed in the PID Index are informed of the opportunity to submit additional information which may provide a basis for removal from the PID Index.

In cases involving a verified criminal conviction that must be disclosed pursuant to ORS 135.815(1)(e), the witness will receive written notice that the committee has included the conviction in the index, and be provided an opportunity to submit any contextual information for inclusion along with the conviction.

For pending criminal matters the witness will receive notice that:

- 1) the fact of the pending case will be included in the index,
- 2) that they have the opportunity to submit any contextual information for inclusion along with the fact of the pending case; and
- 3) that the matter will be monitored for outcome by MCDA, and updated accordingly when it is concluded.

If the case results in a conviction, it will be included in the index per above. If it does not, the information available to this office will be evaluated for inclusion in the index per ordinary PID criteria and procedures, including the opportunity for the witness to address the committee in person or through a representative.

Findings of misconduct involving dishonesty, criminal convictions, and false sworn testimony are three examples of areas which may lead to inclusion of a state witness on the PID Index.

There is not an exclusive list of conduct that may lead to inclusion of a state witness on the PID Index. Examples of the type of potential impeachment disclosure evidence recognized by the Oregon Evidence Code and case law include:

- Pending criminal prosecution,
- Convictions of crimes (OEC 609, ORS 135.815(1)(e)),
- Bias or interest (OEC 609-1),
- Problem alcohol and illegal drug use,
- Character (OEC 404),
- False reports,
- Contrary conflicting statements,
- Inaccurate statements or reports,

- Misconduct involving moral turpitude,
- Reputation for untruthfulness.

See *United States v. Bagley* 473 US 667, 676 (1985).

“Rumor” or “speculation” is not *Brady* material or potential impeachment disclosure evidence. One purpose of creating and maintaining a centralized PID Index is to eliminate rumors and speculation regarding state witnesses and to afford due process to these witnesses and a deliberate committee review and determination of whether potential impeachment disclosure information actually exists.

1.6. Statutory Discovery

It is the practice of this office to disclose appropriate police reports and other documentary evidence to defense counsel at the earliest opportunity once a case is filed. DDAs must be alert to problems experienced by police agencies in providing all case police reports to the District Attorney's Office. DDAs should utilize the following tools to ensure that all reports that should be disclosed are received by this office and disclosed to the defense:

- review information in the police data system regarding reports written;
- contact investigating officer or detective and request they go to their agency records section and verify they have all reports currently on file for that case in their agency;
- meet in person with the investigating officer or detective to assure that all reports have been provided; and
- contact defense counsel and offer them the opportunity to review your case file materials to assure they have been provided to the defense. Document in your case file and in our case management system that you have done this for the defense.

1.6.1. Process for Obtaining Discovery

For individuals represented by a defense attorney, MCDA provides discovery through eDiscovery by Karpel by Prosecutor by Karpel (PbK). PbK allows for the electronic distribution of nearly all discoverable materials via a unique, secure link.

MCDA no longer provides physical discovery or sending through Box.com, except in rare circumstances to address a specific situational need.

When we have discovery on a case, here's what happens:

1. Discovery staff create PDF file(s) of the printable discovery and send the PDFs and other files, such as audio or video files, to the discovery server hosted by our vendor in Microsoft's secure AzureGov cloud storage.
2. PbK then logs that the discovery was sent, along with the date it was sent.
3. Defense counsel receives a NO REPLY email from the system (not from MCDA staff), indicating that there is eDiscovery available. The email includes the defendant's name and court number, along with a link for each file to open or download.
4. The system will log when discovery sent this way is downloaded to allow us to confirm actual receipt by defense counsel or their agent.

MCDA utilizes a number of other platforms to provide discovery as well, such as Axon.

Instructions for defense counsel to access discovery can be found at [this link](#).

Defendants who are representing themselves are required to pick up discovery in person so that proper identification can be made, with the exception of defendants who are incarcerated, in which case discovery will be delivered by an assigned MCDA Investigator. Discovery can also be facilitated through an assigned legal advisor.

1.6.2. Costs for Discovery

MCDA passes on its actual costs for making discovery available to defense attorneys as per the [fee schedule linked here](#).

1.6.3. Discovery Unit Process

The decisions as to what is and is not discoverable and to whom discovery shall be provided are legal decisions to be made by the DDA assigned to a particular case. The discovery unit shall follow the mechanical procedures established by their supervisors for prioritizing and providing discovery. However, individual cases may present unusual situations and the case DDA is the final decision maker on what must be provided in discovery. The discovery unit and/or BWC unit, depending on which has responsibility for the type of evidence at issue, shall provide any item in discovery, whether or not other procedural instructions indicate otherwise, upon receiving express written direction from the case DDA to do so and to whom to provide it.

1.7. Confidential and Sensitive Information

In the course of our work MCDA employees handle many different types of confidential or sensitive information with varying rules and regulations governing its use. It is critical that employees coming into contact with these materials are familiar with the rules regarding its use. In general, confidential information may not be disclosed outside the office without legal authorization. In many cases, the criminal discovery

statutes are the authorization for limited disclosure of otherwise confidential information to a defense attorney. When confidential records are no longer needed for the purpose for which it was obtained, and if consistent with the applicable retention schedule, it shall be securely disposed of.

Types of confidential or sensitive information may include Criminal Justice Information System ("CJIS") Data, Medical / Treatment Records, Personally Identifiable Information ("PII"), Child Sex Abuse Material ("CSAM"), Juvenile Court Records, Reports of Child Abuse, Grand Jury Records, and other similar categories of information. Confidential or sensitive information shall not be disclosed unless specifically provided for in a practice guide or as directed by a supervisor. Staff who are unsure if information qualifies as confidential shall seek clarification from their supervisor.

It is expected that all staff will use their discretion when discussing this information. Common sense tells us to refrain from sharing case information or any confidential material with others. Every staff member should remember to be careful when discussing cases and of their surroundings when doing so. Case information should not be relayed to other staff members or police officers in the reception area or any other public area of the office or courthouse, including the elevator.

Likewise, sensitive information should only be included in an email, court filing, or other written record if there is a specific need to do so. Many of these documents are subject to public inspection and it is our responsibility to ensure that we are responsible custodians of the information entrusted to us.

1.7.1. Outside Requests For Information

Personnel in the District Attorney's Office are often asked for information from office records regarding criminal matters. Staff members should familiarize themselves with this policy and be certain to ascertain an inquirer's identity and purpose before providing any information.

Staff should not provide information from internal systems, or systems to which they have access, to individuals outside of the office unless doing so is a regular part of their job duties and they are certain of the identity of the requestor and that the information at issue may permissibly be released to them. All questions should be referred to your immediate supervisor.

All requests for review or duplication of office files should be referred to the Public Records DDA in the Justice Integrity Unit. Any request for authorization to police agencies to release reports should be referred to the Public Records DDA. Reports are subject to release unless their release would interfere with an ongoing criminal

investigation. Generally speaking, the public release of police reports while a criminal prosecution is ongoing will interfere with the criminal investigation, however a case-by-case analysis must be made. Likewise, release of reports shall not be authorized where doing so would risk tainting the jury pool or otherwise impairing a defendant's right to a fair trial.

Generally, closed criminal files are publicly accessible, however certain documents contained in those files are exempt from disclosure to include (but not limited to): LEDS printouts, medical records, psychological evaluations, pre-sentence investigation reports, and certain attorney work-product. Release of a file should not be made without first consulting with the Public Records DDA.

1.7.2. Juvenile Records

The law significantly limits the disclosure of juvenile records. See ORS [419A.252](#), et seq. Many records, including police reports, can only be released by court order. There is one exception ORS 810.460 allows release of traffic accident reports whether a juvenile is involved or not. If a member of the public seeks the release of a confidential record, the DDA screening the request should send a letter to the requesting party indicating that a motion must be made to the Juvenile Court for release of records.

Some information about juveniles and juvenile court proceedings is not confidential. See ORS 419A.252, et seq. Requests for non-confidential records should be directed to the Juvenile Department.

1.7.3. Access to Restricted Law Enforcement Databases

Only personnel of the District Attorney's Office and personnel of criminal justice agencies who are officially authorized by this office and have a valid law enforcement purpose are permitted to access computers located in any of the District Attorney's offices. This includes connecting to the office by Virtual Private Network (VPN).

1.7.4. Presentence Investigation Reports

[ORS 137.077](#) specifies to whom a copy of a presentence investigation (PSI) report may be given.

State v. Collins, 308 Or 66 (1989), held that there was no express prohibition against disclosing the PSI information to third parties (as opposed to giving a copy to someone). The disclosure of presentence information to victims was later codified to ORS 137.077(4). The statute says that presentence reports shall be made available only to sentencing courts, appellate courts, the district attorney, the defense attorney, the defendant, the "Department of Corrections, State Board of Parole and Post-Prison

Supervision and other persons or agencies having a legitimate professional interest in the information.” It is unclear who these “other persons or agencies” are that can be provided a physical copy of the presentence report. Several trial judges have ruled that the language “other persons or agencies having a legitimate professional interest in the information” is to be narrowly construed and applies only to people involved in the probation and parole function.

In order to avoid potential ethical problems, unless specifically spelled out by the statute, do not release a copy of a presentence report when engaging with crime victims or others involved in a case. DDAs may provide the information orally or allow a victim to review the report in their office. DDAs may also seek a court's permission to release a copy of the report.

1.8. Conflicts of Interest

Any time a DDA becomes aware that there exists a possible conflict of interest or any other reason our office should not handle a given case, that DDA shall bring the case to the attention of their CDDA. The CDDA will consult with the General Counsel and if they determine that our office should not handle a given case, we will request the assistance of another district attorney's office within the state of Oregon, a special prosecutor from the private bar, or the Attorney General's Office to prosecute the case as a Special Deputy District Attorney.

This office will provide administrative support to a Special Prosecutor designated under this policy unless, in the judgment of the General Counsel, that would be inappropriate given the nature of the conflict.

Likewise, MCDA DDAs may also be called upon by the District Attorney to serve as Special Prosecutors in other Oregon counties if conflicts arise there. If such an assignment is made it is considered part of the DDAs caseload and no additional or extra compensation is expected or required for serving in that role unless otherwise specified in the then-current MCPAA contract.

1.9. Use of Certified Law Students

MCDA employs certified law students in its Misdemeanor Trial, Domestic Violence, and Treatment, Accountability, and Specialty Courts Units. Certified Law Students may not sign legal pleadings, but may do other work under the supervision and at the direction of lawyers in those units 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. Supervising attorneys responsible for Certified Law Students must ensure they are familiar and in compliance with the Oregon State Bar's rules for the Law Student Appearance Program.

1.10. Use of Official MCDA Identification

Deputy District Attorneys and Investigators are issued law enforcement badges. All employees are issued MCDA identification cards. Employees are responsible for, and must not misuse, official MCDA identification. MCDA identification may never be used for personal benefit, financial or otherwise, and should not be publicly displayed when the employee is not working in an official capacity. Sworn MCDA investigators needing to exercise any lawful authority as a peace officer while off duty may display identification to demonstrate their authority.

Employees are responsible for returning all official identification upon separation from employment with MCDA.

Any employee whose badge or identification card is lost or stolen must immediately report the matter to their supervisor or, in their supervisor's absence, any manager.

2. Office Administration

2.1. Management Structure

2.1.1. Attorney Managers

District Attorney

The elected District Attorney is the final decisionmaker as to all matters related to the conduct, policy, and operations of MCDA.

First Assistant to the District Attorney

The First Assistant reports directly to the District Attorney and oversees the day-to-day operations of the office as well as advising the District Attorney on policy and personnel matters. The First Assistant is the presumptive person-in-charge of the office in the event of the unavailability of the District Attorney. The General Counsel and Chief Deputies report to the First Assistant.

General Counsel

All matters relating to office-involved litigation, legal training, compliance, and complex resolution of criminal law issues should be directed to this office. The General Counsel also manages the office's Justice Integrity Unit, which is outside of the Chief Deputy divisional structure.

The General Counsel does not provide legal representation to the office or any individual employee of the office and no attorney-client privilege exists or will be

claimed in relation to their communications or work product except as that privilege flows from County Counsel or the Attorney General in the course of their representation of MCDA or as derives from their work as a deputy district attorney.

Chief Deputy District Attorneys

The current MCPAA contract authorizes three Chief Deputy District Attorneys, who oversee the lawyers in the office in three divisions. Each division contains multiple trial units, each of which are supervised by one or two Senior Deputy District Attorneys.

Division 1

Division 1 contains the Domestic Violence Unit (crimes in the home or between intimate partners), Multi-disciplinary Team (physical and sexual abuse of children), Juvenile Unit (all matters handled in juvenile court in which the State appears), and Misdemeanor Trial Unit (all matters relating to non-domestic violence misdemeanors)

Division 2

Division 2 contains the Strategic Prosecution and Services Unit (high-volume system users, data-based prosecution, special prosecution programs), Unit A/B (felony property crimes); Treatment and Specialty Courts, and Support Enforcement Division (child support enforcement)

Division 3

Division 3 contains Unit C (robbery, burglary, gun crimes, vehicular assault and homicide); Unit D (felony assault and sex crimes not fitting into a more specialized unit); and the Homicide Unit (all non-vehicular homicides).

2.1.2. Non-Attorney Managers

Chief of Staff

The Chief of Staff reports directly to the District Attorney and oversees the day-to-day administrative operations of the office, as well as Human Resources, Finance, and Information Technology. The Chief of Staff also serves as the primary liaison to central Multnomah County administrative, financial, operational, and policy functions.

Chief Investigator

The Chief Investigator provides leadership, policy direction, strategic planning, problem solving, and daily operational oversight for District Attorney Investigators, which conduct interviews, process evidence, write search warrants, conduct surveillance, locate witnesses, and other tasks to support criminal proceedings.

HR Manager

The HR Manager oversees all human resources functions, including labor relations, recruitment and selection, union bargaining, classification and compensation, reasonable accommodations, time and leave administration, and maintenance of personnel files. They serve as a liaison to central County human resources functions and advises leadership on all related matters.

Finance Manager

The Finance Manager oversees all financial functions, including accounting, budgeting, financial reporting, internal controls, procurement, and contracts. It serves as a liaison to central County finance functions and is key advisor to leadership by providing direction and guidance on short- and long-range financial management and operations.

IT Manager

The IT Manager oversees the office's technology infrastructure, ensuring operational efficiency, data security, and modern case management systems. This role includes managing software applications, supporting IT systems, and optimizing technology-related processes to enhance office operations.

Equity Manager

The Equity Manager leads the implementation of internal and external policies, processes, and practices centered around equity and inclusion. It also leads the MCDA Diversity, Equity, and Inclusion workgroup, is responsible for the creation, implementation, and management of an MCDA equity strategic plan, and supports MCDA efforts to implement applicable aspects of the County Workforce Equity Strategic Plan (WESP).

2.1.3. Other Managers and Supervisors

Under the direction of the Management Attorneys, Senior Deputy District Attorneys supervise the attorneys in the office. Under the direction of the Administrative Management, staff Managers and Operations Supervisors supervise the non-attorney staff in the office.

2.2. Physical Access to Office

2.2.1. Front Desk

All office visitors to the fifth and sixth floor District Attorney's Office should be met at the front desk and escorted through the office to the visited individual's work area. Visitors are not to be admitted prior to 8 a.m.

Generally, no unauthorized individual should be allowed to move unescorted around the office. If you have questions about an individual in the office, ask them directly if you can help them.

2.2.2. Satellite Offices

All visitors to the satellite offices, including staff members of the District Attorney's Office, need to identify themselves before proceeding into the private areas of the office. This will assist the receptionists in each of the satellites who may not be familiar with all District Attorney Staff members.

2.2.3. Receipt of Legal Process at Reception

A receptionist on duty at a public-facing reception desk for MCDA when presented with a document purporting to be legal process shall proceed as follows:

- Accept the document.
- Attempt to ascertain the identity and affiliation of the person delivering it if safe and appropriate to the circumstances.
- Inform the individual delivering the document as follows: "I will take a copy of whatever you have and forward it to our General Counsel, but I do not have the authority to sign any acknowledgement of receipt or waive requirements of service on the individual named in this document. Please contact our General Counsel to discuss further."
- Not sign any document provided by the person.
- If the person wishes to personally serve an employee, the receptionist should notify the employee and General Counsel. In the event neither are available, that can be communicated to the individual who should be encouraged to reach out directly to the employee to arrange a time to effect service. The email address for the involved employee can be provided.
- May identify themselves as the person who received the document if safe and appropriate to the circumstances.
- Escalate to a supervisor if the person delivering will not depart without further engagement.
- Deliver the document received to General Counsel immediately BOTH by scanning and emailing and by interoffice mail. If the documents relate to a specific employee of this office it may also be provided to them but must in all

cases go to General Counsel. The email to General Counsel shall include any relevant contextual information about the delivery including when it was delivered and by whom. The receptionist's supervisor should also be copied on this message.

2.3. Communications

2.3.1. General Guidelines

This office will be candid, cooperative, and responsibly transparent with the media. This cooperation shall be accomplished without compromising the integrity of an investigation, our obligation as officers of the court to ensure a fair trial and to obey the laws of our state, the orders of the court, and our duties, restrictions, and obligations under the Oregon Rules of Professional Conduct and the Oregon Constitution.

Any question relating to any policy of the office from a member of the news media will be referred to the Communications Director. The question may then be assigned to a DDA or management attorney for response.

Detailed interviews with members of the news media will generally be conducted by the District Attorney, the First Assistant to the District Attorney, the Communications Director or one of the CDDAs. On certain occasions, these interviews may be assigned to other members of the staff. If any member of the office receives a request for an on-camera or on-air, live or recorded interview, clearance must be obtained from a management attorney.

DDAs may respond to procedural inquiries concerning specific cases on their caseload. Either prior to, or immediately after communicating with a member of the news media about a specific case, the DDA shall notify the Communications Director about the subject and substance of the media inquiry.

All DDAs will familiarize themselves with and adhere to the Oregon Rule of Professional Conduct Rule 3.6 Trial Publicity and interpreting Bar and judicial decisions. MCDA will conduct periodic trainings with legal staff on this topic.

2.3.2. Press Releases

All press releases will be coordinated by the Communications Director and must be approved by a management attorney unless otherwise specifically directed by the District Attorney.

2.3.3. Public Statements Regarding Other Agencies, Individuals

No one in the District Attorney's Office is authorized to engage in a public evaluation of police or sheriff personnel, judges or members of other public agencies without the approval of the District Attorney or the First Assistant to the District Attorney.

Any complaints concerning judicial decisions or conduct shall be directed to the First Assistant to the District Attorney. No direct correspondence to a judge concerning these matters shall be made by a member of the District Attorney's staff unless the communication is personally approved by the District Attorney.

Any complaints of attorney misconduct shall first be directed to and discussed with the General Counsel prior to any proposed action.

DDAs are occasionally contacted by members of the Judicial Fitness Committee (Committee) or Oregon State Bar (Bar) regarding a specific incident or incidents concerning complaints against sitting judges and attorneys. If approached by a member of the Committee or the Bar, a DDA shall notify the District Attorney or General Counsel. The DDA will be responsible for responding to inquiries in their capacity as a member of the Bar and as an officer of the court.

When a DDA is asked to confirm or deny the substance of a complaint against a judge, they are in effect being asked to render a personal judgment on another member of the Bar. The DDA shall advise the Committee or Bar that any comments are made in their capacity as another lawyer and as an officer of the court and not as a DDA.

2.3.4. Letters of Recommendation

No member of the District Attorney's Office shall use office stationery, or an MCDA email address, to make personal recommendations or letters of reference without the approval of a management attorney.

2.3.5. Outside Speaking Engagements

If you have been requested to appear at an event by an outside agency or organization, require travel expenses or will be representing the office in an official capacity as either a guest, award recipient, speaker or presenter, pre-approval is required.

A request for approval, including the nature of the event, dates, and any anticipated cost should be submitted to the manager over the division in which the employee works.

Once a request is submitted, the manager will review the request and submit it for final approval to the District Attorney and or First Assistant to the District Attorney.

Likewise, official participation in public events, ceremonies, and festivals must be approved. If you have questions about whether a particular event requires approval, please contact your manager.

2.3.6. Internal Communications

The same care should be exercised in drafting e-mail and voice mail communications as goes into written communications. Please note that e-mail and voice mail communications may be subject to the public records law. Any information concerning the public's business, however recorded, constitutes a "public record." Employees should assume that any electronic record generated by this office is subject to public disclosure. Please take care when composing communications and recognize they have the potential to be seen, heard, reviewed, copied, and forwarded to many others.

The county-wide and office-wide e-mail lists that are available to us are available for work activities only and should not be used for personal notices or requests. Employees may not send global messages to all county employees without the express approval of the District Attorney or the Communications Director. Employees may not use internal MCDA email lists for matters not directly related to the business or operations of MCDA.

If you have a personal request or announcement that is of office-wide interest, please send it to the Communications Director for consideration for the weekly Administrative Memo or to be added to the District Attorney's intranet site.

2.4. Public Records

All documents and materials (including e-mails and text messages) obtained or created by prosecutors or staff as part of their job responsibilities and retained in their office are public records under ORS Chapter 192. Requests for public records of this office may be made through the DDA designated on MCDA's website as the recipient of such requests. That DDA will evaluate the request, determine if any responsive material is exempt from disclosure, and complete their response to the records request within the timelines set out in ORS 192.329.

2.5. Records Retention

It is not the policy of this office to retain everything that crosses the desk of a prosecutor or staff. DDAs are responsible for complying with the [Multnomah County records retention schedule](#) applicable to their units.

As to any record not specifically described in the retention schedule, it is the option of the DDA to destroy, retain or return material not placed in the official District Attorney file after the conclusion of the case. DDAs who retain materials in their offices must

maintain these materials so that they can readily be identified and retrieved at a later date.

If a DDA or staff person leaves the office, records that have been retained should be given to their immediate supervisor.

The State Archivist has established by rule minimum retention periods for various categories of district attorney files, which are codified in [OAR 166-150-0095](#). If there is a conflict between the County and State retention schedules, records should be retained for the longer of the two.

Records may be retained by digitizing hard copies and retaining the electronic versions in lieu of paper. Once it has been confirmed that an electronic copy of a file or other record fully and completely reproduces the original hard copy, the hard copy may be destroyed.

2.6. Information Technology

2.6.1. Overview

The technology tools and systems at our disposal are intended to support the MCDA's mission and goals. Employees are encouraged to incorporate technology into daily workflows for official County business, information sharing, and service delivery to citizens of Multnomah County. However, the privilege of using these resources comes with responsibility, and misuse may result in disciplinary action.

When in doubt about whether an action is acceptable, employees should seek clarification from a supervisor or manager. Technology systems, including computers, phones, email, and the internet, are subject to monitoring, auditing, and review. Use of MCDA technology indicates consent to monitoring in accordance with County Rule 3-35.

2.6.2. Appropriate Use of Technology

Technology resources, including computers, software, networks, phones, and email, are provided for conducting official County business. While incidental personal use is allowed occasionally, it should not interfere with work duties or hinder productivity.

Inappropriate Uses

The downloading, streaming, usage, or electronic communicating of offensive, unethical, or inappropriate content on County systems is strictly prohibited. This includes, but is not limited to, content that is discriminatory, harassing, or in violation

of any laws or regulations. Any activity that could compromise the security, reputation, or functionality of MCDA's technology systems is forbidden.

This limitation does not apply to material that is of direct evidentiary relevance to an active criminal investigation or prosecution that is accessed in the course of and in furtherance of such an investigation or prosecution.

Monitoring & Privacy

All electronic communications (email, internet use, etc.) may be monitored. Employees should have no expectation of privacy when using County systems

2.6.3. Employee Responsibilities

Locking and logging off

Employees should lock their computers when leaving them unattended, especially when accessing sensitive information. Always ensure that personal data and secure systems are protected through practicing vigilance.

Passwords & Confidentiality

Employees must protect their system passwords and take care not to write them down. Sharing passwords with others is prohibited. Employees should not access files, emails, systems, or data to which they do not have explicit permission to access.

Security Compliance

To maintain the security of MCDA's network, employees must run virus scans on any files downloaded from external sources. Unauthorized installation of software or unauthorized downloads is prohibited. Any software installations must be approved by MCDA IT.

Device Care & Maintenance

Employees are responsible for the care and cleanliness of their devices, including:

- Connecting laptops to the VPN or the on-premise staff WiFi network at least once per month.
- Participating in scheduled IT maintenance windows and updates to ensure devices remain functional and secure.
- Promptly reporting any technology issues that impact their ability to perform work to MCDA IT.
- Lost or stolen devices must be immediately reported to MCDA IT.

2.6.4. Compliance with Legal and Ethical Standards

Laws & Licenses

All employees must adhere to applicable software licensing agreements, intellectual property laws, and other relevant regulations. Violating licensing agreements or using County resources for unlawful activities is prohibited.

Software Installation

Employees may not install software without approval from the MCDA IT. Ensure that all software adheres to copyright and licensing laws.

Protecting Sensitive information

Employees must not share or provide access to sensitive information to unauthorized individuals. Sensitive data should only be accessible to those with a legitimate need to know. This includes, but is not limited to, personal data, case details, legal documents, and any other information protected by privacy laws or internal policies.

Traveling Internationally

Any use of County technology outside of the United States must be approved by a manager or Senior DDA and coordinated in advance through MCDA IT.

2.6.5. Prohibited Activities

Personal Gain

Using County technology for personal financial gain, political activities, or religious promotion is prohibited. Personal use is limited to occasional tasks that do not interfere with official duties.

Non-Work Use

Activities such as online shopping, personal messaging, or engaging with non-work-related sites for extended periods are prohibited during working hours. This includes personal advertising, solicitations, or the promotion of political or religious content.

Ethical Guidelines

Use of County technology for activities that pose a risk to network security or violate state ethics guidelines (e.g., stock trading, online gambling) is strictly prohibited.

2.6.6. Communication Protocols

Email & Messaging

Official MCDA email addresses should be used for all work-related communication. Personal email should not be used for official business unless absolutely necessary, and those emails must be archived according to County retention policies and Federal law.

Public Records

Be mindful that emails, voicemails, text messages, and other electronic communications are subject to public records laws and may be disclosed upon request. All communications should be professional and related to County business.

Broadcast Messages

Requests to send agency-wide emails or messages should be approved by a supervisor or manager.

2.6.7. Cell Phone Policy

Personal Devices

Personal cell phone usage is permitted during breaks, lunch, or in emergency situations.

Work-Related Use

Employees may be assigned mobile devices to perform their official duties. Usage of work-issued phones or mobile devices for personal matters should be limited and infrequent.

Mobile Applications

Only mobile applications sanctioned by MCDA IT may be installed on County mobile devices.

Lost or Damaged Phones

Employees should immediately report any lost or damaged work phones to the MCDA IT for replacement.

2.6.8. General Internet & Network use

Employees are expected to use the internet responsibly and primarily for business purposes. Any use of County systems and networks should comply with security protocols and avoid activities that could compromise the network's integrity.

Remote Access

Accessing the MCDA's network from outside the office is only permitted when necessary for official business. Access must comply with security policies.

Software Compliance

Ensure that all software used for remote access is authorized by MCDA IT and does not jeopardize network security.

2.6.9. Data Security & Encryption

Employees should exercise vigilance when using technology, particularly in relation to safeguarding sensitive information.

Phishing Awareness

Employees must remain vigilant against phishing attempts and other forms of cyberattack. Any suspicious emails or messages should be reported to IT immediately.

Encryption for Sensitive Data

Sensitive data that is not public record should never be transmitted or stored on an external hard drive without proper encryption. If you are unsure how to use encryption tools, please reach out to MCDA IT for guidance and support. Sensitive data should only be accessed by and shared with authorized individuals.

2.6.10. Use of Generative AI

MCDA recognizes the potential utility of generative AI in legal research, drafting, summarizing records, and related tasks but emphasizes that its use must be carefully limited and subject to rigorous human oversight. Attorneys and staff may use generative AI tools to assist with preliminary research, brainstorming, or drafting, but they remain fully responsible for verifying the accuracy, reliability, and appropriateness of any AI-generated content. Under no circumstances should AI-generated work be submitted, filed, or shared outside the office without thorough personal review and independent validation. Any use of AI that results in errors, ethical violations or confidentiality breaches will be the responsibility of the individual using the tool. All MCDA staff are expected to prioritize professional judgment, uphold legal and ethical standards, and ensure that AI serves as an aid rather than a substitute for skilled legal analysis.

Except as expressly provided below no employee shall input non-public factual information relating to a criminal investigation, or any other information that is not freely and publicly disclosable, into an AI tool.

AI assistants in the following programs or services purchased by MCDA for employee use have been confirmed by MCDA IT to be CJIS compliant may be used by employees, including non-public factual information relating to pending investigations, subject to the restrictions above:

- Microsoft (CoPilot)
- Thompson Reuters / Westlaw (CoCounsel)
- Axon (Brief One)

The following may never be provided to an AI tool:

- Police reports generated by the federal government or as part of a federal investigation;
- Records relating in any way to the investigation or adjudication of a youth;
- Records directly obtained from NCIC or LEDS;
- Sex offender registry records.

2.6.11. Consequence of Misuse

Misuse of technology resources may result in disciplinary action, including but not limited to suspension of technology privileges, employment termination, or legal consequences. Employees found violating these policies will be held accountable for their actions.

2.7. Receipt of Mail and Legal Process

This office receives legal documents from a variety of sources. The date we receive these documents often starts a statutory timeline for taking action. To that end, all incoming mail will be date stamped with a “received” date by the staff member responsible for receiving our mail and it will be promptly distributed through appropriate internal channels to the recipient. Unless otherwise specified below, the appropriate internal channel is our interoffice mail system.

2.7.1. Certified Mail

Any certified mail that is received must be provided immediately to a supervisor for appropriate distribution.

2.7.2. Process Servers

If individuals are attempting to serve legal process on this office, or an employee of this office, reception staff are to immediately notify the General Counsel or, in their absence, a management attorney to receive direction on how to proceed.

Any document purporting to be legal process that is received by any MCDA reception desk must immediately and directly be provided to the General Counsel. “Directly

provided” means walked up to their office or placed in their hands the day it is received or, if received off-site, scanned and emailed in addition to interoffice mailing the original.

2.8. Inclement Weather, Administrative Closures and Special Emergencies Policy

The Purpose: To establish a District Attorney's Office policy designating essential employees and the process/expectations for reporting for duty during situations which may cause the closure or curtailment of County operations. This policy is not intended to supersede any governing collective bargaining agreements, personnel rules, and or ordinances regarding inclement weather, natural or man-made disasters, or any other special emergency (“Declared Special Emergency”).

Essential Public Safety Services: The District Attorney's Office is committed to providing essential public safety services to the community regardless of weather, natural or man-made incidents, or other special emergencies. District Attorney's Office employees recognize their unique role in fulfilling that mission by providing uninterrupted services to the community. While court and office facilities may close or be curtailed in certain circumstances, most Multnomah County District Attorney's Office job functions must continue in emergency situations.

For purposes of this policy, all District Attorney's Office employees fit into one of the categories below that carry specific designations related to operationally essential (“essential”) status. It shall be at the discretion of the District Attorney, First Assistant, CDDAs or Chief of Staff to determine if specific posts within the District Attorney's Office remain essential in each Declared Special Emergency.

- **Non-Represented Managers & Supervisors:** Considered essential and required to work during inclement weather, administrative closures, and special emergencies, with telework allowed based on operational needs and the ability to perform work remotely. These employees are expected to make every reasonable effort to report for duty during any inclement weather, natural or man-made disaster or any other declared special emergency, as needed and at the discretion of the District Attorney.
- **Local 88 Employees:** Considered essential or not essential on a position-by-position basis determined by management, following Article 13, Section 9 of the Local 88 agreement. Employees who have been designated as essential are required to report for duty regardless of facility closure or curtailment of some or all County operations. The County shall annually provide a list of Local 88-represented positions and/or job profiles from each Department that have been designated Essential by October 1 each year; the County reserves the right to

revise the list as necessary. Essential employees are required to work during inclement weather, administrative closures, and special emergencies, with telework allowed based on operational needs and the ability to perform work remotely. These employees are expected to make every reasonable effort to report for duty during any inclement weather, natural or man-made disaster or any other declared special emergency, as needed and at the discretion of the District Attorney.

- **Deputy District Attorneys:** Considered essential and required to work during inclement weather, administrative closures, and special emergencies, with telework allowed based on operational needs. These employees are expected to make every reasonable effort to report for duty during any inclement weather, natural or man-made disaster or any other declared special emergency, as needed and at the discretion of the District Attorney.

Declaration of Special Emergency: The District Attorney or their designee(s) may order curtailment or closure of District Attorney's Office facilities or offices, or reassign employees to other work locations, when conditions exist that interfere or prevent continued agency operations. For purposes of this policy, declaration of special emergency is limited to employees of the Multnomah County District Attorney's Office.

Notification of Special Emergency: During incidents of inclement weather, administrative closure, or other special emergency, notification of operational impacts shall be made in the following manner:

- Notification process through the management structure. Employees are responsible for keeping a current phone number on file with the District Attorney Human Resources Office.
- MCDA's Office emergency information line and the DAweb.

The emergency information line includes a message that will contain the most up-to-date information about reporting requirements during an emergency. The emergency information line is for internal notification only and should not be given out to the public. It shall be the responsibility of the Multnomah County District Attorney's Management staff to keep the emergency information line updated daily during inclement weather, administrative closures, or other special emergencies.

Cancellation of Declared Special Emergency: The District Attorney or their designee(s) shall cancel a Declared Special Emergency when conditions causing the special emergency have subsided to the appropriate level. Notification of cancellation of the special emergency shall be made in the same manner as the original notification of the special emergency.

Leave options for employees unable to report to work: Pursuant to [Multnomah County Personnel Rule 3-15: Inclement Weather and Administrative Closure](#), an employee who does not report to work under circumstances outlined in this policy, shall use appropriate leave as follows:

- Leave without pay;
- Compensatory time off;
- Personal or saved holiday;
- Vacation leave.

Sick leave may not be used for this purpose.

2.9. Procedures for Emergencies

2.9.1. Evacuation

Fire

Whenever there is a fire alarm the building must be evacuated. The elevators are not used in a fire. If at all possible, take the back fire steps. Once you leave the building you are to go to your designated areas. It is your responsibility to know where that area is.

Earthquake

In the event of an earthquake, you will be directed to leave the building as soon as it is safe. Do not attempt to leave during an actual quake. During the quake, try to find a safe place, such as under a desk or in a doorframe.

2.9.2. Emergency Communications

The following outlines the procedures for internal office-wide emergency communications. Based on past experience, it is believed that this procedure will rarely be used. However, given the type of work we do and random acts of Mother Nature it is important that such a procedure be in place. Emergency communications will also be distributed by email if the email system is functioning.

The phone tree will follow the existing organizational structure. Each manager and lead worker is responsible for calling those that they supervise.

- District Attorney contacts: First Assistant to the District Attorney, Chief of Staff, and Communications Director.
- First Assistant to the District Attorney contacts: CDDAs, General Counsel.

- CDDAs, General Counsel contact SDDAs in their division.
- Chief of Staff contacts: SED Program Supervisor, Victim Assistance Program Supervisor, Information Technology Manager, Finance Manager, Human Resources Staff, Operations Supervisors.
- All of the above contact their direct reports.

Each person must have direct contact with those they are responsible for calling. It is the responsibility of the managers and the leads to maintain current contact information of those they supervise.

3. Personnel Matters

3.1. Training, Education, and Travel

3.1.1. Continuing Legal Education Requirements

Every attorney is responsible for meeting the minimum continuing legal education (MCLE) requirements established by the Oregon State Bar. The office endeavors to put on sufficient CLE presentations each reporting period to meet all the minimum requirements of the bar, and reports attendance at office-sponsored CLEs to the bar. However, each attorney is ultimately responsible for maintaining records of CLE attendance and ensuring accurate reporting of the required CLE information to the Oregon State Bar during their reporting period.

New Oregon lawyers are required to complete the requirements of the Oregon State Bar New Lawyer Mentoring Program (NLMP) (<http://www.osbar.org/nlmp>). Each newly admitted attorney is responsible for completing the requirements of the program.

DDAs with five or more years of experience are encouraged to enroll as mentors in the NLMP. Doing so will offer the DDA-mentor an opportunity to share their knowledge and experience with a new lawyer.

3.1.2. Education or Training Event Review Process and Travel Funds Authorization

All requests to attend an educational or training event, outside of the MCDA office sponsored opportunities, must be directed first to the employee's immediate supervisor for review and consideration. In the case of DDAs, the request should first be directed to the SDDA to whom they report for initial review and preliminary approval. In the case of

other staff members, requests should be directed to their exempt supervisor. If supported by the SDDA/exempt supervisor, and there is no cost or fee associated to the event, then the request must be submitted for review and approval by a CDDA or appropriate staff manager.

In the event there is a cost or fee associated with the educational or training event, (excluding parking and/or mileage reimbursement) such as airfare, lodging, registration and or per diem, then the event material shall be forwarded to the travel coordinator by the traveling employee to calculate the associated costs. The employee shall be expected to use the county CarShare option, when driving is the method of travel, unless specific circumstances exist and approval is obtained calling for personal vehicle use.

The CDDA or staff manager will then review all of the associated material and determine if they recommend approval, or not, of the education or training event request and notify the travel coordinator. This process includes events where the individual has been asked to make a presentation or otherwise participate at an event and the requesting agency or organization has volunteered to pay for some or all of the associated costs.

All CDDA or staff manager approved requests shall then be forwarded to the office finance manager for review and approval. Trainings with a total cost to the office less than \$500 may be approved by the appropriate divisional Chief. More expensive trainings must be approved by the District Attorney or First Assistant before travel and training occurs.

Finally, the completed Travel and Training form will be returned to the travel coordinator, who will register the traveler for the event, book the required travel services and initiate the payment of per diem.

3.2. Work Performance Expectations

3.2.1. Office Hours

The formal hours of operation in the District Attorney's Office are 8 a.m. to 5:30 p.m. Monday through Friday. Attorneys in this office should, absent specific approval of their supervisor, expect to be in the office at least from 8 to 5. However, MCDA's lawyers are salaried and must be prepared as a condition of employment in this office to work, without additional compensation, either in terms of money or time, extra hours, as requested by their supervisors or as necessary to the effective management of their caseloads. In short, it should be remembered that lawyers, be they public or private, should not expect to strictly work a 40-hour week or 8-hour day.

3.2.2. On-Call Duty

The District Attorney's Office maintains an on-call DDA 24-hours a day. DDAs who have been in the office for at least 12 months are assigned to this on-call duty for a week at a time on a rotating basis.

"On-Call DDA" lists are prepared and distributed on a periodic basis. DDAs desiring to switch their scheduled on-call week must give written notice to the General Counsel at least one month in advance.

3.2.3. Dress Code Policy

The Multnomah County District Attorney's Office is a professional law office representing the State of Oregon and the citizens of Multnomah County. Employees at all locations are expected to present themselves in a professional manner that reflects the office's commitment to public service, professionalism, and respect for victims, colleagues, and the judicial system.

In Court and Grand Jury

Deputy District Attorneys and certified law students are expected to dress in Courtroom Professional attire while in court or grand jury and in accordance with UTCR 3.010. Staff present in the courtroom, but not appearing as a litigator on the case, are expected to dress in at least Business Casual.

The base requirements of the UTCR require that attire for attorneys be "appropriate." In practical application this means employees formally appearing on a case (attorneys or CLSs) must wear a suit jacket or blazer, professional footwear, and, if the employee identifies or expresses as male, a tie is expected. Denim is never appropriate when appearing in court or grand jury.

In the Office

All employees in the office must wear at least Business Casual attire. For these purposes "Business Casual" means clothing that with the addition of a jacket would meet requirements for courtroom attire. This includes: collared shirts, blouses, or neat sweaters and slacks, khakis, skirts, or dresses. The two exceptions to this standard are that ties are not required in the office and that dark-colored jeans without holes, rips, or frays may be worn in the office. Athletic wear, slippers, pajamas, shorts, sneakers, t-shirts with slogans or graphics, and sweatshirts are not considered Business Casual; nor are t-shirts that could not be worn to court under a jacket.

In the Community

When employees of MCDA are representing the office (virtually or in person) by participating in community events, meetings, training, conferences, etc., they are expected to dress in accordance with the activities planned and the attire requested by the event organizer.

In the Field

Employees operating in the field, either responding to crime scenes, engaging in investigative activity, or conducting field work with victims or witnesses are expected to wear attire appropriate to the situation they are in and that would not reflect poorly on the office. This can include casual attire, but may not include attire with prominent slogans or messages.

Commitment to Inclusion

Employees may wear culturally or religiously significant attire. Dress that aligns with one's gender identity or expression is welcomed. Employees needing accommodations related to attire are encouraged to contact Human Resources.

3.2.4. Staff Leaving the Office

When employment with the office is ended, employee offboarding will include both mandatory and optional tasks that must be completed prior to receiving their last paycheck. Mandatory obligations include turning over all office equipment, supplies, and keys, identification cards, safe combinations, and business cards. DDAs shall arrange for an orderly transfer of their files to another DDA. This shall be done with the concurrence of their immediate supervisor.

Optionally, in an effort to gain insights into organizational culture, leadership effectiveness, and opportunities for improvement to help reduce turnover and enhance organizational performance, it is the preference of the District Attorney that all departing employees participate in an exit interview.

A departing DDA may take advance sheets and books, handbooks, or manuals acquired with their own funds, including continuing legal education materials obtained while attending sessions and meetings on an excused time basis.

3.2.5. Noise

Recognizing that we work in close proximity to one another it is essential that staff be aware of the noise they are making and other staff members around them. This may be business-related audio or video playing on computers, conversations with colleagues, or telephone calls. The following guidelines should be observed:

- Speakerphones should not be used for phone calls unless there is a necessary business purpose and the sound can be isolated (for example, in an office or conference room with the door closed).
- Music, video, or audio files which are audible beyond an employee's immediate workstation may not be played unless essential to a business function. If it is necessary to play such items, employees should do so in a way that minimizes disruption to other employees (such as by using headphones or with the door closed).
- Employees must be mindful of their surroundings when conversing with colleagues or others in shared office space and move their discussion to a more private location if it will interfere with the work of others.

3.2.6. Headphones

The use of personal headphones to listen to music or for other non-business purposes is not permitted.

3.3. Hiring and Promotional Decisions

3.3.1. Veteran's Preference

Under Oregon Law, qualifying veterans may apply for veterans' preference. Review our [veterans' preference page](#) for details about eligibility and how to apply. Note: Veterans' Preference does not apply in a transfer process.

3.3.2. Diversity and Inclusion

This office is an Equal Opportunity Employer. We evaluate qualified applicants without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, genetic information and other legally protected characteristics.

3.3.3. Considerations for Hiring or Promotion of DDAs

Although a formal scoring may not be done in every case, as the needs and circumstances of a particular position require, the following considerations are weighed by the District Attorney in evaluating DDAs for promotion. As specified in the MCPAA contract, a temporary rotation is not a promotion.

Deputy District Attorney 1

Quantity and quality of relevant experience (30% weight)

Relevant experience may include MCDA experience as an intern, prosecutorial experience in or out of Oregon, non-prosecutorial experience (law practice, moot court, mock trial, etc.). Score is a weighted blend of amount of experience, relevance, and quality of experience. This is as compared to expectations for a DDA 1 position.

Legal acumen (20% weight)

Has demonstrated skills of a new lawyer including possessing a fundamental understanding of the criminal justice system. This may include good grades from an accredited law school and excellent research and writing skills.

Poise (25% weight)

Has demonstrated ability to engage orally in a professional and fluent manner over the course of interview process and, if known, in prior work and court environments.

Expected ability to handle the work (25% weight)

Exhibits and endorses characteristics necessary to work long hours in a stressful environment. Articulates flexibility to handle the various job assignments and worksite locations to which an MCDA DDA may be assigned.

Deputy District Attorney 2

Quantity and quality of relevant experience (30% weight)

Relevant experience must include prior prosecutorial experience, preferably in Oregon. May include non-prosecutorial work if relevant to the position. Score is a weighted blend of amount of experience, relevance, and quality of experience. This is as compared to expectations for a DDA 2 position.

Demonstrated ability to handle the work (20% weight)

Exhibits characteristics necessary to work long hours in a stressful environment. Has demonstrated ability to manage a high-volume caseload.

Legal acumen (20% weight)

Has demonstrated skills expected of a lawyer able to manage a felony caseload. This includes: knowledge of relevant case law, familiarity with applicable rules and statutes, demonstrated ability to manage courtroom procedures and motion practice. Experience conducting grand jury proceedings preferred.

Judgment (20% weight)

Has demonstrated the ability to consider all factors relevant to appropriate job responsibilities to include involvement of supervisors and other necessary parties and specific decision-making. Includes past history of specific instances of exercise of professional judgment.

Collaborative attitude (10% weight)

Has demonstrated the ability to work collaboratively and effectively with other DDAs and support staff in a mission-focused way.

Deputy District Attorney 3

Quantity and quality of relevant experience (20% weight)

Relevant experience must include prior prosecutorial experience, preferably in Oregon. May include non-prosecutorial work if relevant to the position. Must have significant trial experience. Score is a weighted blend of amount of experience, relevance, and quality of experience. This is as compared to expectations for a DDA 3 position.

Legal acumen (25% weight)

Has demonstrated skills expected of a lawyer able to manage major prosecutions as primary trial counsel. This includes: knowledge of relevant case law, fluency in applicable rules and statutes, complete fluency with courtroom procedures and motion practice.

Judgment (25% weight)

Has demonstrated the ability to consider all factors relevant to appropriate job responsibilities to include involvement of supervisors and other necessary parties and specific decision-making. Includes past history of specific instances of exercise of professional judgment.

Working relationship with law enforcement (20% weight)

Has demonstrated ability to communicate effectively with law enforcement partners, direct investigative activities, and avoid downstream issues by active problem solving at the police level.

Collaborative attitude (10% weight)

Has demonstrated the ability to work collaboratively and effectively with other DDAs and support staff in a mission-focused way.

Deputy District Attorney 4

Legal acumen (20% weight)

Has demonstrated skills expected of a lawyer practicing at the highest levels, to include knowledge of relevant case law, ability to synthesize legal sources and develop approaches to successfully navigate developing areas of criminal law, and complete fluency in applicable rules and statutes.

Judgment (20% weight)

Has demonstrated the ability to consider all factors relevant to appropriate job responsibilities to include involvement of management and other necessary parties and specific decision-making. Includes past history of specific instances of exercise of professional judgment.

Demonstrated specific subject-matter competence relevant to position under consideration (20% weight)

To include managing complex litigation for trial units, comparable other skills for non-trial units. Score separately if DDA is being considered for multiple openings.

Demonstrated competence in external-facing communications. (15% weight)

Includes skill at building and managing relationships with law enforcement, crime victims, and other relevant community organizations.

Demonstrated competence in internal-facing communications. (15% weight)

Includes mentorship, formal and informal, leadership, trainings, and professional and helpful demeanor and attitude in all internal interactions

Quantity and quality of relevant experience (10% weight)

May include non-prosecutorial work if relevant to the position.

3.4. Outside Employment, Compensation, and Gifts

3.4.1. Employment

Employees are expected to follow County personnel rules regarding outside employment (3-30-040). Generally employees may obtain employment with a private employer or engage in private income producing activity of their own so long as that activity is not otherwise prohibited by personnel rules. In order to avoid potential conflict of interest and ensure that office performance is aimed at serving the public, all staff members of the District Attorney's Office are prohibited from engaging in the private practice of law (ORS 8.720; 8.726; 8.790). Any questions as to what constitutes the practice of law

should be cleared with the General Counsel. Any exceptions to this policy must be authorized, in writing, by the District Attorney.

Employees shall not engage in any type of work or activity that potentially conflicts with the operation and function of the District Attorney's Office or which would cast discredit upon this office. For your further guidance the following is excerpted from the County's Personnel Rules 3-30-040(C)-(E):

Employees may not accept outside employment that involves:

- The use of county time, facilities, equipment and supplies, or the prestige or influence of the employee's county position. In other words, the employee may not engage in private business interests or other employment activities on the county's time or using the county's property;
- The performance of an act that may later be subject to control, inspection, review or audit by the department for whom the employee works;
- Receipt of money or other consideration for performance of duties that the employee is required to perform for the county; or
- Competing with the county in providing a service or product.

Employees are responsible for assuring that their outside employment does not conflict with these rules.

The county requires employees to report outside employment on an annual basis, or sooner if any changes in outside employment occur, using the procedure described in Multnomah County Personnel Rule 3-30-50.

3.4.2. Authorized Work for Outside Organizations

Performing professionally in projects directed by the District Attorney's Office, Oregon District Attorneys Association, Attorney General's Office, State and County Bar Association, DPSST, or any other court, law enforcement agency or legislative committee is a responsibility and an opportunity our office encourages.

The professional staff member who provides such service shall be selected by the District Attorney or the First Assistant to the District Attorney. The staff member selected may be excused from normal work assignment, when necessary, without loss of pay or benefits.

3.4.3. Acceptance of Gifts

All employees are prohibited from accepting gifts, whether nominal or significant, from individuals, firms, organizations, or their employees, agents, who may or do conduct business with this office. This includes victims or witnesses associated with a case without regard to the current status of the case.

This imposes a more stringent requirement on MCDA employees than what is required by the Oregon Government Ethics laws. Conduct that would be permissible under the state ethics law may nonetheless be prohibited by this policy. In particular:

- This policy contains no exception for low dollar value gifts.
- This policy does not permit accepting a gift even if the employee does not have the individual authority to grant a benefit to the gift giver.

Employees are required to be familiar with, and comply with, both the state ethics laws contained in ORS Chapter 244 and this policy.

In place of a gift, it may be suggested that a Letter of Commendation for the employee be sent to the District Attorney. Reference should be made in the letter to the specific project, actions or program for which the employee is being commended.

An employee presented with or offered a gift prohibited by this policy should politely decline with reference to this policy. A gift received in the mail, or dropped off at the office, should be returned to the giver with an appropriate explanatory note. If the gift is unable to be returned for any reason it must be reported to the First Assistant or Chief of Staff and disposed of according to their direction.

Exceptions

Flowers or a box of candy can be accepted if shared by the unit or division.

Employees may accept unsolicited food or beverage provided incidentally to a meeting without violating this policy.

Any other request for an exception to this policy should be directed to the First Assistant.

Definitions

“Gift” has the same meaning as defined in the Oregon Government Ethics law, ORS 244.020(7).

3.4.4. Acceptance of Fees or Honoraria

DDAs are sometimes asked to serve as trainers, speakers, or consultants to other organizations. On occasion an honorarium or a fee may be offered for the service. Multnomah County does have personnel rules and policies regarding these kinds of situations. According to County Counsel:

“No employee may use [their] employment to obtain a financial gain and any outside employment involving the employee may not use county time, facilities, equipment, and supplies in order to accomplish those goals.”

“It must be communicated clearly that the activity in which the employee is involved is private and not as a county representative. The manner of expressing this must be clear and unambiguous.”

However, there are exceptions if staff members are participating at the direction of the District Attorney. There are options that are acceptable in these situations.

If the employee provided the service while on their own time (vacation, personal holiday, leave without pay), it is permissible to accept the honorarium or consultant fee.

If the employee provides the service while on county time they can request that:

- The honorarium or consultant fee be donated to a recognized charity or a 501(c)(3) organization; or
- The honorarium or fee be donated to the Multnomah County general fund.

3.5. Employee-Involved Legal Proceedings

3.5.1. Bar Complaints

Occasionally, a complaint regarding the conduct of a member of the office will be made (by a defendant, witness, victim, or an attorney) to the Oregon State Bar (OSB). The OSB has a duty to investigate every complaint made about an Oregon attorney's conduct.

Upon receipt of an official notice from the Oregon State Bar regarding a complaint (whether from Client Assistance Office or Disciplinary Counsel), the DDA shall forward copies of all materials to the General Counsel and the CDDA of the attorney's division.

Attorneys are to cooperate fully with the investigation, working with the General Counsel and the CDDA to be responsive to any questions or requests for documents. All correspondence with the Bar will be copied to the General Counsel and CDDA.

The General Counsel does not provide legal representation to DDAs facing bar complaints, and internal conversations regarding such matters are not privileged. Legal representation for DDAs facing bar complaints may be provided by outside counsel, at the expense of MCDA, at the discretion of the District Attorney in particular cases.

3.5.2. Lawsuits

Whenever an employee of this office is served with a lawsuit relating to or arising from their work in this office, they shall inform the General Counsel and provide them with a copy of the lawsuit or complaint. If a DDA is served with a complaint that has a mail-in notice, the DDA should not sign the notice until the Attorney General's Office has been notified.

Upon receiving a copy of the complaint, the General Counsel shall notify the Attorney General's Office in writing. A copy of that transmittal letter shall be sent to the DDA who is the subject of the lawsuit and the District Attorney.

3.5.3. Staff Member as Crime Victim or Defendant

To avoid any conflict or appearance of a conflict office supervisors and management needs to be advised if you are a victim of a crime in a case that may be reviewed by the office.

Please contact your supervisor, the Chief of Staff, or the CDDA in charge of your division and advise them of the circumstances.

Because it is necessary to know in advance of any personal court appearances by employees, it is your responsibility to advise your immediate supervisor should you be arrested or receive a citation that requires an appearance in court. The supervisor will, in turn, notify the Chief of Staff or the CDDA in charge of your division.

3.5.4. Parking Tickets and Traffic Citations

Whenever a staff member receives a traffic citation they shall notify their supervisor, who will, in turn, notify the First Assistant to the District Attorney or the District Attorney. The employee must inform the First Assistant to the District Attorney or the District Attorney if the matter is going to be challenged. Although an employee may choose to challenge a parking ticket and seek a "not guilty" finding employees may not take any action that suggests or implies they are seeking special treatment as a result of their association with this office. If contested, the employee shall notify the First Assistant to the District Attorney or the General Counsel of the matter's ultimate resolution.

3.5.5. Investigation of Staff and Criminal Associations

It is the responsibility of staff members to immediately notify either the First Assistant to the District Attorney or the District Attorney of any criminal case, investigation, or arrest for alleged criminal conduct involving the staff member or the staff member's immediate family.

3.6. Association with Victims/Witnesses or Defendants

Employees of the District Attorney's Office should avoid regular or continuous non-professional associations with any persons they know are either under criminal investigation, under criminal charges, or having been convicted of a criminal offense, are presently incarcerated, on probation or parole. Employees who are unable to avoid regular or continuous contact due to family or social relationships can request an exemption from this prohibition from the First Assistant to the District Attorney or the District Attorney if it can be demonstrated that the contact does not place the staff member or the District Attorney's Office in a compromising situation. It is incumbent upon the employee to notify the First Assistant to the District Attorney or District Attorney immediately upon becoming aware of this situation.

Employees of the District Attorney's Office should also avoid non-professional associations or socializing with persons who are victims or witnesses when it would create an appearance of conflict. Upon becoming aware of such a situation, attorneys should notify the CDDA in charge of their division and support staff should notify the Chief of Staff immediately. The general rule that should be applied is: when in doubt, ask. If an employee has a question concerning their involvement with an individual receiving services from the District Attorney's Office, it should be directed to a management attorney.

3.7. Vehicle Assignment and Use

3.7.1. Definitions

The following terms shall have the following meanings:

“Assigned Take-Home Vehicle” means a county vehicle that is used by a District Attorney Office employee for county business and for regularly commuting to and from the employee's home and workstation. The vehicle shall be a subcompact or midsize administrative car unless the approval is based on the “Special Equipment Vehicles” assignment criteria.

“Assigned Vehicle” means a county vehicle assigned to a department or county employee for county business, but not for employee commuting to and from the employee's home and work station.

“Call-Out” means a directive to an employee to report to a work site during off duty time or day, and to respond to emergencies, which require immediate response to protect life and property.

“Commute Trip Mileage” means the mileage from an employee's home to the regular place of work and back, or the actual daily mileage from home to the first work-site and from the last work-site to home.

“Work Station” means the office or site a county employee reports to perform normally scheduled work.

“De minimis personal use” is defined as stopping for a personal errand on the way between a business location and the employee's home. County policy defines that de minimis personal use is allowable for a take-home vehicle under the following conditions:

- An employee must not go out of the way of a direct route to or from home to make a personal errand.
- The personal errand stop must be of short duration for a necessary purpose and should not take place daily.
- De minimis use does not extend to personal visits or entertainment of any kind.

3.7.2. Policies

Assignment of county vehicle is neither a privilege nor a right of any county employee.

Assignment of a county vehicle shall not be made based on employee merit or employee status.

Take-home county vehicle assignments must be authorized by the District Attorney.

Use of County vehicles for personal purposes other than travel to/from home/work is prohibited. See Multnomah County Administrative Procedure FLT-2 “Take-Home” Vehicle Assignment.

3.7.3. Assignment Criteria

To receive a take-home vehicle assignment, one of the three criteria, Emergency Response, Specialized Equipment Vehicles, or Economic Benefit to the County, must be documented:

Emergency Response

Take-home vehicles may be assigned to county employees who:

Are called out at least 12 times per quarter, or 48 times a year and have primary responsibility to respond to emergencies which require immediate response to protect life or property; and

Cannot use alternative forms of transportation to respond to emergencies; and

Cannot pick up county-owned assigned vehicles at designated sites without significantly impacting the employee's ability to respond to emergencies, which require immediate response to protect life or property.

Special Equipment Vehicles

Take-home vehicles may be assigned if an employee needs specialized equipment or a special vehicle to perform county work outside of an employee's normally scheduled workday.

Employees when taking a county vehicle home must have primary responsibility to respond to calls and generally are available to respond when requested.

Special equipment vehicle assignments shall be supported by information describing the special equipment needed to perform the county work. The special equipment shall be substantial in nature i.e., telescoping bucket truck, significant tools requiring a pickup or van, etc.

Economic Benefit to the County

Take-home vehicles may be assigned when there is an economic benefit to the County. This may occur if an employee's travel reimbursement costs are greater than the commuting costs associated with overnight vehicle usage or when the cost of traveling directly from home to a field job site rather than from a county parking facility to the field job site significantly exceeds the cost of the take-home vehicle use.

Lost productivity costs, the cost of the time it takes an employee to travel from a designated county parking facility to their workstation, may be included in the calculation of economic benefit to the county.

3.7.4. Responsibilities

District Attorney, First Assistant or Chief Investigator

District Attorney, First Assistant or Chief Investigator shall be responsible for implementation of the following procedures:

1. Evaluate and authorize or deny take-home vehicle assignment requests from all District Attorney's staff members.

2. Route approved copies to appropriate department directors each time a new take-home vehicle assignment is authorized.
3. Submit the summary of authorized take-home vehicle assignments to the County Fleet Services and to the Finance Division on an annual basis.
4. On an on-going basis, Fleet Services shall review and authorize or deny Take-Home Vehicle Authorization Forms submitted by department directors.
5. Recordkeeping: Develop and maintain central records of all take-home vehicle assignments. At a minimum, the record-keeping shall contain:
 - Take-home authorization by department, division, employee name and position title.
 - The records shall be maintained by the District Attorney Office and County Fleet Services and shall be readily available upon request.
 - By January 31 of each year, Fleet Services shall make available to the Board of County Commissioners an updated list of take-home vehicle assignments.
6. Annual Monitoring and Re-Authorization of Take-Home Vehicle Assignments:
 - On an annual basis, Fleet Services shall re-evaluate, update and re-authorize all take-home vehicle assignments.

The District Attorney or their designees shall:

1. Provide a copy of the policies, procedures and criteria governing take-home vehicle assignments to employees requesting Take-Home Vehicle Assignment.
2. Review the need for Take-Home Vehicle Assignments in their respective departments and compliance with the previously listed policies and criteria.
3. Apply the following standards and criteria for take-home assignment:
 - The employee commute mileage shall be less than the business mileage.
 - In cases where the Take-Home Vehicle Assignment requests are based on Emergency Response or Special Equipment, the department must have determined that emergency response is necessary outside of the employee's normal working hours.

4. Review and approve initial and annual reauthorization requests for take-home vehicles, to ensure that the requests meet the applicable criteria requirements governing take-home vehicles, before those requests are submitted to Fleet Services for review and approval.
5. Forward a copy of the District Attorney Take-Home Vehicle Authorization Forms to County Fleet Services.
6. Maintain current lists of authorized take-home vehicles.
7. Provide written notification to Fleet Services whenever individual employees no longer have assigned take-home vehicle authorization.
8. Assure that copies of Take-Home Vehicle Trip Log Forms, submitted by employees, are retained in departmental files for a period of time not less than three years.
9. Provide City of Portland parking placards for each vehicle to use while on official business. Placards may be used in personally-owned vehicles (POV) if the POV is being used for official business.
10. Direct employees with assigned vehicles to pick up and drop off their vehicles at designated county parking areas when appropriate.

Employees

Employees with assigned take-home vehicles shall:

1. Submit completed Take-Home Vehicle Authorization Form through the appropriate departmental process to department director for review and approval. An update of this form must be completed and submitted annually for reauthorization.
2. Notify the Chief Investigator as soon as practicable regarding any accident, collision, damage to or mechanical/maintenance issue with any take-home vehicle.
3. Schedule regular maintenance, keep the vehicle fueled, and maintain interior and exterior cleanliness.
4. Refrain from the use of any intoxicants, including alcohol, during a period of time in which the take-home vehicle will be in use, including during a reasonable period prior to operating the take-home vehicle.
5. Comply with “de minimis personal use” definition.

6. Transportation of family members is authorized with approval of the Chief Investigator (within "de minimis personal use" definition).

3.7.5. Authorization for Use of Personal Vehicle

County Motor Pool and Carshare provide automobiles for business purposes. If travel is required during the course of the workday, the first option is for employees to utilize cars from the County Motor Pool or Carshare. In some cases, the locations and or timing of meetings in relation to the employee's work location and or home make use of county vehicles impractical. Consequently, procedures are in place to allow for use of a private automobile and to reimburse staff for expenses.

3.7.6. Reimbursement for Expenses Related to Approved Use

Employees are entitled to receive reimbursement when they use private automobiles for business purposes and they are authorized to do so in advance by their supervisor. For DDAs the requests should be submitted to the SDDA in their unit or the CDDA in charge of their division. For other staff members, requests should be directed to their Operations Supervisor, Program Coordinator, Chief Investigator, Operations Manager, or the Finance Manager.

The Mileage and Parking Reimbursement form is e-mailed out to all MCDA employees on the first business day of each month by a finance staff member and is also available on the Commons: Travel and Mileage. Requests for reimbursement must be submitted to finance monthly. The signed reimbursement requests must be received by finance no later than the last business day of the month following the month during which the costs were incurred. For example: July parking and mileage reimbursement requests must be received by finance no later than the last business day in August.

Local 88 employees should refer to the Local 88 contract for further details regarding reimbursement of expenses.

Mileage Reimbursement

Staff members who have approval from a supervisor to use a private automobile for work-related travel may request mileage reimbursement. Mileage expenses cannot be reimbursed for commuting to and from work. Mileage reimbursement is for travel during the workday from one work site to another work site as well as for travel to and from supervisor-approved trainings. The current reimbursement rate is the current federal "Privately Owned Vehicle (POV) Mileage Reimbursement Rate," set by the General Services Administration.

Parking Reimbursement

Employees who are assigned to satellite offices and drive their private automobiles downtown to attend court appearances and or meetings are eligible for parking reimbursement. Receipts must accompany all parking reimbursement requests.

3.7.7. Reporting Accidents

Whenever employees are involved in any traffic accident involving a county vehicle or a personal vehicle while conducting county business, the employee shall immediately report this to their supervisor and the Finance Manager.

3.8. Political Activity

Participation in political activities, judicial races, initiative campaigns, legislation and ballot measure activities outside of work time is encouraged.

If a staff member, as part of their job, is asked to comment or provide information to candidates or measures that have qualified for the ballot, it is necessary to clear any verbal commentary or requests for information through the First Assistant.

All employees are expected to fully comply with ORS 260.432, which reads in relevant part:

No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the adoption of a measure or the recall of a public office holder.

No public employee shall solicit any money, influence, service or other thing of value or otherwise promote any political committee or promote or oppose the nomination or election of a candidate, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.

Once a measure has qualified for placement on a ballot, ORS 260.432 effectively prohibits public employees from promoting or opposing its adoption during working hours. Although officials and employees of the agency might possess valuable expertise and information, when an issue that an agency views as strictly a matter of medical science has become a ballot measure, the agency may not participate in the debate using public time or funds, even if that agency sees itself as merely providing the public with scientifically verified information or merely continuing an ongoing activity of the agency.

3.9. Communicable Disease Policy

Any employee with a known infectious disease for which there is a known risk of transmission to co-workers or clients shall take all reasonable steps to prevent transmission of the infectious disease to co-workers and immediately consult with their supervisor to be accorded either of the following:

- Given as a reasonable accommodation a suitable and available alternate assignment within the work organization which does not pose a risk of disease transmission, or
- Placed on a medical leave subject to the terms and limitations of the applicable collective bargaining agreement or the Management Compensation Ordinance.

Any employee with a known infectious disease for which there is no known risk of transmission in the work place shall be continued in their position as long as the employee is able to perform their job duties. In instances in which such an employee is subject to risk of complications of their illness due to ordinary work place conditions, reasonable accommodations will be made in job assignment to avoid such complications.

If the District Attorney, following consultation whenever practicable with the county Health Department, has reasonable basis to believe that an employee has an infectious disease which may pose a hazard to their co-workers or clients, the District Attorney may request a medical assessment from the employee's physician. If in the District Attorney's judgment, the medical assessment by the employee's physician does not adequately resolve the issue of hazard, the District Attorney may require a second opinion from a physician selected by the District Attorney in consultation with the Health Department. Any leave taken under the terms of this section for medical examinations shall be an administrative leave with pay. To the extent not covered by the employee's medical insurance, the cost for medical examinations required under this section shall be borne by the county.

The District Attorney may consult with the county Health Officer for technical assistance regarding medical issues, which may arise out of an infectious disease incident. Medical technical assistance shall include, but not be limited to, providing a current list of infectious diseases, which are transmissible in the work places operated by the county. This listing shall be consistent with the rules of the Oregon Public Health Division.

The Employee and Labor Relations Division will be available to provide technical assistance regarding questions of employment rights, which arise out of an infectious disease incident. It shall be the responsibility of the county to provide employees with education and training regarding infectious disease. Such training will include personal

preventive techniques such as immunization and good hygiene. Any training provided to county employees regarding hazardous materials shall specifically include information concerning the infectious risks associated with contact with blood and other bodily fluid spills.

In implementation of this policy, the health records of employees and information concerning an employee's health condition shall be confidential.

3.10. Substance Abuse Policy

3.10.1. Policy Rationale

As District Attorney for Multnomah County, I have an obligation to provide the citizens in this community with quality services. I also have the obligation to protect the lives and safety of every individual in the county.

Members of the Multnomah County District Attorney's Office constantly work with confidential information and documents pertaining to criminal investigations. We have information relating to the safety of individuals such as informants, witnesses and vulnerable victims; we have information regarding the future service of search warrants and arrest warrants; we help monitor wiretaps and have information regarding body wires; we have information about ongoing investigations; and we have personal information about the members of our staff that could be used by offenders to retaliate against the DDAs or other employees of the office. Compromising any of these materials or a momentary lapse in attention could result in injury or death to another person. Moreover, since people who use illegal (whether state, federal and or local) drugs sometimes voluntarily or unwittingly immerse themselves in ongoing criminal enterprises in order to obtain those drugs, such people can pose a security risk within the law enforcement community. We cannot allow the information we possess to be distributed in the criminal community. A drug free work environment is essential to meet this obligation.

In addition, the DDAs have other responsibilities where drug usage would create a risk to public safety. DDAs are constantly working with drug cases and it is not uncommon that they must handle the illegal drugs as part of their case presentation. Because our offices are located throughout the metro area, DDAs frequently drive to get to meetings or court hearings. Whenever there is a homicide or other high-profile case the DDAs are generally called out to the scene. We frequently bring firearms, ammunition, drugs, and other evidence into our offices in preparation of trial.

3.10.2. Pre-Employment Drug Screening

I therefore find that the following is a partial list of those positions in which drug impairment constitutes an immediate and direct threat to public safety. Pre-employment drug screening will be required for all employees who are either employed or likely to be employed in the following capacities:

- Positions that try or assist in trying drug cases, or cases where drugs are components of the case.
- Positions that have access to sensitive and confidential information such as contained in our digital case management system.
- Positions that come in contact with firearms, or are physically located near where firearms might be located.
- Positions where the employees carry firearms or dangerous weapons.
- Positions where employees drive cars as any part of their duties.
- Positions that have access to personal information about the prosecutors.
- Positions where the employee would have information that could jeopardize someone's life if the information was distributed outside the office.
- Positions that have access to information regarding future activities of law enforcement agencies such as court orders, search warrants, arrest warrants, wiretap orders, body wire orders, grand jury information, indictments and criminal informations.
- Positions where a person could disrupt, alter or affect a criminal case.

The intent of our substance abuse policy is not to be punitive but rather to help ensure the safety of the police, victims, witnesses and the men and women who work in the Multnomah County District Attorney's Office and to assure the citizens of Multnomah County that they can continue to depend upon the District Attorney's Office for quality services. It also gives our employees the assurance that they will continue to have a safe and drug free workplace. Toward this end, pre-employment drug screening for all DDAs was instituted on February 1, 1989. Pre-employment drug screening for all Local 88 staff was instituted in August, 1996. Pre-employment drug screening will continue to be required for all employees who are either employed or likely to be employed.

It is not my intent to pursue any criminal cases as a result of any pre-employment drug testing. The results will be confidential and will not be used as evidence in any criminal

prosecution, or criminal investigation. The results of a positive test will not be given to any other employer.

3.10.3. Prohibited Alcohol and Illegal Drug Use

The use of alcoholic beverages on or off office premises during normal working hours, which includes lunch hours, is prohibited.

No alcoholic beverages are permitted in the office for personal use.

The unlawful (whether state, federal, or local law) possession, use, manufacture, and/or distribution of controlled substances, which includes prescription drugs, are prohibited.

The District Attorney recognizes that the manifestations of prohibited conduct may differ from person to person. Therefore, the District Attorney will look at changes in work performance, on-the-job behavior, objective and articulable signs of substance abuse, or credible evidence of the presence or use of prohibited substances in determining whether an employee has engaged in prohibited conduct.

When there is cause to believe that an employee has violated this policy, the District Attorney, or the First Assistant to the District Attorney, may require that employee to take a blood, urine, or breath test to determine the presence of alcohol or drugs. If there is a positive finding, a second confirmatory test will be administered. Test results are confidential.

Violation of this policy may result in disciplinary action. Disciplinary action includes but is not limited to:

- Verbal and written reprimands;
- Placing an employee on administrative leave;
- Requiring participation in a treatment program as a condition of continuing employment;
- Suspending or terminating an employee;
- Initiating a criminal investigation;
- Prosecution.

It is the intent of the District Attorney to correct problems associated with prohibited conduct through referral to an EAP rather than to penalize employees. However, this may not be possible in every case, particularly where controlled substances are involved. The unlawful possession, use, manufacture and or distribution of controlled substances are defined as criminal acts and will be responded to as such.

3.10.4. Available Resources

My continuing expectation is that all staff, whether on or off duty, shall follow reasonable rules of good conduct and behavior and shall not act in a manner that would bring discredit upon the Multnomah County District Attorney's Office. I recognize the value of each employee, and their health and safety are of significant concern to me.

Because of this, I strongly encourage all employees to deal with any substance abuse problem through the Multnomah County Employee Assistance Program (EAP). The EAP currently available is through UNUM Provident Work-Life Balance. This confidential and free service is available to all employees 24 hours a day. This EAP is provided at no charge to all employees and their families. The Oregon State Bar can also provide attorneys with help and referral for substance abuse problems. Additional information can be obtained through the Attorneys Assistance Program of the Professional Liability Fund.

3.11. Employee Firearm Policy

Staff members must know and follow the applicable state and federal laws pertaining to the possession and use of firearms. Failure to do so may result in disciplinary action, including termination.

If any staff member intends to apply for a concealed weapons permit, they must advise the District Attorney of their intent to do so prior to submitting the application for such permit. Copies of such applications and actual concealed weapons permits must be filed with the District Attorney.

No staff member, except investigators authorized under the District Attorney Weapons Policy for investigators, may possess on District Attorney Property or carry, concealed or otherwise, a firearm while working in an official capacity. Working in an official capacity is meant to cover all official activity, including but not limited to, work in the office, in the court, and locations necessitated by employment, such as crime scenes.

Firearms may not be carried by staff, concealed or otherwise, in public vehicles assigned for use by employees of the District Attorney's Office except by District Attorney Investigators pursuant to policy. Likewise, firearms may not be so carried in private vehicles which are being used for official business. This does not prevent staff from transporting weapons in their private automobiles on their way to work, but does prohibit those automobiles from then being used, for example, by staff to drive from one office location to another during working hours. Firearm lockers are available for checking weapons in the lobby of the courthouse.

Nothing in this section is meant to restrict the carrying or possession of weapons necessary as evidence or otherwise in cases investigated or prosecuted by this office. Any exception to this policy can only be at the express authorization of the District Attorney.

3.12. Employee Time Off Policies

3.13. Vacation

3.13.1. General

All employees, including Local 88 members, will submit their vacation requests to their supervisor using the County's Workday system. Exempt employees requesting partial day leave should submit their requests by e-mail to their exempt manager or designee. Employees should always obtain approval prior to incurring expenses for travel as requests may not be approved, depending on the needs of the office.

3.13.2. Peak Vacation Periods

Holiday and summer vacation requests are normally solicited from Local 88 employees one to two months in advance of the season by memo from the exempt manager or designee. In an effort to give all employees the opportunity to have time off during the holidays and or summer, consideration will be given to those employees who have not taken any time off during the previous year's holiday season and or summer time.

MCPAA employees can likewise expect some level of coordination within their unit to ensure the basic functions of the office are met during these periods.

3.13.3. MCPAA

It is acknowledged that, as professionals, attorneys will often work more than 40 hours a week. It is also acknowledged that as a result attorneys will sometimes work less than a full 8-hour shift on a particular day. Attorneys are required to submit requests for leave to their supervisors when taking time off. If the leave request is approved attorneys should not mark "partial day" on their timesheets for that time. No deduction in pay or vacation will result for absences of less than a full workday. All absences, regardless of duration, will continue to receive the approval of the attorney's supervisor.

For vacations in excess of a day, the following vacation policy is to ensure that vacation time is equally and fairly distributed among staff members. It also takes into account the needs of the office.

- Vacation requests must be submitted through Workday.
- Requests must be approved by the unit supervisor.

- Vacation requests of longer than two weeks (10 working days) in a 31-day period must be approved by the District Attorney.
- The staffing needs of the office will determine whether a request is approved.
- Vacation requests normally will be approved on a first-come, first-served basis.

3.13.4. Vacation - Local 88

Use and scheduling of accrued vacation for Local 88 employees of the Multnomah County District Attorney's Office will be handled pursuant to and in compliance with the Local 88 agreement. Article 8, Section 5 states that "Employees will be given reasonable opportunities to use their vacation time; however, employees' use of accrued vacation leave shall be subject to the needs and requirements of the County. Employees shall be permitted to select one or more vacation times. The method of vacation selection shall be in accordance with Memoranda of Agreement negotiated between the Union, Labor Relations and each department and is incorporated herein by reference." Vacation requests that result in scheduling conflicts that cannot be mutually resolved between Local 88 employees shall be determined by the relevant provisions of the Local 88 agreement.

3.14. Other Leave Types

3.14.1. Sick Leave/Leave Without Pay

MCDA follows the Multnomah County personnel rules regarding Sick Leave (2-45). Sick leave may be used by an employee for non-occupational conditions involving the employee or to care for a member of the employee's family or household, as defined in the personnel rules.

Employees taking sick leave are required to notify their supervisor that they will not be reporting to work, unless not medically reasonable. An employee who has a position which requires a replacement (including those whose work would need to get reassigned for the day) during illness must notify the supervisor on duty in sufficient time (at least 90 minutes) and follow call in procedures before the beginning of the employee's shift so that a replacement may be obtained. Other employees must notify their immediate supervisor, if available, or work site no later than fifteen (15) minutes before their scheduled starting time. It is understood that employees may not be able to provide advance notice in emergencies, when caring for a sick child, or sudden illness but will notify management as soon as possible. Failure to report may result in loss of County pay for the day involved. Where employees are taking sick leave for scheduled appointments, advance notice shall be given to the employee's supervisor of the need to be absent for the appointment.

Use and misuse of leave for sick leave purposes is outlined in County personnel rule 3-55. Unless otherwise protected by law, sick leave shall be confined to accrued and available sick leave. Only if sick leave charges are in excess of accrued sick leave may they be charged to accrued and available vacation leave, saved holiday time, or compensatory time, sequenced at the employee's option, until they are exhausted and then leave without pay. Leave without pay may be requested, but only after all accrued leave has been utilized. Leaves without pay are subject to the approval of the District Attorney.

3.14.2. Family Medical Leave Act (FMLA), Oregon Medical Leave Act (OFLA), and Paid Leave Oregon (PLO)

MCDA follows the Multnomah County personnel rules regarding Paid Parental Leave (Rule 2-57) and Family and Medical Leave (Rule 2-60).

Consistent with Rule 2-60-110 it is the obligation of an employee seeking to take leave under this section to notify their supervisor, who will in turn immediately notify the Human Resources Manager.

Where the need for leave may be reasonably anticipated (e.g. a scheduled medical procedure, pregnancy, or military deployment) the employee shall give at least four weeks notice to MCDA of the intent to take leave where possible.

3.14.3. Leave of Absence

Leave requests in excess of allocated vacation time will be considered consistent with the needs of the office and must be approved by the District Attorney. The office recognizes there are exceptional circumstances, which may necessitate an extended leave request and will consider the request based upon the needs of the individual and the requirements of the office.

3.14.4. Educational Leave and Professional Recognition Leaves

Requests for attendance at educational programs will be reviewed individually. A determination will be made whether or not to grant office leave time for attendance for such events. Requests by DDAs for Professional Recognition Leave shall be handled in accordance with the procedures identified in the MCPAA contract.

3.14.5. Leave for Jury Duty

The District Attorney encourages DDAs, management, and staff to report for jury duty when they are summoned for jury duty.

When an employee is required to report for jury duty the following policy is in effect:

- All staff shall be granted leave with full pay in lieu of jury fees on any scheduled day of work they are required to report for jury duty. Staff should indicate to the court that they are declining the jury service fee because their employer is paying their salary while serving.
- If you are excused early for the day, you are to report to the office for the remainder of your work shift. This is in agreement with the Local 88 contract, "An employee who is excused or dismissed from jury duty before the end of the day will report back to work if practicable."
- In the event that you are selected for a criminal case, do not return to the office or discuss the case with anyone in this office until the case is completed.
- For attendance purposes please call in to your supervisor or leave a voice mail message on a daily basis while you are on jury duty.

3.15. Employee Background Checks

As a condition of employment, applicants for positions in the District Attorney's Office will also be required to successfully complete a fingerprint-based criminal records check and a Law Enforcement Data System (LEDS) criminal history check through the Oregon State Police and the Federal Bureau of Investigation.

A background investigation must include at a minimum:

1. Review of Federal Bureau of Investigation (FBI) fingerprint results conducted to identify possible suitability issues;
2. Check of local law enforcement agencies where the subject has lived/worked/attended school within the last five (5) years and if applicable, of the appropriate agency for any identified arrests; and
3. Validate the subject's eligibility to legally work in the United States.

3.15.1. Timing/Frequency

A background check will be performed on all candidates for employment at MCDA prior to a final offer of employment.

Background checks will be performed at a minimum every five years for:

- All MCDA employees with access to Federal Tax Information, in accordance with 26 USC 6103 and IRS Publication 1075;
- All MCDA employees working in a grant-funded position requiring an enhanced background screening.

3.15.2. Fitness Determination

Once the results of relevant background investigation are received, Human Resources will review the results and make a preliminary fitness determination as described in OAR 137-007-0240. A final fitness determination as described in OAR 137-007-0260 will be made by the First Assistant for lawyers or the Chief of Staff for non-lawyer staff regarding the individual's suitability for the position. The District Attorney has adopted the review criteria in the above referenced OARs to guide management staff in assessing background check information, however the appeals procedures referenced in OAR 137-007-0260(5) and other OARs in that chapter do not apply to individuals employed by or seeking employment with the District Attorney's office. A person wishing to challenge an adverse favorability finding may submit whatever materials they wish to be considered to the District Attorney within seven days of the adverse determination. The decision of the District Attorney is final.

4. Crime Victims

4.1. Statement of Principles

A primary goal of this office is to ensure crime victims a meaningful role in the criminal and juvenile justice system and to accord them due dignity and respect. To this end, every effort should be made by all members of our staff to maximize victim involvement at every possible stage of a criminal case. Every DDA and Victim's Advocate must be familiar with the statutory Crime Victims' Bill of Rights (see ORS 147.405 and related statutes) and the state constitutional rights of crime victims contained in Article 1, Sections 42 and 43 of the Bill of Rights of the Constitution of Oregon.

It is the responsibility of each employee of this office to see that victims are not only active participants in the criminal proceedings, but that they receive whatever assistance or referral information this office can provide. Therefore, all members of this office are expected to be familiar with the services and programs available to victims and to refer victims to those services whenever needed.

4.2. Prompt Advice of Rights Required

It is the duty of the DDA responsible for a case in coordination with any assigned victim advocate, to ensure victims are advised of their rights as soon as reasonably practical. This includes complying with the statutory requirement that reasonable efforts be made to notify a victim of the time and place of arraignment. If the victim wishes to exercise their rights, it is the responsibility of the DDA, either directly or through the victim advocate, to inform the victim of hearings, negotiations, or any other right the victim wishes to exercise.

4.3. Victim Involvement in Pretrial Offers

ORS 147.512 (a) and (c) require the prosecuting attorney to make reasonable efforts to consult with the victim in a person felony case prior to providing a pretrial offer, and, if the victim so chooses, prior to any final plea agreement. These efforts should be noted in the Case Management System. Because advocates may be asked basic questions about the pretrial offer in later conversations with the victim, both the fact of the consultation and a basic summary or copy of the pretrial offer must be entered into the case management system. It is not appropriate for advocates to engage in detailed discussions regarding pretrial offers in the DDA's absence, and those questions should be referred back to the trial DDA. The DDA should also be prepared to make a record to the court regarding the extent to which the victim was consulted on any pretrial offer in these cases as required by ORS 147.512(c).

For non-person felony cases and domestic violence misdemeanor cases, while there is no legal requirement that a victim be consulted regarding the character of a pretrial offer, this is nonetheless a best practice whenever possible. Where these consultations occur, they shall be log noted in the case management system. Because contact with victims is often more sporadic in these cases and notification of the victim prior to sentencing may be time pressured, it may be more common for advocates to answer basic questions regarding the pretrial offer. For this reason, it is important that a copy of the PTO is available in the digital case management system.

4.4. Restitution

Victims have both statutory and constitutional rights to restitution. Article I Section 42(1)(d) of the Oregon Constitution states that crime victims have “[t]he right to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury.” Additionally, ORS 137.106(1)(a) obligates the district attorney to investigate and present to the court “evidence of the nature and amount of damages” for restitution. It is important to familiarize yourself with the restitution statutes ORS 137.103 to 137.109 to ensure that the victims’ interests are protected.

It is not only the policy of this office, but a requirement of Oregon law, that restitution must equal the amount of economic loss for victims of all types of crimes. ORS 137.106(1).

When issuing a case, the DDA is responsible for determining if restitution is applicable. If it is, a flag is made in PbK that initiates the process for staff to send a restitution letter to the victim(s) and attempt to contact them to discuss restitution. A second letter is sent 21 days following the first letter if restitution documentation has not yet been received. When restitution documentation is received, it is entered into PbK and sent for discovery.

In all cases where a victim has sustained a loss, it is the responsibility of the DDA who handles the sentencing hearing to be familiar with the victim's restitution request and to request restitution be included in the judgment on behalf of the victim. This shall be the policy even though the defendant is sentenced to a lengthy period of incarceration.

In cases where more than one defendant is held responsible for a criminal act causing an economic loss, it is generally the position of this office to hold all defendants jointly and severally liable for the payment of restitution. Therefore, judges should be requested to pronounce judgments in such a way that, in the absence of mitigating circumstances, all defendants are held equally liable for a victim's losses.

Restitution to victims is an important part of a defendant's sanctions and this office will pursue probation violation hearings for those who willfully fail to make scheduled court-ordered payments.

5. Criminal Investigation

5.1. Search Warrants

No DDA shall prepare or authorize a search warrant concerning the search of an attorney's office, a news gathering organization's premises, an elected official's office, or a reporter's notes without the specific approval of the District Attorney. The District Attorney and CDDA of the affected division shall be advised prior to the service of any warrant on any case that could potentially generate exceptional scrutiny, such as high publicity, sensitivity or notoriety.

Multnomah County Supplemental Local Trial Court Rule 4.035 requires that a DDA personally review the facts supporting every search warrant request.

During business hours, search warrants will be reviewed by an available DDA from the trial unit that handles the crime under investigation. Warrants needing review after business hours that cannot wait for the next business day will be reviewed by the on-call DDA.

5.2. Electronic Surveillance Orders

This District Attorney must personally approve authorizations for wiretaps and eavesdropping applications under ORS Chapters 133 and 165. This authority may not be delegated under federal law. *State v. Harris*, 369 Or. 628 (2020) (interpreting 18 USC § 2516(2)). All inquiries concerning these matters should initially be directed to the CDDA of the affected unit or the First Assistant to the District Attorney, who will in turn present the matter to the District Attorney. All electronic surveillance orders will be entered in an electronic surveillance log and a filing deadline sheet will be filled out for

each order. The DDA in charge of the surveillance will be responsible for meeting each of the deadlines required.

Annual reporting of these orders to the federal government is required by law. The Staff Assistant will oversee and facilitate this process.

5.3. Jail Call Protocol

The Multnomah County Sheriff's Office and Securus Technologies® have safeguards in place to prevent the recording and release of confidential attorney-client communications. It is incumbent on this office, however, to take additional steps to ensure the integrity of such privileged communications. Additionally, compliance with discovery obligations in this area is recognized and necessary. The following procedures should be followed by members of this office when seeking to utilize recorded jail calls or recorded video visits.

5.3.1. Screening

All calls or video visits that are monitored must be subsequently downloaded and disclosed to the defense. This is to ensure compliance with the applicable constitutional, statutory and case law-imposed rules of discovery and the principles established in *Brady v. Maryland*. The initial screening of calls and video visits is an investigative task that should be performed by the case detective or a district attorney investigator or designee. Generally, this function should not be performed by DDAs. Adherence to this procedure will prevent case prosecutors from potential exposure to privileged communications in the unlikely event the safeguards in place have failed. The investigator will check the "all calls" category on the Securus search screen on a requested case and then "completed calls" to determine which phone numbers are not attorney calls or otherwise privileged calls. Calls which are determined to be non-confidential will then be downloaded.

An exception to this procedure may exist when a DDA knows a particular number is non-privileged. With approval of the DDA's assigned SDDA, such calls may be monitored by persons other than the case detective or district attorney investigator or designee.

5.3.2. Release of Calls

The state's discovery obligations compel timely release of recorded jail calls and video visits. At the same time, recorded jail calls and video visits should normally not be provided to the defense unless and until the call or visit has been reviewed in its entirety by the case detective, district attorney investigator or designee or case DDA. Any exceptions to this rule must be sought and approved by a CDDA or the DDA's assigned

SDDA. The case detective, district attorney investigator or designee or DDA would nonetheless be expected to review such calls or video visits prior to trial.

5.3.3. Limited Use of Jail Call Monitoring

Review of recorded jail calls and video visits can be time consuming and of limited utility in many cases. Generally, jail call and video visit monitoring should be conducted only when the case DDA has a specific belief that information useful to case prosecution will result or that evidence of new crimes will be produced (e.g., tampering or solicitation). Generally, a priority is placed on homicide and other Ballot Measure 11 cases and high-profile matters. Jail call and video visit monitoring requests must be approved by the requestor's SDDA.

5.4. Criminal Activity by State Licensed Professionals

Any DDA becoming aware that a person is under investigation for or has been charged with a crime and that person is a member of a profession or occupation that is licensed by a state regulatory agency shall report this information to a management attorney.

If the person has been charged with a crime, upon conclusion of the criminal proceedings, the trial DDA will forward to the respective CDDA of their division a copy of the charging instrument, the police reports, and a note as to the disposition of the case. It will be the policy of this office to forward this information to the appropriate state-licensing agency for its consideration. This policy does not preclude an earlier notification of the state-licensing agency if the circumstances warrant.

Additionally, if the professional is a health care provider, supplier, or practitioner, and the conviction "related to the delivery of a health care item or service," a report must be made upon conviction to the National Practitioner Data Bank as per 42 USC § 1396r-2.

5.5. Criminal Activity by Teachers, School Employees, Coaches, Volunteers, or others with enhanced access to children

All cases involving child victims that document suspected criminal activity committed by teachers, school employees, coaches, volunteers, and others who have contact with children in an educational or child care setting, will be tracked by MCDA. If the individual is licensed, the appropriate licensing agency will be notified in accordance with MCDA Policy 5.4. Criminal Activity by State Licensed Professionals.

5.6. Evidence

The following policies have been adopted to restore stolen property to the owner as early as possible without jeopardizing the criminal case.

The District Attorney's Office does not require a retail store to retain stolen property pending the resolution of a misdemeanor charge. It will be the store's option whether to return the property to stock or retain it as evidence.

In almost all cases the investigating police agency is the physical and legal custodian of evidence seized during an investigation. DDAs receiving motions for return of property must include the attorney for the police department in any discussion of the motion.

When a DDA is in trial, the DDA may temporarily secure evidence during the trial in the office's property room. An investigator must be contacted to secure the property. It is the DDA's responsibility to have the property taken out of the property room within 30 days following the conclusion of the trial. Any property left beyond the 30 days will be returned to the police property room.

5.7. Proffers

There will be occasions when it will be necessary for a person to enter into a proffer with our office. A proffer usually comes in the form of a person being interviewed about relevant knowledge the person may have in anticipation that the person will be entering into some kind of a cooperation agreement with our office. Normally, the person will be represented by counsel, although that is not always the case. A DDA must obtain SDDA approval prior to entering into a proffer agreement.

The proffer letter included as an appendix to this manual below shall be used prior to all proffers, and shall not be modified without the approval of a management attorney. This generic proffer letter is intended to be reviewed and signed before the interview takes place and is not intended to replace the formal "cooperation agreement" that would be signed by the parties regarding the specifics of the particular case after the interview(s) are concluded.

DDAs will not engage in a proffer interview unless a law enforcement witness or an MCDA investigator is physically present with the DDA, absent SDDA approval otherwise. Proffer interviews will be audio recorded to document what was said. An SDDA may approve a proffer interview not be recorded if there is a significant case-specific reason. If such approval is obtained, the case DDA will document the approving SDDA's name and the reason the proffer interview was not recorded in the case file.

5.8. Use of Testifying Informants

Certain criminal investigations may require the use of testifying informants. While the selection and control of such informants is ultimately the responsibility of the investigative agency handling the informant, it is nonetheless the additional responsibility of the District Attorney's Office to be apprised of informant's backgrounds. Absent extraordinary circumstances, informants who have been arrested

or convicted of violent person felony crimes or sexual offenses should not be used as testifying informants. The District Attorney's Office expects that police agencies employing testifying informants to provide the following information:

- A full criminal history of the informant including arrest history;
- Police reports for any felony person crime or sexual offense;
- Any information regarding prior use as an informant;
- Any pending criminal investigations of the informant;
- Any promise of consideration for the informant;
- Any current or previous investigations in which the informant participated;
- Information regarding the stability of the informant including housing, employment and family ties to the local community;
- Any information regarding mental illness or substance abuse;
- Any information regarding known or suspected gang affiliations;
- Any information regarding racial bias of the informant;
- Any information regarding tattoos of the informant and their suspected meaning;
- Any information regarding the informant's association or acquaintance with intended targets of the investigation(s);
- Any information regarding prior corroboration of information previously supplied by informant;
- Any information regarding danger the informant may pose to the community along with any safety plan designed to mitigate these dangers;
- Any information regarding danger the informant may be subject to due to the contemplated investigation(s) along with any safety plan designed to mitigate these dangers.

A police agency seeking to utilize a testifying informant shall advise the SDDA of the appropriate trial unit prior to using the informant and provide the background information listed above for review and approval. The Multnomah County District Attorney's Office may decline to use a testifying informant when their value in a criminal investigation appears to be outweighed by other factors, including the informant's criminal history. Certain information regarding an informant may be disclosed to the defense pursuant to statutory discovery obligations.

5.9. Grants of Immunity

In order to appropriately secure a conviction, it is sometimes necessary to grant full, or “formal,” 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 not charging the proposed immunity recipient for their criminal conduct. Before offering anyone immunity, the following procedures must be considered.

5.9.1. 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 641 (1984), affirmed 298 Or 392 (1985).

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 full immunity for crimes they commit. All inquiries concerning these matters should be initially directed to the divisional CDDA or the First Assistant to the District Attorney, who in turn will present the matter to the District Attorney. Such a request should be presented at the earliest possible time.

A DDA requesting an authorization of statutory immunity must notify the District Attorney in writing.

5.9.2. Contractual Immunity

Contractual immunity can occur when a person agrees to testify at grand jury, trial, sentencing, or other proceedings in exchange for a benefit, usually a DDA's promise to dismiss a charge(s), to not bring charges, to allow a plea to a reduced charge, or to 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 all of the witness's obligations.

The advantage of contractual immunity is that the DDA can 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 person crimes and significant non-person crimes, before agreeing to any contractual immunity agreement, a DDA must receive approval from the CDDA in charge of their division, or the First Assistant to the District Attorney. For most non-person crimes, the DDA must obtain the approval from a SDDA in their unit.

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

- A statement that it only covers those crimes specifically listed.
- A statement that all terms, including changes, must be in writing and signed by all parties. It should state that it is the “exclusive recital of the terms.”
- The specific nature of the information and crimes that the witness agrees to testify and or debrief about, including a recitation of persons against whom the witness shall testify, or debrief about.
- A statement that the witness is subject to prosecution for perjury.
- 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.
- A statement as to who will determine whether there has been a breach. Absent compelling reasons, this should be reserved to the court.
- A statement as to the duration of the agreement. Normally, this will include trial, appeals, post-conviction, and re-trials.
- 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 breach by the defendant. See section 7.8, “Cooperating Witnesses”
- A statement of the specific obligations of the witness. Examples are:
 - To truthfully provide complete and detailed information;
 - To provide all information known;
 - To name names;
 - To make and record phone calls;
 - To wear recording devices;
 - To introduce informants or undercover officers to other suspects;
 - To cooperate, use best efforts, and testify;
 - To take, complete and pass a polygraph that will be given by the police.

5.9.3. Factors to Consider Before Granting Immunity

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

- Is the witness necessary for conviction?
- Are there other means of securing the information?
- The witness's role in the offense compared to other participants.
- The witness's prior criminal record and criminal activity in comparison to other defendants.
- The witness's cooperation and willingness to aid early in the investigation and or prosecution.
- The witness's willingness to give full disclosure of the present offense and other related criminal activity.
- The witness's believability and willingness to take, complete, and pass a polygraph examination on the information they provided.
- The witness's willingness to provide a complete and truthful sworn statement prior to the grant of immunity.
- 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.
- Any other relevant factor that warrants the granting of immunity.

5.10. Investigation of Law Enforcement-Involved Deaths/Serious Physical Injury

The grand jury will review all cases involving a law enforcement officer's discharge of a firearm which results in death, serious physical injury or physical injury unless at the discretion of the District Attorney it is determined that grand jury review is unwarranted.

6. Case Review

6.1. General Principles

The prosecutor is not obligated to file all possible charges which available evidence might support. The prosecutor may properly exercise discretion to present only those charges, which are consistent with the evidence and in the best interests of justice.

In making the charging decision, the DDA shall file only those charges, which the DDA believes can be reasonably substantiated by admissible evidence at trial. The DDA shall

not attempt to use the charging decision as a leverage device in attempting to obtain a guilty plea to a lesser charge. Also to be avoided is the charging of an excessive number of counts, indictments, or informations merely to provide sufficient leverage to persuade a defendant to enter a guilty plea to one or several charges.

Among the factors which the prosecutor may consider in making the charging decision include but are not necessarily limited to:

- the nature of the offense;
- the interest and expressed wishes of the victim;
- the impact on the community of the individual case or in the aggregate for similar cases;
- any mitigating circumstances.
- excessive costs of prosecution in relation to the seriousness of the offense;
- possible deterrent value of the prosecution;
- the age of the case;
- treating similarly situated defendants the same;
- recommendations of the involved law enforcement agency;
- possible improper motives of a victim or witness;
- a history of non-enforcement of a particular statute or ordinance;
- likelihood of prosecution by another criminal justice authority;
- the availability of suitable diversion programs.

6.1.1. Prosecution of Stand-Alone Violations

It is not the policy of MCDA to prosecute stand-alone violations in the absence of a direct nexus to a criminal investigation. When non-criminal offenses other than contempt of court are presented to this office for prosecution, it will be the policy of this office to decline them for prosecution unless they were investigated concurrently with a criminal case and, with the approval of the unit's senior deputy, prosecution would meaningfully advance public or victim safety.

6.2. Prosecution Decline Memos

If a DDA elects to decline prosecution in a particular case, the DDA will document the facts of the investigation and the rationale for declining to issue charges in the case management system. In all cases the case DDA is responsible for ensuring this document is sent to the primary investigating police officer or detective on the case. DDAs should be aware that the prosecution decline memorandum is a public record and should therefore continue to use good judgment and clarity in communicating their message.

6.3. Timelines

DDAs are expected to have all custody referrals (i.e. cases referred to us for review after arrest and booking at the jail) reviewed by 1:00 pm on the day of referral.

Criminal citations must be reviewed, and relevant documents prepared, two court days ahead of the appearance date on the citation.

Directly presented cases shall be reviewed, and a charging decision communicated back to the complainant, within 60 days of the case's assignment to a DDA.

6.4. Federal/State Requests for Investigations and Prosecution

All requests from the U.S. Attorney's Office, another federal agency, or the Oregon Department of Justice for acceptance of a case for local prosecution by the District Attorney's Office shall be directed to the CDDA in whose division the case would be handled. This shall be done prior to giving any indication as to whether or not our office will relieve the outside agency of its responsibility on the case.

6.5. Grand Jury Proceedings

6.5.1. Function of DDA in Grand Jury

A DDA fulfills two functions before the grand jury. The first is to present evidence to the grand jury upon which they will base their decision to indict the suspect or to return a "not true bill." The second is to act as legal advisor to the grand jury.

6.5.2. Presentation of evidence

Except where specifically authorized by law, no evidence may be presented to the grand jury except that which would be admissible in a trial under the Oregon Evidence Code.

All evidence presented to the grand jury must be presented under oath and the names of the witnesses before the grand jury listed on the indictment, if an indictment is returned.

It is not a function of the grand jury to determine if evidence should be suppressed for constitutional violation by investigating officers. Where it is apparent, however, that evidence was obtained in violation of a defendant's constitutional rights and would be inadmissible at trial, a DDA shall not present that evidence before the grand jury.

Oregon law requires that all cases presented before the grand jury shall be recorded. Audio recording is delegated to the grand jury by statute. DDAs shall not operate the audio recording devices. The grand jury is to record the following:

- The case name and number;
- The name of each witness that testifies; and
- Every question to, and every answer of, the witness.

The grand jury is not required to consider defenses to charges presented to the grand jury. However, where credible evidence known to a DDA presenting a case before the grand jury would objectively refute the guilt of the defendant, the DDA shall present that evidence to the grand jury.

Defendants have a right to testify in front of the grand jury if they are (1) represented by counsel, (2) have a current pending felony information, and (3) the indictment has not yet been filed. A defendant exercising this right may have their attorney with them in the grand jury room. It is contrary to law to permit a defense attorney into the grand jury room to accompany a client who does not meet all three criteria above. As such, DDAs must permit defense attorneys to accompany defendants exercising their statutory right to testify and may not permit defense attorneys to accompany any other witness into the grand jury.

The compelled testimony before the grand jury of any witness who might objectively be considered a potential suspect in the crimes under investigation must be approved by a management attorney.

DDAs shall document every date that a grand jury receives evidence in a case and every witness who actually testified in the case. That information must appear on the indictment. This includes any dates that a previous grand jury received evidence for the same offense, which did not result in a "true bill" or in a "no true bill."

6.5.3. DDA as legal advisor to the grand jury

At the beginning of each grand jury term and prior to the presentation of any evidence, grand jurors will receive an orientation from a DDA or DDAs concerning the grand jury process. This orientation is designed to provide information about the legal procedures of the grand jury and the practical necessities of grand jury service. Factual information pertaining to potential cases under investigation shall not be presented in grand jury orientations.

As noted, no evidence will be presented to the grand jury that would not be admissible at trial unless expressly permitted by the grand jury statutes. Furthermore, as legal advisors, DDAs should prevent grand jurors from making inquiries which would produce inadmissible evidence.

DDAs should not preempt the fact-finding function of the grand jury. Advice to grand jurors should be limited to matters of law. DDAs should not discuss or advise grand jurors on the significance of purely factual matters, other than to instruct them on how the law applies to the facts presented.

DDAs cannot advise grand jurors on how to vote.

6.5.4. Grand Jury Records-Only Subpoenas and Procedures for Presentation of Subpoenaed Records to the Grand Jury

Every matter presented to a grand jury receives a grand jury case number. During the grand jury's orientation, jurors are told that they are to assign a grand jury case number to each new case as it is presented. Accordingly, a grand jury number is assigned to every criminal case regardless of whether the case results in a "true" or "not true" bill, or the case is presented but later withdrawn. Similarly, a grand jury case number is assigned to every records-only case.

A records-only case begins with a DDA issuing a subpoena on behalf of the grand jury for financial, phone, medical, or other business records. A law enforcement officer may not sign a DDA's name to a grand jury subpoena. Similarly, a law enforcement officer may not present the subpoenaed material to the grand jury without a DDA present. Once obtained, the records must be presented to the grand jury and at that time a case number is assigned by the grand jury. Oregon law prohibits the recording of this procedure.

When the records are presented, some information should be provided to the grand jury that reveals the nature of the investigation and its status. This explanation should provide the grand jury with sufficient information that its members can document in their notes that (1) the subpoenaed records were presented, (2) the identity of the DDA who authorized and or signed the subpoena, and (3) the general nature of the investigation.

Concurrent with the grand jury's documentation of the records-only case, the DDA should direct the law enforcement officer involved in the investigation to write the grand jury case number on the subpoena and submit the original subpoena to the grand jury staff and obtain a copy of the subpoena to place in the officer's notebook. The documentation by both the grand jury and investigating officer will provide sufficient evidence of compliance with the law should an allegation arise at some later date that the grand jury's subpoena process was abused.

It is best practice to get records to grand jury and opened prior to indictment. However, records may be subpoenaed to grand jury even after an indictment has been found. ORS 136.563 states that the State may subpoena witnesses to grand jury "in support of the prosecution" without any reference to the stage of the prosecution.

6.5.5. Protective Orders

DDAs are required by Oregon law to inform victims of the ability to seek a protective order concerning the audio recording of testimony during a grand jury proceeding. The protective order may be on behalf of the victim or a witness and must be specific to the date, time and portion of the recording. The motion must be filed within ten days after a defendant's arraignment on an indictment.

6.6. RICO Prosecution Policy

The District Attorney must be consulted, and approve, any RICO prosecution prior to submission to the grand jury. If a RICO case is indicted, the District Attorney must approve any pretrial offer.

6.7. Prosecution of Environmental and Wildlife Crimes

Environmental and wildlife crimes present complex investigation and legal issues that are disproportionate to the severity of the underlying crimes. The Department of Justice staffs a prosecutor who is expert in these matters. It is the policy of this office to in all but simple and routine matters defer to and authorize the appearance of a Department of Justice prosecutor as a Special Deputy District Attorney in these matters.

6.8. Firearms Prosecution

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

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

On all felony cases involving the possession, use or attempted use of a firearm, DDA's must consult with the SDDA or CDDA of the affected division before declining to issue charges.

6.9. Release Recommendations

6.9.1. Generally

Oregon statutory law requires the imposition of the least restrictive conditions on a defendant that are necessary to ensure public and victim safety and the defendant's subsequent appearance. It is the policy of MCDA that where unsecured release has previously failed to secure the attendance of a defendant in a case, we shall recommend to the court that a security amount is necessary. This does not preclude a DDA from requesting security as an initial release recommendation if the particular case, or the defendant's personal history, demonstrate that secured release is the least restrictive means to ensure that a defendant appears for trial. The amount of security recommended shall be reasonably calculated to ensure that the defendant appears in court, without being more than necessary to accomplish that purpose.

Where conditional release is the appropriate form of release based on the primary and secondary release criteria, DDAs shall recommend conditions of release narrowly tailored to addressing the particular risks that a defendant poses to the victim and the community while on release.

DDAs issuing criminal cases shall include a release recommendation in their issuing notes for the DDA assigned to cover the initial appearance.

6.9.2. Preventative Detention

Article I, section 43 of the Oregon Constitution permits pretrial detention without bail of certain criminal defendants. Detention under this law should be sought when a DDA can point to specific and articulable facts leading them to believe that the victim or the public is in real danger of harm should this defendant be released and this risk cannot be adequately mitigated by other forms of release.

Given the applicable statutory timelines the decision to seek detention needs to be made at the time a case is initially charged. If new facts or charges arise at grand jury, a detention determination can be made at that point and sought at arraignment on indictment.

All decisions to seek preventative detention must be pre-approved by a management attorney, preferably the CDDA over the case DDA's unit, if available.

In order to obtain a detention order, the case DDA will have to prove that the defendant is 1) charged with a violent felony (a felony involving actual or threatened serious physical injury or a felony sex crime), and 2) that there is a danger of physical injury or sexual victimization to the victim or members of the public by the defendant if released. Detention requests should be authorized only when the evidence available indicates a likelihood of prevailing at this hearing.

Defendants charged with any degree of murder are subject to a different detention process under Oregon law. All such defendants will be detained pending a bail hearing. This is mandatory and no management approval is needed to proceed.

6.10. Charges Secondary to Existing Prosecution

Crimes or contempt allegations that directly relate to the conduct of a prosecution will be handled by the DDA and Unit assigned to the primary prosecution. Such charges usually include: Perjury, False Swearing, Hindering Prosecution, Tampering with a Witness, and Violating a Release Agreement. Failure to Appear is addressed below. Any such charges arising out of the Misdemeanor Trial Unit will be managed by one of the Sr. DDAs assigned to the unit.

6.11. Failure to Appear Policy

This office will prosecute the crime of Failure to Appear (FTA) in two circumstances, absent approval of a management attorney:

First, FTAs which occur at arraignment in the Justice Center after a person arrested on a felony offense is released following the recognizance process and fails to appear immediately thereafter. This behavior directly impacts the integrity of the justice system, and must be prosecuted aggressively. In these cases, wherein the defendant provides a specific recognition of their obligation to appear via the release agreement and then fails to appear within hours thereafter, proof of the requisite mental state should be straightforward. These FTAs, charged as felony FTA I, will be issued added to the open felony case by the JIU DDA who covered the arraignment. The JIU DDA will ensure that the charge is added to the case in the case management system, all necessary facts are pled within the charge, a lognote is added documenting FTA facts and addition of the charge, and JIU staff are sent tasks necessary to obtain the documents necessary to build the FTA packet for grand jury and add the appropriate corrections deputy to PbK as a trial witness. The FTA packet will include: certified copy of eSWIS QBOO; certified copy of the release agreement and bench warrant; ORS 132.320(6) affidavit of court staff.

Second, FTAs which occur at a trial setting may be prosecuted. Trial FTAs are incredibly wasteful, traumatizing for victims, and dismissive of scarce law enforcement resources. As such, these FTAs are eligible to be charged if the release agreement

requires personal appearance. The charging decision, and management of the resulting case, is the responsibility of the case DDA.

Other applications of the FTA statutes are permissible upon management attorney approval. Care should be taken to issue this charge only within consistent parameters.

6.12. Issuing Cases for Other Trial Sections

No misdemeanor DDA, other than those assigned to a felony unit, should issue a case for a felony unit. Any felony DDA screening a case for issuing who determines another felony unit should handle the case must contact the SDDA of that other unit to determine how to proceed. Based on the needs of the unit at that time, if the SDDA agrees to the transfer, the SDDA may elect to assume responsibility for the issuance of the case immediately. Alternatively, the SDDA may direct the screening DDA to issue the case on the other unit's behalf and have the file transferred after issuing.

Any felony or domestic violence DDA who, after screening a case, determines that only non-domestic violence misdemeanor charges should be issued, will be responsible for issuing all misdemeanors arising out of the incident including those involving associated defendants committing only misdemeanors. Upon issuing the case, the screening DDA must inform the Misdemeanor Trial Unit supervisors of the new case. If follow-up investigation is required for a misdemeanor, the case will be referred to the appropriate police agency. After the follow-up is completed, the misdemeanor may be presented to the Misdemeanor Trial Unit for direct present review.

Any DDA who presents a felony case to a grand jury, but determines after presentation of evidence that only misdemeanor charges are supported, shall nonetheless proceed to have the grand jury vote on any remaining misdemeanor(s). Should the grand jury choose to indict the misdemeanor charge(s), the grand jury DDA remains responsible for completing all grand jury paperwork just as the DDA would on a felony case.

The DDA presenting the case to the grand jury will make appropriate notes in the case management system detailing why the case was reduced from the original felony charges to the resultant misdemeanor charge(s). The DDA will also inform the Misdemeanor Trial Unit supervisors that the case is now proceeding as a misdemeanor so that the case can be reassigned to a misdemeanor DDA.

This policy recognizes that where recordings of witness testimony in grand jury exist, they should be provided to criminal defense counsel in discovery. However, the statutes governing grand jury recordings do not permit those recordings to be provided where a case is withdrawn and subsequently charged by an Information of the District Attorney.

Indictments on these cases will be drafted, and grand jury recordings prepared, by grand jury staff just as on felony cases, after which the case will be brought to resolution by the Misdemeanor Trial Unit.

6.13. Reissuance of Charges after Dismissal

Class A misdemeanors and felonies dismissed without prejudice, pursuant to ORS 136.120, may be re-issued. ORS 136.130. All qualifying crimes will be reviewed for re-issuance. A DDA wishing to refile a case after dismissal must obtain SDDA approval to do so.

6.14. Forfeiture

MCDA believes that civil forfeiture proceedings by this or other law enforcement agencies are appropriate in certain circumstances. MCDA will commence and/or support counsel for police agencies who wish to pursue forfeiture actions to the extent it does not interfere with the prosecution of the criminal case. MCDA will pursue criminal forfeiture if determined to be necessary and appropriate in a particular case and approved by a management attorney.

6.15. Aggregation of Property Offenses

Oregon law allows the state to aggregate the value of losses in certain property crimes when there are multiple violations against the same or multiple victims within certain time periods. See, for example, ORS 164.115(6). The effect of such aggregation is that a defendant may be charged with a more serious crime if the aggregate loss totals more than the statutory minimum loss required for the more serious degree of the applicable charge.

Because DDAs have the responsibility to see that charges selected or presented to the Grand Jury accurately reflect the offense(s) committed and provide for an adequate sentence for the offense(s), there is a preference for charging individual counts for separate victims as well as for separate acts or transactions, even if committed against the same victim.

However, when charging separate counts for each incident would not adequately capture the gravity of the harm (i.e. it would preclude the option of formally supervised probation or prison for repeat property offenders), the DDA shall aggregate offenses. In these cases, the charging deputy shall aggregate offenses in such a way as to maximize the number of available C Felony charges.

The DDA may aggregate felony offenses in such a way as to present a charging instrument that: adequately describes the accused's criminal conduct and that will provide for an adequate sentence for the offenses taking into consideration: the availability of witnesses, the availability of financial records, the injury or harm suffered

by the victim(s), and whether such aggregation sets forth a logical and coherent presentation of the evidence at trial.

7. Criminal Case Resolution

7.1. General Principles

7.1.1. Overarching Philosophy

The Multnomah County District Attorney's Office will conduct its plea negotiation efforts in a professional, nondiscriminatory and nonpartisan manner. In all plea negotiations this office shall be guided by the relevant constitutional, ethical and statutory considerations.

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

7.1.2. Reservation of Discretion

Except as spelled out below, DDAs retain the discretion to negotiate dismissals, non-prosecution, and sentencing recommendations in all cases subject to the general standards for plea agreements.

DDAs shall not imply a greater power to influence the disposition of the case than is actually possessed. If the DDA is unable to fulfill a plea agreement, the DDA will give notice promptly to the accused and cooperate in securing leave of the court for withdrawal of any plea and other remedial steps necessary to restore the original positions of the parties before plea negotiations.

7.1.3. Equality of Plea Negotiations

Similarly situated defendants shall be afforded equal plea and sentence agreement opportunities. While obvious, the choice of defense counsel or social or economic status shall not be a factor in a trial DDA's decision to negotiate with a defendant. A defendant shall not receive advantage or disadvantage in negotiations based upon past or present relationships between defense counsel and this office.

7.2. Conduct of Plea Negotiations

7.2.1. Timing of Plea Offer

In all felony cases, after a case is assigned out for trial, there shall be no plea offer or plea agreement without the specific approval of the SDDA of the unit or a management attorney.

7.2.2. Factors to Consider

An examination of the offense and the offender shall guide negotiations. However, we must treat similarly situated defendants the same throughout the office. Particular factors that may be considered include, but are not limited to:

- The nature of the offense;
- The expressed wish of the victim;
- The degree of the offense charged;
- Aggravating and mitigating circumstances;
- Relationships between the accused and the victim;
- Collateral consequences to the accused. (If the case DDA becomes aware of anticipated significant and exceptional collateral consequences that may result from a negotiated plea agreement, the DDA will follow the guidelines below.)
- The age, background and criminal record of the accused;
- The attitude and mental state of the accused at the time of the plea discussion;
- The age of the victim;
- The sufficiency of admissible evidence to support a verdict;
- Undue hardship caused to the victim or the accused;
- The deterrent value of a resolution;
- Aid to other prosecution goals;
- A history of non-enforcement of the statute involved;
- The age of the case;
- Possible improper motives of a victim or witness;
- Likelihood of prosecution in other jurisdictions; and
- Restitution.

7.2.3. Non-reducible Charges

The following adult crimes will not be the subject of charge reduction plea bargaining absent approval of a management attorney:

- Burglary I;
- Delivery of Heroin, Fentanyl, or Methamphetamine;

- Escape I;
- Criminal Mischief I or II involving the application of graffiti;
- Felon in Possession of a Firearm;
- Failure to Appear;

DUI charges may not be dismissed pursuant to plea agreement per statute.

7.2.4. Prohibited Terms of Pretrial Offer

Absent a management attorney's approval, no pre-trial offer by this office will require a waiver by defendant of appellate rights, the right to post-conviction relief, including claims of inadequate assistance of counsel or other collateral remedies, or a waiver of procedural rights in probation violation hearings. This does not apply to cooperation agreements, where MCDA has established policies and protocols.

Additionally, in accordance with ORS 135.418, no plea offer will be extended that includes any suggestion that the defendant must waive eligibility for good time, work time, SB 936 credits, Alternative Incarceration Programs, or transitional leave. Additionally, it is to be expected that opposing counsel may occasionally propose a counter-offer that will include a defendant's willingness to waive eligibility for one of the programs or sentence reductions mentioned above.

Language listed below should be included in every pre-trial offer that is made:

In accordance with ORS 135.418, this offer does not constitute, nor is it conditioned on or contingent upon defendant's waiver of the following: The disclosure obligation under ORS 135.815(1)(g); The ability to receive the audio recording of grand jury proceedings under ORS 132.270; Eligibility for transitional leave under ORS 421.168; Eligibility for a reduction in the term of incarceration under ORS 421.120 or 421.121; or Eligibility for any reduction in sentence, leave or release from custody or any other program for which the executing or releasing authority, as defined under ORS 137.750(3)(a), may consider the Defendant as prescribed in ORS 137.750.

Any counter offer received in response to this offer that contains a provision proscribed by ORS 135.418 will be summarily rejected.

There may or may not be agreement between the parties regarding eligibility for, and the appropriateness of, sentence reducing programs. If the state agrees that such reductions are appropriate and the defendant meets statutory and rule-based requirements, such a position may be stated in the written pre-trial offer. However, if

the state intends to argue against eligibility for such programs, the offer must be carefully worded to reflect the state's position.

7.2.5. Cases Requiring Management Approval to Resolve

7.2.5.1. Homicide Cases

The District Attorney will personally review and approve all plea negotiations in homicide cases. The case DDA shall notify their CDDA upon receiving a serious plea offer from the defendant. Prior to submitting a homicide plea offer for approval by the District Attorney, the case DDA 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. In the absence of the District Attorney, the First Assistant may give necessary approvals.

7.2.5.2. RICO Cases

The District Attorney will personally review and approve all plea negotiations in RICO cases.

7.2.5.3. Mandatory Minimum Sentence Cases

To ensure that similarly situated defendants are being treated the same, all prosecutions involving a potential mandatory minimum prison sentence, including departable "gun minimums" under ORS 161.610, will be staffed with a management attorney prior to a pretrial offer being extended. A pre-trial offer may not be issued, or accepted if initiated by defendant, on such a case without the approval of a management attorney.

Each CDDA will develop a process consistent with the needs of their trial units to ensure that cases are staffed in a manner that promotes equitable case resolutions among the many defendants we prosecute.

7.2.5.4. Early Termination of Probation

The court retains the authority to discharge a defendant's probation, grant early termination, under ORS 137.545. This is distinct from an earned discharge under ORS 137.633, to which the State has no ability to object.

A plea offer on a case involving the condition of "no early termination of probation" may only be extended with the approval of a management attorney.

7.2.6. Collateral Consequences

The Multnomah County District Attorney's office is committed to the open and balanced administration of justice, one that honors and respects diversity in all of its forms. A primary concern of the District Attorney's Office is to support and ensure crime victims are afforded a meaningful role in the criminal and juvenile justice system and to do so with dignity and respect. Further, the Multnomah County District Attorney's Office will treat everyone that comes into contact with this office fairly and equitably.

This office recognizes that in certain situations the collateral consequences of a particular criminal conviction for a particular defendant can have disproportionate results. Criminal conviction brings with it a host of sanctions and disqualifications that can sometimes place an unanticipated burden on individuals in the community or trying to re-enter society and lead productive lives. The cases this office handles are complex and justice would be ill-served by an inflexible or proscriptive rule. To ensure equitable resolution of criminal cases, DDAs shall consider the following when deciding how much weight, if any, potential collateral consequences should have in plea negotiations.

In cases where the collateral consequences of a criminal conviction are significantly and exceptionally disproportionate to the direct punishment appropriate for the defendant's conduct, the interests of justice may require the DDA to make reasonable efforts to mitigate those consequences through the plea negotiation process.

It is incumbent on a prosecutor to seek equitable resolutions of cases. This means, if a DDA agrees to mitigate a charge or a sentence based on collateral considerations, the DDA should ensure that the totality of the resolution is comparable when analyzing victim input and impact, risk of recidivism, the treatment needs of the defendant and use of punitive sanctions as between a defendant facing collateral consequences and an otherwise similarly situated defendant who does not face collateral consequences.

If a defendant is charged with a serious felony offense, to include any crime listed in ORS 137.700(2) or ORS 137.635(2), any modification due to potential collateral consequences is presumptively inappropriate.

We recognize that it is difficult for this office to independently assess the likelihood that certain claimed collateral consequences will manifest. The solution, consistent with Subsection (3) of this section, is to not alter charges or procedure as mitigation, but to correspondingly consider an increase, when appropriate, to the sanction component of the sentence (incarceration, community service, probation, etc.) to assist in balancing the competing interests. In addition to maintaining a rough parity between a collaterally affected defendant and one not so affected, it is unlikely that a defendant would accept such an offer unless they were facing the claimed collateral consequence. Where appropriate and useful to the decision-making process, a DDA should require

independent evidence from a source other than the defendant or their attorney that the claimed consequence will occur as represented.

Collateral consequences are of varying levels of severity and should not all be weighed the same. Consequences that are normal outcomes of a criminal case, including all matters directly ordered by the court, such as prison, probation, jail time, fines, driver's license suspensions, or sex offender registration, are not collateral consequences" within the meaning of this policy.

All decisions to mitigate based on collateral consequences, or not mitigate after such is requested, shall be documented by the DDA in the case management system and require SDDA or CDDA approval if they depart from existing policies.

7.3. Non-dismissal of domestic violence crimes

Domestic violence cases will not be subject to dismissal pursuant to plea negotiations in other non-domestic violence cases except in those certain circumstances where dismissal is deemed warranted. In those cases, the SDDA for the DV Unit, the CDDA in charge of DV, or the First Assistant to the District Attorney must approve such negotiations. However, if two or more domestic violence cases are pending against the same defendant, one or more may be dismissed pursuant to a plea on one or more domestic violence cases.

7.4. Resolution of Firearms and other Weapons Crimes

The District Attorney's Office will never approve the return of a firearm to a specific individual under any circumstance. If, at the conclusion of the case, the firearm is not ordered forfeited by the court, then the decision about whether to release a firearm, and to whom, rests exclusively with the police agency under state law.

Any exception to this policy must be approved by a management attorney.

7.4.1. Forfeiture of Weapons Required

Whenever a plea is negotiated on any weapons case, the DDA, as part of the negotiation, will obtain a stipulation authorizing the forfeiture of the weapon, whether the weapon is a firearm or any other type of weapon. ORS 166.279(2) requires the court to declare forfeited, any weapon that was "possessed, used, or available for use to facilitate the offense." Accordingly, this office will require this in any negotiations and, in the event of a trial, notify the court of this obligation in such case.

The District Attorney's Office, absent extraordinary circumstances, will request that all firearms and dangerous weapons illegally possessed, carried or used in the commission of a crime be confiscated as part of any sentence imposed.

These situations require that the Portland City Attorney, County Counsel, Gresham City Attorney (or equivalent other agencies) representing the police agency in an actual possession of the weapon be served with any motion to release so that they may assert the public's interest in having those weapons confiscated.

If the firearm is the stolen property of an unrelated, third-party victim, then the DDA may agree to lift the state's evidentiary hold upon completion of the case to make possible its return to the victim of the theft (i.e. the lawful owner of the firearm) per ORS 166.279(3). This allows the police agency to determine who the lawful owner is and return it to that person as appropriate. With a stolen firearm, it is assumed that the firearm will be returned to its lawful owner, but it is the police agency's responsibility to determine who that is. Thus, the DDA will never specify to whom a firearm may be returned, whether stolen or not.

7.4.2. Return After Dismissal or Acquittal

The District Attorney's Office shall not agree to return a firearm to a defendant, or a family member or associate of defendant, and will oppose such a return even if the case is dismissed or there is an acquittal. It is up to the police agency that has custody of the firearm to determine the status and ownership of that firearm. The District Attorney's Office will always object to a return of the firearm to a defendant, their family member, or anyone else whom defendant selects.

A defendant may, of course, file a motion seeking a court order for the return of a firearm. The DDA will oppose any such motion and will immediately notify the relevant city attorney's office or county counsel so they may intervene and be heard.

7.4.3. Negotiated Dismissal of Charges

The District Attorney's Office will not dismiss firearms offenses unless (1) the defendant is pleading to more serious charges and the use or threatened use of the firearm is an element of the offense, or (2) the CDDA of the unit approves the plea.

7.4.4. Referral for Federal Prosecution

In consultation with the United States Attorney's Office, when appropriate, cases where a firearm is possessed or used by a felon may be considered for referral to the United States Attorney for federal "Felon in Possession of a Firearm" and Armed Career Criminal treatment.

7.5. Pre-Plea Diversion

There will be no use of pre-plea diversion agreements except for the first-time offender program for the charge of Commercial Sexual Solicitation, and that only with SDDA approval.

7.6. Civil Compromise Policy

We will object to civil compromise on felony cases unless the unit SDDA approves otherwise. When a civil compromise is negotiated between a victim and an individual charged with an eligible misdemeanor, our attorneys will not object to the court's acceptance of it and dismissal of the charges unless there are articulable facts suggesting the presence of any of the following:

- **Fraud, coercion or misrepresentation.** Any articulable suspicion that a victim lacks competency to agree to a civil compromise or has been provided with misinformation is an immediate basis for objection.
- **Failure to show full satisfaction of compromise remuneration.** If the satisfaction guaranteed in the compromise consists of unenforceable future conduct or other terms, actions or conditions not yet fully realized at the time of case resolution, there will be an objection to the compromise.
- **Granting of a prior civil compromise.** The remedy of civil compromise is not appropriate for a defendant who has already been granted a dismissal on this basis at any time, on any other case in any court of competent jurisdiction.
- **On supervision at the time of the offense.** A defendant who is on supervision at the time of the new offense should not be granted a civil compromise.
- **Significant or serious criminal history.** A defendant who has engaged in chronic criminality or who has committed a person felony of any kind should not be granted a civil compromise. Class C property felonies or misdemeanors are not categorically disqualifying if the previous conviction is not recent (older than ten years) and the defendant's performance on probation was strong. A defendant who has committed multiple offenses of any kind within the last five years should not be granted civil compromise.
- **Sex Offenses.** An indication in the case facts that there has been touching or attempted touching of sexual or intimate parts, threats of a sexualized nature, or that the offense was committed for the sexual gratification of the defendant should not qualify for civil compromise.

Exceptional circumstances which suggest the need to either support a civil compromise despite the presence of an above factor or the need to oppose a civil compromise for a reason not listed above can support discretionary departure from this policy with SDDA approval.

7.7. Second Look Policy

ORS 420A.203 provides that offenders in the legal custody of the Department of Corrections and the physical custody of the Oregon Youth Authority are eligible for a second look hearing to consider a conditional release into the community if they were under age 18 when they committed their crime and received at least a 24-month sentence after waiver into adult court. Those offenders serving a sentence under ORS 137.707 (Ballot Measure 11) are not eligible for a second look hearing. If a juvenile Ballot Measure 11 offender is convicted of a lesser-included offense instead of the Ballot Measure 11 crime, that offender can be eligible for a second look hearing.

CDDA approval is required for PTOs on youth waived into adult court, including as to any second look provisions of such an offer.

If a second look hearing is scheduled, the assigned DDA shall staff the case with the CDDA over their division prior to the hearing date.

7.8. Cooperating Witnesses

A Cooperating Witness (CW) is a witness who enters into an agreement with the District Attorney's office to provide truthful information and evidence that may be used in a criminal investigation and receives a benefit for their cooperation.

Cooperating witnesses who have information and evidence concerning a pending criminal case are important contributors to many law enforcement investigations. With careful evaluation and oversight, the use of such witnesses is a valuable enhancement to public safety and the pursuit of justice for victims.

A CW may be called to testify as a state's witness in a criminal proceeding if, in the informed professional judgement of the case DDA, the witness can provide competent and truthful testimony based on personal knowledge of the matter to which the CW intends to testify.

A case DDA must receive SDDA approval before entering into a cooperation agreement with a CW.

Once the case DDA has entered into a cooperation agreement, the case DDA should submit the signed original agreement to the Felony Trial Unit Operations Supervisor. The Operations Supervisor will scan the document into the MCDA case management system (PbK) to be stored as an electronic document on the CW's person record and

apply security protections limit accessibility to the document. The Operations Supervisor will then identify the person as a CW in the MCDA case management system (PbK) so that anyone who adds the CW as a witness to a case will be notified of their status.

If a DDA receives notification that a witness on their case was a prior CW, the DDA will obtain and review the archived prior cooperation agreement to determine if any of the archived materials are discoverable to the defense.

If a DDA determines that a CW has made materially false statements about, or during the pendency of, the instant case, the DDA will evaluate this for potential disclosure to the defense and to any tribunal before which the CW may have testified. The DDA will also, after consultation with the SDDA, take whatever remedial measures are necessary to address the false statements. If appropriate, and in consultation with the SDDA, the DDA will write a memorandum describing the circumstances of the false statements and forward that memorandum for archiving with the CW's cooperation agreement. This memorandum may, in consultation with the SDDA, also be forwarded to the defense and / or the court.

7.9. Fines and Fees

Individual trial units shall include in any pretrial offer guidelines specific direction to their DDAs on requesting fines and fees as part of a sentence based on the following principles:

- MCDA will always recommend to the court that any statutorily required fine or fee be imposed.
- If a defendant's financial resources are limited, MCDA will always prioritize a crime victim's restitution over requesting punitive fines.
- Punitive fines should not be recommended in lieu of custodial sanctions that would otherwise be requested solely because the defendant has the financial means to pay them.

Where a defendant has the means to pay, MCDA will always request that the court require the defendant to pay an appropriate amount towards the cost of their representation as part of any disposition of the case.

7.10. Criminal History

7.10.1. Challenges to Criminal History Information

According to OAR 213-004-0013(3), it is necessary that the defendant give the district attorney and the court written notice of any dispute in the criminal history summary. To

allow the criminal history clerk reasonable time to produce the proper documentation to establish disputed convictions, DDAs should request two-week set-overs for in-state verification and 30 days for out-of-state verification. The written notice must be forwarded immediately to the felony unit handling the case. Documentation for verification of disputed convictions will include a certified copy of conviction from the jurisdiction in which the conviction occurred.

DDAs should use discretion in ordering verification when the challenged conviction will not affect the presumptive sentence.

8. Trial

8.1. BM 11 / Homicide Second Chair or Assistance Policy

To ensure proper allocation of staff resources, the assignment of a DDA as a second chair or to assist with motions drafting or binder organization on a BM 11 case may only be done with approval of a management attorney. On non-BM 11 cases, except for a DDA's first misdemeanor trial, second chairs will not be assigned to cases absent extraordinary circumstances and the express approval of a management attorney.

8.2. 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 DDA having information that they believe reflects a sitting judge's prejudice toward the state shall inform the CDDA in their division. Copies of those reports shall be given to the District Attorney and to the First Assistant to the District Attorney.

The intent to file an affidavit of prejudice will be articulated on the record by the DDA covering AM call, CPC, or a Justice Center arraignment court, at the time a judicial officer is assigned to a case. Affidavits of prejudice shall be filed with the presiding circuit court judge at 1:30 p.m. *ex parte* the day the state notifies the court an affidavit will be filed.

8.3. Subpoenas

8.3.1. Subpoenaing Federal Employees

When a witness who is a federal employee is needed, certain procedures apply. These procedures, commonly known as a "Touhy Letter" are outlined in Volume 28, Section 16.21 through 16.29 of the Code of Federal Regulations. All DDAs must follow these procedures. The United States Attorney's Office, or departmental counsel for the relevant federal agency, may be consulted if there are any questions.

8.3.2. Subpoenaing an Attorney

Unless otherwise approved by the District Attorney, whenever it is necessary to require the attendance of an attorney, in their capacity as an attorney,¹ at any stage of a criminal proceeding, the following steps shall be taken:

- Contact the attorney by phone and explain the purpose of their testimony. At that time try to arrange the appearance at a mutually convenient time.
- Ask the attorney if they will appear voluntarily or if they desire a subpoena, either mailed or personally served. The DDA may arrange a stipulation with the attorney as to the substance of their testimony when appropriate.
- Follow up any phone conversation with a confirming letter.
- Never serve an attorney with a subpoena without first attempting to contact the attorney using all reasonable means, by phone or letter.
- The DDA shall notify the CDDA of their division prior to securing the attendance (either voluntarily or through subpoena process) of an attorney.

8.3.3. Subpoenaing a Judge

Judges may not be subpoenaed without the express written permission of a management attorney.

8.3.4. Receipt of a Subpoena by an MCDA Employee

Any MCDA employee who receives a subpoena in the course of, or as a result of, their official duties must immediately notify both their immediate supervisor and the General Counsel.

8.4. Material Witness Order Policy

ORS 136.608-136.614 authorize the arrest and detention of certain witnesses when necessary to secure their testimony at trial. This office recognizes the substantial burden this practice can place on people who are not themselves charged with a crime, and it is our policy that material witness orders shall be used sparingly. Any DDA who wants to ask the court to issue a material witness order must first obtain the approval of a management attorney. In considering such a request the following factors shall be weighed:

¹ This policy does not require any special process to subpoena cooperative crime victims who happen to be attorneys.

- The severity of the involved charges,
- The importance of the witness to the prosecution of the case,
- The personal circumstances of the witness, and
- The risk to public safety if the case cannot proceed due to the absence of the witness.

In cases involving domestic violence charges and sexual assault charges, the use of a material witness warrant to secure the appearance of a victim witness at trial should be used sparingly. In these cases, the trial DDA should consider the many collateral consequences a victim may face if compelled to appear at trial. The DV Unit SDDA and the VAWA DDA will work in conjunction with General Counsel and the Victim's Assistance Program to ensure that each deputy handling domestic violence and sexual assault cases understand the collateral consequences a victim witness may face if compelled to appear in court. Additionally, training will be provided to minimize the re-traumatization of victims if a material witness warrant is sought. This training will be based on victim-centered approaches to the prosecution of such cases as developed by experts in the field.

Whenever a material witness order is granted at this office's request, the case DDA will closely monitor the case and ensure that they are notified by law enforcement when the witness is arrested. Upon the arrest of a witness, the case DDA will promptly brief the SDDA of JIU on the circumstances of the case in advance of the witness' initial appearance in JC 3, which will be the next court day after the witness' arrest.

At the witness' appearance in JC 3, the JC 3 DDA will request that counsel be appointed for the witness and that a status hearing be set on the felony call docket within a week. The JC 3 DDA must be provided sufficient information to address release at the initial appearance in JC 3 if raised. At the status hearing on the felony call docket, we will request that the court set further regular status hearings to review the custody status of any witness who is not appropriate for release on supervision.

If a material witness is held in custody longer than 10 days, the case DDA will send an e-mail to the CDDA of the division, the First Assistant to the District Attorney, and the District Attorney weekly with an update regarding the status of the case.

8.5. Joinder of Defendants and Charges

It shall be the policy of the Multnomah County District Attorney's Office to charge and try defendants jointly under ORS 136.060 whenever possible and reasonable in light of the needs of the case and the victim. It shall also be the policy to join charges against the same defendant under ORS 132.560 if the offenses are of a similar character, based on

two or more acts connected together or constituting parts of a common scheme or plan, or based on the same act or transaction.

The District Attorney believes that this is in the best interest of the community in that it maximizes the efficiency of the court system and minimizes the ordeal of criminal proceedings on victims.

It shall be the obligation of the DDA to move to consolidate charges and indictments if the DDA knows that there are joinable offenses under ORS 132.560.

This policy does not prohibit the issuance of individual charging documents for each co-defendant in a case if, in the judgment of the case DDA, that is necessary or advisable to avoid demurrer. In such a case the DDA shall promptly move to consolidate the charging documents for trial.

8.6. Guilty Except for Insanity Defense

In felony cases, if a guilty except for insanity (GEI) defense is raised by a defendant, the assigned DDA shall seek a second opinion from a qualified Oregon State Hospital (OSH) psychologist or, with a management attorney's approval, a non-OSH psychologist, unless a management attorney approves otherwise. In the Misdemeanor Trial Unit the unit supervisor has authority to assess and approve disposition.

No DDA shall enter into a stipulation that a person is GEI or otherwise engage in plea negotiations that involve a stipulation that a person is GEI. However, with a management attorney's approval, a case involving a GEI defense may be resolved by a stipulated facts trial conducted in accordance with MCDA Policy 8.7. Stipulated Facts Trials.

Any stipulated facts trial where a defendant will be found GEI must include an agreement between the parties as to the ultimate placement of the defendant before the trial commences (Hospital Commitment or Conditional Release - See ORS 161.327). If the defense refuses to make such a commitment, do not proceed with a stipulated facts trial, absent prior management attorney approval.

In a stipulated facts trial for GEI, the DDA shall submit into the trial record all police reports and other digital evidence related to the criminal charges, copies of both state and defense psychologists' reports, and any other information relevant to the court finding the defendant GEI on all counts. At sentencing, the DDA shall submit any additional information, including victim impact statements, that bears on the defendant's appropriateness for a hospital level of care and the ongoing jurisdiction of the Psychiatric Security Review Board (PSRB). At the termination of the stipulated facts trial, the DDA shall move the court for an order authorizing release of all case records to

the PSRB, including confidential materials, treatment records, and competency evaluations.

8.7. Stipulated Facts Trials

Any agreement to a stipulated facts trial must follow the following rules:

- Agreements shall include stipulation to allegations contained in the information or indictment, along with all evidence submitted by the DDA to support the guilty/GEI finding(s).
- Agreements shall include a stipulation to a guilty/GEI finding - the defense may not argue the defendant is “not guilty” or “not GEI” of any of the charged offenses based on the stipulated record. If either the defense or court refuses to make such a commitment, do not proceed with a stipulated facts trial.
- A stipulated facts trial is a trial for purposes of double jeopardy. DDAs shall not allow a defendant to stipulate to a lesser-included charge or dismiss charges in exchange for a stipulated facts trial verdict.
- A jury trial waiver must be signed prior to commencement of the trial.
- Never allow the defense to put on any evidence.

8.8. Peremptory Strike Policy

8.8.1. Policy and Purpose

Racial, sexual and other forms of discrimination in the selection of jurors is obviously contrary to the values of this office. However, because of the uniquely important role of jury selection in upholding the fairness of the judicial process, simply avoiding overt forms of discrimination is not enough. A prosecutor may not use a peremptory challenge against any prospective juror because they are a member of a protected class. When striking a member of a protected class, a prosecutor must both subjectively follow this rule but also ensure that the totality of voir dire does not objectively suggest that this is what the prosecutor has done, actual subjective intent notwithstanding. For the purpose of this guidance, protected class includes race, color, religion, gender, gender identity, sexual orientation, disability or national origin. However, when using a peremptory challenge against a juror who is of the same race as the defendant, additional procedures are necessary as outlined in this policy.

8.8.2. Applicable Law

The landmark US Supreme Court case of *Batson v. Kentucky*, 476 U.S. 79 (1986) established that a prosecutor's use of a peremptory challenge in a criminal case—the dismissal of jurors without stating a valid cause for doing so—may not be used to exclude jurors based solely on their race. Under a “*Batson* challenge,” the defendant first must show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the jury pool members of the defendant's race. Finally, the defendant must show that such facts and any other relevant circumstances raise an inference that the prosecutor used peremptory challenges to exclude a juror on account of their race. Once the defendant makes a *prima facie* showing, the burden shifts to the State to come forward with a neutral explanation. In *Miller-El v. Dretke*, 545 U.S. 231 (2005), the Supreme Court introduced the “comparative juror analysis,” which disfavored the use of peremptory challenges when the proffered reason for striking a juror of the same race could just as easily be applied to white jurors in the same jury pool who were not stricken. This rule was explicitly incorporated by the Oregon Court of Appeals in *State v. Curry*, 298 Or App 377 (2019). This was further extended by *State v. McWoods*, 320 Or App 728 (2022), which demonstrated that appellate courts will provide very little deference to the factual findings of the trial court in *Batson* cases and so an exceptionally detailed record is necessary in order to survive a *Batson* challenge.

8.8.3. Comparative Juror Analysis

Any use of a peremptory strike of a juror which could result in a *Batson* challenge should be performed with the utmost caution, and limited to those circumstances where the need is particularly great and a substantial record detailing the reasons for the challenge can be made. If a for-cause challenge is supported by the record it should be used in lieu of peremptories whenever possible. It is recommended that any deputy intending to use a peremptory challenge under these circumstances prepare a comparative juror analysis. Comparative juror analysis involves determining whether a race-neutral reason that a party offers for striking a prospective juror also applies to one or more prospective jurors whom the party did not strike. For example, if a prosecutor's proffered reason for striking a panelist of the same race as the defendant applies just as well to an otherwise similar juror who was permitted to serve, the court may find this as evidence of purposeful discrimination. As such, the prosecutor must be prepared not just to demonstrate a race-neutral reason for striking that juror, but also that the rationale offered applies more powerfully to that juror than to any other juror within the jury pool.

8.8.4. Use of Questionnaires

The Court retains discretion regarding the use of questionnaires under Oregon law. Deputies should use caution when agreeing to the use of questionnaires in any case. In any case involving a charge less than Murder 1 or Murder 2, deputies must object to the use of questionnaires absent prior approval of the DA, First Assistant, and/or Chief DDA. If a questionnaire is used, deputies are advised to keep the questionnaire as short and as basic as possible. Areas of inquiry on the questionnaire should be limited in scope and should avoid questions that would condition the jury pool. In cases involving the use of questionnaires, a comparative juror analysis must include any information provided by potential jurors in both the questionnaires and voir dire. In any case in which questionnaires are used, for purposes of a potential appeal, DDAs must ensure the questionnaires are entered into the Court's record and that copies are retained in the state's file. All *voir dire* materials should likewise be retained.

8.8.5. Ongoing Training Requirements

DDAs shall be trained on proper considerations to use in exercising peremptory strikes as part of their onboarding process prior to handling their first jury trial. The office shall refresh its CLE training on peremptory strikes no later than every three years, and every DDA shall complete that training during every Oregon State Bar MCLE reporting period.

8.9. Jury and Court Trial Evaluations

In order to inform other attorneys and staff members of the outcome of a case, attorneys shall write and distribute a trial evaluation at the conclusion of each trial where a jury or a judge has reached a verdict (or mistrial by hung jury).

The purpose of the evaluation is to inform other employees about the charges, facts, significant legal motions/argument, decisions by the court, defenses, and outcomes of specific criminal cases. Trial evaluations will be sent to all staff, to acknowledge the contribution of all employees' efforts in trial work.

The trial evaluation will include the following sections:

1. A header including the following:
 - a. Case/PbK number
 - b. Jury or Bench
 - c. Date and Length of Trial
 - d. Defendant Name
 - e. Name of Judge and all counsel
 - f. Name of victim advocate and/or attorney (if applicable)
 - g. All counts with each verdict (or MJOA noted if granted)

- h. Length of Deliberation (for jury trials)
2. Significant Motions and their Outcome

Routine motions decisions (MJOA, probable cause-based motions to suppress, etc.) should not be included as they do not advance the purpose of succinctly informing the employees of this office of the important matters in a trial.

3. Facts of the case
4. Defenses raised and/or argued

Attorneys may include a section about anything particularly noteworthy about a case (“Of Note”). This section should be reserved for things like novel legal arguments, problematic or important rulings, or truly exceptional events during the trial. Most cases will not have one.

No photos or videos will be inserted or attached. Trial evaluations should be short, summarizing only the basic facts of a case.

All trial evaluations written by level 1, 2, or 3 DDAs must be reviewed by their Senior or Chief Deputy, and approved by one, before being sent out officewide. If their Senior is not available, a Senior from another unit may be consulted.

All trial evaluations must be written, and sent to a supervisor (per above) within seven calendar days of the verdict.

8.9.1. Juvenile Trial Evaluations

The policy above applies equally to juvenile court matters with the following exceptions and additions.

- No SDDA other than the Juvenile SDDA may approve a trial evaluation from a juvenile adjudication.
- Juvenile evaluations must be written in a manner where the youth cannot be identified. This may include omitting case numbers, using pseudonyms (not initials) for key parties, victims, or witnesses, or any other modification deemed necessary by the Juvenile SDDA.
- If, in the discretion of the Juvenile SDDA, it is not possible to sufficiently anonymize the facts of the case and still produce a useful memorandum of the trial, they may authorize the DDA to not draft or distribute a trial evaluation for a particular case.

8.10. State's Appeal Review Procedure

8.10.1. Summary

A DDA wishing to appeal a judge's ruling must, within seven calendar days: consult with their SDDA, obtain the FTR recording of the applicable proceeding, write and submit a detailed memorandum covering the law and facts justifying the appropriateness of an appeal to the General Counsel for review. Before starting this process, ensure that the order at issue is actually eligible for appeal under ORS 138.045.

8.10.2. Purpose

An adverse ruling on appeal has the potential to affect all district attorney's offices and all criminal proceedings throughout the state. Accordingly, the filing of a state's appeal requires careful consideration. It also requires the services and assistance of the DOJ Appellate Division and involves rapid coordination of communications within this office. Compliance with this procedure will ensure due consideration of each case.

8.10.3. Approval

The decision to request a state's appeal must be approved by the General Counsel, subject to such consultation with, and further approval by, the District Attorney as the District Attorney requires. This approval generally follows the steps listed in part four below.

8.10.4. Appeal Review Steps

An appeal, or the filing of a special proceeding in a higher court in lieu of an appeal, must be approved by the General Counsel or the District Attorney before an appeal is filed. The following steps are necessary for review of all requests for an appeal.

- Upon determining that an appeal is or may be warranted, the case attorney will immediately discuss the proposed appeal with the SDDA in charge of their unit.
- A brief log note should be entered recording the result of that consultation, i.e., "appeal recommended" or "no appeal review requested," along with a brief statement of reason; e.g., "important question of search and seizure law," "judge's decisions appeared arbitrary," "not worth expense of appeal because of other viable charges pending."
- Within seven calendar days from the entry of the order to be appealed the case attorney must provide the General Counsel with: the FTR recording of the proceeding, the signed order to be appealed, and a detailed memorandum stating: (1) the issue(s) to be appealed, (2) a brief summary of the main

evidentiary facts, particularly indicating how the court resolved any conflicts of evidence or any credibility issues, and (3) citation of leading case(s) relied upon and key cases cited by defense, if important.

- No case file will be accepted for review unless the file contains a copy of the order or judgment in question. The DDA may consult the General Counsel or SDDA for advice on the form of the order of judgment, or of relevant findings and conclusions, before the order or judgment is signed, since the form of order or particular findings may affect MCDA's position on appeal.
- The General Counsel will determine whether any further written memorandum or supplementary information or documentation is needed. It is the responsibility of the case attorney to provide such additional information as may be needed.
- The General Counsel will notify DOJ that this office is recommending an appeal and facilitate any further conversation with their office on the topic. DOJ will file the notice of appeal on behalf of the state unless the General Counsel or District Attorney direct otherwise.

8.10.5. Timeline for Appeal Review

To ensure adequate time for review the following timetable for state's appeals should be strictly adhered to. All days are counted from the day the formal order or judgment is entered in the register, which is Day 0.

Day 7

The case file, fully prepared in accordance with these review procedures, is provided to the General Counsel. The General Counsel will alert DOJ to the pending case.

Day 14

Approval by General Counsel in consultation with the District Attorney, First Assistant, and CDDA of the affected division as needed.

Day 15

DOJ formally notified of this office's request for a state's appeal.

Day 30

Deadline for filing a notice of appeal.

8.11. Contact with Jurors

Review [UTCR 3.120](#). Except as necessary during trial and except as provided in UTCR 3.120(12), employees of this office shall not initiate contact with any juror concerning staffing any case that the juror was sworn to try.

Even if after discharge of the juror from further consideration of a case, a juror initiates contact with an employee of this office, no employee of this office shall ask questions of, or make comments to, a member of the jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

9. Unit or Program Specific Policies

The policies contained in this section apply only to the division, unit, program, or team under whose header they appear.

9.1. Victim's Assistance Program

The participation of an assigned victim advocate (VA) is a recognized best practice in criminal prosecution. However, the advocates are a finite resource - each additional assigned case further pulls the advocates in multiple directions simultaneously, providing less availability, slower responsiveness to victim requests, higher levels of stress and a greater risk of burnout. While it is the aspiration of MCDA to assign an advocate to every case where their participation would be helpful to any degree, current staffing levels require that this valuable resource be used intentionally and carefully in order to balance the need to respond fully to the needs of our most vulnerable victims while avoiding the overtaxing of our advocates.

With these principles in mind, it is the policy of MCDA going forward to implement screening criteria in determining whether an advocate should be assigned in any given case. These parameters will fall into three categories: Cases which will always have an advocate assigned, cases which will never have an advocate assigned, and cases that will have an advocate assigned only when certain conditions are met.

It is important to note that even in those cases where an advocate cannot be assigned, point in time advocacy will be made available for victims whenever possible. Any case designation can be overridden at the discretion of a Lead Advocate or the VAP Supervisor. At any point, a DDA can request that a case be reconsidered for VA assignment. Examples could include, but are not limited to:

- The VA is initially unable to reach the victim for initial assessment, but the DDA or other staff are in contact with the victim later on and determine VA assignment could be helpful.

- The victim's circumstances have changed since the initial assessment and they now meet category 2 requirements for assignment.
- A VA has not been assigned to a case, but the DDA assesses that the victim could benefit from having the VA's support through a trial. In this scenario, as much advance notice should be given whenever possible.

A case may also initially be assigned to a VA that is later determined that the support of a VA is no longer necessary.

- If a DDA reaches this assessment, they can contact the VA to notify them that assignment is no longer needed.
- If the VA reaches this assessment, they will reach out to the case DDA to confirm they are in agreement with unassigning a VA from the case.

If a request is made to assign a VA that is denied, that MCDA employee can request that they or their Supervisor (Unit SDDA, Operations Supervisor, or Chief Investigator) have an additional consultation with the VAP Supervisor or a Lead VA. If there is still disagreement after those three assessments, a Chief DDA can override this decision. To do so, they will staff the case with the VAP Supervisor to provide explanation as to how the override decision was reached.

9.1.1. Procedure for Assignment

VA's will continue to make initial custody calls on all domestic violence cases and all felony unit custodies. At the time of this initial call, if possible, VA will assess Category Two cases to determine if they meet assignment criteria. They will document assessment information or if an assessment still needs to be done in a PbK note. The DDA can provide input as to any additional information they believe would be helpful in determining VA assignment.

At case assignment, the Lead VA will review the PbK note for assignment determination.

If no assessment has been completed, the case will be assigned to a VA. A reminder event will be entered into PbK indicating to the VA that an assessment will be needed. The VA is then responsible for assessing the case for VA assignment and following up with the Lead VA.

The assessment can be completed at any time prior to or at Grand Jury. At the latest, the VA will complete assessment within one week after the Grand Jury.

When it is assessed that a VA will not be assigned, the VA who completed the assessment will document in PbK notes and enter the event of "VAPANADV", which will

generate a reminder to the case DDA that an advocate will not be / remain assigned to the case. DDA's can request reconsideration if there is additional information or context to be considered.

All victims who are not assigned a VA are sent a Victim's Rights Notification (VRN), restitution form (if applicable), and initial victim letter that contains information about resources and what to expect when navigating the criminal justice system.

9.1.2. Category One: Cases in which an advocate will always be assigned.

Charge based assignment:

- All sex assaults, including misdemeanor sex abuse III and trafficking,
- All domestic violence felony, and misdemeanor, and violation of restraining order cases,
- Homicides,
- Vehicular homicides and other manslaughter charges,
- Child abuse,
- Felony stalking,
- Trafficking,
- Felony bias crimes, and
- Attempted murder and Assault I & II.

Victim factors (felonies only):

- Victim is a minor
- VA assesses with one contact that the victim will require assistance to assert any rights due to underlying mental or behavioral health needs, cultural or linguistic barriers, or any other similar reason.

Preventative detention is filed due to victim safety concerns.

9.1.3. Category Two: Cases in which an advocate may be assigned if certain conditions are present.

If these factors are present, it is likely that we will NOT assign a VA:

- Victim is working with civil or defense attorney.
- In a non-domestic violence related case, the victim has indicated that they do not wish to cooperate with the prosecution.
- Victim has good relationship with the assigned case DDA, and the DDA confirms that no VA needs to be assigned.
- Victim has accurate system knowledge through professional experience and is capable of accessing information independently (i.e. an attorney or other professional role connected to the criminal justice system).
- Victim behaves abusively toward the advocate in a way that makes the advocate feel unsafe or mistreated and cannot be reasonably accommodated by any other means.
- Victim does not wish to assert any rights or knowingly refuses services.

These factors are taken into consideration when assessing for VA assignment:

- The VA concludes that victim is in need of particular resources that can be assisted by the VA.
- Victim feels very strongly about asserting their rights and a VA would be helpful in that process.
- Victim requests a VA.
- The relationship between victim and perpetrator causes additional safety concerns for victim or the VA.
- The Victim is experiencing disparate impacts due to discrimination based on identity, history of harm, trauma, or violence. These circumstances may create additional barriers to the victim's ability to navigate the criminal justice system, invoke their rights, and access resources and support and having an assigned VA would significantly assist.

9.1.4. Category Three - Cases in which an advocate will presumptively not be assigned.

Charges

- Misdemeanors (excluding Sex Abuse III and DV)
- Property crimes (Criminal Mischief, Unlawful Use of a Motor Vehicle, Possession of a Stolen Vehicle)
- Identity Theft

- Robbery III
- Non-intimate partner Violation of Restraining Order

Victim factors

- The victim is a law enforcement officer working within the scope of their employment
- The victim is a loss prevention officer working within the scope of their employment

9.1.5. Cash equivalent disbursement.

In an effort to make our system more accessible to crime victims who are required to attend hearings or meetings, or who are asserting their rights to be present at hearings relevant to their case, the Victim Assistance Program offers parking validation for the Smart Park parking ramp. Parking validation is part of the Victim Assistance Program budget and is a limited resource that should be used with discretion.

General Guidelines

Parking validation should be offered when a victim is required to be present at the courthouse, such as for a court hearing or scheduled meeting, or the victim is asserting their right to be present at a court hearing.

If a hearing has been set-over and the victim or witness should have reasonably had access to this information ahead of time (such as a trial that was set-over at the call hearing, where the number on the subpoena should have been called), parking validation should only be provided under extenuating circumstances. An example of extenuating circumstances could be a situation where the victim is financially vulnerable, does not currently have the means to pay to get out of the parking structure, is without a phone, but still put in an effort to be present when subpoenaed.

When in trial for a number of days:

- The case DDA or Victim Advocate should have a conversation with the victim or next of kin ahead of time about parking validation being a limited resource, and ask that they explore carpooling or other methods for getting to the courthouse. Generally, parking should be limited to one all day validation per victim/family, per day.
- If looking for large exceptions, such as a lengthy trial where parking validation for multiple support persons or witnesses is necessary, approval is required from the VAP Supervisor or CDDA who is approving that the validations be billed to their unit instead of VAP.

- In the event the approval is provided by a CDDA, it needs to be forwarded to the Finance with advance notice. This ensures an adequate amount of parking validations will be available for all victims, both for your case and other cases.

Parking validation is prioritized for victims of crime, rather than witnesses or individuals coming to court as a support person. Validation should not be provided to law enforcement or other professionals who are compensated for their attendance. If it is unclear if validation should be offered, contact the VAP Supervisor to discuss. While we should be mindful of the number of validations distributed, we also acknowledge that this resource is still considerably more cost effective than a radio cab or investigator pick-up, and we want to be sure transportation is not a barrier to coming to court.

9.2. Unit AB

9.2.1. Crimes Handled

Cases where the most serious charge or type of investigation is listed below will presumptively be handled by Unit AB.

- Bias Crime I, II
- Bribery I, II
- Burglary II (Non-residential burglaries)
- Child Neglect I, II (when associated to drug charges)
- Computer Crime - (Felony)
- Criminal Impersonation of a Peace Officer
- Criminal Mischief I (> \$1000)
- Criminal Possession of a Forged Instrument I/Forgery Device
- Criminal Possession of Rented/Leased Personal Property – (Felony)
- Delivery of Controlled Substances
- Disseminating Obscene Materials
- Elder Financial Abuse (Criminal Mistreatment)
- Embezzlement (Theft I)
- Endangering Aircraft
- Extortion
- Felony Attempt to Elude (by vehicle)
- Felony Driving Under the Influence of Intoxicants
- Insurance Fraud
- Major Fraud
- Manufacture and Cultivation of Controlled Substances
- Negotiating a Bad Check - (Felony)
- Possession Fraudulent Communications Devices
- Possession of Gambling Devices
- Possession of Stolen Motor Vehicle
- Promoting Gambling
- Sports Bribery/Sports Bribe Receiving
- Supplying Contraband
- Supplying False Information to an Agency
- Tampering with Drug Records
- Tampering with a Witness (underlying misdemeanor case)
- Theft I
- Trafficking in Stolen Vehicles
- Unauthorized Use of Vehicle
- Unlawful Conduct in a Live Public Show
- Unlawful Factoring of Credit Card Transactions

- Felony Driving While Suspended/Revoked
- Forgery I (> \$1000)
- Fraudulent Use of Credit Card – (Felony)
- Identity Theft
- Unlawful Labeling of a Sound Recording
- Welfare Fraud
- White Collar crimes

9.2.2. Unauthorized Use of a Vehicle (UUV) and Possession of a Stolen Vehicle (PSV) Policy

9.2.2.1. Plea Offer Guidelines

Currently, absent exceptional circumstances approved by the CDDA, a Defendant shall not receive a probation offer from this office in the following circumstances:

- The Defendant has a UUV/PSV conviction within the last five years;
- The Defendant has two prior UUV/PSV convictions in a lifetime;
- The Defendant has zero prior UUV/PSV convictions but is currently charged with three or more UUV/PSVs.

Professional judgment regarding the length of prison term offered on a case will continue to be analyzed using the MCJRP PAVRON model including, but not limited to, information provided by the crime victim(s) and any aggravating and mitigating circumstances.

9.2.2.2. Probation Violation Guidelines

Absent exceptional circumstances, approved by the CDDA, MCDA will litigate allegations of Failure to Obey All Laws, for appropriate charges, at a probation violation hearing and advocate for sanctions, to include revocation of probation, when a defendant:

- Is currently on supervision for UUV/PSV;
- Is on a downward departure to probation or otherwise subject to ORS 137.717;
- Is arrested for a new UUV/PSV offense that was declined for prosecution; and
- Sufficient evidence exists to prove an allegation of Failure to Obey All Laws by a preponderance of the evidence.

9.3. Unit C

9.3.1. Crimes Handled

Cases where the most serious charge or type of investigation is listed below will presumptively be handled but Unit C.

- Agg. Animal Abuse
- Animal Abuse I, II (Review Misdemeanor)
- Animal Neglect I, II (Review Misdemeanor)
- Arson I, II
- Burglary I - (Residential burglaries)
- Environmental Crimes (Felony & Misdemeanor)
- Environmental Endangerment
- Supplying False Information to Agency
- Unlawful Air Pollution I, II
- Unlawful Disposal of Hazardous Waste I, II
- Unlawful Transport of Hazardous Waste I, II
- Unlawful Water Pollution I, II
- Escape I, II
- Failure to Provide Duties of a Driver to Injured Persons
- Felony Weapons Charges:
 - Felon in Possession of Firearm
 - Obliteration or Change of ID Marks on Firearms
 - Possession of a Weapon in Public Building
 - Unlawful Furnishing a Firearm
 - Unlawful Possession/Manufacture Destructive Device
 - Unlawful Use of Weapon (guns only)
- Maintaining Dangerous Dog - (Felony)
- Riot
- Robbery I, II, III
- Vehicular manslaughter

9.3.2. Felon in Possession of a Firearm Cases

All cases involving at least one charge of felon in possession of a firearm should be considered for potential prosecution by the U.S. Attorney's Office. Certain defendants in possession of firearms or ammunition may be eligible for enhanced sentences through the federal court system if they have prior convictions for serious drug offenses, such as drug delivery and manufacturing, or intentional violent felonies, such as murder, assault, robbery, coercion or unlawful use of a weapon. Any DDA issuing at least one charge of felon in possession of a firearm should make a case note indicating whether the case merits federal referral. Any questions about whether a case should be referred should be directed to AUSA Leah Bolstad at leah.bolstad@usdoj.gov.

9.4. Unit D

9.4.1. Crimes Handled

Cases where the most serious charge or type of investigation is listed below will presumptively be handled by Unit D except when the underlying facts involve domestic violence, gangs, or reckless vehicular conduct.

- Aggravated Harassment
- Assault I, II, III
- Assault Public Safety Officer
- Attempted Murder
- Bigamy
- Coercion
- Conspiracy/Solicitation to Commit Aggravated Murder or Murder
- Criminal Mistreatment I (adult victims, case does not exclusively involve financial fraud and the victim is not elderly)
- Custodial Interference I, II
- Failure to Report as Sex Offender (Felony)
- Incest
- Invasion of Personal Privacy
- Kidnap I, II
- Official Misconduct
- Felony Public Indecency
- Rape I, II, III
- Sexual Abuse I, II
- Sexual Misconduct
- Sodomy I, II, III
- Stalking (felony)
- Throwing an Object off an Overpass I
- Treason
- Unlawful Sexual Penetration I, II
- Unlawful Use of Weapon (not gun)
- Violating Stalking Protective Order (felony)

9.4.2. Criminal Investigations and Alleged Misconduct of Sworn Law Enforcement Officers

Whenever any agency or individual contacts a DDA regarding possible criminal conduct by any sworn law enforcement officer, that DDA shall immediately notify the SDDA in charge of Unit D, the CDDA of Division III or the First Assistant to the District Attorney, who shall then notify the District Attorney. The DDA having responsibility for the investigation must update the SDDA in charge of Unit D, the CDDA of Division III or the First Assistant to the District Attorney on a regular basis until the case is resolved.

When allegations of misconduct or impropriety are made concerning a sworn law enforcement officer, the DDA receiving such information shall attempt to gather all pertinent information regarding the specific complaint, including the name, address and phone number of the person bringing the activity to the DDA's attention. This information will be brought immediately to the attention of the CDDA of Division III, the SDDA in charge of Unit D, the First Assistant to the District Attorney or the District Attorney for a decision on the appropriate next steps.

9.5. Domestic Violence Unit

9.5.1. Crimes Handled

Cases where the most serious charge or type of investigation is listed below will presumptively be handled by Domestic Violence.

- All crimes “constituting domestic violence”
- Other crimes involving domestic violence relationship dynamics that do not constitute domestic violence per statute (e.g. Criminal Mischief or Harassment between current or former intimate partners)
- Violations of Restraining Orders (both FAPA and EDPAPA)

9.5.2. Survivor Centered Diversion Program

The Survivor Centered Diversion is designed to identify justice-involved survivors of intimate partner violence and, when eligible, divert survivor-defendants away from criminal prosecution, connecting them instead with services and support from community-based organizations. To qualify for the program, the survivor-defendant must:

1. Be a victim of recent violence committed by an intimate partner, including domestic violence, sexual violence, trafficking, and prostitution, and be a suspect or defendant in a referred case that is an immediate product of this abuse.
2. The survivor-defendant must be facing criminal charges, either pre- or post-charging decision, by MCDA as follows:
 - a. The most serious charge referred includes one of the following:
 - i. Assault in the Fourth Degree Constituting Domestic Violence,
 - ii. Harassment committed against a family or household member,
 - iii. Criminal Mischief in the Second or Third Degree related to domestic violence, or
 - iv. Violation of restraining order.
 - b. Any other charge(s) as authorized by the Senior Deputy District Attorney of the Domestic Violence Unit
3. The survivor-defendant must not constitute a threat to public safety as determined by the Senior Deputy District Attorney of the Domestic Violence Unit

If the Senior Deputy District Attorney of the Domestic Violence unit approves a survivor-defendant's eligibility for the program, the criminal case against the survivor-defendant will be no complained or, if already issued, will be dismissed. MCDA will then issue a referral packet to the appropriate community based organization, which will include the contact information for the survivor-defendant.

9.5.3. Deferred Sentencing Program (DSP) Eligibility Criteria

At time of issuing, DV misdemeanor cases will be screened for eligibility in the Deferred Sentencing Program (DSP). Defendants are eligible for the program if:

1. The defendant is charged with a misdemeanor offense prosecuted by the Domestic Violence Unit.
2. The defendant has not participated in, nor are they currently participating in, any domestic violence deferred sentencing or diversion program (including expunged cases).
3. The defendant has no:
 - a. Person felony convictions or pending person felony charges.
 - b. Class A person misdemeanor convictions within the last ten years other than on-DV traffic cases.
 - c. No person misdemeanor cases that are being prosecuted by the Domestic Violence Unit or in any other county (other than non-DV traffic cases).
 - d. Have not been convicted of violating a restraining order or a protective order. If a violation of a restraining order case is pending, the defendant cannot enter DSP unless and until the violation case is dismissed.
 - e. No more than four convictions for non-person criminal offenses within the last ten years.
 - f. Convictions and offense records under this section include juvenile adjudications.
4. The defendant has no judicial hold from another jurisdiction and is otherwise eligible for security release. If the hold is later resolved, the defendant can petition for entry into the program.
5. The defendant is not currently on formal probation, parole, or post-prison supervision, or on bench probation for a person misdemeanor or any offense prosecuted by the DV Unit.

If a defendant is determined to be eligible for DSP, eligibility will be noted on the charging document. If a defendant wants to enter DSP, notice of intent to enter must be communicated to the State and the Court no later than the Pretrial Conference hearing, which will be set two weeks after arraignment.

9.6. Juvenile

9.6.1. Juvenile Waiver to Adult Court Policy

There are two categories of cases that may be waived into adult court by the juvenile court:

Category 1: Pursuant to ORS 419C.349(1)(a) crimes enumerated under ORS 137.707 (juvenile BM11 crimes) and aggravated murder. Within this category are Tier I offenses and Tier II offenses.

Tier I offenses include: Assault in the First Degree, Attempted Aggravated Murder, Attempted Murder, Aggravated Murder, Murder, Kidnapping in the First Degree, Rape in the First Degree, Sodomy in the First Degree, Unlawful Sexual Penetration in the First Degree, Compelling Prostitution, Using a Child in Display of Sexually Explicit Conduct, Robbery in the First Degree, Manslaughter in the First Degree and Second Degree, Arson in the First Degree with Threat of Serious Injury, Conspiracy to Commit Murder, and Conspiracy to Commit Aggravated Murder.

Tier II offenses include: Robbery in the Second Degree, Rape in the Second Degree, Assault in the Second Degree, Kidnapping in the Second Degree, Sodomy in the Second Degree, Unlawful Sexual Penetration in the Second Degree, and Sexual Abuse in the First Degree.

Category 2: Pursuant to ORS 419C.349(1)(b) included crimes are non-BM11 Class A/Class B felonies and the following Class C felonies: Escape in the Second Degree, Assault in the Third Degree, Coercion, Arson in the Second Degree, Robbery in the Third Degree and any Class C felony in which the youth used, or threatened to use, a firearm. Further, per ORS 419C.349(1)(b)(D), also subject to potential waiver by the court is any other crime that the State and youth stipulate to waive into adult court.

Factors to consider when determining whether to file a motion requesting a waiver hearing seeking a remand from juvenile court to adult court include but are not limited to:

1. The seriousness of the offense;

- a. All degrees of Murder, Attempted Murder and Manslaughter, except in exceptional circumstances, will require a motion requesting a waiver hearing;
 - b. Tier I BM11 cases will require a motion requesting a waiver hearing unless other factors indicate a different result is appropriate;
 - c. Tier II BM11 crimes and Category 2 crimes will remain in juvenile court, unless other factors indicate a motion requesting a waiver hearing is appropriate;
2. Whether the offense was committed in a premeditated or willful manner, and or was exceptionally violent or aggressive;
 3. The impact and input from the victim to include vulnerability, wishes and position of the victims(s);
 4. The gravity of the loss, damage or injury caused or attempted during the offense;
 5. Protection and safety of the community;
 6. Whether, in the interest of justice, the potential sentence is proportional to the offense and other relevant factors;
 7. The history of the juvenile offender (see items 8 and 9 below), including whether or not the juvenile offender has consistently demonstrated that the unique jurisdiction of the juvenile court and programs will/will not ameliorate their criminal behavior;
 8. Prior delinquency history factors to include:
 - a. Youth previously committed to the Oregon Youth Authority (OYA) and paroled are presumed to have had the benefit of OYA jurisdiction;
 - b. Youth with prior violent person felonies that have had prior out of home placements or treatment;
 - c. Youth who have failed to cooperate with, or take advantage of, services offered while on probation;
 - d. Youth engaged in sophisticated or repeated criminal activity.
 9. Prior Treatment or Services offered by Juvenile Services Division (JSD), OYA, Department of Human Services (DHS) or others;
 10. Whether or not the juvenile justice system, due to possible alternatives and or the availability of less punitive alternatives, is more or less likely to safely achieve rehabilitation of the offender than the adult system;

11. Age of the youth at the time of the commission of the offense and whether the youth, at the time of the offense, was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and
12. The physical, emotional, and mental health of the youth.

The DDA shall consider these factors in determining whether to file a motion to request a waiver hearing. Any initial waiver decision may be reconsidered at a later date, should further facts or circumstances develop.

The process for making these determinations is as follows:

When a case referral is received from law enforcement for crimes enumerated in ORS 137.707 (BM11), the assigned DDA shall review the case and determine the appropriate charge. The assigned DDA shall then consult with the SDDA in their unit, and if different, the SDDA in the Juvenile Unit, where the decision to request a waiver hearing involves exceptional circumstances or other factors that affect the waiver decision per policy. Note: given juvenile statute time limits, initial decisions about charging, and waiver must be made as soon as practicable.

If there is a recommendation by the assigned case DDA, the consulted SDDA and CDDA, all supporting the filing of a motion requesting a waiver hearing, the case shall be reviewed and approved, by the District Attorney or his designee. Further, the District Attorney or his designee shall review and determine whether to file a motion requesting a waiver hearing in cases involving all degrees of Murder, Attempted Murder, and Manslaughter with input as outlined above.

MCDA Finance may create purchase orders or contracts at the request of the Deputy District Attorneys, and with Chief DDA and MCDA Finance Manager approval, for SB1008 Juvenile Waiver to Adult Court. The contracts may be on a case-by-case basis, or for multiple cases; and may be up to one to five years. A current contract may be amended, due to increased fees, with the approval of Chief DDA, and MCDA Finance Manager. Annually, MCDA Finance will review all current expert witness contracts for rate increases.

9.7. Homicide Unit

9.7.1. Crimes Handled

The Homicide Unit handles all homicide cases other than non-intentional vehicular homicide.

- Aggravated Murder
- Murder I, II

- Manslaughter I, II
- Criminally Negligent Homicide

9.7.2. On-Call Duties

Homicide Unit DDAs are always on-call unless on pre-approved time off or leave. DDAs are expected to respond to the scene of homicides as assigned by the divisional CDDA to assist with and manage the investigation.

9.7.3. Sentencing Phase Evidence Policy

MCDA shall present evidence in a sentencing proceeding under ORS 163.150 only after consulting with, and obtaining the approval of, the District Attorney. In making that determination the District Attorney will consider the facts and context of the crime, the input of the victim's family, the defendant's history, and any mitigating information presented by the defense.

9.7.4. Homicide Case Closing Protocol

Homicide cases contain six primary types of materials: Physical evidence (the murder weapon), documentary evidence (police reports), digital evidence (video/audio recordings), body worn camera, trial exhibits (poster boards, PowerPoint / Prezi exhibits for photographic evidence), and attorney work product.

- Physical evidence should be returned to the referring LE agency for storage in the agency's property room. For any physical evidence admitted at trial, DDAs should seek a court order returning the evidence from the custody of the court to the case DDA. The case DDA should then transfer the evidence to an MCDA investigator or case detective to be returned to the referring agency's property room for storage.
- Any documentary evidence, including discovery provided by the defense related to factual defenses, impeachment, and/or mitigation, not already scanned/uploaded into the MCDA case management system (PbK) should be scanned/uploaded into the system for digital retention and storage.
- Any digital evidence not already uploaded into the MCDA digital evidence management system (Axon) should be uploaded into the system for digital retention and storage.
- Any body worn camera evidence will remain in the MCDA digital evidence management system (Axon), or if not transferred to MCDA, retained in the referring agency's system (Gresham Police Only).
- Any non-digital trial exhibits, including poster boards, maps, etc, will be photographed by an MCDA investigator with evidence label visible. The photographs will be uploaded into the MCDA digital evidence management system

(Axon) for storage. For any exhibits admitted at trial, the DDA should seek a court order authorizing the destruction of the exhibit after photographic documentation for preservation purposes. If approved by the court, the trial exhibits will then be destroyed. Otherwise they will be transferred to the referring agency's property room for storage. Any digital trial exhibits (i.e. PowerPoint/Prezi exhibits containing photographic evidence with evidence labels) will be stored in the MCDA case management system (PbK).

- Any attorney work product, including opening statement/closing argument PowerPoint/Prezi presentations, trial preparation notes, notes taken during trial, etc., will be scanned/uploaded into the MCDA case management system (PbK) for storage.

MCDA Support Staff will send a letter to the Oregon Department of Corrections, with a copy to the State Board of Parole and Post-Prison Supervision, with the indictment, judgment, criminal history, Presentence Investigation (PSI), restitution order, victim impact statements, and any other materials necessary to describe the case.

If there is a paper file, it will be retained in the MCDA Homicide Room.

9.8. Misdemeanor Trial Unit

9.8.1. Crimes Handled

MTU is presumptively responsible for review and prosecution of all cases where the most serious charge is a misdemeanor and the facts do not give rise to concerns of domestic violence. Certain discrete categories of misdemeanors may be handled by other units as spelled out in those units' policies.

9.8.2. Case Review

Victim Call Ins

Police officers provide crime victims with information in the field after an arrest informing them that, in order to pursue prosecution, they need to call our office by 11:00 the next business morning. When a victim calls in wanting to "press charges" the MCDA employee answering the phones will log note in the case management system that the individual wishes to pursue charges and will confirm their contact information. On private-party victim cases we ordinarily will not file charges in the absence of a victim call-in if the only viable charges from the arrest are charges that that person is a victim of. However, the decision as to whether or not to file charges is ultimately within the discretion of the DDA reviewing the file who will take all relevant factors into account and make an appropriate charging decision.

Retail Theft

Retail theft is a priority for MCDA. An MTU DDA will not decline a retail theft case for which there is probable cause absent the approval of a supervisor. If a retail theft case is missing store materials (security footage, LPO reports) the DDA will initiate suitable follow-up to ensure those materials are promptly obtained.

In the discretion of the MTU SDDA we may require evidence in hand prior to filing charges involving a retailer who is chronically unable to timely provide us with the materials necessary to successfully prosecute. If this occurs, the MTU SDDA will notify the management of the retailer of this in writing as well as the CDDA over MTU.

Possession of Controlled Substances

PCS will be prosecuted in all cases, regardless of amount, so long as the reviewing DDA believes the seizure of the controlled substances is defensible in court and the facts support a conviction beyond a reasonable doubt at trial.

Firearms Cases

The aggressive prosecution of gun crime is essential for community safety. To this end MTU DDAs wishing to decline a referred gun charge must first staff the case with an MTU SDDA. All PTOs for firearms cases will require a plea to at least one firearms charge and must require that any involved firearms and ammunition be forfeited as a term of the plea agreement.

DUIs

Importance of DUI Prosecution

The effective prosecution of DUI offenses is a priority for MCDA. All DUI charges supported by sufficient evidence to prevail at trial will be charged by a reviewing DDA.

Hospital Records

Given adverse precedent in the Court of Appeals, and the practical inability to obtain necessary foundational information on misdemeanor cases, MCDA will not file misdemeanor DUI charges in cases where the only toxicological evidence of intoxication is contained in hospital records. This policy does not affect:

- Other provable criminal charges associated with the case, such as driving while suspended or reckless driving.
- Our ability to prove cases without a BAC. These can be tough cases, but they are not categorically precluded by this practice.

“No Investigation DUIs”

Situations where police take none of the standard and expected steps to investigate a DUI will not be charged. Please note that a defendant who refuses to comply with a DUI investigation does *not* fit within this policy. Refusals are provable cases. Situations where officers whether through lack of training or other press of business are unable to perform field sobriety tests, offer a breath test, and/or obtain other toxicological evidence of intoxication are not, absent extraordinary circumstances.

9.8.3. Case Resolution

9.8.3.1. Misdemeanor Plea Offer Guidelines

A plea offer guideline document shall be maintained by MTU. This document may be amended by the CDDA over MTU at any time without notice. The MTU Plea Offer Guidelines is a public record and shall be provided upon request to any interested party. MTU DDAs shall issue pretrial offers on their cases consistent with the provisions of the current MTU Plea Offer Guidelines.

9.8.3.2. Setover Sentencing Prohibited; Exceptions

Setover sentencing offers outside the limited context of the existing pre-approved programs (FOP for Commercial Sexual Solicitation) will not be extended absent the approval of an SDDA. DDAs should expect that such approval will not be given and should not seek it absent unusual circumstances.

Rescission of Previous Policy

The “reckless setover” policy is rescinded. Setover sentencing offers will no longer be extended on cases involving DUI. Any offers outstanding on the effective date of this policy remain valid and may be accepted, except in cases in which the defendant failed to appear after the setover sentencing offer was extended. In those cases, the setover sentencing offer is considered revoked.

Charging

A defendant charged with DUI whose driving was reckless and caused property damage in excess of \$500 will also be charged with Reckless Driving and one count of Criminal Mischief II for each victim whose property was damaged in excess of \$500. This is in addition to any other appropriate crimes, such as Driving While Suspended, Hit and Run, or Assault IV. If defendant's driving was reckless and there was property damage, but there is not probable cause to believe that damage is in excess of \$500, the defendant will be charged with Reckless Driving. For diversion-eligible DUI defendants who did not cause property damage, and Reckless Driving is the only other chargeable

crime, the Reckless Driving charge will not be added to the information unless the driving conduct shocks the conscious and an MTU SDDA approves adding the charge (and if this is the case a Recklessly Endangering Another Person (REAP) count is likely appropriate as well).

If it is determined post-charging that restitution is in excess of \$500, the DDA shall promptly file an amended information adding the count(s) as appropriate.

Civil Compromise

Provided that the defendant enters DUI diversion, MCDA will not oppose the civil compromise of any Criminal Mischief II count if the victim is satisfied that they have been adequately compensated. In the event that the court grants a civil compromise, and the only remaining charge is Reckless Driving, MCDA will move to dismiss the Reckless Driving count. If the case also involves a charge of Assault IV, a plea offer consistent with current MTU offer guidelines will be extended.

Resolution

After a defendant enters DUI diversion, if the only remaining counts are Reckless Driving due to property damage less than \$500 or Criminal Mischief II (CM II) for property damage in excess of \$500, the PTO will be as follows:

Cases with CM II Counts

Plea to the CM II, full restitution to the victim(s) in a specified dollar amount, 90 day ODL suspension, bench probation to end at the same time as DUI diversion. If the defendant pays the restitution amount in full and is otherwise in full compliance with the conditions of DUI diversion and bench probation, MCDA will not oppose early termination of probation.

Cases without CM II Counts

If the defendant has fully satisfied restitution (which will always be less than \$500) to the victim prior to entry of plea OR the defense attorney represents to the court that the full amount of restitution is in their client trust account and will be tendered to the court immediately post-plea to satisfy the restitution judgment: Stipulate to modification of the diversion agreement to include a restitution term; immediate payment of restitution as per above; dismiss the Reckless Driving.

An MTU SDDA may approve deviation from this policy, which should only happen in rare circumstances.

Cases including charges other than Reckless Driving and CM II are not within the scope of this policy and DDAs should use their discretion to negotiate an appropriate resolution.

Restitution

A pretrial offer may not be extended prior to establishing a dollar amount of restitution from the victim. A plea agreement will not be entered into that does not include a stipulation to the amount of restitution. The only situation in which restitution should ever be “left open for 90 days” in a case subject to this policy is if a defendant pleads to the remaining charges on the information and goes open sentencing in the absence of an offer, or if the case proceeds to trial and the defendant is convicted.

Rationale

The purpose of this resolution policy is to facilitate prompt payment of restitution to crime victims and promote efficiency for both the court and defense attorney caseloads by not leaving cases open pending sentencing for twelve months. This also requires our DDAs to front-load their investigation of resolution to provide all parties better insight into proper resolution of these cases. By pivoting towards Criminal Mischief II as the preferred crime of resolution, this will ensure that these counts are expungeable if a defendant is otherwise eligible, which would not be the case if a defendant were convicted of a traffic crime. Additionally, the old Reckless Setover policy excluded certain cases from eligibility based on the BAC level.

9.8.3.3. Day of Trial Negotiation

DDAs are not permitted to agree to dismiss counts as part of a plea agreement on the day of trial. Absent SDDA approval, which will only be given based on changed circumstances related to specific newly-arisen proof problems or other extraordinary circumstances, a defendant wishing to change their plea on the day of trial must plead to all counts on the charging document. A DDA may agree to a joint sentencing recommendation as part of a day of trial negotiation, but may not agree to dismiss counts. DDAs must obtain SDDA approval prior to entering into any conditional plea, following an omnibus motion hearing.

9.8.3.4. Felony Case Controls Resolution of Tracking Misdemeanors

If a defendant has a pending felony case and one or more pending misdemeanor cases is tracking with that felony case, the MTU DDA shall not resolve the misdemeanor case without first consulting with the felony case DDA or obtaining the approval of an MTU SDDA. If there is an open felony case, but the misdemeanors are not tracking, the misdemeanors shall be resolved independently consistent with MTU plea negotiation policy or by trial.

9.8.3.5. DUI Diversion

Many defendants charged with misdemeanor DUI are eligible, as a matter of statutory right, to have their cases diverted. The DUI diversion statute affords only limited ability to interpose discretionary objections to diversion. DDAs reviewing misdemeanor DUI charges will carefully review a defendant's criminal and driving record to determine if they meet the statutory diversion criteria with special focus on: prior DUI convictions, provable injury caused during the incident, and commercial driving privileges.

9.9. Strategic Prosecution and Services Unit (SPSU)

9.9.1. Crimes Handled

Cases where the most serious charge or type of investigation is listed below will presumptively be handled by SPSU.

- Compelling Prostitution
- Promoting Prostitution
- Commercial Sexual Solicitation
- Loitering to Solicit Prostitution
- Unlawful Prostitution Procurement Activity
- Prostitution
- Retail Theft Missions
- Auto Theft Missions
- TriMet Cases
- Port of Portland Cases
- High Volume Defendants

9.9.2. Human Trafficking

Victims of human trafficking will not be prosecuted for the misdemeanor crimes of ORS 167.007 Prostitution, Portland City Code 14A.40.040 Loitering to Solicit Prostitution or 14A.40.050 Unlawful Prostitution Procurement Activities.

9.10. Multnomah Attorney Access Program (MAAP)

[RESERVED]

9.11. Multi-Disciplinary Team (MDT)

9.11.1. Crimes Handled

Cases where the most serious charge or type of investigation is listed below will presumptively be handled by MDT.

- Abandonment of Child
- All Felony Sex Crimes where the victim is under 18 years of age
- Child Neglect I
- Contributing to the Sexual Delinquency of a Minor

- Criminal Mistreatment (where victim is a minor)
- Custodial Interference (DHS as custodian)
- Dealing in Depictions of Sexual Conduct Involving a Child
- Death Investigations involving a Child
- Displaying Obscene Materials to a Minor
- Encouraging Child Sexual Abuse I, II, III
- Endangering the Welfare of a Minor (where the child witnesses an act of sexual conduct or sadomasochistic abuse)
- Exhibiting Obscene Performance to a Minor
- Failure to Report Child Pornography
- Felony-level assault where victim is under 14
- Furnishing Obscene Materials to a Minor
- Invasion of Personal Privacy (when victim is a minor and defendant is family)
- Luring a Minor
- Online Sexual Corruption of a Child I, II
- Paying for Viewing Sexual Conduct Involving a Child
- Poss. of Materials Depicting Sexually Explicit Conduct of a Child I, II
- Possession of Depiction of Sexual Conduct Involving a Child
- Private Indecency (Misd) (when victim is a minor and defendant is family)
- Promoting an Obscene Performance by a Child
- Public Indecency (Misd) (when victim is a minor and defendant is family)
- Sale or Exhibition of Visual Reproduction of Sexual Conduct by a Child
- Sending Obscene Materials to a Minor
- Sex Abuse III (when victim is a minor and defendant is family)
- Sexual Misconduct
- Transporting Child Pornography into State
- Unlawfully Being in Location where Children Regularly Congregate (Misd)
- Using a Child in a Display of Sexually Explicit Conduct
- Using Children in Obscene Performances

9.12. Treatment, Accountability, and Specialty Courts (TASC)

9.12.1. Support Enforcement Division (SED)

[Reserved]

9.12.2. Child Support Deferred Sentencing Program (CSDS)

Eligibility Criteria

To be eligible for the Child Support Deferred Sentencing Program (CSDS), the defendant must:

- Have no prior contempt adjudications for failure to pay their child support in Multnomah County that have already gone through the CSDS Program,

- Make an admission or enter a no contest plea to the pending contempt charge, and
- Agree to the following:
 - Attend all court appearances;
 - Pay court ordered support in accordance with the terms of CSDS each month;
 - Notify the Support Enforcement office of any changes in address, employment, or phone numbers within 5 days of those changes; and
 - If ordered by the court, work with the Court Compliance Coordinator and follow all directives.

Disqualifying Criteria

Defendants who have previously completed the CSDS program in Multnomah County may not enter it again unless agreed to by the State.

Program Participation Considerations

- Employability and job seeking efforts
- Substance use treatment
- Social barriers
- Case History

Standard Disposition Recommendations

Parties entering CSDS are typically required to:

- Pay at least half of their current child support order each month. This amount may be lower depending on the party's individual circumstances and barriers to employment.
- Attend hearings in person each month unless/until granted permission to appear remotely. Hearings will occur less frequently in some circumstances.
- Meet with the Court Coordinator and follow all directives. These directives may include things such as:
 - Applying for staffing agencies
 - Engaging with employment programs

- Applying for jobs
- Attending job fairs
- Obtaining a GED
- Obtaining a substance abused evaluation and engaging with treatment programs
- Applying for housing
- Engaging with their doctor to obtain medical records
- Attending future meetings with the Court Coordinator

Program Culmination

Parties will graduate from the program once they have made six consecutive months of payments that are either 120% of the court ordered child support amount if it is still accruing, or of the last court ordered child support if it is no longer accruing. Upon graduation their plea will be withdrawn and the contempt charge dismissed.

Parties will be revoked from the program if they consistently fail to comply with the program requirements. Upon revocation they will be sanctioned on the underlying contempt charge.

9.12.3. DUII Intensive Supervision Program (DISP)

Eligibility Criteria

To be eligible for DISP, a potential participant must meet the following criteria:

- Open DUII case or current DUII probation case
- Participants must be 18 years of age or older
- No less than two and no more than seven prior DUIIs, including diversion and pending charges
- Prior to entry, potential participants must complete the Impaired Driver Assessment (IDA) and score High Risk / High Need
- Must reside in Oregon
- Participants with felony charges must be a resident of, or capable of moving to, Multnomah County

Disqualifying Criteria

- Current charges include a DUII related death
- Prior convictions for sexual offenses or for a violent offense, as defined by federal guidelines

- Certain sex offenses/domestic assaults/violent offenses/weapons convictions
- Potential participant is not mentally competent or medically capable of complying with DISP probation conditions
- Current probationer seeking to transfer into DISP does not currently have 24 months of probation left and cannot be extended such that their probation would last for at least 24 months beyond their entry into DISP

Program Participation Considerations

Participants may not have any vehicles registered in their name, so prior to entry vehicles must be sold or transferred into another's name. Treatment and Urinalysis requirements are intense and can be particularly burdensome for parents who serve as primary caregivers; the DISP is willing to be flexible but does not give parents special exemptions from the requirements of the program. Cases will be reviewed on an individual basis to determine the extent and circumstances surrounding the disqualification factors versus the need to participate in the program. Exclusions (those who fall into disqualifying factors) can be given discretionary review by the DISP team and/or community stakeholders to determine client eligibility and acceptance into the program. The possibility of additional program conditions may be considered for acceptance. All potential participants are required to participate in an orientation/JSC to meet the DISP team and ensure they understand the rigors of the program prior to entry. Potential participants are encouraged to attend a weekly DISP court session to observe how the program functions. All participants who fail to reach benchmarks set in the DISP phases may have their probation extended or revoked depending on individual circumstances.

Standard Disposition Recommendations

By default, DISP is a 36 month program with eligibility for termination after 24 months. However, qualifying misdemeanor cases can be placed on 24 months of probation with eligibility for termination after 18 months. Given the focus on treatment, most DISP offers will involve a jail reduction compared to a non-DISP offer. Many misdemeanor participants receive the statutory minimum 2 days of jail to be served at the start of probation so that the participant may then begin the mandatory 90 days of electronic monitoring (typically SCRAM) to begin their probation. Many felony participants receive the statutory 90 days jail. Unless the participant is assessed to need in-patient treatment, longer jail sentences are typically served over the course of probation via the jail's Turn Self In (TSI) program.

Disqualifying Criteria for 24-Month Probation

- Cases where the DUII charge would have been a felony except that an out-of-state prior conviction involving drinking (or substance use) and driving cannot be counted as a prior DUII in Oregon

- Three or more prior lifetime DUIIs
- Prior felony DUII conviction
- Present incident involved an injury accident
- Potential participant is facing other felony charges and is entering DISP on a misdemeanor DUII in order to access treatment services
- Cases where the District Attorney's Office has previously determined to be high risk enough to warrant a significant custody or probation offer

9.12.4. Strategic Treatment and Engagement Program (STEP) Court

General Basis for Eligibility

- Must live in Multnomah County .
- Must be charged with a BM11 offenses.
 - Only Eligible charges: Assault I, Assault II, Robbery I, Robbery II
 - Assault II must be charged on or after June 5, 2025 to be eligible for STEP.
- Must have at least 18 months of supervision left on Multnomah County probation or ability to extend (if probation transfer).
- Must have at least 90 sanctioning units available. If the presumptive sanctioning units have been exhausted, defendant must sign a waiver agreeing to increase the available sanctioning units to at least 90.
- Cannot currently be in another treatment court unless both judges willing to transfer supervision to STEP Court.
- No pending out of county case(s) that are likely to result in prison sentences.
- Defendant is not currently supervised on formal probation out of county.
- If the defendant is going to enter STEP Court after a DOC sentence, the defendant must agree to release to Multnomah County.
- Defendant must waive automatic earned discharge—earned discharge qualifications will be determined by the STEP Court judge given the totality of the circumstances.
- No clinical disqualifiers.

Disqualifying Criteria

Persons charged with the following crimes in the same indictment will not qualify for a STEP Court Assessment or for STEP Court:

- Homicide crimes
- Attempted Murder charges
- Any vehicular crime
- Sex crimes / Sex Offender conditions or treatment
 - Caveat: If the sex offense charge(s) are no longer prosecutable, the remaining offenses may be considered for STEP COURT if otherwise eligible
 - Defendants with previous sex offense conviction(s): The pre-adjudication assessment may disqualify a defendant from STEP COURT participation if sex offender conditions are required or there is a Level 3 designation (predatory)
- Compelling Prostitution or Promoting Prostitution offenses
- Domestic violence crimes²
- Kidnapping offenses
- Arson in the First Degree (BM11)
- Any case prosecuted by the Multidisciplinary Team (MDT child abuse cases)

Program Participation Factors

Persons charged with Robbery in the First Degree may be assessed for STEP Court participation. Additional factors that will be considered regarding whether the defendant will get an offer for STEP Court include:

- Presence of a firearm and manner of use
- Multiple victims

² This includes misdemeanors tracking with a non-DV Ballot Measure 11 crime. If someone is convicted of a DV offense, DCJ can unilaterally decide to place that probationer in their DV unit. That means even if someone is sentenced to STEP, DCJ can pull people from the program, altering their level of supervision. Further, the DV assessment tool (ODARA) is NOT used in STEP, so DV offenders will not receive appropriate evaluation or treatment within STEP.

- Multiple incidents
- If Defendant has one or more person felony convictions and the non-custodial/nonsupervisory timeframe since last conviction

Persons charged with Assault in the First Degree may be assessed for STEP Court participation. Additional factors that will be considered regarding whether the defendant will get an offer for STEP Court include:

- Presence of a firearm and manner of use
- Multiple victims
- Multiple incidents
- If Defendant has one or more person felony convictions and the non-custodial/nonsupervisory timeframe since last conviction
- Protracted and egregious harm to victim

Other factors informing professional judgement in determining program participation and appropriateness of a prison departure includes:

- Victim Input/Impact
 - Article 1, §42 of the Oregon Constitution ensures crime victims a meaningful role in the criminal and juvenile justice systems. (1)(a) and (1)(f) of §42 grants victims the right to be present at, and informed in advance of, any critical stage of the proceedings held in open court and to be heard at the pretrial release hearing and the sentencing or juvenile court delinquency disposition. Victim consultation during plea negotiations on violent felonies, and the opportunity to be heard at sentence is desirable and constitutionally mandated.
- Public safety
 - The protection of the general public
- The nature of the underlying offense: Aggravating and/or Mitigating factors
 - The nature and gravity of the underlying offense is recognized together with any relevant mitigating and/or aggravating information. Mitigating circumstances do not constitute a justification or excuse for the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability

- Defendant's risk to reoffend and program resources available to reduce that risk
 - The process includes the use of an actuarial tool to assess the defendant's risks and needs factors associated with the likelihood of recidivism. The assessment tool results are intended to inform the parties at critical decision points by determining an individual's level of supervision if placed on probation.
- Defendant's needs and resources available to address those needs
 - This process uses Needs Assessments to identify an individual's clinical and criminogenic needs (e.g. drug and/or alcohol treatment, mental health related medication and/or counseling, psychiatric or psychological evaluation, housing, physical health-related issues, etc.) and program availability in the community, Treatment services should target an individual's clinical and criminogenic needs.
- Accountability: restitution and/or restoration
 - Accountability includes both personal and social accountability. It is an obligation or willingness to accept responsibility or account for one's own actions and the effect on, and expectations of, the community around you.

Given the totality of the circumstances, the parties may conclude that a different court program or supervision plan may more aptly suit the risks and needs of the defendant. The parties might also determine that probation is not an appropriate outcome. The parties may therefore opt to resolve the case outside of STEP Court, to either prison or other probation services.

The parties are committed to exploring diversion options for this cohort while maintaining public safety. This includes a commitment to collect data and review outcomes including, but not limited to: the number of cases/defendants eligible for STEP Court consideration, the number of cases/defendants diverted into STEP Court or other appropriate probation program, the number of defendants transferred into STEP Court, the demographic breakdown of participants, quadrant placement breakdown, and recidivism/revocation rates. Data will influence whether program revisions need to be made or whether policies or processes should be modified.

Standard Disposition Procedure and Recommendations

If the case DDA is considering making a STEP offer, the parties should set any JSC in front of the STEP Judge. If the case results in a STEP Court probation offer, the parties should schedule a plea and sentencing hearing with the STEP Court judge. If the case results in a prison offer, the plea and sentencing hearing should be scheduled via the call

docket or scheduled directly with a judge outside of STEP Court. If the defendant is in custody and the pre-trial offer is not a "Split Sentence", it is highly recommended for the pre-trial offer to contain a jail sentence with no credit for time served, with no good time, with no earned time, and with early release to treatment per PO. This is done to give the probation officer to set up a treatment bed or other necessary services. 90 days is typically sufficient time, but it may be wise to discuss with the STEP Team to determine a jail sentence that will meet this goal.

9.12.5. Success Through Accountability, Restitution, Treatment (START) Court

General Basis for Eligibility

Disposition

- Downward departure from prison (366 days or more DOC) on a Multnomah County case
- Must have at least 18 months of supervision left on Multnomah County probation. If less than 18 months are remaining, the court must have the ability to extend.
- Must have at least 90 sanctioning units available. If the presumptive sanctioning units have been exhausted, Defendant must sign a waiver agreeing to increase the available sanctioning units to at least 90.

Qualifiers

- Must score as "high" or "very high risk" on the LSCMI or WRNA.
- Completed ASAM within the last 6 months showing a diagnosis of substance dependence.
- Does not have a pending out of county case(s) that are likely to result in prison sentences.
- Must live in Multnomah County. If the defendant is going to enter START after a DOC sentence, the defendant must agree to release to Multnomah County.
- Not being supervised on formal probation out of county. May be on supervision for other cases and from other jurisdictions if the defendant has a qualifying Multnomah County case and is not being formally supervised by another county.
- No sex offender, domestic violence or gang conditions of probation (not a disqualifier – may be reviewed on case-by-case basis).

- If the defendant has a felony DUII, defendant has been screened and denied entry into DUII Intensive supervision Program (DISP).
- If the defendant has a diagnosis of schizophrenia, schizoaffective disorder or bipolar disorder, the defendant has been screened and denied entry into Mental Health Court.

Eligibility Determination

In order to determine if a participant is eligible for the START program, a completed referral packet must be completed and submitted to start-court-program-referrals@multco.us (this is typically done by the defense attorney).

Program policies related to referrals:

- Referrals to the program should be completed prior to sentencing into the START program to ensure the individual meets eligibility criteria, can be supervised in Multnomah County, and the best transition into the program from sentencing as possible.
- Upon receiving the referral, DCJ facilitates the screening process, conducted by the lead START Court PO.
- If an individual has or will have upon entry, gang, sex offender, or domestic violence conditions of probation, DCJ will determine if another specialized unit is more appropriate based on supervision needs and needs of the individual while on probation.
- The coordinator will create a participant record in the Specialty Court Management System (SCMS) upon receiving the required ROI.
- As needed, the lead PO may request to staff a referral with the START team if a signed release of information was included in the referral and the parties on the referred case are included.
- Regardless of the eligibility determination, a START Court judicial settlement conference may be set with the START Judge upon request, although this is not required for entry.

Program Participation Factors

Prior adjudications, pending allegations and previous START participation can be taken into account when drafting pre-trial offers but are not themselves an automatic disqualification from START participation.

Persons charged with Delivery of Controlled Substances may be assessed for START Court participation.³ Additional factors that will be considered regarding whether the defendant will get an offer for START Court include:

- Amount of controlled substances involved
- Presence of a firearm and manner of use
- Multiple buyers
- Multiple incidents
- If Defendant has one or more delivery of controlled substance convictions and the non-custodial/nonsupervisory timeframe since last conviction

Other factors informing professional judgement in determining program participation and appropriateness of a prison departure includes:

- Victim Input/Impact
 - Article 1, §42 of the Oregon Constitution ensures crime victims a meaningful role in the criminal and juvenile justice systems. (1)(a) and (1)(f) of §42 grants victims the right to be present at, and informed in advance of, any critical stage of the proceedings held in open court and to be heard at the pretrial release hearing and the sentencing or juvenile court delinquency disposition. The opportunity to be heard at sentence is desirable and constitutionally mandated.
- Public safety
 - The protection of the general public
- The nature of the underlying offense: Aggravating and/or Mitigating factors
 - The nature and gravity of the underlying offense is recognized together with any relevant mitigating and/or aggravating information. Mitigating circumstances do not constitute a justification or excuse for the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability
- Defendant's risk to reoffend and program resources available to reduce that risk

³ START Court is a social treatment court where participants will generally meet one another whether through the treatment program or during court itself. When reviewing a case involving Delivery of Controlled Substances, consider the potential the defendant reoffends and may deliver controlled substances to other START Court participants.

- The process includes the use of an actuarial tool to assess the defendant's risks and needs factors associated with the likelihood of recidivism. The assessment tool results are intended to inform the parties at critical decision points by determining an individual's level of supervision if placed on probation.
- Defendant's needs and resources available to address those needs
 - This process uses Needs Assessments to identify an individual's clinical and criminogenic needs (e.g. drug and/or alcohol treatment, mental health related medication and/or counseling, psychiatric or psychological evaluation, housing, physical health-related issues, etc.) and program availability in the community, Treatment services should target an individual's clinical and criminogenic needs.
- Accountability: restitution and/or restoration
 - Accountability includes both personal and social accountability. It is an obligation or willingness to accept responsibility or account for one's own actions and the effect on, and expectations of, the community around you.

Given the totality of the circumstances, the parties may conclude that a different court program or supervision plan may more aptly suit the risks and needs of the defendant. The parties might also determine that probation is not an appropriate outcome.

Standard Disposition Recommendations

It is recommended that pre-trial offers contain probation terms of 36 months or longer in order to provide sufficient time to successfully complete and advance through each program phase. If the defendant is in custody and the pre-trial offer is not a "Split Sentence", it is highly recommended for the pre-trial offer to contain a jail sentence with no credit for time served, with no good time, with no earned time, and with early release to treatment per PO. This is done to give the probation officer time to set up a treatment bed or other necessary services. 90 days is typically sufficient time, but it may be wise to reach out to the START PO who did the START referral to see how much time they may need due to current treatment bed availability. The court and DCJ discourage "Split Sentences", as it is much easier for POs to ensure a smooth transition to treatment from MCDC than from DOC.

9.12.6. Mental Health Court

General Basis for Eligibility

To be eligible for Mental Health Court, participants must be on probation, either supervised (formal probation) or unsupervised (bench probation) and suffer from a qualifying diagnosis.

Potential participants are identified from a variety of sources:

- Persons against whom criminal charges are pending
- New probationers
- Persons currently on probation and being supervised by the Mental Health Unit of the Multnomah County Department of Community Justice, Probation Department

Persons currently on unsupervised probation (bench probation) referred by the supervising judge

Qualifying Diagnoses

A defendant must suffer from one of the following:

- Bi-polar disorder,
- Schizo-affective disorder,
- Schizophrenia, or
- Major depression.

Other diagnoses are considered on a case-by-case basis.

Standard Disposition Recommendations

It takes a minimum of one year to complete Mental Health Court. It is therefore recommended that all pre-trial offers contemplate probation terms between 12 to 24 months.

9.12.7. Veteran's Treatment Court (VTC)

Eligibility Criteria

To be eligible for Veterans Treatment Court involving formal supervision, a defendant must meet the following criteria.

- Must live in Multnomah County

- Veteran of the U.S. Armed Forces who is eligible for VA healthcare
- High clinical need for substance use disorder and/or mental health treatment
- Other treatment needs, for example: domestic violence, responsible thinking, anger management, parenting classes, etc.
- Must have at least 18 months of supervision left on Multnomah County probation or ability to extend (if probation transfer within Multnomah County)
- Must have at least 90 sanctioning units available. If the presumptive sanctioning units have been exhausted, defendant must sign a waiver agreeing to increase the available sanctioning units to at least 90
- Cannot currently be in another treatment court unless both judges are willing to transfer supervision to VTC
- No pending out of county case(s) that are likely to result in prison sentences
- Defendant is not currently supervised on formal probation out of county
- If the defendant is going to enter VTC after a DOC sentence, the defendant must agree to release to Multnomah County
- No clinical disqualifiers

Disqualifying Criteria

Persons charged with the following crimes in the same indictment or on a separate pending case will not qualify for VTC:

- Homicide crimes
- Attempted Murder charges
 - Caveat: If the Attempted Murder charge(s) are no longer prosecutable, the remaining offenses may be considered for VTC if otherwise eligible
- Sex crimes / Sex Offender conditions or treatment
 - Caveat: If the sex offense charge(s) are no longer prosecutable, the remaining offenses may be considered for VTC if otherwise eligible
- Defendants may be disqualified from VTC participation if sex offender conditions are required or there is a Level 3 designation (predatory)
- Compelling Prostitution or Promoting Prostitution offenses
- Kidnapping in the First Degree
- Arson in the First Degree (BM11)
- Any case prosecuted by the Multidisciplinary Team (MDT child abuse cases)

Defendants charged with domestic violence offenses may not be considered for Veteran's Court absent Chief Deputy approval.

Program Participation Considerations

Prior adjudications, pending allegations and previous VTC participation can be taken into account when drafting pre-trial offers but are not themselves an automatic

disqualification from VTC participation. DDAs are encouraged to staff unusual cases or circumstances, or cases involving egregious circumstances, with their supervisor and the VTC DDA prior to sending an offer to the defense.

Standard Disposition Recommendations

It is recommended that pre-trial offers contain probation terms of 18 months or longer in order to provide sufficient time to successfully complete and advance through each program phase. Standard dispositions should range from 18 months to 60 months, depending on the Veterans risk and needs, while also taking earned discharge supervision termination into account. "Split sentences" may be allowed if agreed to by the VTC team, although not encouraged.

9.12.8. Multnomah County Justice Reinvestment Program (MCJRP)

Eligibility Criteria

To be eligible for the MCJRP pre-adjudication process, a participant must be charged on or after July 1, 2014 with a felony offense—except those listed in the ineligible offense list—that carries a presumptive prison sentence (12 months + 1 day or more).

Defendants must:

- Reside in Multnomah County
- Be 18 years of age or older
- Not receive a "split sentence" involving prison and probation
- Not be currently supervised in a specialty court

MCJRP Ineligible Offense List (Updated 5/18/21)

Below is a list of felony charges that are excluded from participation in the MCJRP assessment.

- Aggravated Murder and Murder
- Attempted Aggravated Murder and Attempted Murder
- Manslaughter in the First Degree and Second Degree
- Criminally Negligent Homicide
- Aggravated Vehicular Homicide

- Failure to Perform the Duties of a Driver (Death involved)
- Any other Death involved offense (including Len Bias cases)
- Arson in the First Degree (only BM11 Arson offenses)
- Assault in the First Degree
- Kidnapping in the First Degree
- Robbery in the First Degree
- Domestic Violence involved Offenses
- Child Victim under the age of 14
- Sex Crimes/Offenses (including FRISO charges)
- Burglary in the First Degree Offenses with determinative sentences, such as Denny Smith (all other Burglary I charges are MCJRP eligible)

Beginning on or after September 30, 2019, otherwise MCJRP-eligible cases in the following categories are not eligible for the MCJRP process:

- Defendants with more than one pending MCJRP Eligible Unlawful Use of a Vehicle (UUV) or Possession of a Stolen Vehicle (PSV) case

An otherwise eligible case may be deemed ineligible if a defendant has a pending disqualifying BM11 offense.

9.12.9. Domestic Violence Deferred Sentencing Program (DSP)

See Domestic Violence Unit policies.

9.13. Justice Integrity Unit (JIU)

9.13.1. Purpose

A prosecutor's job is to seek justice, now and in the future. MCDA is committed to the notion that our role as ministers of justice does not end at the conclusion of a case in the courtroom, but instead recognizes that ensuring justice integrity is a process.

As recognized by the American Bar Association, the "primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict . . . the prosecutor should seek to protect the innocent and convict the guilty, consider the interests of

victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.”

9.13.2. Guiding Principles

The JIU shall be an independent unit that reports directly to the District Attorney or their designee. The JIU will approach its review and investigation of cases in a manner to ensure that justice prevails in each and every case. JIU will approach its assigned tasks prioritizing equitable treatment of defendants and victims as well as with consideration of the interests of the community at large in a fair and equitable criminal justice system.

The unit will work as transparently as possible and will make efforts to fully inform victims, applicants, petitioners, and community members of the unit's work. The unit's aim shall be to build trust in the justice system through commitment to truth-finding and transparent practices.

The unit will meaningfully involve and inform victims using trauma-informed practices. The unit will be respectful of victims and cultivate a culture of keeping victims abreast and involved in cases handled by the unit.

9.13.3. Duties

The JIU will be charged with the duties of (1) reviewing claims of innocence and remedying wrongful conviction, (2) assessing clemency claims, (3) ensuring that sentences for past convictions are serving the interests of justice, (4) processing applications to set-aside convictions, (5) evaluating and managing claims for post-conviction or habeas corpus relief, (6) evaluating and managing requests for reductions to misdemeanor on most eligible cases, (7) considering requests for post-conviction bail remission.

The JIU is also responsible for representing the State in arraignment court where initial release decisions are made and managing all aspects of the fugitive and extradition process.

JIU may be assigned other duties, in the discretion of the District Attorney, other than the active management of a criminal caseload, that do not interfere with their mission above.

9.13.4. Clemency

The JIU will serve as the principal contact with the Governor's office and assist in expressing the office's position with respect to clemency. All clemency petition matters should be routed through the JIU to ensure consistent handling.

9.13.5. Commutation and Pardon

The JIU will assess clemency petitions requesting commutation or pardon based on whether the person has demonstrated substantial rehabilitation, whether the person's continued incarceration serves the interests of justice, and will consider input from the victim or deceased victim's surviving family members. This includes an assessment of:

- Information regarding the individual's original sentence and facts of their crime.
- The individual's criminal history.
- The person's disciplinary record and record of rehabilitation while incarcerated.
- The person's age, any evidence of diminished physical or mental condition, and any other factors that tend to show a lowered likelihood of future offense or dangerousness.
- The portion of the sentence served.
- Any evidence of changed circumstances.
- The impact on the victim's safety if the petition is granted.

The JIU will recommend supporting only those applicants who have shown significant personal growth and excellent behavior while incarcerated, substantial rehabilitation, and who on balance demonstrate that the interests of justice, community safety, and victim well-being weigh against their continued incarceration or conviction.

9.13.6. Evidence-Based Best Practices

If it is determined that a prosecutorial practice or use of certain forensic evidence is inaccurate or unreliable, the JIU may conduct internal auditing to identify cases involving the problematic evidence. The JIU may also work with the MCDA Policy Committee on writing and implementing policies and procedures to remedy the problematic practice. The JIU will attempt to capture data surrounding their work and may engage in data-based projects to improve prosecutorial practices.

9.13.7. Erroneous Judgment Terms

Unless the underlying case prosecutor wishes to handle the matter, the JIU will handle requests to correct erroneous terms in judgments under ORS 137.172. In doing so, the JIU will consult with the prosecutor who originally handled the case to determine

whether they have input on the outcome and will ensure the victim is notified of the potential change.

9.13.8. Prosecutor-Initiated Conviction and Sentence Reconsideration - ORS 137.218

ORS 137.218 authorizes a person convicted of an eligible felony crime in Multnomah County, and the Multnomah County District Attorney, to jointly petition the Multnomah County Circuit Court for reconsideration of a conviction and/or a sentence.

If a petition is submitted, ORS 137.218 grants the court the authority to dismiss the conviction, to resentence a person to a lesser sentence for the same crime of conviction, or to sentence a person for a new crime (if the DA files a new charging document and the defendant pleads guilty to the new charge in lieu of the old charge).

Eligible Convictions

ORS 137.218 explicitly excludes misdemeanors, aggravated murder and convictions eligible for expunction under Oregon's expunction statute (ORS 137.225).

MCDA will consider requests for conviction and sentence reconsideration for all eligible crimes (felonies, other than aggravated murder, that are not eligible for expunction) as long as they are not currently pending appeal or other post-conviction litigation. However, the Multnomah County District Attorney shall need particularly powerful mitigation and/or justification to consider approving petitions involving convictions for homicide, child abuse, domestic violence, or any sex crime. Said cases will be approved for submission to the court only in rare circumstances. MCDA may also initiate petitions on its own. In cases where there is a victim (or victim's surviving family member), the victims will be consulted for their input prior to the initiation of a petition by MCDA.

How to Initiate a Request for Conviction and/or Sentence Reconsideration

MCDA does not provide a specific form to initiate this process. Rather an individual should submit a request via U.S. Mail to: Multnomah County District Attorney, Justice Integrity Unit - SB 819, 1200 SW 1st Avenue, Suite 5200, Portland, Oregon 97204. The application can also be submitted via email to justiceintegrityunit@mcdca.us.

To maximize the chance of a positive decision for reconsideration, petitioners should include the following:

- Conviction(s) underlying the sentence.
- Whether there is an appeal or post-conviction petition pending (if it is, the case is ineligible).

- Reasons why the original sentence or conviction(s) no longer serves the interest of justice.
- The petitioner's desired result: No conviction at all? Conviction of a different crime? Reduction of a prison sentence? Reduction of a fine?
- A narrative of their current life path, successes, schooling, employment, plans, and what they learned from their error embodied by their conviction;
- Letters of reference including contact name, telephone number and/or emails, in particular from treatment providers, probation officers, employers, teachers, professors, and others who have seen the petitioner's success and can vouch for the length and permanency of stable changes they've made in their life.
- Information that addresses concerns under ORS 137.218:
 - Petitioner's disciplinary record in jail or prison (if applicable) and the record of rehabilitation while incarcerated.
 - If a prison sentence has been completed, or if no prison sentence imposed, evidence of rehabilitation while on probation and conformance with conditions of supervision;
 - Evidence that reflects whether the petitioner's age, time served in-custody and diminished physical or mental condition, if any, have reduced the petitioner's risk for future violence.
 - The amount of the original sentence already served by the petitioner.
 - The future safety of the victim(s) of the crime(s) for which the petitioner seeks conviction or sentence reconsideration.
 - Evidence that reflects changed circumstances since the petitioner's conviction and shows that the petitioner's sentence no longer advances the interests of justice.
- Information that addresses whether the petitioner's conviction fits under the following:
 - Oregon law relevant to the crime of conviction, the circumstances of law enforcement interaction with the suspect, and/or the sentence imposed, has changed in a significant way since the conviction.
 - The defendant was under 25 years of age when they were convicted;

- The defendant is a survivor of sexual or physical violence at the time they committed the act that resulted in their conviction; or,
- Felony driving while suspended convictions, when the basis for the suspension was other than a homicide, and when the only conviction(s) on the defendant's criminal record is felony driving while suspended.

District Attorney Decision

The District Attorney must personally approve any decision to file a joint petition under ORS 137.218 unless, due to the nature or history of a particular case, he delegates that decision to another.

If the JIU review of a petition concludes that some form of relief may be warranted they will present a recommendation to the District Attorney who will then consider all information submitted by the petitioner, input from the victim(s) regarding the reconsideration, the input of the lead law enforcement officer involved in the matter, as well as any and all character references in determining whether or not to petition the court for conviction or sentence reconsideration.

MCDA's decision is communicated in writing to requestors and, in a trauma informed way, to victims of crime. In the discretion of the JIU SDDA if a petition for reconsideration will be denied, and a victim has not already been notified of the petition, they may elect to not notify the victim of the petition and its denial if, in their judgment, notifying the victim would lead to undue re-traumatization.

9.13.9. Victim and Survivor Consultation

The JIU will use a trauma-informed and victim-centered approach with the victims and survivors impacted by their work. The JIU shall ensure that the unit's decisions and interactions involving victims and survivors consist of:

- Strengthening the victim's capacity to recover from traumatic events by providing timely and ongoing information, resources, services, support, and relevant contacts, at the victim's request.
- Acknowledging that earlier notification of changes in case status provides better opportunity for victim choice, preparation, and recovery.
- Empowering the victim by providing choices on whether, how, and when they are kept informed and supported.
- Ensuring that a victim advocate with specialized knowledge in trauma-informed best practices is involved in cases the JIU pursues.

- Ensuring that victims are aware of all of the rights extended to them post-conviction.
- Transparency regarding the decisions made by the JIU and MCDA, which includes providing victims with SB 819 petitions and other documents filed that may affect a prior conviction.

The JIU will provide victims and survivors with choice and respect their decision about outreach. In these cases, there should be an initial notification about the renewed case activity, after which individual victims and survivors determine for themselves whether and how they want to receive further information. The JIU will offer the victim the opportunity to express a notification preference, whether by mail, telephone, email, or in person. The victim shall also be offered the option to designate a third party, such as a family member, victim advocate, or attorney, to receive notice on the victim's behalf.

The JIU will allow the victim time to process all new information.

The JIU will establish one person as a primary contact to whom the victim can reach out at any time. Where possible, this person should be a victim advocate. The JIU will also help the victim understand that they may contact the attorney within the JIU working on the case, and ensure that the victim has contact information for the JIU DDA. The JIU DDAs and victim advocates should be actively prepared to answer any and all questions by the victim in a timely fashion as they arise.

SB 819 Consultation Process

The aim of the JIU shall be to meaningfully involve and inform victims in SB 819 petitions using trauma-informed contact and consultation. MCDA uses all reasonable efforts and resources to contact and inform, in a trauma-informed manner, the victims of crime associated with each conviction or sentence reconsideration requests. MCDA shall solicit their opinion regarding whether reconsideration should be pursued.

After initial notification to victims of crime, they will be kept apprised of the reconsideration process, including being notified at least thirty days prior to any court hearing in the matter as required by ORS 137.218.

“All reasonable efforts” as used in this policy includes, but is not limited to:

- Assistance from an investigator to gather up-to-date contact information for victims and survivors.
- A notification letter to the address of each victim identified by the investigator.
- Attempted phone contact, on at least two documented occasions, within 4 weeks of the notification letter being sent, unless the JIU receives notification that the victim does not wish to be involved further.

“Victims of crime” includes surviving family members if the victim is deceased or incapacitated.

After initial notification victims will be kept apprised of the reconsideration process, including being notified at least thirty days prior to any court hearing in the matter, being provided with a copy of any joint petition for reconsideration, as required by ORS 137.218, and being informed of their right to participate in the hearing and the various ways in which they can do that.

Clemency Consultation Process

JIU shall meaningfully involve and inform victims in clemency petitions using trauma-informed contact and consultation. When a clemency petition is received by staff, JIU attorneys or staff will request assistance from an investigator to gather up-to-date contact information for victims and survivors. Next the JIU will, with the assistance of staff and victim advocates, send a notification letter to the address of each victim identified by the investigator. This letter shall provide basic notification that a clemency petition has been filed, and allow the victim to select the level of involvement they would like to have and to select the method of communication they prefer with the office. The victim advocate assigned will attempt phone contact within 4 weeks of the notification letter being sent, unless the JIU receives notification that the victim does not wish to be involved further. In cases where a victim is not reached or does not respond, best efforts at contact must be made. Best efforts are defined as the mailing of the initial notification letter, and at least two documented phone call attempts.

In cases where the victim advocate makes contact with the victim, the victim will be provided information on the clemency process. If the victim chooses to participate, the JIU attorney will consult with the victim regarding their position on clemency after the victim has had sufficient time to review the petition. The victim's position shall be considered by the JIU in making their presentation to the District Attorney, and shall be presented to the District Attorney. Best efforts at contact or consultation must occur before a decision is made on the position of the office with regard to the clemency. If a victim wishes to submit documents or statements to the Governor's office, the JIU and victim advocates will facilitate that process.

This office will always notify a victim about the decision of the final position of this office on a clemency application before submitting an answer to the Governor's office.

9.13.10. Reduction to Misdemeanor

JIU will handle post-conviction requests from defendants that their felony convictions be reduced to misdemeanors under ORS 161.705(2)(b) except if:

- the case originated from MDT;

- the reduction to misdemeanor is an express term of a plea agreement.

In either situation, the underlying trial unit will handle the request. For those cases handled by JIU, in determining the appropriate position of this office, will:

- notify and consult with the original case deputy;
- notify and consult with the victim(s) (if any);
- consider the facts and context of the underlying charge;
- consider the performance of the defendant in the community since conviction;
- consider the interests of community safety in maintaining a felony conviction; and
- consider the particular impact on the defendant of maintaining a felony conviction.

9.13.11. Remission of Forfeited Security

Oregon law permits a defendant or a surety to apply to the court for remission of forfeited security. JIU will handle any such request that is made post-resolution. The originating trial unit will handle any such request that comes in pre-resolution.

Where a court has ordered forfeiture of security, and entered a security judgment, a defendant has already not complied with the order of the court to appear as required delayed the adjudication of their case to the detriment of the victim(s) and witnesses in the case.

A security forfeiture has two parts: 1) the forfeiture of the 10% of security that was actually posted with the court and 2) a judgment requiring payment of the 90% of security still owed.

Absent evidence beyond the statement of a defendant demonstrating that the failure to appear was not wilful (e.g. record of incarceration, hospitalization, or in-patient placement) and evidence that the defendant took *prompt* steps to appear once they were able to do so (i.e. turning themselves in or scheduling a court date), this office will always object to remission of the 10% forfeited. The purpose of security is to ensure a defendant's appearance in court and if a defendant may reasonably expect a remission of any forfeited security, the purpose of security is not served. Even in a situation where remission is otherwise indicated, if there is outstanding restitution, this office will nonetheless object to remission of the 10% and request that forfeited security instead be applied to restitution.

In the rare case where a remission of the 10% forfeited is deemed appropriate, vacating the 90% is also presumptively appropriate.

As to requests directed at the 90% judgment, JIU will not oppose a request to vacate that portion of the judgment if:

- The defendant has no open cases in any state;
- The defendant has no cases pending review in Oregon;
- Other than payment of fines, fees, and forfeited security, defendant fully complied with or performed the sentence of the court;
- Defendant has not been convicted of a misdemeanor for 3 years;
- Defendant has not been convicted of a felony for 5 years; and
- If the defendant is currently incarcerated on another case, the defendant has had no disciplinary misconduct findings for 5 years.

9.13.12. Independence and Conflicts

In order to avoid confirmation bias and ensure that the JIU can meaningfully pursue its purpose, the JIU must be as independent as practicable. The ultimate decision maker on all work of the JIU is the District Attorney. To the extent possible, JIU DDAs should report directly to the District Attorney or their designee regarding their work. As part of their holistic review of a case or claim, JIU attorneys should contact the prosecutor who handled the underlying matter to obtain factual information and context. The case prosecutor should be informed of any final decision on the case, and their input shall be included alongside the JIU workup of a case.

Prosecutorial Misconduct Claims

To the extent that a claim raises, or subsequent JIU review reveals prosecutorial misconduct, the JIU shall follow all MCDA protocols related to prosecutorial misconduct and will notify the General Counsel. The JIU will not take any part in employee discipline, and the intent of this Policy is to preserve the processes that already exist with regard to employee discipline. The JIU shall not engage in investigating the conduct except for assessing whether the conviction should remain intact in light of any substantiated improper conduct.

Conflicts

If any attorney in the JIU or the JIU's line of command, except for the District Attorney, had a role in the underlying case that is under review a conflict screening shall occur. Where the JIU DDA handled the underlying case, the JIU SDDA shall handle the review. Where the JIU SDDA handled the underlying case, the General Counsel or other person designated by the District Attorney shall take over reviewing duties from the JIU. Where the General Counsel handled the underlying case, the JIU shall retain reviewing powers but shall report directly to the District Attorney or a designee approved by the District Attorney.

9.14. Investigations

District Attorney Investigators (herein referred to as DA Investigators) shall be managed by a set of Standard Operating Procedures as designated by the District Attorney.

DA Investigators assist Deputy District Attorneys (DDAs) in the investigation of cases and perform other functions ancillary to court proceedings such as the service of subpoenas, preparation of court exhibits, interviewing witnesses, and the gathering and protecting of evidence. Investigators are under the general supervision of the Chief District Attorney Investigator (Chief DA Investigator). DA Investigators are subject to the policies of the Multnomah County District Attorney's Office (MCDA) and to the Investigations Division Standard Operating Procedures.

9.14.1. Goals

To assist DDAs in the successful prosecution of cases by providing quality trial assistance with difficult and complex case preparation.

9.14.2. Staff

The Investigations Division is staffed by a Chief DA Investigator, Lead DA Investigators, and sworn and nonsworn DA Investigators. Investigators are generally assigned to units within MCDA.

9.14.3. Duties

Investigatory duties are complex and wide ranging. Duties include:

Preparing Cases for Trial

Most criminal cases set for trial need additional investigation. The amount of additional investigation required varies depending on the particular type of case. Primarily, this consists of locating, contacting, and interviewing additional witnesses that have developed since the preliminary investigation by other law enforcement agencies.

Re-Interviewing Victims and Witnesses

Due to frequent time lapses from crime date to trial date, victims or witnesses may need to be re-contacted to review their version of the facts. It is often necessary to re-contact these persons either personally or by conference in this office prior to trial.

Reluctant Witnesses

Many cases have witnesses who, for various reasons, are apprehensive and reluctant to testify or do not want to be involved in the case. Forced testimony of a witness can

generally be harmful. Overcoming apprehension and reluctance sometimes involves witness protection, transportation, consultation regarding intimidation or threat, dealing with loss of work, etc.

Out-of-State Witnesses

Facilitating testimony of out-of-state witnesses involves arranging for transportation, hotel reservations, and coordinating and scheduling court appearance days with a minimum loss of time and expense.

Evidence

The DA Investigator's responsibilities may include protecting the chain of any evidence in his or her charge by locating, assembling, identifying, and readying it for trial as well as returning it to the property room. DA Investigators may be responsible for securing, witnessing, transporting, and delivering evidentiary "standards" to the Oregon State Crime Lab. Responsibilities may also include the release of property to rightful owners at the end of trial and completion of appeal date.

DA Investigators may also collect digital evidence (i.e. video, phone records, photographs, etc.) from victims or witnesses. DA Investigators will ensure that original copies are submitted to the appropriate law enforcement agency's property room. Generally, DA Investigators should not be the collector of original, physical evidence and should coordinate with the relevant law enforcement agency.

Exhibits

DA Investigators may be required to render scale drawings of crime scenes; assist with or secure visual aids, video and sound equipment; produce, select, enlarge, and mount crime scene photographs; and order aerial photography when necessary.

Other Agency Investigations

DA Investigators act as liaison to all law enforcement agencies and may assist other agency investigators conducting investigations in this county by serving subpoenas, warrants, conducting interviews and investigations, and locating witnesses. In the course of their regular duties, investigators should establish and maintain credibility with the courts, support personnel, prosecuting and defense attorneys, law enforcement and similar outside agencies.

Grand Jury Interviews and Investigation

DA Investigators assist the grand jury deputy in locating, interviewing, and subpoenaing witnesses. Investigators may be required to conduct investigations in such matters as witness tampering, threatening of witnesses, bribing of witnesses, perjury, and locating

witnesses. Investigators may conduct an immediate investigation to locate victims or witnesses in old cases for the purpose of extradition. In addition, investigators may be responsible for investigating threats made to the court or its personnel.

Task Force Assignments

DA Investigators may be assigned to law enforcement task force operations as part of their duties. Any DA Investigator assigned to a task force or other joint operation shall follow MCDA Policy and Oregon law.

Body Worn Camera Unit

DA Investigators may be assigned to the Body Worn Camera (BWC) Unit to assist with the review of BWC footage, including the preparation of video for court.

Security

Sworn DA Investigators may be required to provide backup security for MCDA staff, other court personnel, or witnesses who have been threatened by hostile subjects. DA Investigators spend a significant amount of time in the field so immediate security issues should be handled by the Multnomah County Sheriff's Office courthouse security, according to established safety protocols.

DA Investigators needing to contact dangerous subject(s) in the field will secure the accompaniment of another DA Investigator or obtain the assistance of local law enforcement.

Sworn DA Investigators may, on occasion, be required to provide close protection for the District Attorney at public events. These requests will be vetted by the Chief DA Investigator.

Transporting Witnesses

Investigators may be required to transport victims, witnesses, and/or family members who for health, economic, expediency, or protection reasons cannot provide their own transportation. Subjects in custody shall not be transported by DA Investigators. Children shall be transported in the appropriate car seat or booster seat, in accordance with Oregon law. Persons with severe health conditions requiring special medical care will not be transported by investigators.

Search Warrants

Sworn DA Investigators may be required to research and assist in the preparation of search warrants. Only sworn DA Investigators employed by MCDA may serve search or arrest warrants, after consultation with the Chief DA Investigator.

Systems Data Updating

In the course of performing their duties, investigators frequently discover new information. As appropriate, DA Investigators shall update records to facilitate a more efficient court process.

Inmate Release Tracking

In some instances, due to the nature of the proceeding, witnesses, victims, and support recipients may need to be advised of a pending inmate release date. When appropriate, the DA Investigator will assist in this function as directed by the District Attorney.

Court Testimony

DA Investigators prepare reports and often interview witnesses on investigative assignments. Due to the nature of their duties, court testimony may be necessary. In addition, DA Investigators may need to attend trials to track the development of cases that may require ongoing investigation.

Public Speaking

DA Investigators may be called upon to speak before schools, agencies, and organizations. These duties may include the development and organization of training agendas for DDAs, support staff, and other agencies.

Other Duties as Needed

Due to the wide range of investigatory possibilities, and changing legal requirements, DA Investigators may be required to assist in other related duties as needed by DDAs. Under rare circumstances, DA Investigators may be required to participate in undercover operations. This will require prior consultation with and approval from the Chief DA Investigator.

9.14.4. Time

Investigators generally work 40 hours per week, Monday through Friday, providing availability during court hours.

Overtime and special duty must be pre-approved by the Chief DA Investigator. If a DA Investigator is called by a DDA or other law enforcement agency to assist on a case outside regularly scheduled work hours, a text should be sent to the Chief DA Investigator notifying them of the nature of the request.

Holiday and compensatory time is governed by contract agreement,

9.14.5. Firearms

The following reflects MCDA policy regarding the possession of firearms by DA Investigators during the course of their duties for the office. This policy recognizes that DA Investigators, in the course of their duties, may encounter situations where the use of firearms for personal protection may be appropriate. This policy also recognizes the fact that DA Investigators may encounter situations where they will be called upon to assist other sworn peace officers in situations where force may be appropriate. The policy is directed at the protection of DA Investigators in these situations.

Only sworn DA Investigators may carry a firearm while on duty at MCDA. Sworn DA Investigators carrying a firearm must do the following:

- Qualify with the firearm annually, in accordance with the certification requirements of Oregon's Department of Public Safety Standards and Training (DPSST).
- Obtain written approval of the Chief DA Investigator and District Attorney before carrying firearms while working as DA Investigators for MCDA.
- Attend mandatory training on firearms and use of force, in accordance with the certification requirements of DPSST.

9.14.6. Security of Firearms

Any sworn DA Investigator carrying a firearm must keep such firearm secured on their person, in an approved holster as outlined below. While in the field, the firearm must be worn in a manner such that the firearm is not readily visible and is concealed upon their person.

Any sworn DA Investigator carrying a concealed firearm inside the Multnomah County Courthouse shall wear their MCDA ID card or badge on a lanyard or chain that allows it to hang in the center of the body. The ID should be readily visible, to ensure that law enforcement officers are easily identifiable during an emergency response.

All duty firearms must be stored in a secure manner that complies with ORS while not being carried upon a person when off duty.

9.14.7. Use of Force Guidelines

DA Investigators shall follow Oregon law and Multnomah County Sheriff's Office (MCSO) policy on use of force, including the use of deadly force. This policy shall be reviewed annually to ensure compliance and understanding. NOTE: There are sections of MCSO policy that do not apply to DA Investigators and they are not expected to retain

that information (i.e. use of handheld chemical incapacitants / agents (OC), use of Conducted Electrical Weapons (CEW, i.e. Taser). Security of Firearms

9.14.8. Training and Equipment

The District Attorney's Office will provide equipment necessary for compliance with the training and implementation of this policy, including ammunition for training and service, and safety devices such as armored ballistic vests as required by the policies of the Multnomah County Sheriff's Office for the safe carrying and operation of firearms.

Firearms

The firearm to be used by an investigator must be furnished by the investigator and will be of reputable firearms manufacturer with an acceptable reliability rating, such as Glock, Smith & Wesson, Beretta, Ruger, H&K, Colt, etc. Acceptable calibers are 9-millimeter or .45 caliber.

The District Attorney's office will provide to each investigator authorized to carry a firearm:

- A firearms holster – minimum security level of single retention device.
- Flashlight and holster
- Spare magazine carrier
- One pair of handcuffs and case

Ballistic Vests

All DA Investigators, except for full time telework, will be issued a ballistic safety vest and external vest carrier.

Radios

Each investigator will be issued a police radio that they will be responsible for keeping charged and available for use while in the field.

Training

The Chief DA Investigator, or their designee, will be responsible for scheduling mandatory training for certified, sworn DA Investigators that is required to maintain their DPSST certifications. Other trainings will be scheduled and authorized by the Chief DA Investigator as the needs of each investigator is evaluated.

The minimum sworn officer training is posted on the DPSST website and is subject to change. As of July 1, 2023, the required maintenance requirements (due by December 31 of each year) are as follows:

- 8 hours Use of Force or Firearms Training
- 1 hour Ethics training

Required maintenance requirements (due December 31 every three years) are as follows:

- 84 hours total training (annual requirements included in this amount)
- 3 hours training relating to CIT/mental health

9.14.9. Social Media

Definitions

“Content” – Any posts, writings, material, documents, photographs, graphics, videos, links, or other information that is created, posted, distributed, or transmitted via social media.

“Social Media Site” – An internet site or application where users create and share content and participate in online communities and conversations, in the form of a page, profile, account, group, or other presence. These include, but are not limited to, blogs, forums, chat sites, Facebook, X, Instagram, Nextdoor, LinkedIn, Reddit, YouTube, TikTok, and Snapchat. This policy includes emerging new web-based platforms generally regarded as social media or having many of the same functions as those listed

“Covert Social Media Profile” – A social media site profile created and maintained by an MCDA DA Investigator, but in a username not associated with the MCDA DA Investigator for the purpose of investigating criminal activity.

Covert Use of Social Media Sites

MCDA recognizes that the use of covert social media profiles can be a useful tool in the investigation of criminal activity.

Profile registration

All covert social media profiles shall be registered with the Chief District Attorney Investigator. The information provided shall include:

- The name and web address of the social media site.
- The username, screen name, and password of the covert social media profile; and,
- The MCDA DA Investigator responsible for maintaining the covert social media profile.

The Chief District Attorney Investigator or their designee shall conduct yearly audits to ensure that the covert profiles are still active.

When a covert social media profile is no longer needed it shall be deactivated or deleted from the social media site to the extent permitted by the social media site, and the Chief District Attorney Investigator shall be notified.

DA Investigator Responsibility

The MCDA DA Investigator registered as the maintainer of a covert social media profile is responsible for all content posted online under that profile.

The DA Investigator shall maintain their own covert social media profile and shall not share the access information with other DA Investigators or other law enforcement officers, except to the Chief District Attorney Investigator for auditing purposes.

Covert social media profiles are to be utilized for official use only.

Documentation

DA Investigators utilizing information discovered through their use of a covert social media profile shall document the information in the appropriate report and include the date, time, and source of the information, and include screenshot of the relevant information.

Training

DA Investigators who maintain a covert social media profile shall attend formal training as determined by the Chief District Attorney Investigator.

10. Workplace Equity and Safety

10.1. Profiling

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

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

In person by visiting the main office, 1200 SW First Avenue, Suite 5200; or

In writing, signed by the complainant, and delivered by hand, postal mail, facsimile 503-988-3643, e-mail (da@mcdca.us); or

By telephone 503-988-3162. Telephonic reports may be made anonymously or through a third party.

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

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

Any such complaint, or phone caller wishing to make a complaint, shall be forwarded to the First Assistant to the District Attorney. Upon receipt of a complaint alleging profiling, the First Assistant to the District Attorney shall conduct a thorough investigation of the complaint. The aforementioned investigation will be conducted within 60 days of the filing of the complaint. At the conclusion of the investigation, the First Assistant will forward a report containing findings regarding the complaint, along with any recommended actions, to the District Attorney. Copies of the report will be forwarded to the Law Enforcement Contacts Policy and Data Review Committee and to the original complainant (unless the complaint was made anonymously).

10.2. Workplace Harassment/Discrimination

The Multnomah County District Attorney's Office is committed to providing its employees with a workplace that is free of illegal bias, prejudice, discrimination, harassment or retaliatory conduct. It is committed to creating and maintaining an environment in which each person is respected and valued without regard to protected status.

In light of this, District Attorney's office adopts Multnomah County's rules outlining a respectful workplace that is free from any form of discrimination, harassment, and violence, rules #3-40, #3-42, #3-45, and #3-47.

[Rule # 3-40](#) Discrimination and Harassment-Free Workplace.

[Rule # 3-42](#) Gender Identity and Gender Expression Harassment and Discrimination-Free Workplace.

[Rule # 3-45](#) Violence-Free Workplace.

[Rule # 3-47](#) Maintaining a Professional and Respectful Workplace.

10.2.1. Internal Complaint Process

Multnomah County Rule 3-40-060 designates who discrimination and harassment may be reported to. As applied to the District Attorney's office, "County Manager" means that can be any member of the management team.

11. Foreign Nationals in the Criminal Justice System

11.1. U/T Visa

11.1.1. Introduction

MCDA strives to ensure victims and witnesses, regardless of immigration status, feel safe reporting crimes and assisting in the prosecution of cases. Fear of adverse immigration consequences should not be a barrier to justice for victims or witnesses.

Under this policy, MCDA will continue to take steps necessary to respect and uphold the rights of immigrant communities and pursue protections for immigrant victims of crime. The intention of this policy is to avoid added collateral impact to victims when assisting in the detection and prosecution of crimes.

Because MCDA seeks to be a safe space for immigrant victims, this policy and its related processes are intended to be trauma informed and culturally responsive.

11.1.2. Certification Policies

11.1.2.1. U/T Visa Authority & Background

The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) promotes community safety by minimizing adverse immigration consequences for immigrant victims. To that end, the TVPA authorizes U visas for victims of crime and T visas for victims of human trafficking.

11.1.2.2. U Visas

The I-918B form that MCDA completes for certification is only one component of a U visa petition. MCDA's role is not to determine the applicant's ultimate eligibility, but rather to confirm that the requester was a victim of a qualifying crime and to describe the victim's helpfulness. Additionally, MCDA may report information about the physical

and mental abuse the victim suffered, to the extent known or observed. MCDA does not grant immigration relief by certifying an I-918B form. The only agency that can grant relief on a U visa petition is the U.S. Citizenship and Immigration Services (USCIS).

USCIS takes years to process a U visa petition, but USCIS can grant an applicant deferred action in the form of work authorization as part of a waiting list determination. The annual statutory cap for U visas is 10,000. Consequently, final issuance of U-nonimmigrant status takes more than a decade but does result in up to 4 years of temporary nonimmigrant status with work authorization. The applicant may then be eligible to apply for a green card.

11.1.2.3. T Visas

Unlike U visas, a T visa petition does not require a certification from a law enforcement agency. But applicants may still request certification from such agencies to support their petition. Once USCIS grants a T visa, the applicant receives up to 4 years of temporary nonimmigrant status with work authorization and access to federal benefits. The applicant may be eligible to apply for a green card. The annual statutory cap for T visas is 5,000.

Because survivors of human trafficking frequently suffer from intense trauma, law enforcement agencies are allowed to waive the “helpfulness” standard when certifying I-914B forms for T visa petitions. MCDA will use trauma-informed practices and certify I-914B forms in every credible case of sex trafficking, labor trafficking, or forced labor, regardless of an individual’s helpfulness in investigating or prosecuting criminal activity.

T and U visa certification requests are not mutually exclusive. When MCDA certifies an I-914B form for a T visa petition, it will also process an I-918B form for a U visa petition.

11.1.2.4. Certifying Officials

The District Attorney shall designate a CDDA to serve as the primary Certifying Official. The CDDA shall work in collaboration with a victim advocate, who will have primary responsibility for initial intake and assessment over the petition. The designated Certifying Official will exercise sound discretion and judgment in processing each certification request on a case-by-case basis, taking into consideration all relevant factors.

11.1.3. Timeliness of Certifications

MCDA will respond to U/T visa certification requests within 90 calendar days of receiving a request. If an applicant informs MCDA that they are in removal proceedings, MCDA will respond to the U/T visa certification request within 14 days. The Certifying Official will record all information required by Oregon Senate Bill 597 (2023), including the total number, within the previous year, of certification requests received, requests granted and requests denied, and the number of pending certifications on the date of the report and for denied certification requests, the number of times each of the following were the reason for the denial:

- Lack of qualifying criminal activity;
- Lack of helpfulness;
- Lack of jurisdiction over certification request; or
- Other circumstances for which a certifying official or agency may lawfully deny certification.

11.1.4. *Brady* Compliance

When MCDA receives a certification request related to an active criminal case, MCDA will notify the defendant that MCDA received the request. MCDA will also disclose to the defendant any certification decision. Other information related to the certification request may be disclosed as required by MCDA's Brady policy. Applicants will be notified that their requests and any enclosures may be discoverable.

To ensure compliance with this subsection, the Certifying Official will keep the prosecutor informed about any certification decision when the criminal case is still open.

11.1.5. Guidelines for Processing U/T Visa Applications

U Visa Qualifying Criminal Activity

Pursuant to INA 101(a)(15)(U)(iii) and 8 U.S.C. 1101(a)(15)(U)(iii), MCDA will issue a certification to qualified applicants who are victims of one or more of the following violations of federal, state, or local criminal law, or other related crimes:

Abduction	Domestic Violence	Felonious Assault
Abusive Sexual Contact	Extortion	Female Genital Mutilation
Blackmail	False Imprisonment	

Fraud in Foreign Labor Trafficking (18 U.S.C. 1351.)	Obstruction of Justice	Stalking
Hostage	Peonage	Torture
Incest	Perjury	Trafficking
Involuntary Servitude	Prostitution	Unlawful Criminal Restraint
Kidnapping	Rape	Witness Tampering (8 CFR 214.14(a)(14)(ii).)
Manslaughter	Sexual Assault	
Murder	Sexual Exploitation	
	Slave Trade	

Pursuant to 8 CFR 214.14(a)(11), criminal activity includes attempt, conspiracy, or solicitation to commit any of the above qualifying crimes. MCDA will mark every qualifying crime on the I-918B form that is credibly supported.

“Other related crimes,” means any similar activity where the elements of the crime are substantially similar to those listed in this section. See Department of Homeland Security’s U Visa Law Enforcement Certification Resource Guides. For example, felony robbery may be considered equivalent to felonious assault, and coercion may be considered equivalent to false imprisonment.

Qualified Applicants

Direct, indirect, and bystander victims of a qualifying criminal activity may request certification.

Indirect victims can request certification regardless of the direct victim’s immigration status as follows:

- If the direct victim is incompetent, incapacitated, or deceased because of homicide or manslaughter, the next of kin can request certification;
- If the direct victim is 21 years old or older on the offense date, their spouse and unmarried children can request certification; or
- If the direct victim is under 21 years old on the offense date, their spouse, children, parents, and unmarried siblings can request certification.

MCDA will consider U/T visa certification requests when the applicant or qualifying criminal activity has some nexus to Multnomah County.

Helpfulness Standard

To obtain a U visa, applicants must show USCIS that they have been helpful, are being helpful, or are likely to be helpful to, among others, local authorities investigating or prosecuting certain criminal activity. See INA 101(a)(15)(U)(i)(III), 8 U.S.C. 1101(a)(15)(U)(i)(III).

When MCDA reviews a request for U/T visa certification, it will employ a rebuttable presumption that the victim is likely to be helpful unless there is evidence that: (1) a victim unreasonably refused to cooperate; or (2) a victim unreasonably failed to provide information and assistance reasonably requested by law enforcement or the prosecution.

Applicants who show evidence of other compelling circumstances, such as further threats of violence, housing issues, or illness, that prevented cooperation may be able to show that their decision or inability to continue cooperating was not unreasonable, and therefore, that they remain eligible for certification.

The advocate assigned to process a certification will prepare a description of the applicant's past, present, and/or future helpfulness to law enforcement and/or prosecutors, using information available to MCDA. The advocate will consider any additional materials furnished by the applicant or their attorney. To the extent possible, the certification will document all helpfulness on the part of the applicant.

Examples of helpfulness include, but are not limited to:

Calling 911	Submitting a Crime Victims Reimbursement Program (CVRP) claim
Filing a restitution claim	Meeting with an MCDA advocate
Meeting with a prosecutor	Testifying in court
Signing a release of information for medical records	Providing input to probation (e.g., pre-sentence investigation)
Providing a victim impact statement	Supplying helpful information to an MCDA advocate
Following up with advocate	Filing an order for protection or harassment/restraining order
Supplying updates on injuries	
Providing a statement to law enforcement	

Participating in a forensic interview or supporting a victim at a forensic interview

Attending court

Participating in trial preparation

Providing plea input

Providing evidence for a sexual assault kit / SANE

Responding to a subpoena

Following up with law enforcement about an incident

No Statute of Limitations

Federal U and T visa regulations do not set a specific statute of limitations for certifying I-918B and I-914B forms, respectively. See Department of Homeland Security's U and T Visa Law Enforcement Certification Resource Guides. MCDA will process certification requests regardless of case status.

Factors Not to be Considered

MCDA will not impose requirements for certification beyond those that are statutorily enumerated in 8 U.S.C. 1101(a)(15)(U).

Accordingly, MCDA will process certifications without considering doubts as to whether an applicant – who has been identified as a victim of a qualifying crime - will ultimately qualify for a U or T visa, an applicant's criminal or civil court history, whether the incident was charged, the outcome of the case in which the victim was involved, or whether the perpetrator was apprehended. As a matter of law, these factors will be considered by the Department of Homeland Security in determining whether to issue the visa, and should not be considered by MCDA.

Declining to Certify U/T Visas

If MCDA elects to decline a certification request, MCDA will decline the request, explain the declination to the applicant and provide the applicant with the opportunity to provide any supplementary materials which might be helpful.

Withdrawing Certification

MCDA may withdraw a U/T visa certification if an applicant unreasonably obstructs MCDA's ability to enforce the law. Whether an applicant unreasonably obstructs MCDA's ability to enforce the law will be assessed pursuant to section II(e)(3) of this policy. Prior to a withdrawal, MCDA will make reasonable efforts to notify the applicant

and provide them with an opportunity to respond. The County Attorney must approve any withdrawal before MCDA sends the withdrawal notification to USCIS.

Recertification Requests

USCIS requires that victims file U or T visa petitions within 6 months of MCDA's certification date. Consequently, certifications can expire. Upon request by the applicant, MCDA will issue a recertification if an applicant misses their filing deadline.

Victims may also request a recertification after the initial certification when applying for a green card as a way for MCDA to attest to their helpfulness.

MCDA will issue recertifications unless an applicant has unreasonably obstructed MCDA's ability to enforce the law, as described in Section II(h).

Contents of Certification Requests

Applicants should submit a cover letter and a completed I-918(b) form. No other materials shall be required by the office, though the applicant should feel free to submit any other information they deem pertinent to the application as needed.

Possible Discoverability/Disclosure of Certification Requests

Please note that any information an applicant or their representative provides as part of a certification request may be disclosed to the defense, the court, and in some circumstances, the public during an open court proceeding.

When MCDA receives a petition for a U-Visa on an open criminal matter, they are to furnish this fact via discovery as soon as is practicable, and should not wait until MCDA has made a decision as to the petition itself.

How to Send Certification Requests to MCDA

Applicants and/or their representative can send all certification requests and immigration relief inquiries via email to uvisa@mcda.us.

To send requests via U.S. Mail, address the requests to:

Multnomah County District Attorney
Attn: U/T Visa Request
1200 S.W. 1st Avenue, Suite 5300
Portland, Oregon 97204

11.2. Consular Notification

This office will encounter criminal suspects, victims and witnesses who are citizens of foreign countries. When this happens, our office has certain obligations under state, federal, and international law.

International law requires that arrested criminal defendants be notified of their right to contact the consulate of their native country, and to have local authorities assist them in notifying that consulate if they so desire. Certain bilateral treaties also require the mandatory notification of consulates for 58 countries. As of 2025 those countries are:

Albania	Georgia	Saint Kitts and Nevis
Algeria	Ghana	Saint Lucia
Antigua and Barbuda	Grenada	Saint Vincent and the Grenadines
Armenia	Guyana	Seychelles
Azerbaijan	Hungary	Sierra Leone
Bahamas	Jamaica	Slovakia
Barbados	Kazakhstan	Tajikistan
Belarus	Kiribati	Tanzania
Belize	Kuwait	Tonga
Brunei	Kyrgyzstan	Trinidad and Tobago
Bulgaria	Malaysia	Tunisia
China (including Macao and Hong Kong)	Malta	Turkmenistan
Costa Rica	Mauritius	Tuvalu
Cyprus	Moldova	Ukraine
Czech Republic	Mongolia	United Kingdom
Dominica	Nigeria	Uzbekistan
Fiji	Philippines	Zambia
Gambia	Poland	Zimbabwe
	Romania	
	Russia	

An up-to-date list can be found on the State Department's webpage.

11.3. Plea Bargaining

It is the policy of the Multnomah 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 MCDA's commitment to the safety and dignity of all our community members, regardless of immigration status, and to help us earn the trust of immigrant communities.

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.

MCDA's collateral consequences 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.

11.4. Reference to Immigration Status During Trial or Other Proceedings

DDAs should avoid language during a plea colloquy or other in-court appearance that could unintentionally trigger immigration consequences, including making any reference to a defendant's immigration status or foreign place of birth, unless it is demonstrably relevant and necessary to the matter at hand. Immigration status can be raised by the DDA when it is necessary for the purposes of impeachment for bias, motive or any other legally permissible reason. The mere fact that a person faces a theoretical immigration consequence, without more, does not constitute motive or bias. If it is necessary to provide the court or jury with such information, including during a trial or other court, the DDA should provide notice to the court and defense counsel ahead of time whenever possible. The furnishing of this notice should be documented as a log note in the case management system, and the DDA should notify their SDDA that the issue exists and may be raised in court.

11.5. Contact With Federal Immigration Authorities

Consistent with Oregon law, the Multnomah County District Attorney's Office does not have a policy or practice of notifying or alerting immigration officials or agencies

regarding individuals (witnesses, victims, or defendants) with whom we come into contact. This applies to our work in the adult and juvenile justice systems, as well as our work seeking to enforce child support obligations.

Members of this office are committed to protecting the rights and dignity of all individuals, including immigrant community members. Members of this office also must not knowingly provide false information to federal agents, obstruct their lawful duties, or resist judicially-issued legal process. Engaging in such conduct may lead to legal consequences including potential criminal liability.

If any employee receives a request for information from a person associated with a federal immigration agency, that person shall immediately notify the General Counsel. In emergency situations, if the General Counsel is unavailable, immediate notification of an available management attorney may be made instead. The General Counsel will ensure compliance with applicable state and federal law, to include mandatory reporting of the request for information relating to immigration enforcement as defined in ORS 181A.822(3).

12. Change Log

Date	Section(s)	Description
6/2/2025	All	New policy manual effective.
6/13/2025	throughout	Typographical corrections and minor rewording for clarity.
	2.6.10	Updated policy to reflect permissible use of professional legal tools.
	1.6.3	Added section clarifying decision-making authority on discovery.
	9.12.3	Updated STEP eligibility criteria to include certain Assault II cases.
	9.8.3.3	Removed language on expiration date of misdemeanor PTOs as inconsistent with PTO guidelines document and new court rules on misdemeanor case process.
7/11/2025	9.12.8	Updated MCJRP program eligibility criteria
8/15/2025	1.10	Added section "Use of Official MCDA Identification"
9/30/2025	6.14	Updated forfeiture policy
	3.15	Added section "Background Checks"
	9.1.5	Cash equivalents disbursement
11/6/2025	8.4	Added language specifically addressing considerations around arrest of a victim
11/24/2025	9.12.7	Added approval requirement for DV charges prior to extending to veteran's court offers
	9.12.3	Removed SPI as disqualifying criterion for DISP
	11.5	Legal compliance updates
	1.5.3	Streamlined ORS 135.815(1)(e) process
	9.1.1	Updated case assignment procedure regarding initial assessment
	5.4	Legal compliance updates
12/8/2025	8.6	Updated approval pathway and criteria for GEI findings; allows for approval of exceptions
	7.2.5.3	Clarified approving authority could be any management attorney for negotiation of mandatory minimum sentence cases.
12/22/2025	1.5.3	Updated PID policy to include fast track inclusion of pending criminal cases.
	9.14.9	New section. Covert use of social media by DA Investigators.
	6.14	Added approval requirement for pursuing criminal forfeiture

Multnomah County District Attorney's Office Policy Manual

	6.1.1	New section. Created policy on prosecution of stand-alone violations
1/27/2026	2.2.3 2.6.10	New section. Receipt of legal process at reception. Updated AI policy for future flexibility and to address tools incorporated into existing software packages.
2/24/2026	2.6.10	Updated AI policy to include Axon Brief One
3/31/2026	3.4.3	Clarified definition of “gift” was the same as used in State law, removed redundancy, and added additional clarifications to the policy.



NATHAN VASQUEZ, District Attorney for Multnomah County
Multnomah County District Attorney's Office

1200 SW 1st Ave Ste 5200 Office: (503)988-3162
Portland, OR 97204-2902

Proffer Agreement: State v.; DA# 051-

Dear Counsel:

Your client has information that may be of assistance in the investigation and prosecution of another person or persons for criminal activities. You indicate that your client is willing to provide truthful and complete information and cooperate in the investigation of those activities in return for potential sentencing concessions from the prosecution in your client's pending case noted above. Because the Multnomah County District Attorney's Office (MCDA) must first evaluate whether your client is prepared to be entirely truthful and cooperative, it is necessary for your client to proffer information to criminal investigators which discloses the nature and scope of the criminal activities of others, including the extent of your client's own involvement in those activities. Assuming that your client is willing to provide a proffer of such information, the proffer must be accomplished pursuant to ground rules that are set forth herein. This agreement governs only the use of and protections for information provided by your client to the MCDA. It does not bind any other state, federal, or local prosecuting, administrative, or regulatory authority in the independent exercise of their authority. Under no circumstance will participation in this debriefing confer immunity of any kind upon your client for any crime your client may have committed.

1. **Purpose:** The purpose of your client making a proffer is to provide the MCDA with an opportunity to assess the value, extent, and truthfulness of your client's information about the criminal liability of the client and others.
2. **Truth:** Your client's proffer must be completely truthful with no intentional and/or material misstatements or omissions of fact. Such proffer includes producing any and all documents, records, writings, tangible objects, electronically stored materials, account numbers, access codes and any other requested information, evidence or form of access within your client's possession or control which, in the state's view, relate to the criminal activity under investigation.
3. **Reporting:** At the MCDA's option, the proffer interview may be documented. This will include but may not be limited to a formal report that will be written and retained by an involved law enforcement agency and/or the office of the MCDA.

4. **Verification**: Your client agrees to cooperate with any efforts and requests by the MCDA to verify that the client's information is truthful and complete.
5. **No Disclosure of Cooperation**: Your client agrees not to reveal this debriefing, cooperation, or any information about this investigation or prosecution to anyone without the prior written consent of the MCDA.
6. **No Promises**: While your client may hope to receive some benefit by cooperating with the MCDA, your client expressly understands that the MCDA is making no promise of any consideration now or in the future. Your client further understands that providing a proffer does not obligate the MCDA to negotiate any terms or make any concessions to your client. If the MCDA, in its sole judgment and discretion, concludes that your client's proffer is complete and truthful, the MCDA may choose to offer your client terms for future cooperation in the investigation and prosecution of others.
7. **No Direct Use**: Except as outlined herein, the MCDA agrees that statements or information contained in your client's proffer made after signing this agreement may not be used in the MCDA's case-in-chief against your client should a trial be held for any charges pending or later filed in the course of this investigation. The protections for your client under this agreement do not extend to crimes of violence except for crimes now indicted against your client under the above case number or unless specifically noted herein.
8. **Collateral Use**: If your client should ever testify materially contrary to the substance of the proffer, or otherwise presents in any legal proceeding involving the client or anyone else a position materially inconsistent with the proffer, any information or evidence obtained through the proffer may be used against your client in any fashion, including, but not limited to, the basis for a prosecution for offenses involving perjury, false swearing, false declaration before a grand jury or court, false statement, and obstruction of justice.
9. **Derivative Use**: The MCDA may make any derivative use of, and may pursue investigative leads suggested by, any statements, information or evidence provided by your client's proffer under this agreement. This is true whether or not the MCDA formally enters into a cooperation agreement with your client. Additionally, your client understands that any documentation (as noted in section 3 above) of the proffer will be retained by the MCDA and/or the involved law enforcement agency whether an agreement is reached or not. This provision eliminates the requirement of a hearing wherein the MCDA may otherwise have to prove that the evidence it sought to introduce against your client was derived from "a legitimate source wholly independent" of statements or information from the proffer. Further, as part of this debriefing process, your client will assist the state as requested in securing other evidence and locating witnesses. The state may pursue any investigative leads from the interview without restriction or obligation.
10. **Brady and Statutory Discovery Under ORS 135.815**: Your client understands that, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and related case law, the MCDA must provide any indicted defendant all information known to the MCDA which is material to such defendant's guilt or punishment. Should your client's proffer contain *Brady* material, your client should expect that the MCDA will disclose this information to the appropriate defendant(s) even

if no agreement is reached. Further, pursuant to the state's constitutional and statutory discovery obligations, the state or another party may seek, and a court may later order, an in-camera inspection of your client's written or recorded statements. This may result in disclosure of your client's statements to the defendant(s) about whom your client is debriefing, even if there is no cooperation agreement between your client and the state. If this occurs, the state may seek a protective order limiting further disclosure.

11. **Voluntariness**: Your client is signing this document and engaging in this debriefing of his/her own free will and with the advice of counsel. Your client will have counsel present during the debriefing, may consult with you privately as appropriate, and may choose to end the debriefing at any time.

12. **Full Agreement**: This letter constitutes the full and complete agreement of the parties.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: _____
DDA
Deputy District Attorney

Proffer Agreement

I have read this proffer agreement carefully and reviewed every part of it with my attorney. I understand and voluntarily agree to its terms.

Date

Defendant

I represent the defendant as legal counsel. I have carefully reviewed every part of this proffer agreement with my client. To my knowledge, my client's decision to make this proffer agreement is an informed and voluntary one.

Date

Attorney for Defendant