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Policies for the Coos County District Attorneys Office as Required by ORS 8.705

Revised or Created: November 30, 2022.

These policies are effective December 1, 2022.

Pursuant to ORS 8.705, the District Attorneys of Oregon are now required to have written policies on various subjects. Further, those required policies are to be posted on the website of the District Attorney. These policies are subject to revision at any time. Persons reviewing these policies should make sure they have the latest version.

Our ultimate goal as prosecutors is to protect the public by delivering justice. The legislative branch is responsible for writing law. Laws passed by the legislature and case law developed by the courts will be our primary policy manual. If any such law conflicts with a specific policy provision below, then the law shall take precedent.

Further, as each case and each defendant are different, it is impossible to write a policy that will cover every given situation. These below policies, except as otherwise indicated below, are to be viewed as principles to follow rather than as strict edicts.

ORS 8.705(1)(a) Pretrial Discovery

This office shall abide by the requirements of ORS 135.805 and ORS 135.815, and any other discovery obligation mandated by the Oregon and Federal Courts.

Unless otherwise agreed to by defense counsel, written discovery will be provided to the defense by means of the Karpel EDiscovery program. Electronic discovery, such as photographs, audio and video recordings shall be provided to the defense by staff copying such discovery to a CD, DVD, thumb drive or portable drive and then notifying the defense it is ready to be picked up at the office or if the defense prefers, being sent by US Mail. Defense counsel will be charged an appropriate fee for the discovery. Said fees will be in accordance with those fees approved by the Coos County Commission.

Absent an agreement to otherwise provide discovery through an open file arrangement, there no longer exists a reason for this office to maintain an open file policy. Individual deputy district attorneys may grant access to an office file as they deem appropriate.

It is the responsibility of each Deputy District Attorney to make sure the defense is aware that additional discovery has been received once the initial disclosure has been made. The Deputy District Attorney shall document the notification to the defense in the file or by means of the EDiscovery system.

At this time, this office has no existing agreement with any law enforcement agency on data retention or data sharing. If such an agreement is reached in the future, a policy will be developed regarding the use and retention of any shared data. In terms of retaining physical prosecution files the office shall follow the requirements established by the State Archives.

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Brady Material

1. Introduction

As officers of the law, each of us took an oath that we would support the laws and Constitutions of both the United States and the State of Oregon. Our job is to seek justice. However, it is our duty to make sure that in seeking justice that we scrupulously follow the law and procedures as set forth in the applicable statutes and case law developed by the Courts of the United States and the State of Oregon. We also need to keep in mind the requirements of the rules of professional responsibility that specifically apply to prosecutors and our duty to disclose exculpatory evidence.

We have an express obligation to provide to defendants what is referred to as exculpatory evidence, Brady Material, or potential impeachment evidence (PIE). This was first set forth in the United States Supreme Court case of Brady v. Maryland, 373 US 83 (1963). Brady specifically held that any exculpatory evidence that tended to show that the defendant did not commit the crime was to be given to the defense in advance of trial.

Subsequent cases have further defined the type of exculpatory information that must be turned over to the defendant prior to trial. That information includes:

A. Any information tending to show the defendant did not commit the crime;

B. Any information tending to show that that the defendant committed a lesser degree of crime than the defendant is accused of committing;

C. Any information tending to show that the defendant should receive a lesser sentence; and

D. Any information that potentially could be used to impeach any government witness.

In addition, prosecutors have "a duty to learn of any [exculpatory] information known to others acting on the government's behalf in the case, including the police." Kyles v. Whitely, 514 US 419, 437 (1995).

2. Brady Material

It is the policy of this office that all Brady Material will be given to the defense as soon as possible after its receipt in the office. No one shall in anyway impede the timely discovery of Brady Material. The failure to disclose Brady Material in a timely fashion shall be viewed as a serious matter.

The intentional withholding of Brady Material will result in disciplinary action up to and including dismissal from the office. At the bare minimum, the violation will be reported to the Disciplinary Counsel of the Oregon State Bar.

The Coos County District Attorney's Office does not have an open file policy. However, a deputy district attorney may grant access to the file pertaining to any criminal case. The only material that will not be made available to the defense through this exception will be work product materials, materials governed by a protective order or materials that are currently under investigation and whose disclosure would endanger the investigation.

Deputy District Attorneys will make sure all discovery is the file. No materials will be removed from the file and kept elsewhere unless work product.

Deputy District Attorneys will notify the defense if there is Brady Material in the file that comes in after the defense obtains its initial discovery. A written record will be kept in the file detailing when the notification was made, specifically identifying the Brady

Material that is being disclosed, who made the notification and who received the notification.

Prior to trial, each Deputy Disrict Attorney will contact the lead police officer on the case. The Deputy will ask the officer to review the police file and to report to the Deputy whether the file contains any material that is exculpatory. If such material exists and it is not in the District Attorney file, the Deputy will immediately obtains copies of the material and notify the defense of its existence.

If there is any question as to whether the material is Brady Material, we will err on the side of caution and disclose the material.

Again, all efforts will be made to disclose Brady Material in a timely fashion.

Nothing in this policy should be construed as an agreement by this office that even if the material is discoverable that the material is admissible at trial. If a Deputy believes that the material is not admissible, the material still must be released to the defense. However, the Deputy may seek to prevent its admission if the evidence is inadmissible pursuant to the Oregon Rules of Evidence or is otherwise inadmissible under Oregon law.

3. Potential Impeachment Evidence (PIE) Concerning Civilian Witnesses

It is the policy of this office that all Potential Impeachment Evidence will be given to the defense as soon as possible after its receipt in the office. No one shall in anyway impede the timely discovery of Potential Impeachment Evidence. The failure to disclose Potential Impeachment Evidence in a timely fashion shall be viewed as a serious matter.

The intentional withholding of Potential Impeachment Evidence will result in disciplinary action up to and including dismissal from the office. At the bare minimum, the violation will be reported to the Disciplinary Counsel of the Oregon State Bar.

If the government is in possession of any potential evidence that could be used to impeach the credibility of a government witness the government is required to turn such evidence over to the defense in advance of trial.

Potential impeachment evidence includes but is not limited to:

A. Any false reports by the witness;

B. Any inconsistent statement made by the witness;

C. Pending criminal charges against a prosecution witness;

D. Parole or probation status of the witness;

E. Prior criminal history of the witness, including any violations or infractions that involve dishonesty;

F. Any evidence contradicting the witness;

G. Evidence undermining an expert witness's expertise;

H. A finding of misconduct reflecting on the truthfulness of the witness;

I. Evidence that the witness has a reputation for being untruthful;

J. The name and address of a person known to the government that has expressed a personal opinion that the witness is not truthful;

K. Evidence that a witness has a particular bias regarding the outcome of the criminal case or that the witness has a racial, religious or other discriminating bias or any personal bias against the defendant individually or as a member of a group; or

L. Any promise, offer or inducement for the witness to testify or provide information to the government or any law enforcement agency.

Basically, any evidence that would reflect on the credibility of the witness must be disclosed to the defense.

To accomplish that goal, for each civilian witness to be called at trial the deputy district attorney will check the name of the witness with our case management system to see if there are pending charges. If so, the information will be given to the defense.

For each civilian witness to be called at trial, a CCH and ODL check will be run and placed in the file.

If the witness has been given any promise of leniency, inducement or other promise to induce the witness to testify, such information will be given to the defense.

For witnesses that arguably could be called "informants" any contract entered into with the witness will be disclosed. Any money or rewards paid to the informant shall be disclosed to the defense. Any benefit provided a witness, such as housing expenses, relocation expenses, utilities paid for, bills paid, cell phones etc., shall be disclosed to the defense.

Prior to trial, each Deputy Disrict Attorney will contact the lead police officer on the case. The Deputy will ask the officer to review the police file and to report to the Deputy whether the file contains any material that could potentially be used to impeach the credibility of any government witness. If such material exists and it is not in the District Attorney file, the Deputy will immediately obtains copies of the material and notify the defense of its existence.

If there is any question as to whether the material is exculpatory evidence that could be used to impeach the credibility of a government witness, we will approach such situations with caution and disclose the material.

Again, all efforts will be made to disclose evidence that could be used to impeach a government witness in a timely fashion.

Nothing in this policy should be construed as an agreement by this office that even if the material is discoverable that the material is admissible at trial. If a Deputy believes that the material is not admissible, the material still must be released to the defense. However, the Deputy may seek to prevent its admission if the evidence is inadmissible pursuant to the Oregon Rules of Evidence or is otherwise inadmissible under Oregon law.

4. Potential Impeach Evidence Concerning Police Officers

Any evidence that could be used to impeach the credibility of a police officer who appears as a witness for the government must be disclosed to the defense. The evidence that must be turned over is the same as if the police officer were a civilian as is described above. It is the policy of this office to comply with this constitutional requirement and we will turn over such material to the defense.

Determining the existence or non-existence of potential impeachable evidence against an officer in some circumstances may not be possible by this office. The main reason for that is because the officer is not an employee of the District Attorney. The District Attorney is not privy to the personnel file of the officer and any complaints made to the parent agency of the officer.

However, this does not relieve the District Attorney's Office of its obligation to affirmatively seek out that information. While a prosecutor can conduct such a review, the responsibility can be delegated to someone else, namely the command staff of the law enforcement agencies who supervise the officer in question.

To accomplish our constitutional duty in this area, this office will delegate to the command staff of each agency in Coos County the responsibility to report to this office any potential impeachment evidence that it has in its possession concerning any officer who will appear as a witness on behalf of the government. Command staff of all law enforcement agencies will be reminded in writing by the District Attorney each year of their obligation to share exculpatory evidence with this office.

The District Attorney's Office will follow this procedure regarding potential impeachment evidence which is in the possession of the parent agency:

1. The agency command staff will report to the elected District Attorney the information in its possession;
2. Only the elected district attorney will be privy to such information and any reports or other documents submitted regarding such information will be kept in a secure location in the personal office of the elected district attorney until a disclosure decision is made;
3. The elected District Attorney will consult with the agency head and make an initial determination if the information is subject to disclosure;
4. If it is clear that the information is subject to disclosure, the elected district attorney will then disclose the material to the defense;
5. If it is questionable that the evidence is subject to disclosure, the elected District Attorney will seek an ex-parte protective order from the court pursuant to ORS 135.873 concerning whether the information should be disclosed. If the court orders its disclosure, then the material will be given to the defense;

6. If the material is not subject to disclosure, it will be returned to the officer's parent agency; and
7. As an alternative to disclosure, the District Attorney can consider dismissal of the charges.

If the potential impeachment evidence is provided to this office by a source other than the parent agency, the following procedure will be followed:

1. Such information will be given by the reporting party to the elected District Attorney;
2. If the information given to this office clearly challenges the credibility of the officer, the information shall be disclosed to the defense. The information shall be disclosed to the command staff of the parent agency for the officer for their review and to give to the officer in question;
3. If the information does not directly challenge the credibility of the officer, but suggests that there may be an issue, the elected District Attorney will contact the head of the parent agency and describe the material to the agency head;
4. The elected District Attorney will ask the parent agency to investigate the complaint;
5. Any materials received by the elected District Attorney will be kept in a secure location in the personal office of the elected District Attorney until a decision is reached regarding whether the material should be disclosed;
6. Upon completion of the investigation, the agency will promptly report the results to the elected District Attorney; and

7. The elected District Attorney will follow the procedure as set forth above in the section describing the procedure for information brought directly to the elected District Attorney by the parent agency.

If a decision is made to release potential impeachment evidence to the defense regarding an officer, the officer will be informed of that decision, either by this office or by the officer's command staff.

If there is any question as to whether the material is potentially evidence that could be used to impeach the credibility of a government witness, we will approach such situations with caution and disclose the material, except as described above.

Again, all efforts will be made to disclose evidence that could be used to impeach a government witness in a timely fashion.

If a parent agency will not accept the delegation of the duty to disclose such information, to comply with our affirmative duty to seek out such information, we will seek by means of court order to personally inspect the personnel files of an officer.

Nothing in this policy should be construed as an agreement by this office that even if the material is discoverable that the material is admissible at trial. If a Deputy DA believes that the material is not admissible, the material still must be released to the defense. However, the Deputy DA can and should seek to prevent its admission if the evidence is inadmissible pursuant to the Oregon Rules of Evidence or is otherwise inadmissible under Oregon law.

5. Conclusion

Deputy District Attorneys must remember that the obligation to provide exculpatory information is a constitutional requirement and a requirement of the rules of professional

responsibility. The obligation to provide this evidence is required regardless if requested or not. Deputy District Attorneys have the duty and obligation to proactively seek out exculpatory evidence which might exist. See, Kyles v. Whitely, supra.

We must remember that is our job to see that justice is done in every criminal case and that we obtain that justice in a manner that is in conformance with the laws and Constitutions of our country and state. Keeping that ideal in mind should compel all of us to make sure that any exculpatory evidence as described above is promptly turned over to the defense of the accused.

ORS 8.705(1)(b) Prosecutorial Ethics

Each attorney shall abide by the Oregon Rules of Professional Conduct. Each attorney will also follow the rulings of State and Federal Courts regarding prosecutorial ethics, especially in the area of what is referred to as "Brady Material". Non-attorney employees of this office shall also abide by those rules as need be.

An attorney in the office who is under investigation by the Bar, even in circumstances where the Bar finds no violation of the rules, shall inform the District Attorney of the situation as soon as the attorney becomes aware of such an investigation.

Failure of an attorney to follow the Rules of Professional Conduct and State and Federal Court rulings on ethics, may lead to employee discipline up to and including dismissal.

ORS 8.705(1)(c) Confidential Information

Every employee in this office shall keep confidential any information that is not subject to public inspection, is not a public record pursuant to the Public Records Law, or is ordered to be kept confidential by a court. All employees must also keep confidential

any information on pending investigations or matters that have not been filed with the court. No employee of the office is authorized to discuss with the press any case or investigation pending in the office without the consent of the District Attorney.

Failure to keep such information confidential may lead to employee discipline, up to and including dismissal.

ORS 8.705(1)(d) Use of Certified law Students

If the financial resources are available, this office may make use of a certified law student to assist in prosecutorial duties. Each student being used by the office shall be subject to the same background investigation as a lawyer being offered employment in the office. The law student shall also abide by all policies of the office. Each student will have a supervising Deputy District Attorney.

Each charging and plea offer decision by a student shall be approved by their supervising Deputy District Attorney. A student may make court appearances as allowed by the rules set forth by the Oregon Supreme Court. However, their supervising Deputy District Attorney must approve such appearances and such approval shall not be given unless the student will be directly and in person supervised in the courtroom by a Deputy District Attorney or the student has demonstrated that the student is competent to handle such court appearances by themselves.

ORS 8.705(1)(e) Charging Decisions

Each prosecutor in this office is called upon to review the facts provided us by the various police agencies and then make a charging decision based upon what has been provided to us. Charging a crime also has the ultimate burden of negotiating it at a later time. The plea negotiation policy should be read and kept in mind when making a charging

decision. At no time shall a Deputy District Attorney charge a higher crime solely for the purpose of dismissing it later in a plea negotiation. Each crime charged must be supported by the facts.

Under no circumstances shall a person's race, color, religion, sexual preference or membership in any protected class, have any bearing on whether a case will be filed, what charges are to be filed, how the case will be negotiated or what sentence recommendation will be made. Any Deputy District Attorney who does so will be subject to discipline, up to and including dismissal.

In making a charging decision, the prosecutor needs to keep the following in mind:

1. Strength of the case.

While the constitutional standard is that we must have probable cause to charge an offense, the prosecutor in this office must be convinced that the case can be proven beyond a reasonable doubt before the case is filed. If the case cannot be proven beyond any reasonable doubt, the prosecutor should either reject the case outright, or reject the case pending further investigation. If further investigation does develop the information needed to prove the case, the case can be resubmitted to this office for review. Again, if it cannot be proven beyond a reasonable doubt, the case shall be rejected.

2. Miranda, Search and Seizure Issues.

When making the decision about the strength of the case, the prosecutor must also study any potential Miranda or Search and Seizure issues. For example, if there is a confession and it is it is clearly suppressible, the prosecutor must decide if the case should be filed without the benefit of the confession. If the case cannot be proved without the confession, the case should be rejected.

3. Violation Treatment.

Due to present budget constraints in Coos County, all stand alone B and C misdemeanors will be filed as violations, except harassment cases in a domestic situation or where the harassment was witnessed by a minor. We will also treat the following A misdemeanors as violations:

Criminal Trespass in the First Degree

Theft in the Second Degree

Criminal Mischief in the Second Degree

Unlawful Entry into a Motor Vehicle

Unlawfully Applying Graffiti

Placing Offensive Substances in Water

Unlawful Cutting/Transport of Forest Products

Failing to Maintain a Cedar Purchase Records

All Misdemeanor Metal Products Crimes

Negotiating a Bad Check

Forgery in the Second Degree

Misdemeanor Possession of a Forged Instrument

Criminal Simulation

Fraudulently obtaining a Signature

Misdemeanor Fraudulent Use of a Credit Card

Falsifying Business Record

Misapplication of Entrusted Property

Issuing a False Financial Statement

Obtaining Execution of Documents by Deception

The law enforcement agency investigating the matter to be treated as a violation shall cite the defendant to appear in Circuit Court in accordance with the schedule developed by the Court. The officer shall submit their report and the citation to this office well in advance of the scheduled court appearance. This office will review the case for legal sufficiency. If the offender is not cited to Circuit Court we will refer the case back to the law enforcement agency.

If law enforcement identifies a defendant who is a repeat offender or a case where the facts are egregious, the Deputy DA may consider on a case by case basis whether the crimes in question should be treated as crimes. Prior to filing such a matter as a crime, the Deputy District Attorney will obtain approval of the District Attorney or the Chief Deputy District Attorney.

4. Felonies as A misdemeanors

No class C or B felony crimes eligible for treatment as an A misdemeanor at the time of filing will be filed as an A misdemeanor. This does not prevent a Deputy District Attorney from negotiating a case to allow for misdemeanor treatment either at the time of sentencing or upon successful completion of probation.

5. Measure 11 offenses.

Measure 11 offenses should be filed if the evidence is sufficient to sustain a conviction on that charge. Under no circumstances should a prosecutor file a Measure 11 charge solely to gain an advantage in the plea negotiation process.

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6. Aggravated Murder.

Where the evidence shows that a murder was committed under aggravating circumstances, aggravated murder will be charged. A decision as to whether or not to seek the death penalty shall be made in conformance with the plea negotiation policy.

7. Multiple Counts.

Some defendants commit multiple crimes that could result in many counts. Rather than filing all available counts, the prosecutor should consider filing only a representative number of the charges as a basis to initiate the case. If the defendant rejects a plea offer, the remaining charges can be filed in time for trial.

In no case will a prosecutor file a case with more than fifteen counts without the approval of the District Attorney or Chief Deputy.

8. Public Safety.

One primary objective in any charging decision should be to ensure that the victim and the public will be protected from any further criminal acts by the defendant.

9. The Severity of the Crime.

The more severe the crime, the more vigilant we should be when considering what charge to file.

10. The number of victims.

The more persons victimized by the defendant should cause us to be stronger in our charging decisions.

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11. The wishes of the victim.

While not binding, the wishes of the victim (except in domestic violence or other situations described below) should be taken into account when considering what charge to file.

12. The record of a defendant.

If the defendant has multiple convictions, the stronger position we should take in charging a case.

13. Available resources.

Some cases require a great deal of resources to try that simply are not available. In such cases, a careful charging decision must be made.

14. Sensitive cases.

A sensitive case will include (but is not limited to) situations where a law enforcement officer, a public employee, or an elected official is suspected of criminal conduct. All such cases will be handled by the District Attorney. If the District Attorney determines it would be a conflict for this office to handle the matter, the District Attorney shall make arrangements for an out of county District Attorney office or the Oregon Department of Justice to handle the mater.

15. Conflict cases.

If in reviewing a case the prosecutor believes that the matter will be a conflict for either the prosecutor themselves or this office to handle, the prosecutor will bring the matter to the attention of the District Attorney or Chief Deputy. If in fact that the case is a conflict, an outside agency will be found to review the matter.

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16. DUII

No DUII case shall be filed unless it can be proven beyond a reasonable doubt. Any DUII case that can be filed as a felony shall be filed provided the case can be proven beyond a reasonable doubt and when it can be proven beyond a reasonable doubt that the defendant has the requisite number of prior convictions elevating the case to a felony.

17. Controlled Substance Offenses

The abuse of drugs or alcohol is probably the leading cause of crime in Coos County. More often than not, persons addicted to drugs or alcohol are committing property crimes in order to supply their habits. In addition, the majority of the person crimes committed in Coos County are committed by those who are under the influence of drugs or alcohol. Controlled substance crimes will be filed regardless of the amount found by the police or detected by the crime lab.

With the passage of Ballot Measure 110, this office (as provided by Oregon law) will no longer be involved in the charging and prosecution of possession of small quantities of controlled substances unless the defendant has counsel.

There is a difference between the drug dealer or manufacturer and the drug user. Drug dealers/manufacturers need to be dealt with sternly.

If a drug case falls outside the parameters of Ballot Measure 110, the case should be filed as a crime. If the case falls outside the parameters of Ballot Measure 110, and the facts indicate that the amount of drugs found was for personal use, the case should be considered for conditional discharge so as to allow the defendant the opportunity to avoid a drug conviction by obtaining drug treatment.

When considering what crime to charge, if the facts clearly show that the crime in question is a delivery or manufacture charge, the delivery or manufacture charge should be filed.

18. Aggregation of Theft Cases

ORS 164.115 (5) (a) and (b) provide that the values of individual thefts can be added together to reach a higher level of crime. For example, if a defendant steals $25 from a victim on day one and then 3 days later steals $80, rather than charge two counts of theft in the third degree where the maximum sentence being 30 days in jail on each count, using the aggregation statute the two thefts can be added together allowing the deputy to charge one count of Theft in The Second Degree with a maximum possible sentence of one year in jail.

164.115 (5) (a) provides that if there are multiple victims who are stolen from by similar means, those individual thefts occurring within a 30 day period can be added together to reach a higher crime or crimes.

164.115 (5) (b) provides that if it is the same victim or involves joint owners, the individual thefts occurring within a 180 day period can be added together to reach a higher crime or crimes.

As always any charge considered must be supported by competent and admissible evidence. See policy on charging practices in general. If the evidence supports aggregation, the charging deputy will make use of the aggregation statutes to charge the highest level of crime possible. Under no circumstance will this office use the aggregation statutes solely to obtain an advantage in plea negotiations.

In any case where the potential number of charges exceeds 15 counts, the deputy shall review the case with the District Attorney or the Chief Deputy and obtain approval before filing a charging instrument that contains more than 15 counts.

In making the charging decision, the deputy shall determine the following while in the process of determining what charges to file. The list in not exclusive and other considerations may play a part in the charging decision. Further, the criteria listed are not intended to be absolute findings but rather are intended as a guide to help the deputy make the charging decision. The deputy should:

A. Determine the correct criminal history of the defendant and whether the defendant has the prior requisite convictions to be subject to any mandatory minimum sentence;

B. Determine based upon the defendant's criminal history what the maximum sentence the defendant could receive under the sentencing guidelines, including a potential departure sentence and any possible mandatory minimum sentence;

C. Determine what type of victim or victims are involved so as to determine whether the 30 or 180 day aggregation period applies;

D. Determine the total amount of the thefts;

E. Determine the total time frame within which the thefts occurred;

F. Determine what evidence exists to show when each individual theft occurred and for what value;

G. Determine whether the crimes if aggregated are felonies or misdemeanors and what level of felony or misdemeanor the crimes will be;

H. Determine what crime seriousness levels are available for felony crimes;

I. Determine if the victim(s) are vulnerable victim;

J. Determine what if any mitigating factors exist in making the charging decision; and

K. Determine whether a mandatory minimum sentence is available and what prerequisite crimes need to be obtained to qualify a defendant for a repeat property offender sentence, or to put the defendant in the position that for any future felony property crime the defendant may commit that the provisions of the repeat property law will be applicable.

19. Domestic Violence

Domestic violence is cyclical in nature and gradually gets worse as the offender is allowed to continue their abuse. Charging decisions should be centered on the principle of stopping the cycle of violence and protecting the victim.

All domestic violence (DV) cases will be prosecuted by this office provided there is evidence available to prove the defendant's guilt beyond a reasonable doubt. A victim's wish that the case be dismissed shall not be granted. If the evidence exists to prove the case, the case should be pursued.

This office offers a deferred sentencing program for first time domestic violence defendants. The defendant must agree to enter into the program within seven days of being arraigned on the DV charge. To be eligible for such the program, the following non-exclusive criteria should be considered:

A. The defendant is charged with a DV related misdemeanor where the victim is domestic partner. Domestic partner includes spouses, former spouses, persons cohabitating with each other and have engaged in a sexually intimate relationship,

person who in the past have cohabitated with each other and have engaged in a sexually intimate relationship, persons who may not have cohabitated together but who have engaged in a sexually intimate relationship and unmarried parents of a child;

B. The crimes charged include: misdemeanor Assault in the Fourth Degree, Menacing, Harassment by means of offensive physical contact, Telephonic Harassment; Recklessly Endangering Another Person; Violation of a Restraining Order; and Interfering with Making a Report;

C. The defendant has not participated in the past in any type of domestic violence diversion type program in any other another jurisdiction;

D. A person who has committed the crime of strangulation is not eligible for deferred sentencing;

E. The defendant must not have any of the following convictions or pending cases (including juvenile adjudications):

i. One or more person felony convictions in the past 15 years, or a pending person felony case: or

ii. One or more A misdemeanor person convictions in the past 10 years, or a pending A misdemeanor person crime;

F. If a defendant has been arrested or charged more that twice for a DV crime or stalking in the past 15 years, the person shall not be eligible for the program unless permission is granted by the District Attorney or the Chief Deputy;

G. If a defendant has been convicted of a crime involving the possession or use of dangerous weapon in the past 15 years, the person shall not be eligible for the program unless permission is granted by the District attorney or the Chief Deputy;

H. If the DV crime is a felony, the deferred sentencing program shall not be offered; and

I. If the victim of the DV crime is a juvenile, the deferred sentencing program shall not be offered.

Even if the defendant meets the above qualifications, a deputy may decline to allow a defendant to participate in the program based upon other circumstances not mentioned above. The deferred sentencing program is offered through this office and this office has the ultimate say as to who shall enter the program. However, the deputy shall obtain permission of the District Attorney or the Chief Deputy before making any such decision.

The deferred sentencing program should be liberally used. For the first offender, charging decisions should be centered on getting treatment and stopping the assaultive behavior.

16. Miscellaneous.

In all cases where the prosecutor has any question as to what should be filed, the prosecutor should discuss it with the District Attorney or the Chief Deputy.

ORS 8.705(1)(f) Aggravated Murder and the Death Penalty

Charging Aggravated Murder

All murders committed under facts that would classify the murder or murders as an aggravated murder shall be charged as aggravated murder. Again the evidence must show beyond a reasonable doubt that such a charge is provable.

An aggravated murder charge will not be filed without the express approval of the District Attorney.

Seeking the Death Penalty

The death penalty will not be sought in a case without the express permission of the District Attorney.

The decision to seek the death penalty or to agree to another permissible sentence will be based upon the following non-exclusive criteria:

1. The facts of the actual murder;
2. The prior criminal behavior of the defendant, regardless of whether a conviction was actually obtained;
3. If there are multiple murder victims;
4. The strength of admissible evidence as to the statutory questions regarding the imposition of the death penalty;
5. Any mitigating evidence that the death penalty in the case in question is not appropriate. Defense counsel shall be encouraged to share any mitigating evidence they have so as to assist the District Attorney in making that decision;
6. While not controlling, the wishes of the family of the victim(s);
7. Those criteria as set forth in ORS 135.415.

ORS 8.705(1)(g) Plea Negotiations

Each year, the Coos County District Attorney's Office files mores criminal cases than it can possibly take to trial. As a consequence, the majority of cases will need to be negotiated so that all cases in the office can be dealt with efficiently and so that the public can better be served.

Plea negotiations are an art versus an exact science. Each case and each defendant are different. No ironclad rule will suffice in every case. Consequently, when structuring a plea agreement, the attorney will need to consider a variety of factors.

The following should be taken into consideration when considering whether to negotiate the case:

1. Public Safety. Our primary objective in any plea negotiation should be to assure that the victim and the public will be protected from any further criminal acts by the defendant.

2. The severity of the crime. The more severe the crime, the more vigilant we should be when considering a plea offer.

3. The strength of the case. The stronger the case is evidentiary wise, the more stringent we should be. For example, where the evidence is overwhelming that the defendant is guilty, a plea offer should be stronger.

4. The number of victims. The more persons victimized by the defendant should cause us to be stronger in our plea agreements.

5. The wishes of the victim. While not binding, the wishes of the victim should be taken into account when considering a plea negotiation.

6. The record of a defendant. If the defendant has multiple convictions, the stronger position we should take in plea negotiations.

7. Available resources. Some cases require a great deal of resources to try that simply are not available. For example, in a minor theft case, the defendant may have a mental disease or defect defense. To fight the case would require the hiring

of experts for the prosecution. As we simply would not have the resources to do that, a plea agreement should be reached.

In addition to the above, each attorney needs to realistically assess the case and make a determination of what the case is really worth. The proposed agreement should then be compared to that analysis. If the agreement meets what the case is realistically worth, the agreement should be struck.

Plea offers can cover a variety of areas. Before offering a reduced charge, the prosecutor should consider whether a sentencing concession would be appropriate. On felony cases, a plea to the charged offense may be reached where sentencing guideline allegations are dismissed. Multiple counts should not be dismissed for a plea to other charges unless arrangements are made in the plea agreement for full restitution to all victims.

The following types of charges will have specific rules that must be followed:

A. DUII

Oregon law prohibits the negotiation of DUII cases in the sense that we cannot drop the charge in return for a plea to another charge or another DUII. See ORS 813.170. Consequently, any concessions on DUII case must be in terms of sentence recommendations.

B. Drug Cases

The abuse of drugs or alcohol is probably the leading cause of crime in Coos County. More often than not, persons addicted to drugs or alcohol are committing property crimes in order to supply their habits. In addition, the majority of the person crimes

committed in Coos County are committed by those who are under the influence of drugs or alcohol.

However, with the passage of Ballot Measure 110, the ability of this office to obtain treatment for persons found to be in possession of small quantities of controlled substances has been greatly hampered if not eliminated. For those cases outside of parameters of Ballot Measure 110, defendants who possess controlled substances for personal use need to be addressed in a manner consistent with the goal of getting drug treatment for the offender. In such cases the conditional discharge should be liberally used.

However, there is a difference between the drug dealer or manufacturer and the drug user. Drug dealers/manufacturers need to be dealt with more sternly than the simple drug user.

When considering a plea negotiation for a person charged with delivery or manufacture of drugs, the prosecutor can consider a lesser plea to possession (provided the possession charge would not be subject to Ballot Measure 110) if the evidence of the delivery or manufacture is weak, if the evidence suggests the manufacture was for personal use, or if the quantities involved are less that the substantial quantity amounts for commercial drug offense amounts under the sentencing guidelines. (For example, methamphetamine substantial quantity is 10 grams, commercial drug offense criteria is 8 grams. For marijuana, substantial quantity is 150 grams, commercial drug offense criteria is 110 grams.) Under no circumstances should a drug dealer or a person manufacturing drugs for profit be allowed to plead to possession and then be given a conditional discharge. Plea negotiations must specifically state that there will be no conditional

discharge. The District Attorney or the Chief Deputy must approve any deviation from this policy.

First time drug offenders charged solely with possession should be offered conditional discharge.

C. Domestic Violence Cases

Domestic violence is cyclical in nature and gradually gets worse as the offender is allowed to continue his abuse. Plea negotiations in these cases should be centered on the principle of stopping the cycle of violence and protecting the victim. While batterer's education and treatment may be of assistance, it may be that terms of incarceration are the only remedy available.

All domestic violence cases will be prosecuted by this office provided there is evidence available to prove the defendant's guilt beyond a reasonable doubt. A victim's wish that the case be dismissed shall not be granted. If the evidence exists to prove the case, the case should be pursued.

The deferred sentencing program should be liberally used. For the first offender, plea negotiations should be centered on getting treatment. However, repeat offenders must be dealt with in a stern manner. The message must be sent to the abuser that their conduct will not be tolerated.

D. Sex Offenders

Sex crimes by their very nature demand our highest scrutiny. Plea negotiations must be carefully considered to make sure that the victim and public will be protected. Secondary is making sure that in the appropriate cases that sex offender treatment be made available to the offender. Predatory sex offenders must be dealt with most severely.

Those convicted of sex crimes must be monitored closely to make sure they comply not only with the conditions of their parole or probation, but that they strictly comply with the requirements all laws, including the sex offender registration laws.

E. Measure 11 Offenses

The people of the State of Oregon through the initiative process have indicated that those convicted of certain crimes must be dealt with in a minimum fashion. Therefore, before giving up a Measure 11 offense in the plea negation situation, the prosecutor must remember that the People have indicated that they feel that the punishment set forth by means of Measure 11 is the appropriate sanction. Consequently, a Measure 11 offense should not be dealt away with except under certain circumstances.

Such circumstances that could cause a prosecutor to negotiate away a Measure 11 offense include those situations where the evidence is weak that the defendant did the crime, whether the "safety valve" provisions of ORS 137.712 apply or when taking into account any mitigating evidence it would be manifestly unjust to seek a Measure 11 sentence. The District Attorney or Chief Deputy must approve all negotiations taking a case out of Measure 11.

F. Plea offers for Defendant's who are Assisting Law Enforcement or who wish to turn State's Evidence

Occasionally a defendant will request leniency in a plea offer in return for assisting the police or by offering testimony against another defendant.

Such offers from a defendant must be closely scrutinized. "Jail House Informants" are for the most part unreliable. Their information must be carefully and completely vetted and corroborated before being accepted as the truth.

If the defendant has committed a crime where there is a victim, no deal should be struck where the victim's crime is dismissed. The victim takes priority over what the defendant may or may not be able to do.

Such offers should be carefully scrutinized. Before the prosecutor considers such an offer, there must be a clear understanding what the defendant will do in return for the deal. For example, if the defendant is charged with a drug offense, what they will do for consideration in that case must be clearly spelled out. If they agree to make controlled buys of drugs from others, the number of buys and the time frame they are to be performed in must be clearly set out. If the defendant is offering testimony, before the deal is struck, the defendant must give a proffer of his proposed truthful testimony. The defendant's offer must be legitimate and truthful.

When considering such a negotiation, the proposed crimes and target should be considered. Only where crimes are more serious or the target is more culpable should such an offer should be considered. In other words, a "big fish" should not get a deal in order for the police to get a "little fish."

Such agreements must be writing and signed by the defendant. The agreement must clearly state that if the defendant fails to live up to their end of the bargain that the deal will be revoked and any information gained as a result will be used against them. Such defendants must know and agree that they will abide by the law at all times except as necessary to fulfill their agreements and only then while under the direct supervision of law enforcement. No cooperating defendant will be allowed to violate the law at their own pleasure. Defendants who continue to improperly violate the law while assisting law enforcement will have their agreements terminated.

The District Attorney must approve all agreements where charges are dismissed or it is agreed to not file charges.

G. Justice Reinvestment Act

As part of this office participating in the Justice Reinvestment Act, this office will work to identify defendants accused of felony crimes whose sentence would require a prison sentence who would benefit from supervision in the community versus being sent to prison. Measure 11 offenses will not qualify for this sentencing program unless the Measure 11 offense is subject to the "safety valve" treatment pursuant to ORS 137.712. This office will assign a Deputy District Attorney (DDA) to be housed at Coos County Community Corrections and to work full time on probation and sentencing issues to assist in this program.

Deputy DA's who are reviewing a felony case in order to make a plea offer shall determine if the presumptive sentence in the case will involve a prison sentence. If prison is the presumptive sentence, the Deputy DA shall make an initial assessment to determine if the defendant would benefit from community supervision versus being sent to prison. The Deputy DA should consider such things as the defendant's criminal record, if applicable, past performance on probation, the severity of the loss or injury caused by the defendant, the number of victims and any other mitigating evidence. The contemplated offer would require a guilty plea and sentence but as an offer the Deputy DA would offer a downward departure to probation or a safety valve sentence to probation.

Prior to such an offer being made or entered into to the Deputy DA will contact the Deputy DA assigned to with Community Corrections. The Community Corrections Deputy

DA will consult with the appropriate Community Corrections personnel to verify if Community Corrections has programs available that would benefit the defendant and the defendant is willing to participate in the program. Community Corrections must agree to work with the defendant on a probation basis. The Community Corrections Deputy DA will assist Community Corrections in monitoring those persons on downward departure sentences and will determine, in conjunction with Community Corrections, if and when a revocation of the downward departure is appropriate. The Community Corrections Deputy DA will also assist in indentifying Community Corrections clients who would benefit from Mental Health Court treatment.

If Community Corrections is willing to supervise the defendant on probation in lieu of a prison sentence then the Deputy DA is authorized to make an offer that would allow a downward departure or safety valve sentence. A Deputy DA may not make an offer of a downward departure or safety valve sentence without the concurrence of Community Corrections. Only the District Attorney or Chief Deputy may authorize a plea offer that involves a downward departure or safety valve sentence that is not approved by Community Corrections.

ORS 8.705(1)(h) Civil Compromise

It is the position of this District Attorney that a person who has sufficient funds should not be able to avoid a criminal prosecution by "civilly compromising" the offense. We are required to treat similar defendants equally. We cannot do this when we allow those with money to "buy" their way out of a criminal charge.

We will oppose any motion for civil compromise. We will not offer civil compromise as a resolution of pending criminal charges. We will not stand silent on whether the court should grant such motions.

Any deviation from this policy must be approved by the District Attorney.

ORS 8.705(1)(i) Diversion Programs

This office will make use of the DUII diversion programs and conditional discharge statute for those who are accused of possessing personal use amounts of controlled substances.

As to diversions pursuant to ORS 135.881 et. seq., as Coos County does not have the physical and financial resources to monitor any such agreement, we will not offer diversions under this statute.

ORS 8.705(1)(j) Court Costs and Fines

As to the imposition of any fine, fee or court appointed attorney fees, unless a fee or fine is statutorily mandated, we will leave the decision as to the imposition of such monetary obligations to the discretion of the court.

The only exemption to the above policy will be when a compensatory fine is to be considered. However, before any request for a compensatory fine for the victim is requested, the Deputy District Attorney requesting the compensatory fine must be able to show in court that the defendant has the ability to pay such a fine. Absent such evidence, a compensatory fine should not be sought.

ORS 8.705(1)(k) Early Disposition Programs

The only program that could be considered an early disposition program is the DV deferred sentencing program. Eligibility for this program has been detailed above.

ORS 8.705(1)(L) Treatment Courts

The only treatment court currently available in Coos County (again due to limited physical and financial resources) is Mental Health Court.

The Mental Health Court (MHC) program allows eligible persons who have been charged with a misdemeanor crime and who are suffering from mental illness to avoid convictions by undergoing a term of probation with a therapeutic component. MHC is a cooperative effort between law enforcement, Coos Health and Wellness (CH&W), Bay Area Hospital, the Coos County District Attorney, Indigent Public Defense providers in Coos County and the Coos County Circuit Courts. There is no limit to the number of times a defendant may be considered for MHC.

The goals of MHC are:

1. To prevent defendants with mental illness from occupying a jail cell that could otherwise be used;

2. To reduce the frequency of interaction between the criminal justice system and individuals with mental illness;

3. To identify individuals with mental illness who potentially could increase the level of their criminal behavior and provide an intervention program to reduce the likelihood of an escalation in criminal behavior;

4. To promote public safety;

5. To improve the mental health of individuals in MHC and hopefully to improve the quality of their life; and

6. To reduce the burden on police officers, probation officers and mental health case workers by providing an additional level of oversight for persons taking part in MHC.

To be eligible for MHC, the following non-exclusive list of criteria are set forth below:

1. The defendant is charged with a non-person misdemeanor. Harassment and Resisting Arrest charges may be considered for MHC if the victim or officer did not suffer a physical injury;

2. The misdemeanor is not a drug offense (conditional discharge should be considered in that circumstance with a requirement of the conditional discharge that the defendant participate and complete MHC);

3. The defendant pleads guilty to all charges filed in the case in question;

4. The defendant does not have a dual diagnosis of mental illness accompanied by with intellectual developmental delay (IDD) or a controlled substance abuse (CSA). Individuals with a dual diagnosis including CSA may be considered for MHC if the person is currently undergoing a CSA treatment program or if there is a substantial need to promote public safety;

5. The defendant must have a verified and documented mental health diagnosis and proof must be provided to the District Attorneys Office by the defense attorney prior to the transfer of the case to MHC;

6. The MHC coordinator for CH&W must agree to the individual entering the program;

7. There must be nexus between the mental health diagnosis and the alleged crimes;

8. The defendant must be competent to proceed and must voluntarily consent to entering MHC;

9. The defendant's mental health illness must be treatable in a community setting; and

10. The District Attorneys Office must agree to the defendant participating in MHC.

Upon successful completion of MHC, the misdemeanor case will be dismissed with prejudice.

If the defendant is accused of a non-person felony and has a qualifying mental illness, as a condition of probation and as part of any plea negotiation the defendant may be considered for mental health treatment. To be eligible for such consideration:

1. The defendant must not have a dual diagnosis of mental illness accompanied with intellectual developmental delay (IDD) or a controlled substance abuse (CSA). Individuals with a dual diagnosis including CSA may be considered for MHC if the person is currently undergoing a CSA treatment program or of there is a substantial need to promote public safety by the person;

2. The defendant must have a verified and documented mental health diagnosis and proof must be provided to the District Attorneys Office by the defense attorney;

3. The MHC coordinator for CH&W must agree to the individual entering the program;

4. There must be nexus between the mental health diagnosis and the alleged crimes;

5. The defendant must be competent to proceed and must voluntarily consent to entering MHC;

6. The defendant's mental health illness must be treatable in a community setting; and

7. The District Attorneys Office must agree to the defendant participating in MHC.

While a felony disposition will require a conviction, if the defendant successfully completes MHC, the following non-exclusive list of incentives for participating in MHC shall be considered:

1. Early termination of probation;

2. If statutorily possible, and if the defendant otherwise qualifies, reduction of the felony to a misdemeanor upon successful completion of probation;

3. If statutorily possible and if the defendant otherwise qualifies, offering no opposition to a motion to expunge the offense from the defendant's record.

ORS 8.705(1)(m) Pre-arrest diversion programs

Due to physical and financial constraints, no pre-arrest diversion program exists in Coos County.

ORS 8.705(1)(n) Consideration of Collateral Consequences of a Conviction

When considering a plea negotiation on a case, the Deputy DA may consider collateral consequences of a conviction to a particular crime when making an offer, especially when the collateral consequence will incur a manifestly unjust result.

When taking into account potential collateral consequences as a result of a criminal conviction the Deputy DA may consider the following non-exclusive list of criteria:

1. The nature of the collateral consequence and its impact on the defendant, the defendant's family, the public and if applicable the victim;

2. The prior criminal history of the defendant;

3. If applicable, the defendant's conformance on any prior probation sentence;

4. The gravity of the loss or injury caused by the defendant;

5. While not controlling, the wishes of the victim of the crime charged;

6. The number of victims; and

7. The need for the public or victim to be protected from any potential future criminal conduct by the defendant.

ORS 8.705(1)(o) Sentencing Programs

Current Oregon law prohibits this office from making an offer that contains requirements that the defendant not participate in alternative incarceration programs (AIP's), conditional release, work release, earned sentence reductions and short term transitional leave. To avoid any appearance of impropriety, even when suggested by the defense counsel, this office will not participate in any agreement that would limit a defendant's eligibility for such programs.

While we will not engage in plea negotiations that would limit the defendant's eligibility for such sentencing programs, this office still has the ability, as part of making a sentencing recommendation to the court, to request that the court deny the defendant the opportunity to participate in some if not all available sentencing programs mentioned above. In deciding whether to make a sentencing recommendation to the court to deny such programs, the Deputy DA may consider the following non-exclusive list of criteria:

1. The defendant's criminal history;

2. The defendant's past conformance on any prior probation or parole;

3. If applicable, the defendant's behavior in custody;

4. If released pending resolution of the case, the defeat's conformance with the release agreement;

5. The gravity of the loss or injury suffered by the victim;

6. Whether there are multiple victims; and

7. The need to protect the public and victim(s) from potential future criminal activity of the defendant.

ORS 8.705(1)(p) Motions to Disqualify a Judge

Since at least 1990 this office has not moved to disqualify a judge from hearing a criminal case.

This office will not move to disqualify a judge from hearing a criminal case unless the evidence is clear and convincing that the judge in question will not be fair with the Coos County District Attorney's Office or the victim on the case in question. Any such motion must be approved by the District Attorney.

ORS 8.705(1)(q) Victim Engagement

This office will afford all victims with their rights as guaranteed by the Oregon Constitution and Oregon statutory law. To the extent that available resources and financial capabilities permit, as statutory time limits may permit, and as requested by the victim, this office will make every effort to engage the victim in all stages of a prosecution, especially release decisions and plea offers. Deputy DA's are reminded that victims cannot control any decision made or contemplated. However, Deputy DA's should consider their wishes.

ORS 8.705(1)(r) Pre-trial Release

In Coos County the availability of jail space to hold defendants pretrial is limited. As the jail may be at capacity, a recommendation to hold a defendant pretrial may result in someone being released due to overcrowding. Consequently making a recommendation to hold a defendant pre-trial must be given careful consideration.

In considering making a recommendation that a defendant be required to post security versus being released on their own recognizance, a Deputy DA should take in to account the following non-exclusive list of criteria:

1. Whether the charged offense has a statutory requirement that security be set;

2. The severity of the charge;

3. The need to protect the public from future criminal activity;

4. Whether the defendant will appear in court as required. The Deputy DA should consider prior instances whether the defendant has failed to appear in court as required. Persons facing prison sentences may have a greater incentive to not appear as required;

5. Whether the defendant will comply with any condition of release such as no contact with the victim, abstaining from the use of intoxicants, not possess any dangerous weapon etc. Prior compliance with past release agreements may be considered;

6. Past compliance of the defendant on other court orders, such as restraining orders;

7. Whether the defendant has other holds or warrants for their arrest from other jurisdictions, including arrest warrants from other states that are not extraditable;

8. While not controlling, the wishes of the victim; and

9. The availability of jail space to hold the defendant. In this situation, the Deputy DA must consider whether asking that the defendant being held will result in the release of another inmate who under the totality of the circumstances should be held versus the need of the defendant in question being held.

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SB 819 (to be codified as 137.218).

While ORS 8.705 does not require a written policy pertaining to this statute, this office will set forth its policy regarding this statute.

ORS 137.218 sets forth a procedure whereby a person convicted of a felony in Coos County, with the approval of this office, to jointly petition the Circuit Court for reconsideration of a conviction or sentence. No such petition can be filed without the express consent of this office.

If such a petition is submitted, ORS 137.218 grants the court the authority to dismiss a conviction, to resentence a person to a lesser crime or to sentence a person for a new crime (if the District Attorney files a new charging document and the defendant, as part of the agreement for allowing the joint petition, pleads guilty to the new charge).

It is the intent of this office that ORS 137.218, absent extraordinary circumstances that include newly identified evidence that significantly calls into question the integrity of the evidence upon which the defendant was convicted or sentenced, that such a petition should not be agreed to by this office.

Convictions and sentences not eligible for a petition under ORS 137.218.

Per ORS 137.218 misdemeanors, aggravated murder and convictions eligible for expungement are not eligible for the benefits of this statute.

In addition, this office will not agree to such petition being filed in the following situations:

1. Any case that is currently on direct appeal or is being considered in any court for post-conviction relief or habeas corpus;

2. Any case involving any degree of criminal homicide;

3. Any sexual offense where the victim was under fourteen years of age, the victim was subjected to forcible compulsion, the victim was mentally defective or where the victim was mentally incapacitated;

4. Any sexual offense involving the abuse, solicitation or unlawful depictions of a child;

5. Any violent felony;

6. Any case where the defendant has a violent criminal history;

7. Any case where the incarceration was imposed after the defendant violated probation on a downward dispositional departure;

8. Any case where the defendant benefited from a significant reduction of charges or time in custody during plea negotiations;

9. Any case where the defendant has not served at least 50% of the imposed sentence; and

10. Any case involving the use or threatened use of a firearm or dangerous weapon.

Initiation of a request for conviction/sentence reconsideration.

This office does not have a specific form that must be filled out in order for a request for conviction/sentence reconsideration. Requests should be submitted to this office by US Mail at Coos County District Attorney's Office, 250 North Baxter, Coquille Oregon.

To apply for conviction/sentence reconsideration for cases not described above, the defendant must submit in writing a letter requesting the reconsideration and must also submit the following information:

1. The conviction with court case number of the conviction the defendant is requesting conviction/sentence reconsideration;

2. Whether the conviction is currently on direct appeal, in the process of post-conviction relief or habeas corpus relief. If a direct appeal was taken, or if post-conviction or habeas corpus relief was sought, the defendant shall indicate the results of such appeals or petitions;

3. The request must state in factual detail why the original sentence or conviction no longer serves the interests of justice;

4. Whether the defendant has asked the Governor of the State of Oregon for clemency or commutation and if so what the results of such a request;

5. The request must also state exactly what relief the requestor is requesting; and

6. Information that addresses the considerations listed in ORS 137.218:

    A. The defendant's disciplinary record in jail or in prison;

    B. All records pertaining to any rehabilitative programs the defendant has successfully completed;

C. Evidence pertaining to the defendant's age, time served in custody and any diminished physical or mental condition that was not present at the time of sentencing/conviction and if any such condition has now reduced the defendant's risk to re-offend;

D. The future safety of the victim(s) of the crime(s) for which the defendant seeks reconsideration;

E. The amount of time served already by the defendant; and

F. Any evidence that reflects changed circumstances form the time of conviction/sentencing and shows that the defendant's sentence no longer serves the interests of justice.

Victim Input

For cases being considered for conviction/sentence reconsideration, the victim of such cases shall be notified of the request and the victim's input shall be considered when considering any such request. Absent cases where extraordinary circumstances that include newly identified evidence that significantly calls into question the integrity of the evidence upon which the defendant was convicted or sentenced the wishes of the victim should receive great consideration in determining whether a petition should be agreed to.

Ultimate Decision

The decision as to whether or not a petition for conviction/sentencing reconsideration will be approved will be solely made by the elected Disrict Attorney.

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Cases involving mental defenses such as guilty except for insanity.

All Deputy DA's shall be familiar with all mental defenses, including but not limited to, guilty except for insanity, diminished capacity and extreme emotional disturbance. The applicability of any mental defense will be analyzed on a case-by-case basis in accordance with the all other pertinent office policies.

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Disclaimer as to all policies stated in this document.

No portion of the above policies is intended to, and does not, create a right or benefit, whether substantive or procedural. Similarly, the State's decision as to how the above polices apply to any particular person is not intended to, and does not create any rights, benefits, or harms for which a person can seek legal redress. Further, nothing in these polices is intended to be enforceable at law by a party in litigation with Coos County or the State of Oregon.