

Union County District Attorney's Office Policy Handbook

OVERIDING PRINCIPLES

As the Union County District Attorney's Office, we strive: To protect the public, by delivering justice. Ultimately, that is the overriding principle that governs our decision-making. The legislative branch is responsible for writing law, and the laws they write are our policy manual. If any specific policy provision below conflicts with our ability to achieve our aim within the parameters of law then pursuit of our stated aim will take precedence over any specific policy provision herein. We evaluate each case, incident, and situation on an individual basis. These policies are to be viewed as principles to follow rather than strict edicts.

MISSION STATEMENT

Our mission is to protect and enhance the quality of life in Union County, to protect the rights of crime victims and to pursue justice for all citizens with skill, honor and integrity.

I. Professionalism and Prosecutorial Ethics

All employees of this office hold a public trust and represent the Office of the District Attorney. You are expected to abide by the Union County District Attorney Office's policies and principles. All employees are expected to exercise good judgment and common sense in their everyday dealings with the public, representatives of other departments, other agencies and organizations, and each other.

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

All employees are responsible for their behavior outside of the organization and need to be aware that public perception can be a powerful influence. Employees have a responsibility to perform their duties as public servants with integrity and to serve the public trust.

All employees will be familiar with the rules of professional ethics of the Oregon State Bar and perform their duties in a manner consistent with those standards. In addition, attorneys are expected to know and follow all rules promulgated by the Oregon Supreme Court and by the Circuit Court of Union County or any other court that you may appear in.

Deputy District Attorneys shall immediately notify the District Attorney of any Oregon State Bar complaint or tort notice he or she receives.

II. Adherence with ORS 131.915 and ORS 131.920

Pursuant to ORS 131.915 and ORS 131.920, under no circumstances should decisions made in this office be based upon a person's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness, or disability.

All decisions by this office should be based upon the facts of each case, the criminal history of each defendant, and the input and advice of the crime victims in each case.

Any complaints of a violation of this policy will be received, documented, and investigated. In each complaint, a response will be provided to the complainant within a reasonable period of time. Pursuant to ORS 131.920, a copy of each such complaint shall be forwarded to the Law Enforcement Contacts Policy Data Review Committee.

III. Charging Decisions

All charging decisions are to be made pursuant to the aim of protecting the public by delivering justice. Deciding if criminal charges should be filed and initiating the charging process is the responsibility of the criminal prosecutors (the District Attorney and Deputy District Attorney(s)). Screening is the process by which a determination is made whether to initiate or pursue criminal charges. The criminal prosecutors should use discretion in screening to eliminate cases in which prosecution is not justified.

Criminal prosecutors also have the responsibility to see that the charges selected adequately describe the offense(s) committed and the charges provide for an adequate sentence for the offense(s). Criminal prosecutors are not obligated to file all possible charges that the 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.

Ultimately the filed charges should reflect the conduct, adequately represent the victims, and provide a basis upon which accountability and justice can be obtained. In some cases, justice will dictate an end decision to not file charges at all.

Factors a DDA may consider when evaluating a charge/case (non-exclusive list):

- The nature of the offense.
- Probability of conviction.
- Possible deterrent value of prosecution.
- The characteristics of the offender.
- The interests of the victim.
- Recommendations of the law enforcement agency involved.
- Any provisions for restitution.
- The age of the offender.

- Doubt as to the guilt of the accused.
- A history of non-enforcement of the statute.
- Excessive costs of prosecution in relation to seriousness of the offense.
- The age of the case.
- Insufficiency of evidence to support the case.
- Aid to other prosecutorial goals through non-prosecution.
- An expressed wish by the victim not to prosecute.
- Possible improper motives of the victim or witness.
- Likelihood of prosecution by another criminal justice authority.
- Any mitigating evidence.
- The attitude and physical and mental state of the defendant.
- Whether aggregating property victims into the same charge is in the best interest of the victims.
- Undue hardship caused to the accused.
- Timeline and availability of forensic evidence necessary for trial.

In making the charging decision, Deputy District Attorneys shall file only those charges which are reasonably substantiated by admissible evidence at trial. Deputy District Attorneys shall not attempt to use the charging decision as a leverage device (that is, overcharging) in an attempt to obtain a guilty plea to a lesser charge.

These foregoing policy guidelines on charging decisions apply to all charging decisions, including:

- Driving under the influence of intoxicants under ORS 813.010 or 813.011.
- Controlled substance crimes.
- The aggregation of property offenses under ORS 164.043, 164.045, 164.055, 164.057, 164.061, 164.098, 164.125, 164.140, 164.367, 165.013, 165.055, 165.694 or 165.803.
- Crimes constituting domestic violence as defined in ORS 135.230.
- Misdemeanor crimes.
- Crimes requiring mandatory minimum sentences.

IV. Aggregation

ORS 164.115(5) allows for single theft transactions to be added together if the thefts were committed against multiple victims by similar means within a thirty (30) day period or against the same victim or joint owners within a 180-day period. As a general rule, separately chargeable offenses should be aggregated under ORS 164.115(5) where it increases community protection by increasing potential offender accountability and punishment (where appropriate). Consideration may be given to the Felony Sentencing Guidelines (FSG) thresholds for various levels of Crime Seriousness (CS) based on monetary amounts applicable to different levels of crime seriousness (i.e., less than \$1,000, \$1,000 or more, \$5,000 or more, \$10,000 or more,

\$50,000 or more, etc.). Aggregation may provide a more accurate portrayal of the defendant's activity, and its impact on the victim, in a particular time frame than a series of separately charged offenses. Exceptions may be made on any mitigating factor(s) determined to be credible.

V. Grand Jury

Amendment Article VII, Section 5, of the Oregon Constitution provides two separate procedures for charging defendants in Circuit Court: either by indictment of the grand jury or by information presented by the state at a preliminary hearing.

In order to ensure that the choice between indictment and information is made according to consistent criteria and that the privilege of either a grand jury indictment or a preliminary hearing is equally available to all, the Union County District Attorney's Office takes all cases to a grand jury unless there is a specific evidentiary need, such as eyewitness identification or preservation of testimony, in an individual case, or because a grand jury proceeding could not be scheduled before a preliminary hearing is set. UCDA's Office may also consider the availability of facilities, and witnesses in determining the appropriate route to pursue. Additionally, this policy is subject to modification on an emergency basis when grand jury may not be safely or legally held. In the event of an emergency which alters this policy, the District Attorney will alert the Union County Circuit Court to the temporary working policy of the office.

VI. Innocence and Evidence

All criminal prosecutors shall be alert for cases where the accused is innocent or the evidence is clearly insufficient to sustain a conviction or meet the burden of proof standard for the offense(s) charged. If such is discovered, the victim and police investigator will be contacted and then dismissal will be sought immediately.

VII. Plea Offers

"Truth in Sentencing" is a fundamental value of this office, which includes attempting to ensure that the sentence ordered by the court is fundamentally served. Ultimately, negotiations should be made with an eye towards what we aim for: protecting the public by working for justice. Plea offers are not mandatory to make in criminal cases. They are to be provided to defendants pursuant to promoting efficient yet just outcomes. Criminal prosecutors will retain the discretion to negotiate dismissals, non-prosecution, and sentencing recommendations in all cases subject to the general standards for plea agreements.

The Union 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.

If the criminal prosecutor is aware that a defendant is on probation or post-prison supervision, an effort should be made to get input from the supervising officer. All plea offers should be done in a way that seeks to achieve justice considering the conduct and provable offenses.

When making an offer, the District Attorney may consider the following (non-exclusive list):

1. The age, background, maturity and criminal history of the offender;
2. The attitude, physical and mental state of the offender;
3. The past use of threats or violence by the offender;
4. The age or vulnerability of the victim;
5. The physical and mental state of the victim;
6. The impact of the offense(s) on the victim;
7. The interest and desires of the victim;
8. The relationship between the victim and offender;
9. Early acceptance of guilt or responsibility by the offender;
10. The degree of remorse shown by the offender;
11. The likelihood that the defendant will reoffend;
12. Early payment of restitution or return of the stolen property;
13. The costs or resources involved in prosecution;
14. The recommendation of law enforcement agencies;
15. The sufficiency of evidence;
16. Orderly and readily understandable presentation of charges and evidence;
17. The incentive early resolution of charges;
18. The age of the case;
19. Availability of witnesses;
20. The involvement of multiple police agencies;
21. The proportionality of collateral consequences (i.e. immigration, housing, employment, etc.)
21. Any other circumstances or factors unique to the case.

VIII. Victim Input and Consultation

This office will, at all times as appropriate, seek to involve the victim as much, or as little, as they wish (including in charging decisions and plea offer negotiations and sentencing recommendations). Consistent with the Oregon Constitution and the philosophy of the Union County District Attorney's office, the assigned criminal prosecutor shall solicit input from the victim and consult with the victim during the plea negotiation process where required by law. In the exercise of the discretion to negotiate, the criminal prosecutor in charge of the case should strongly consider the victim's wishes.

IX. Crime Victim's Rights

The Union County District Attorney's Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice system. We treat

them with dignity and respect. Criminal prosecutors shall familiarize themselves with the Crime Victims Bill of Rights as well as with Article 1, Section 42 of the Oregon Constitution, the Crime Victim's Rights Amendment. The interests of the victim should be kept in mind when setting the hearing date and during plea negotiations in any felony involving a person.

Oregon law gives crime victims' rights that protect their interests in criminal investigations and judicial proceedings. This office is familiar with those rights and makes every effort to see that victims benefit from them.

Among these rights are:

- The right to be informed of these rights as soon as practicable.
- The right, if requested, to keep the victim's address and phone number from the person charged [ORS135.970(1)];
- The right, if a defense attorney or representative contacts the victim, to be told who they are, that the victim does not have to talk to them, and that the victim may have a Deputy District Attorney present if they do decide to speak with a defense attorney [ORS135.970(2)];
- The right to a court hearing if harassed or intimidated by the person charged [ORS135.970(3)];
- The right to be considered when court dates and hearings are scheduled or rescheduled [ORS136.145];
- The right to be inside the courtroom during the trial [ORS40.385]; and
- The right to appear personally or with their own attorney, in addition to a Deputy District Attorney, and express their views at the time of the disposition [ORS137.013].

The Oregon constitution also explains victim's rights.

Among these are:

- The right to be reasonably protected from the defendant throughout the criminal justice process;
- The right to be consulted, upon request, regarding plea negotiations involving any violent felony;
- The right, if requested, to be informed in advance when the defendant will be present at a particular stage of the judicial process and to be allowed to speak at each stage;
- The right, if requested, to information about the conviction, sentence, imprisonment, criminal history, and future release of the defendant;
- The right, if requested, to be consulted about plea negotiations on any violent felony charge;
- The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present;

- The right to be heard at the pretrial release hearing and sentencing or the juvenile court delinquency disposition;
- The right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant;
- The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury;
- The right to have a copy of a transcript of any court proceeding in open court, if one is otherwise prepared

X. Victim Restitution

It is our policy to seek restitution equaling the amount of pecuniary loss for victims of all types of crimes. Seeking such restitution in no way supersedes or obviates any civil claims a victim might make against the defendant.

Victim Advocates shall supply victims with financial loss forms to facilitate restitution. Victim Assistance will then take responsibility tracking these forms, communicating with the victim(s) and Crime Victim Compensation. The financial loss documents will include monies paid or pending to be paid by victim insurance companies. After completion, the loss forms shall be provided to the defense, and put in the case file prior to the appropriate court date of case disposition. All efforts will be made to have the restitution amount available at sentencing.

During the sentencing hearing, criminal prosecutors should refer to the completed loss forms to request that restitution be made part of the sentence. Restitution should be ordered based on the loss to the victim, not the offender's ability to pay at the time of sentencing. In cases in which more than one defendant is held responsible for a criminal act, causing a pecuniary loss, this office views all defendants as being jointly and severally liable for paying restitution. As a result, criminal prosecutors should request that judges pronounce the sentence in such a way that leaves all defendants jointly and severally liable for the victim's losses and equally responsible for the expenses incurred by all parties as a result of their criminal actions (ORS 147.005 – 147.365). When restitution is legally unattainable as no pecuniary loss is provable, criminal prosecutors should consider alternative options such as compensatory fines or community service.

XI. Homicide Cases

Prior to arriving at a homicide plea offer, the trial criminal prosecutor 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 any instances when the lead criminal prosecutor is not the District Attorney, he or she must meet with the District Attorney before a plea offer is extended. During this meeting the case Deputy District Attorney will present a factual summary of the case and review the mitigating and aggravating factors in

the case, victim input, officer input, and the reasoning behind the suggested resolution.

XII. Decision to Pursue Death Penalty

The Union County District Attorney's Office believes that in every Aggravated Murder case, evidence that supports the elements necessary to impose the death penalty should be presented to the fact-finder for consideration. It is the UCDA Office's position that the State doesn't elect to seek the death penalty but functions to put forth to the fact finder the known evidence relating to each element required to impose the death penalty for consideration.

XIII. Mandatory Sentence Cases

All plea offers on Measure 11 cases will be done after consultation with the District Attorney (in those instances when the lead criminal prosecutor is not the District Attorney). These case reviews will examine the strength of the case, the victim's concerns and opinions, any mitigating factors, and any aggravating factors.

XIV. Fines, Fees, and Taxpayer Reimbursement

In some instances, justice is best achieved by recommending that a defendant pay fines or fees. Criminal prosecutors may recommend payment of fines and fees in those instances where doing so will serve to protect the public and deliver justice. The issue of repayment of court appointed attorney fees is a matter for the court. In most instances this office should not take a position on that issue. Should the criminal prosecutor be aware of a defendant's ability to pay, and that ability is being misrepresented at the time of sentencing, the criminal prosecutor should provide the accurate information to the court without taking a position on whether repayment should be ordered or not.

XV. Sentence Reduction Provisions

Criminal prosecutors should work to ensure that sentence provisions which reduce the initial sentence declared by the judge are only given after all required legal findings are made. (i.e.: ORS 137.751 for AIPs.)

XVI. Civil Compromise

Civil compromises are available under ORS 135.703 and 135.705, in instances in which a defendant is charged with a crime punishable as a misdemeanor. The injured party may seek to handle the matter as a civil proceeding. There are a few exceptions, most notably in cases involving domestic violence and the elderly.

The Oregon State Bar has ruled that it is unethical under certain circumstance for a prosecuting attorney to advise an injured party against opting for civil compromise of a criminal case. However, a defense attorney motioning the court of a civil compromise must put our position in their motion. Therefore, it is the policy of the

UCDA's Office to evaluate our position on motions for civil compromise on a case by case basis.

A nonexclusive risk of factors to consider before deciding to oppose or not object to a civil compromise are:

- Defendant's criminal history;
- Actual monetary loss of the victim;
- Relationship between the victim and defendant;
- The continued risk the defendant poses to society; and/or
- Whether or not the compensation for the civil compromise has been fully received by the victim.

XVII. Conditional Discharge

For first time user amount drug offenses, defendants are generally offered a conditional discharge opportunity that requires them to complete an appropriate treatment program, preferably the Union County Treatment Court. It would also be acceptable to offer a conditional discharge where an individual has a very limited criminal record, or a dated record, and without prior treatment. However, a conditional discharge offer is not appropriate where a person has a prior felony or has previously been ordered to do treatment. There may be unusual cases (i.e. residue, proof issues, or other compelling reasons) where a conditional discharge may also be considered. Conditional discharges are strict compliance agreements.

XVIII. Treatment Court

The Union County Treatment Court is an intensive program designed to assist drug addicted individuals to overcome their addictions. In accordance with best practice standards of the National Association of Drug Court Professionals, the Treatment Court should be reserved for offenders in need of a full range of interventions offered by the Treatment Court. The Union County Treatment Court accepts "high risk" and "medium risk" individuals. The criminal prosecutor assigned to the Drug Court team works to ensure that Treatment Court is occupied by individuals who are serious about overcoming their addiction. The Treatment Court criminal prosecutor also works to ensure that participants who continue to victimize society are terminated from the program. The Union County Treatment Court Policies and Procedures are available for public inspection.

XIX. Behavioral Health Court

Certain defendants suffer from different forms of mental illness that cause or are a substantial contributing factor to the individual's continued criminal behavior. In order to effectively reduce the criminal conduct of these individuals, traditional criminal punishment needs to be supplemented or replaced with broad-based mental health treatment and supervision. This philosophy is also applied to current and former military members who have engaged in criminal conduct as a result or

consequence of their service. The goal of the program is to enhance public safety by providing a judicially supervised regime of appropriate treatment services and support to criminal justice involved Veterans and individuals with mental health symptoms with the goal of reducing police contact, increased and sustained engagement with treatment and stability in the community with improved quality of life for all participants. If participants successfully complete the program, their charges will be dismissed without a criminal conviction. This program is considered an Early Disposition Program pursuant to ORS 135.941(2).

In order to implement this multidisciplinary approach, various Union County agencies have originated Union County Behavioral Health Court. The team meets on a regular basis to evaluate perspective and current participants. Candidates may be referred to the program by any partnering agency for consideration. Eligibility to participate is as follows:

Mental Health Participants:

- A.) Must be able to aid and assist pursuant to ORS 161.360
- B.) Individuals who suffer from mental illness
- C.) SPMI Diagnosis
- D.) Individuals who assess as high risk/high need
- E.) Individuals who have been charged with:
 - a. A new felony or misdemeanor crime
 - b. A probation violation for a current felony crime
 - c. A probation violation while on supervised probation
- F.) Individuals who are current Union County Residents
- G.) Individuals who exhibit a likelihood that sobriety and addressing mental health issues will stop the participant's criminal behavior.

Veteran Participants:

- A.) Must be able to aid and assist pursuant to ORS 161.360
- B.) Must be a past or present member of the military
- C.) Veterans who suffer from drug/alcohol addiction;
- D.) Veterans who suffer from mental illness
- E.) Veterans who assess as high risk/high need
- F.) Veterans who have been charged with:
 - a. A new felony or misdemeanor crime
 - b. A probation violation for a current felony crime
 - c. A probation violation while on supervised probation
- G.) Veterans who are current Union County residents
- H.) Individuals who exhibit a likelihood that sobriety and addressing mental health issues will stop the participant's criminal behavior.

Factors That May Disqualify a Defendant

1. Evidence that defendant targeted vulnerable victims, abused a position of trust to get financial information, or the defendant's crime represents a significant breach of a fiduciary duty. The defendant's eligibility may be approved by the team after a review of the facts.
2. Evidence that the defendant is affiliated with, or involved in, gang activity
3. If the defendant is not a current resident of Union County.
4. If the defendant has a significant substance abuse issue that may not be amenable to the Behavioral Health Court structure
5. If the current charge is a person crime under ORS 163, a commercial drug offense, a drug offense involving a substantial quantity, a crime involving children, or a Measure 11 offense.
6. If the defendant's criminal history or current charge involves, but is not limited to violent misdemeanor or felony crimes or sex offenses.

The Union County Behavioral Health Court Policies and Procedures are available for public inspection.

XX. Justice Reinvestment Probation Program

Defendants who are "high" or "medium" risk based on their criminal history and current charge, as determined by the Oregon Public Safety Checklist may qualify for an intensive probation sentence with a suspended prison sentence. These individuals will be sentenced to supervised probation with intensive wrap around services and requirements with the expectation that if unsuccessful, a prison sentence will follow. This program is run primarily through Union County Community Corrections and participants should be screened by the DDA initially, and staffed with the Community Corrections Director for acceptance.

XXI. DA Diversions

Pursuant to ORS 135.886, the DA's Office offers a DA Diversion program run out of our office. If an accusatory instrument has been filed, the DDA may offer a DA Diversion in conformance with ORS 135.891, if it appears that a diversion would be in the interest of justice and of benefit to the defendant and the community.

In assessing whether a DA Diversion is appropriate as defined above, the DDA shall consider the following factors:

- The nature of the offense;
- Any special characteristics or difficulties of the offender;
- Whether the defendant is a first-time offender (the defendant may only receive a DA Diversion once)

- Whether there is a probability that the defendant will cooperate with and benefit from alternative treatment;
- Whether the available program is appropriate to the needs of the offender;
- The impact of diversion upon the community
- Recommendations, if any, of the involved law enforcement agency;
- Recommendations, if any, of the victim;
- Provisions for restitution, and
- Any mitigating circumstances.

If the defendant is a servicemember, the DDA shall follow ORS 135.886(3) in determining his or her eligibility, after the DDA has determined that a DA Diversion is appropriate.

XXII. Pre-Trial Release

The following provisions directly govern Oregon's scheme for pre-trial release: Article I, § 14 of the Oregon Constitution; Article I, § 43 of the Oregon Constitution; and ORS 135.230 – ORS 135.290. All criminal prosecutors are expected to be familiar with these laws and to advocate for implementation of their provisions.

Upon consideration of these provisions, if bail is to be recommended, the recommendation should comply with the Union County Circuit Court presiding judge bail schedule. In addition to the above stated laws, victim input and public safety considerations are paramount to our recommendations to the court.

XXIII. Discovery

The discovery obligations of the Union County District Attorney's Office are generally established by ORS 135.805 – 135.825; ORS 135.845 – 135.855; *Brady v. Maryland*, 373 US 83 (1963); *Giglio v. United States*, 405 US 150 (1972) and Rule 3.8 of the Oregon Rules of Professional Conduct. In order to meet discovery obligations in each case, prosecutors must be familiar with these authorities and with the judicial interpretations that discuss or address the application of these authorities to particular facts. In addition, it is important for prosecutors to thoroughly consider how to meet their discovery obligations in each case and consult with their supervisors for guidance whenever appropriate.

It is the practice of this office to disclose appropriate police reports and other discoverable materials to defense counsel at the earliest opportunity once a case is filed. All discovery potentially subject to a protective order will be provided when a signed protective order has been issued by the court.

Fees for discovery copies are set by the Union County District Attorney's Office, and is available for public inspection. Discovery will be provided to a defendant upon

written request, which if represented by an attorney, must also include a notice of representation.

XXIV. Record Retention

All district attorney office records must be maintained in compliance with the Records Retention & Destruction Schedule published by the Secretary of State or by State law. Any agreements with law enforcement agencies on data retention and data sharing shall be subject to public inspection.

XXV. Transparency and Confidentiality

This office is committed to transparency to the public it serves. Public records requests made to the Union County D.A.'s office will be processed in a timely and fiscally reasonable manner. If a law or court order requires that information possessed by this office be kept confidential, then the Union County District Attorney's Office will ensure that such laws or orders are complied with (e.g. Juvenile files, victim information, medical files, personnel files or matters, etc.). All official media contacts (e.g., press releases) must be approved through the District Attorney.

XXVI. The Use of Certified Law Students

Internships in our office can provide educational opportunities for future attorneys and others. Internships also expose interns to the efforts we take to protect the public and deliver justice. In return, the district attorney's office receives legal assistance (or victim assistance) at a reduced cost to taxpayers. To ensure proper supervision and successful internships, all legal interns will be supervised by the District Attorney or a full time Deputy District Attorney. All support staff interns will be overseen by support staff supervisors.

XXVII. Affidavits of Prejudice Against a Judge

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