

MARION COUNTY DISTRICT ATTORNEY
POLICY MANUAL (Per ORS 8.705)



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Introduction, Purpose and Professional Standards

The Marion County District Attorney is the top law official within the county charged with the sole mission to seek justice on behalf of our community. With this privilege comes a unique set of responsibilities.

This manual is designed as a general guideline for all Deputy District Attorneys and Staff of the Marion County District Attorney's Office as we discharge this duty. All information contained herein should be used to guide decision-making and case processing consistent with both Federal and Oregon statutes as well as with the Oregon and United States constitutions. Every case is unique and thus all policies should be applied taking into account the totality of the circumstances surrounding each incident including but not limited to: the facts of each case and their bearing on the ability to prove the case beyond a reasonable doubt; the impact on public safety; the criminal history of the defendant; the input of any affected victim; the needs of our Marion County Community; and the interest of justice.

All members of the Marion County District Attorney's Office are public servants and are expected to comport themselves with the highest level of professionalism in every capacity both on and off the job.

Further, all Deputy District Attorneys are expected to maintain their license to practice law in the State of Oregon and are thus expected to comply with all ethical rules as established by the Oregon State Bar. Failure to do so will result in disciplinary action. *See also:* ODAA "Do The Right Thing" An Ethics Guide for Prosecutors in Appendix A.

To the extent that any policy listed herein conflicts with the overarching fundamental principle of seeking justice in a particular circumstance, individuals should immediately speak with their supervisor.

General Expectations for All

Confidential Information and Communications

Much of the information that is maintained by the Marion County District Attorney's Office is considered confidential, is often sensitive in nature and is frequently the subject of on-going criminal investigations. For this reason, it is imperative that such information not be shared beyond that which is allowable under the law and at the appropriate time and venue. All members of the office are expected to acknowledge and comply with the confidentiality agreement in this manual.

Court Relations and Motions for Change of Judge

As officers of the court, all members of the Marion County District Attorney's Office must recognize the importance of our role within the criminal justice system and the significance of our professional relationship with local elected judges and all administrative staff. Should any deputy district attorney have any concern with any member of the Marion County bench and their ability to fairly discharge their duties consistent with the law, the Deputy DA shall communicate those concerns to a supervisor as soon as practicable. Any motion for a change of judge may only occur with the express permission of the District Attorney and shall comport with the requirements of [ORS 14.250-14.270](#).

Pre-Trial Publicity and Professionalism

The work of the Marion County District Attorney's Office has a direct impact on the safety of our community, the work of our Law Enforcement partners and the trust of Marion County residents. Decisions regarding the filing of criminal charges, the progression of criminal and related matters, and court rulings, sentences or other dispositions are therefore often of significant public interest. The MCDA has an obligation to inform the public of our work in a responsible and transparent way consistent with professionalism and consistent with the ethical rules governing lawyers. Deputy District Attorneys will endeavor to inform office leadership and Public Information Officials of cases appropriate or necessary for public notification. Any formal press releases or media communications shall be at the direction of the District Attorney in keeping with the following Oregon Rules:

Oregon Rules of Professional Responsibility (replaced by ORPC 01/01/05)

Trial Publicity

- 1) A lawyer engaged in a matter shall not make an extrajudicial statement pertaining to that matter that a reasonable person would expect to be disseminated by means of public communication if the statement poses a serious and imminent threat to the fact-finding process in a governmental adjudicative proceeding and if the lawyer either intends to affect that process or reasonably should know that the statement poses such a threat and acts with indifference to that effect.

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(e) A lawyer shall exercise reasonable care to prevent the lawyer's employees from making an extrajudicial statement that the lawyer would be prohibited from making under this rule.

Rule 3.8(f) Special Responsibilities of a Prosecutor

Except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel,

employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Prohibition of Profiling Policy and Complaint Procedure

1. No person shall be targeted by any member of this office (attorney or non-attorney) on the suspicion of the individual's having violated a provision of law, based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the attorney (or non-attorney) is acting on a suspect description or information related to an identified or suspected violation of a provision of law.
2. If a member of the public believes that they have been subjected to profiling by any person affiliated with the Marion County District Attorney's Office, the member of the public may file a complaint with the Marion County District Attorney's Office via the following methods:
 - a. In person by visiting the main office, 555 Court Street NE Suite 3250; or
 - b. In writing, signed by the complainant, and delivered by hand, postal mail, facsimile (503)-588-3564, e-mail (districtattorney@co.marion.or.us); or
 - c. By telephone (503)-588-5222. Telephonic reports may be made anonymously or through a third party.
3. Every profiling complaint received will be copied and submitted to the Law Enforcement Contacts Policy Data Review Committee at:
 - a. Law Enforcement Contacts Policy and Data Review Committee
(lecc@psu.edu)
ATTN: CCJ-JUST
P.O. Box 751
Portland, OR 97204
4. Upon receipt of a complaint alleging profiling, a designated member of the District Attorney's management team shall conduct a thorough investigation of the complaint. The aforementioned investigation will be conducted within 60 days of the filing of the complaint. At the conclusion of the investigation, the report containing findings regarding the complaint, along with any recommended actions, will be forwarded to the District Attorney. Copies of the report will be forwarded to the Law Enforcement Contacts Policy Data Review Committee and to the original complainant (*unless the complaint was made anonymously*). [ORS 131.920, 131.925](#)

General Administrative Policies

Brady & Professional Witnesses

The following general procedures serve as guidelines to be applied as needed given the individual facts and circumstances surrounding any potential Brady-affected witness. The DA and management will make appropriate decisions on a case-by-case basis.

Issue Identification: identifying and discerning potential Brady information

1. DA attends chiefs' meetings regularly. DA's obligations under *Brady* are raised as a reminder for all agencies to keep DA informed of potential personnel/officer issues. DA &/or designee will assist with law enforcement training as requested. DDAs and staff will receive regular training and updates as needed.
2. Upon notification from police agency or any other source that potential *Brady* obligation exists regarding a police officer or other civilian employee with frequent in-court responsibilities, the following shall generally occur as soon as practicable and not necessarily in this order given appropriate discovery obligations:
 - a. **Information Gathering:** DA representative gathers relevant information in form of police reports (if applicable), other personnel/witness sources, any available internal investigation reports, and/or cooperation from affected witness, witness' representation, and the involved agency.
 - b. **Witness Review:** DA rep will run witness in DA case management system to determine applicable pending cases and urgency.
 - c. **Information Review:** DA and Management Team review facts to determine potential *Brady* response. Depending on totality of circumstances, response *includes but is not limited to* tiered designations as in Attachment A and B {Guidelines for *Brady* Disclosure and Guidelines for Lack of Confidence Assessment}.

Witness/Agency Notification:

1. If an individual is being considered as a potential *Brady*-affected witness, DA Rep will send notification letter to affected witness &/or counsel informing witness of status of the inquiry and allowing appropriate time to respond in writing. DA Rep & Management Team will review any material timely submitted as soon as practicable.
2. DA Rep and Management Team will not conduct separate fact-finding investigation(s) nor hold any hearing(s) but may consider in-person meeting at witness' request.
3. DA Rep will maintain contact with the affected witness, and/or any representation, and the affected witness' agency's administration to update and inform regarding any *Brady* obligation developments and final review/judicial determination when applicable. Generally, a formal letter will be sent to all affected parties explaining final decision.

DA Notification of DDAs, Defendant, Partners:

1. **A “Brady Index”** is maintained in a database accessible to all DDAs with a listing of affected personnel and appropriate *Brady* obligation. Index is updated as appropriate given available information and status of decision. DDAs are notified of changes/additions via email. TTLs assist with review of cases for potential *Brady*-affected witnesses.
2. **Discovery Obligation**-if appropriate, discovery of any *Brady*-affected witness material will be made as soon as practicable in relevant cases in which the witness is involved.
 - a. **Judicial Review**-submission of material to *Brady*-judge may occur to direct disclosure. *In camera* review and protective orders may be necessary.
 - b. **Admissibility**-DDAs are encouraged to seek pre-trial rulings regarding use of any collateral *Brady* material at trial.
3. **Communication with Defense Bar:** General letter of notification regarding potential *Brady* information may be appropriate via usual discovery channels. Will be assessed on case-by-case basis given number of cases with affected witness.
4. **Communication with Other Agencies/Partners:** DA and management will consider whether notification to other outside agencies or partners is warranted and will make appropriate contacts (e.g. DPSST, neighboring counties, etc.).

Reconsideration

DA will re-consider *Brady* designations upon receipt of new material information. Re-review will occur at the sole discretion of the DA.

Relief

In extraordinary circumstances consistent with Due Process and fundamental fairness to a criminal defendant (not an affected witness), the DA may seek a standing protective order of relief from future disclosure from the Presiding Judge at the Circuit Court. See ORCP 3.8(b) (creating an exemption for Special Responsibilities of a Prosecutor).

That motion shall occur only when the following conditions are met:

- The witness was designated as Tier 2. *See Appendix B*;
- Sufficient time has passed since the initial determination, which is determined by a meaningful opportunity for defendants to litigate any material issue in a criminal/juvenile proceeding has occurred;
- If applicable, any criminal arrest or conviction has been expunged. (Offenses not statutorily eligible for set-aside are not eligible for relief); and
- The DA is willing to attest in an accompanying affidavit that there is a good faith basis to believe that no adverse consequence to a criminal defendant or youth will occur by not disclosing the information.

Any proposed order shall go to the Presiding Judge in Circuit Court via a motion accompanied by an affidavit attesting that the above-criteria are met. The court shall then make an independent

finding as much. If the court agrees, it may sign a standing protective order of relief. See [ORS 135.873\(2\)](#). If the order is signed, the DA may remove the witness from the Tier 2 designation.

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See also: (adopted herein) Best Practices for Navigating *Brady v. Maryland* in Oregon – March 31, 2014, in Appendix B.

Law Clerk Program

The Marion County District Attorney's office is committed to providing second year (2L) and third year (3L) law school students with a robust and meaningful opportunity to learn and work in the criminal justice system. We strive to provide strong guidance, support, and professional mentorship. Upon hiring, all law clerks attend two-weeks of intensive training covering all areas of criminal prosecution. All law clerks are allowed to work up to 40 hours a week during the summer and up to 20 hours a week during the school year, with time-off for the weeks leading up to and including final exams. All law clerks are designated as such and have a mentor-lawyer and direct supervisor-lawyer during the course of their clerkship at all times.

Second Year (2L) law clerks

Each year our office hires second year (2L) law clerks. Second year (2L) law clerks commit to joining the clerk program for two years, remaining as a third year (3L) certified law clerk. Leaving after the first year is highly discouraged. Second year (2L) law clerks have the following responsibilities:

1. Review and prepare driving under the influence cases according to office standard recommendations;
2. Review and process motions to set aside according to office expungement procedures;
3. Review and process motions for restitution on certain misdemeanor cases;
4. Review and process motions for restoration of driving privileges;
5. Review and process applications for certificate of good standing;
6. Process certified copy of judgment requests;
7. Process 911 audio requests;
8. Assist lawyers with legal research and writing motions/responses;
9. Assist lawyers, investigators, and support staff with trial preparation;
10. Assist lawyers, investigators, and support staff with daily business needs.

Third Year (3L) certified law clerks

Each year our office hires third year (3L) certified law clerks. All third year (3L) law students must be certified by the Oregon Supreme Court. All third year (3L) certified law students will comply with and be supervised according to the Oregon Supreme Court Law Student Appearance Program (*Oregon Supreme Court Rule for Admission 13*). Third year (3L) certified law clerks have the following responsibilities:

1. Manage individual misdemeanor / violation caseload from charging to disposition including but not limited to attending all scheduled court appearances;
2. Prepare civil commitment cases and appear on civil commitment docket;
3. Prepare and appear on objection to motion to set aside cases;
4. Assist lawyers with legal research and writing motion/responses;
5. Assist lawyers, investigators, and support staff with daily business needs

Use of Artificial Intelligence¹

INTRODUCTION

Artificial Intelligence (AI) is a valuable tool that is rapidly becoming integrated into prosecution work. AI has many potential benefits, but it also presents ethical and legal concerns for prosecutors. Prior to implementing AI tools, DDAs need to consider all of these implications. Of primary concern is that improper use of AI tools can make public otherwise confidential case-related information; can endanger victims, witnesses, and the integrity of our cases; and can expose our lawyers to violations of ethical rules. This policy's goal is to help ensure our office implements AI tools responsibly and in the interest of justice.

PURPOSE

Any business decision involving AI must comply with this office's overarching goal of seeking justice, protecting victim rights, and fundamental fairness. Any decision involving AI that violates these fundamental principles is a violation of this policy.

BACKGROUND ON AI

For purposes of this policy, AI refers to any machine-based system that can make predictions, recommendations, or decisions. AI systems use machine and human-based inputs to perceive environments, abstract such perceptions into models through automated analysis, and use model inference to formulate options.

With "machine learning", algorithms are designed to detect patterns and predict outcomes. Thus, AI is being integrated into applications and programs used by prosecutors and law enforcement at a rapid rate and AI machine learning has been present in criminal justice work for some time. Examples include risk assessment tools used in setting bail and algorithms used for fingerprint and DNA analysis. New forms of AI continue to emerge, including generative AI ("GAI"), which uses Large Language Models (massive inputs of data, including textual, audio, graphic, and video) to produce coherent, unique answers and written material in response to human queries. ChatGPT is an example of a GAI program.

AI AND PROSECUTION: IMPORTANT CONSIDERATIONS

This policy addresses three types of AI tools relevant to our work:

- 1) AI tools that are currently embedded in existing office-approved programs. AI tools are now embedded into websites and applications that you may use every day. This means that office programs we have been using for years may require us to consider whether and how they can be used in light of newly introduced AI features.

¹ Draft format based on [Prosecutors' Center for Excellence AI POLICY TEMPLATE](#)

- 2) Publicly available AI tools. Numerous GAI tools are available to the public online. These tools are typically free, chat-based systems in which users can feed the program questions, textual data, audio, graphics, or videos and request analytical or generative output.
- 3) AI tools that the office and our criminal justice partners may acquire, including tools being developed specifically for prosecutors and law enforcement. AI tools designed to assist lawyers and law enforcement are quickly coming on the market. Our office, the courts, law enforcement agencies, and other criminal justice partners may now integrate these tools into their work.

Each set of AI tools presents its own set of issues and risks. Before you use any AI tools for work-related projects, you must exercise caution and consider what kind of information you are providing the AI tool. This policy relates mainly to GAI tools, but many of the concerns raised about the use of GAI are relevant to other forms of AI. Employees must bear this in mind whenever they are using an application or program in which AI has been integrated. **If you have questions about whether the use of a particular AI tool is problematic, seek help before using it.**

As AI tools and platforms continue to develop, this office recognizes that these tools and platforms represent innovation that may improve our efficiency, transparency, and our ability to serve the public. However, we also recognize that our duties of competence and confidentiality are paramount and must adhere to the legal and ethical rules that govern our work.

In light of these concerns, we must always be sensitive to several issues in our use of AI, including:

- Confidentiality – We must ensure that the confidential data and materials – such as case and witness details, evidence, and work product – are not improperly disclosed by using an AI tool. Some AI tools may absorb and utilize input information to train its AI model, or to answer the questions of future users. This possibility raises serious concerns, as much of the information and data our office gathers, receives, and creates is confidential, and disclosure may be prohibited by statute, ethical provision, or other governing body. **A determination must be made about what data can safely be entered into a specific AI tool before you use it.**
- Human oversight required – AI is an aid to us as a prosecutor office, not a replacement for human judgment, especially in making charging and final decisions about cases. AI tools are not inherently unreliable, however they can pick up misinformation and use it to generate convincing but false or erroneous responses, a phenomenon called “hallucination.” **Employees must review all AI output for accuracy and reliability and are ultimately responsible for the accuracy of their work.**
- Transparency – Our use of AI should be explainable and transparent. We must be prepared to disclose to the court and the defense when AI tools are being used and for what purposes.

- Data Privacy and Security – All sensitive data must be handled securely and in a manner that does not lead to the potential compromise of office data, systems, and networks. Certain types of data – such as personal identifiers, victim information, medical treatment and criminal histories – may have specific legal protections. **Extra care and caution must be given when handling sensitive information using AI tools.**
- Supervision and Accountability – Supervisors within the office are responsible for ensuring staff members are using AI tools appropriately and in accordance with office policies. Employees using AI tools improperly will face disciplinary action.
- Bias Mitigation – We must take steps to mitigate the risk of bias in our use of AI, which may include periodic audits and validation testing to ensure fairness across demographics.
- Feedback – We must be receptive to feedback from judges, defense attorneys, our law enforcement partners and the community about our use of AI, so that we can improve fairness and ensure public accountability.

OFFICE USE OF AI

Based on the above considerations, this section outlines the acceptable use of AI tools for conducting office work. Attorneys and non-legal staff may use only those AI tools that have been vetted and approved by this Office. Publicly available tools may not provide the necessary security, and information entered into such tools could compromise the confidentiality of our work and our cases.

Attorneys and non-legal staff are NOT PERMITTED to do the following:

- File AI-generated documents with the court. *By signing your name on any filing, lawyers agree that they did not use AI tools to generate the substance of the filing.* Violation of this agreement is a basis for discipline up to and including termination.
- Use publicly available, non IT-approved AI tools for any work-related function. To the extent that you have downloaded any such tools to your office computer or device, you must delete them. Nor may you use such AI tools on your personal devices for any work-related function.

Publicly available tools include, but are not limited to:

- | | |
|--|---------------|
| ▪ ChatGPT | ▪ DALL-E |
| ▪ Non IT-approved versions of Gemini (formerly Bard) | ▪ DeepAI |
| ▪ Grammarly | ▪ AlphaCode |
| ▪ Google Translate | ▪ Q Developer |
| | ▪ OpenAI |

- Enter any confidential information into any publicly available software, applications, and chatbots, regardless of whether they use AI, unless the software, application, or chatbot has been approved for that specific purpose. This prohibition includes, but is not limited to, ChatGPT, grammar checkers such as Grammarly, translation assistants such as Google Translate, etc.

“Confidential information” includes details of an investigation or case, evidence, witness information, criminal history information, and other personal identifying information.² It also includes confidential information pertaining to office employees, office policies, and programs. Nor can you endeavor to “anonymize” such confidential data by, for example, changing the names or posing a question using the fact pattern of your case hypothetically.

- Use any publicly available AI tools to analyze digital evidence, including but not limited to cellphone, computer, or social media records, or any information obtained via subpoena or search warrant. Note, however, that IT approved AI systems may be permissible in this area.
- Rely upon AI in forming legal conclusions or advice, nor rely upon it as a credible source or citation in any court filings or representations to the court or defense counsel. AI may be used to perform cursory legal research, as long as the results are independently verified.
- Use AI programs to write codes, scripts, or queries or use programs such as DALL-E to generate photo-realistic images.
- Download AI tools onto work on computers, laptops, or cell phones. You must delete any AI tools you may already have downloaded on these devices.
- Use AI programs on personal devices to perform work in a manner inconsistent with this policy. Employees must follow the office’s policies on the use of AI tools when using personal phones, computers, and other devices to conduct office work.
- Rely upon AI to produce the final version of any letters, reports, policies, or any other document. All AI output must be reviewed and verified.

Attorneys and non-legal staff are PERMITTED to do the following provided:

The following uses of publicly available AI tools are permitted:

- Google Translate or Zoom/Teams for translations that do not involve the input of confidential information (see below definition), such as directions to the office or a request for a meeting.
- Online map applications to search for locations relevant to prosecutions.
- Summarize and prepare presentations that do not involve confidential information, such as PowerPoint and Google slides.

² For purposes of this policy, “Personal Identifying Information” means a person’s name, address, telephone number, driver’s license number, social security number, credit card number, bank account number, or any other unique identifier or number that could be used to discover the identity of the person.

- Summarize and prepare flowcharts or checklists to ensure easily consumable policy or procedure-based documents. Any document must be independently validated for accuracy.
- Conduct translation and transcription services that are produced in a “closed” AI system that does not leak information into the internet.
- AI Transcription services of electronic evidence (jail phone calls, interviews, body cam) so long as the transcription is not considered final. Any reliance of an AI-generated transcription must be verified before it is represented to the Court or community partner.
- Use AI features embedded in MS Office, Adobe, and case management programs. Employees may use AI features embedded in these existing office programs installed on an office device. However, they may not be used in a generative capacity (see above).
- Use videoconferencing platforms with AI features to communicate. You may also use communication platforms such as Zoom and Microsoft Teams to communicate with witnesses, victims, defense attorneys, etc. However, you may not use the translation features on these platforms to conduct witness interviews, nor may you generate transcripts of your conversations on these platforms for any case-related work. Likewise, you should not allow any parties to the meeting to do so.
- Use AI tools specifically acquired by the office.

Your responsibility. The use of any office-approved AI application or AI program does not negate or undermine your responsibility to make an informed decision about if and how to use the output of an AI application or AI program. For example, if you use an office-approved AI program to summarize the contents of a case file, you must still determine if that summary is accurate and useful for decision-making and comports with the standards of professional conduct required of all employees. **You, not the AI program, are responsible for the conclusions, representations and decisions that flow from an AI- work product.**

Consult a supervisor before using these tools or if you have any questions about permitted use.

LAW ENFORCEMENT AI UTILIZATION. In addition to prosecutorial considerations, law enforcement may use AI tools that are passed to this office through investigation reports. If, in reviewing a case for prosecution, you become aware that law enforcement has used an AI application or AI program as part of the investigation, you must determine that the information produced by the AI application or AI program is accurate. For example, if a law enforcement agency used facial recognition software to identify a suspect, you must review the evidence and determine that there is sufficient information proving the person being charged is indeed the same person that the facial recognition software identified. You may be required to disclose to the defense and to the court that AI was used for these purposes.

A list of law enforcement agencies and the AI tools they use will be regularly circulated to staff. If any additional tools become prohibited, those tools will also be added to the list.

POLICY UPDATES

Please be aware that our AI policies may change, based on our experience and how new tools evolve. Rapid changes in technology require us to monitor continuously whether our policies continue to serve us well, and we will need to adjust. Sometimes those necessary adjustments may occur faster than policy amendments. Thus, we issue this guidance, and the policies outlined above, to protect our staff and maintain the confidentiality of information in our possession. Any decision around AI usage must comport with this office's overarching goal of seeking justice, protecting victim rights, and fundamental fairness.

Victim Services and Advocacy

Marion County Victim Assistance

SCOPE

Protecting Victim Rights is fundamental to the work of the Marion County District Attorney's Office. It is central to each decision we make, balanced by fundamental fairness and the principles of justice. Much of this critical work is completed by the Victim Assistance Division (VAD) through Victim advocates; however, every employee must endeavor to serve victims with unparalleled customer service.

PURPOSE

The purpose of these policies and procedures is to serve as general guidance when providing services to victims and facilitate engagement in the criminal and juvenile justice system.

1. NOTIFICATION TO CRIME VICTIMS OF THEIR RIGHTS IN OREGON

We must notify victims of their rights as soon as practicable. Therefore, we provide notice to victims of their rights at several points of contact within the process:

(A) At the Time of On-Scene Response: VAD provides on-scene crisis response to victims of sexual assault and to co-victims of homicide in Marion County. The advocate who responds provides the victim with information about their rights by providing a copy of the Victims' Rights Guide and discussing rights with the victim, especially focusing on rights that are relevant at that point in time, such as the right to a personal representative for the sexual assault process. If the victim is looking ahead to a court process, the advocate will discuss rights that address the victim's concerns, such as the right to notice, the right to have their safety considered, or the right to be consulted about plea negotiations.

(B) When Charging Decision Is Made: In both the adult and juvenile systems, once a case is filed, we provide victim notices by first class mail that include the Victims' Rights Guide with the first notice.

(C) During Quickset Phone Calls: When the turn around for a court event is sooner than the notice can reach the victim by mail, VAD endeavors to contact victims by telephone. ("quickset"). At that time, VAD gives victims notice of their rights and explains the rights implicated for that hearing. VAD notifies them they will receive the Victims' Rights Guide in the mail along with the Rights Request Form.

(D) During Advocate Contact: Unfortunately, the Marion County District Attorney's Office is unable to assign a victim advocate to every filed case due to limited resources. If the case is assigned to an advocate, the advocate contacts the victim for an advocate introduction, explains their rights and assists them in invoking them. The advocate will continue to discuss the victim's rights and ensure they know they can assert their rights throughout the case.

We are also required to provide information about available remedies when a victim's rights are not upheld. The Victims' Rights Guide outlines what steps can be taken when a right is not honored. In addition, advocates inform victims that there is a formal process for asserting violations claim if they believe their rights have not been respected, and VAD will help connect them with the appropriate contacts to support them through that process.

2. NOTIFICATION OF CRITICAL STAGES OF CRIMINAL CASE

If a victim requests, they have the right to advance notice of any critical stage of the proceedings. VAD accomplishes this in three ways:

(A) Victim Notices Sent in the Mail: Once a victim's information is entered into the DA Case Management System, identified victims will receive mailed notices when a new court event is entered into the case. These notices go to all victims of crime. These notices provide information of the specific stage in the court process, such as arraignments, plea hearings, hearings, trials, and final dispositions, as well as information about the charges involved. VAD supplements these notices with relevant enclosures to resources to community partners to assist the victim beyond the services the VAD office can provide

(B) Quickset Calls: When the turn around for a court event is sooner than the automated notice can reach the victim by mail VAD endeavors to contact victims by telephone using a specialized report that notifies VAD of victims who have asserted their right to be notified. Additionally, this report captures newly charged cases where a victim has not had time to assert their rights and provides an opportunity for the VAD office to capture those rights at this phone call.

(C) Advocate Contact: If the case is assigned to an advocate, the advocate will ensure the victim receives notice of all hearings.

3. PROVIDING ADVOCACY

Regardless of which setting the advocacy is provided, the core services VAD provides include: crisis intervention and support; safety planning; connection with VISOR; accompaniment through law enforcement interviews; support with restraining orders; information on the status of an investigation or court case; notification of hearing dates and times; information about Oregon's Crime Victims' Compensation fund; assistance in establishing financial losses for restitution purposes; problem solving barriers to attending court proceedings and participation in the case; referrals to support groups and counseling; liaison assistance with law enforcement officers, prosecutors, and social service agencies; assistance in preparing a statement for the court at the time of sentencing; assistance with court preparation by explaining the court process, touring empty courtrooms, accompaniment to court hearings, coordinating a safe and private area while waiting to testify; information, referrals and advocacy for personal safety and security issues; notification of case disposition and sentence; and information about crime victims' rights and assistance asserting those rights. Our services are victim-directed, so the advocate provides services in response to the victim's identified needs.

VAD provides advocacy for victims and family members through the aftermath of a crime in several ways that include:

(A) Sexual Assault Response: VAD provides 24-hour sexual assault response for Marion County. If VAD responds to the hospital, and the victim permits, we often accompany the victim through the SAFE process providing support and advocacy through that process. Additionally, if a victim chooses to report to law enforcement our advocates support the victim through the interview and investigation process. The advocate will follow up with the victim the following day to check in and address any additional concerns a victim may have and to connect the victim to additional community resources. The VAD office continues to be a resource for that victim as the investigation continues.

(B) Homicide Response: VAD provides 24-hour crisis response to family members when someone criminally causes the death of another person in Marion County. This includes deaths caused by an impaired driver. Services may include on-scene response, assist law enforcement with the death notification to surviving family members, provide immediate crisis intervention, provide resources for additional services to assist the family beyond what VAD can provide, provide case updates, and assist the family with the application for Crime Victims' Compensation. If the person who caused the death also dies during the incident and there is no criminal case that follows VAD will still respond and provide victim services.

(C) Advocacy within Criminal Justice System:

(i) Long-term Advocacy: VAD assigns advocates to provide comprehensive victim services throughout the duration of a criminal case for victims of sexual assault, stalking, child abuse, domestic violence (all felonies and many misdemeanors), burglary, robbery, driving under the influence of intoxicants when there is physical injury, assaults, homicide, elder abuse and juvenile crimes.

(ii) One-time or Periodic Contacts: On cases where VAD does not assign an advocate for the duration of the case VAD will endeavor to provide a one-time outreach to victims through a phone call, Grand Jury, Restitution hearings, Quick set calls (as mentioned above), or victim initiated call or walk in and provide any of the services listed above during these contacts.

(iii) No-Actioned Cases: When a prosecutor does not file charges on a case submitted by law enforcement we refer to these cases as No-Actioned cases. Advocates reach out to victims by phone or mail on all sexual assault, child abuse, domestic violence, elder abuse, and stalking cases that are not filed by prosecutors.

(D) Protective Orders: Protective orders are part of the civil legal system not the criminal legal system; nevertheless, our advocates regularly provide advocacy through the restraining order process by assisting with the completion of the paperwork, accompaniment to restraining order hearings, and safety planning.

4. ASSISTING VICTIMS IN OBTAINING RESTITUTION OR COMPENSATION FOR MEDICAL OR OTHER EXPENSES INCURRED AS A RESULT OF THE CRIMINAL ACT

The VAD office assists victims in requesting restitution. Our notices include information on how to request restitution for any financial losses a victim may have incurred due to the crime. Victims must submit documentation to the VAD office by a specific deadline. Submission of documentation does not guarantee the restitution will be granted. Whether restitution is granted or not, advocates will provide victims with resources to assist with any specific needs if resources are available to assist with the recovery of their losses. If it's necessary to schedule a restitution hearing, advocates may attend the restitution hearing with the victim.

5. VICTIM INPUT IN DECISION-MAKING PROCESS AT PROSECUTION AND JUDICIAL LEVELS

(A) Prosecution Level: On the Victims' Rights Request form, victims can assert their right to be consulted before a plea offer is made on a violent felony case.

(B) Judicial Level: We advocate for the involvement of victims in the sentencing process. Victims are informed that they have a right to make a statement at sentencing, and the prosecutor ensures that right is asserted in court. Advocates support victims in the composition of their victim impact statements by helping them understand the purpose as well as identifying the ways in which the statement can be delivered.

Communications, Media, and Public Records

Media Policy

PURPOSE

The purpose of the policy is to provide consistency and guidance on responding to media inquiries within the Marion County District Attorney's Office in accordance with applicable laws, ethical obligations, and interests of justice.

POLICY

While transparency and accurate information in the community is vital, the Marion County District Attorney's Office primary obligation is to ensure a fair, impartial trial for those charged with a crime in Marion County.

Absent extraordinary circumstances, the Marion County District Attorney's Office will respond to all media inquiries in a manner that is consistent with the Oregon Rules of Professional Conduct (ORPC Rule 3.6). The Marion County District Attorney's Office will designate a Public Information Officer (PIO) to be responsible to receive and coordinate a response to all media inquiries consistent with this policy.

Media Inquiries About a Criminal Investigation or Case

1. The Marion County District Attorney's Office will refer all media inquiries involving ongoing criminal investigations to the investigating law enforcement agency. An ongoing criminal investigation is an investigation that has not been referred to the Marion County District Attorney's office for review.
2. The Marion County District Attorney's Office will not comment on any criminal investigation under review. Doing so acknowledges the existence and potential stage of an investigation, which almost always has negative ramifications for the quality of the case.
3. The Marion County District Attorney's Office will respond to all media inquiries involving completed criminal investigations. A completed criminal investigation is an investigation that has been referred to the Marion County District Attorney's office for review and a criminal charge has been filed; or a decision has been made to not file a criminal charge; or the case was presented to a grand jury resulting in a not true bill or a justified use of force.
4. The Marion County District Attorney's Office will not acknowledge the existence of nor comment upon a case or indictment for an individual's arrest when the indictment is not subject to public inspection (i.e., secret indictments prior to arraignment on the criminal offense.) See [ORS 132.420](#)
5. The Marion County District Attorney's Office will not comment on any open criminal case, which is a case that involves a pending criminal charge beyond Oregon Rules of Professional Conduct (ORPC Rule 3.6). Information that can be shared includes the following:
 - the offense involved;
 - the identity, residence, occupation and family status of the accused;

- the identity of a victim after appropriate notification and if allowed by law;
 - if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - the fact, time and place of arrest;
 - the identity of investigating and arresting officers or agencies and the length of the investigation; and
 - information contained and available in the court record.
6. The Marion County District Attorney's office will comment on closed criminal investigations or cases in a manner consistent with applicable laws, ethical obligations, and interests of justice. A closed criminal investigation involves a criminal investigation that a decision has been made to not file a criminal charge or has been presented to a grand jury resulting in a not true bill or a justified use of force. A closed criminal case is a criminal case that involves a criminal charge that has been resolved by dismissal or imposition of a final sentence. Depending on the nature of inquiry, a case on appeal may not be considered "closed."
 7. It is the policy of the Marion County District Attorney's Office that child abuse records remain confidential under ORS [419B.035\(6\)\(a\)](#) through all direct and collateral appeals.
 8. The Marion County District Attorney's office will respond to all SB111 officer involved use of force investigations pursuant to the Marion County SB111 Protocol. *See Also* [Marion County SB 111 Protocol](#).

Responses and Releases

1. The Marion County District Attorney's Office endeavors to respond to all media inquiries in a timely manner and consistent with the guidelines outlined in this policy. All media inquiries will be referred to the designated PIO to coordinate a response.
2. The Marion County District Attorney's Office will send a press release for any completed criminal investigation involving a criminal charge that resulted in a fatality, an officer's intentional use of deadly physical force , and any other completed criminal investigations in which a press release is in the interests of the community and/or justice.
3. All press releases will be consistent with the guidelines outlined in this policy, reviewed by the office PIO and if applicable, notice given to the victim prior to release. All press releases will be released online using [Flash Alert Newswire](#).

Public Records Requests & Appeals

Public Records Requests

The Marion County District Attorney's Office is subject to and complies with the Marion County Public Records Requests Administrative Policy and Procedure.³

PURPOSE

To establish a county-wide policy for responding to public records requests in compliance with Oregon's Inspection of Public Records Law ([ORS 192.311 to 192.478](#)), which provides members of the public the right to inspect and copy public records that are not otherwise exempt from public disclosure.

AUTHORITY: The Marion County Board of Commissioners may establish rules and regulations in reference to managing the interest and business of the county under [ORS 203.010, 203.035, 203.111, and 203.230](#).

APPLICABILITY: All Marion County departments shall be subject to this policy.

GENERAL POLICY: This policy establishes an orderly and consistent procedure for responding to public records requests, creates the basis for a fee schedule designed to reimburse Marion County for the actual costs incurred in responding to public records requests, and informs individuals of the procedures that apply to public records requests. It is the policy of Marion County to ensure that all requests for public records are handled consistent with applicable public records laws. This policy shall be implemented in a manner that minimizes the impact on County workload and resources.

DEFINITIONS:

Business Day: A day other than Saturday, Sunday, or a legal holiday and on which at least one paid employee of the County is scheduled to and does report to work.

Impracticable: For the purposes of this policy and complying with the timelines established in this policy and [ORS 192.324 and 192.329](#), compliance may be deemed impracticable because: (1) The staff or volunteers necessary to complete a response to a public records request are unavailable; (2) Compliance with the timelines would demonstrably impede the county's ability to perform other necessary services; or (3) The volume of public records requests being simultaneously processed by the county.

Public records officer: An individual who is identified in accordance with this policy to whom public records requests may be sent.

³ Marion County Board of Commissioners, *Public Records Requests*, <https://www.co.marion.or.us/BOC/Pages/Public-Records-Requests.aspx> (accessed February 17, 2026).

Public records request: A written request, by a person or organization, to be provided access or copies of identified public records. This includes requests received via email. A public records request does not include simple, routine requests for readily available records.

Record: Any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. [ORS 192.410\(4\)\(a\)](#). A record may be handwritten, typed, photocopied, printed, microfilmed, or exist in an electronic form such as email or a word processing document, or other types of electronic recordings. A record is a public record if it contains information relating to the conduct of Marion County business and is prepared, owned, used or retained by the county.

POLICY GUIDELINES

1. Public Records Requests

Written public records requests shall be responded to without unreasonable delay and in accordance with this policy. Public records identified in a request shall be disclosed unless the records are confidential, privileged, or subject to an exemption. Marion County is not required to create a record in order to respond to a public records request.

2. Public Records Officers

2.1. In certain circumstances, the District Attorney may elect to disclose more information than typical when public interest, transparency and need for information creates a need to do so. When making this disclosure the DA shall consider ORCP Rule 3.6, any potential prejudice on a defendant; the immediacy of the pending litigation and any other relevant factor in balancing the public's need for information and issues of justice.

The Marion County District Attorney is responsible for:

2.1.1. Appointing one or more public records officer(s) who shall be responsible for coordinating and assisting staff implementation of this policy; and

2.1.2. Developing, approving, and maintaining public records procedures for the DAs Office , in compliance with this policy.

2.2. Each public records officer within the DA's Office is responsible for ensuring timely and reliable processing of written public records requests as outlined by this policy.

2.3. Requests from journalists or media representatives shall be handled by a person authorized to speak with the media.

3. Processing Public Records Requests

3.1. Unless impracticable, the public records officer shall acknowledge receipt of the written request to inspect or receive a copy of a public record within five business days after receiving the request.

3.2. The acknowledgement must be in writing, which includes emailed acknowledgements, and must, at a minimum, inform the requester that the request has been received and that the department or division:

- 3.2.1. is the custodian of the requested record; or
- 3.2.2. is not the custodian of the requested record; or
- 3.2.3. is uncertain whether the department or division has custody of the requested record.

3.3. A written acknowledgement is not required if the public records request is completed within five business days.

3.4. In order to more appropriately respond to the request, a public records officer may request additional information or clarification from the requester. The obligation to further complete the request is suspended until the requester provides the information for clarification. Requests for additional information or clarification must be made in a good faith attempt to expedite the request.

3.5. As soon as reasonably possible, but not later than 15 business days after a public records officer from the has received a written public records request, the DA's Office shall complete its response to the request or inform the requester in writing that the county is still processing the request and provide a reasonable estimated date when its response will be complete.

3.5.1. The 15 business days timeframe does not apply:

3.5.1.1. If compliance is impracticable;

3.5.1.2. During the time that the DA's Office waits for a requester to provide additional information or clarification requested by the public records officer; or

3.5.1.3. For those days the DA's Office waited for a requester to pay a fee for the county's anticipated cost of making the public records available.

3.6. If a requester seeks access for inspection of records, reasonable steps must be taken to ensure that the records are protected from damage or removal.

3.7. A response is complete when:

3.7.1. Access or copies of non-exempt records are provided;

3.7.2. The DA's Office asserts that an exemption within [ORS 192.311 to 192.478](#) applies to the requested records; or

3.7.3. The DA's Office informs the requester that it is not the custodian of the requested records.

3.8. If the DA's Office asserts an exemption to disclosure of a record, the response shall include a statement that the requester may seek review of the county's determination pursuant to the provisions set forth in [ORS 192.407 to 192.431](#).

4. Fees

4.1. Oregon's Inspection of Public Records Law allows public bodies to recover their actual costs in fulfilling a public records request.

4.2. The fee must be reasonably calculated to reimburse the DA's Office for its actual costs in making records available, and may include:

4.2.1. Charges for the time spent by staff to locate the requested public records, to review the records in order to determine whether any requested records are exempt from disclosure, to segregate exempt records, to supervise the requester's inspection of

original documents, to copy records, to certify records as true copies, and to send records by mail;

4.2.2. A per-page charge for photocopies or requested records; and

4.2.3. A per-item charge for CDs, audiotapes, or other electronic copies of requested records.

4.3. The Board of Commissioners establishes the public records fee schedule set forth by board order. Departments may request board approval of a department-specific fee schedule.

4.4. The requester will be informed of estimated fees and may be required to make a deposit before the request will be further processed.

4.5. If the estimated fee is greater than \$25, the DA's Office must provide the requester with written notice of the estimated amount of the fee prior to fulfilling the records request. The notice may be delivered via email. The DA's Office will not fulfill the request until the requester makes a deposit in the amount of the estimated fee.

4.6. The requester must pay the amount owing before the requested records will be made available.

4.6.1. If the requester was required to make a deposit, fees will be debited against that deposit. If the fees are less than the deposit, the DA's Office will provide the records along with a refund of the deposit, less the fee.

4.6.2. If the deposit is insufficient to cover the entire costs of completing the public records request, or the requester was not required to pay a deposit, an invoice for the unpaid costs of completing the public records request will be generated and sent to the requester.

5. Fee Waivers

Requests for fee waivers or reduced fees must be made in writing. The DA's Office has discretion to approve or deny the request for a fee waiver. The final decision to grant a fee waiver request must be approved by the District Attorney. The DA must consider, among other things, the character of the public interest in the particular disclosure, the purpose for which the requester intends to use the information, the extent to which the fee impedes the public interest and the extent to which the waiver would burden the county. The law prohibits waiving fees if the records were created through use of certain constitutionally dedicated funds, such as fuel taxes or motor vehicle fees, unless the cost of charging the fee would exceed the cost of providing the record.

6. Copyrighted Material

If the DA's Office maintains public records containing copyrighted material, it will permit the person making the request to inspect the copyrighted material and may allow limited copying of such material if allowed under federal copyright law. The DA's Office may require the requester to obtain written consent from the copyright holder or an opinion from the person's legal counsel before allowing copying of such materials.

7. Destruction of Records

No employee shall alter or destroy a record that the employee reasonably believes is subject to a public records request or is relevant to current or reasonably anticipated litigation. This includes records otherwise eligible for destruction.

8. Implementation

The District Attorney has the sole authority and responsibility to implement this policy and assure compliance by county departments.

9. Tracking Public Records Requests

The DA's Office public records officer shall document the number and type of public records requests the department has received and completed.

10. Periodic Review

The DA's Office will update this policy in accordance with the Board of Commissioners policy review schedule.

PROCEDURE

POLICY STATEMENT: Oregon's Inspection of Public Records Law ([ORS 192.311 to 192.478](#)) provides members of the public the right to inspect and copy public records that are not otherwise exempt from disclosure. This procedure establishes a consistent approach to handling public records requests, guides Marion County employees, including those from the District Attorney's Office, on the processing of public records requests and informs the public of the standards that apply to public records requests. It is the policy of Marion County to ensure that all requests for public records are handled promptly and in conformance with Oregon public records laws.

APPLICABILITY: All Marion County departments.

DEFINITIONS:

Business Day: A day other than Saturday, Sunday, or a legal holiday and on which at least one paid employee of the County is scheduled to and does report to work.

Impracticable: For the purposes of this policy and complying with the timelines established in this policy and [ORS 192.324 and 192.329](#), compliance may be deemed impracticable because:

(1) The staff or volunteers necessary to complete a response to a public records request are unavailable; (2) Compliance with the timelines would demonstrably impede the county's ability to perform other necessary services; or (3) Because of the volume of public records requests being simultaneously processed by the county.

Public records officer: An individual who is identified in accordance with this policy to whom public records requests may be sent.

Public records request: A written request, by a person or organization, to be provided access or copies of identified public records. A public records request does not include simple, routine requests for readily available records that may be handled immediately.

Record: Any writing containing information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. [ORS 192.410\(4\)\(a\)](#). A record may be handwritten, typed, photocopied, printed, microfilmed, or exist in an electronic form such as email or a word processing document, or other types of electronic recordings. A record is a public record if it contains information relating to the conduct of Marion County business and is prepared, owned, used or retained by the county.

PROCEDURES:

Public Records Requests:

Written public records requests shall be responded to without unreasonable delay and in accordance with Oregon law and Administrative Policy 213. Public records identified in a request shall be disclosed unless the records are confidential, privileged, or subject to an exemption. Marion County DA's Office is not required to create a record in order to respond to a public records request.

All public records requests must identify the public records requested. Public records requests should be submitted in writing to the appropriate department public records officer. The public records officers to whom public records requests may be submitted are identified in Attachment A.

1. Initial Processing of the Request:

1.1 The public records officer who receives a written public records request shall conduct an initial assessment.

1.1.1 Simple routine requests for readily available documents may be handled immediately. In some cases, the requester may be referred to the county website or other resources where records are readily available.

1.1.2 Except for routine requests that have been addressed immediately, the public records officer shall make a preliminary determination as to whether the records are held and if possible, whether all or a portion of the contents may be subject to exemption. The public records officer may need to consult with their supervisor.

1.1.3 If the records relate to pending claims or litigation the public records officer shall consult with a supervisor.

1.2 The public records officer shall promptly determine if the requested records are in the custody of the DA's Office.

1.3 The public records officer should consider whether additional information or clarification is needed from the requester in order to effectively process the request.

2. Acknowledging the Request:

2.1 Unless impracticable, the public records officer shall acknowledge receipt of the written request to inspect or receive a copy of a public record within five business days after receiving the request. The written acknowledgement shall:

2.1.1 Inform the requester that the DA's Office is not the custodian of the requested record(s); or

2.1.2 Notify the requester that the DA's Office is uncertain whether it is the custodian of the requested record(s); or

2.1.3 Confirm that the DA's Office is the custodian of some or all of the requested record(s); or

2.1.4 Note that the request is unclear, ambiguous or lacks specificity and requesting additional clarification.

2.2 If the DA's Office is custodian of at least some of the request records, and if the public records officer has obtained sufficient information, then the public records officer may provide an estimate of the fees that the requester must pay prior to receiving the requested records as part of the written acknowledgement.

2.3 A written acknowledgement is not required if the public records request is completed within five business days.

3. Responding to the Public Records Request

3.1 In order to more appropriately respond to the request, a public records officer may request additional information or clarification from the requester. Requests for additional information or clarification must be made in a good faith attempt to expedite the request.

3.1.1 Common examples of additional information necessary to clarify a request are: date ranges for the request, explanation of ambiguous terms, inquire if a request for large volume of records might be limited, or clarification about the program or division responsible for the records being sought.

3.2 The obligation to further complete the request is suspended until the requester provides the clarifying information.

3.3 The public records officer shall consider whether any of the requested records are exempt from disclosure. The public records officer may need to consult with their supervisor about the applicability of exemption.

3.4 If the department has custody of requested records and no exemption will be asserted, the public records officer shall establish an estimate of the fee to reimburse the DA's Office for the cost of providing the records.

3.4.1 The estimate must reasonably calculate actual costs anticipated to make records available;

3.4.2 The costs may include anticipated charges for the time spent by staff to locate the requested public records, to review the records in order to determine if an exemption applies, to segregate exempt records, to supervise the requester's inspection of original documents, to copy records, and mailing costs.

3.4.3 The estimate may include charges for photocopies of requested records.

3.4.4 The fees must be consistent with the county policy and departmental procedure, if any.

3.5 If the estimated fee is greater than \$25, the department must provide the requester with written notice of the estimated amount of the fee prior to fulfilling the records request. The department will not fulfill the request until the requester makes a deposit in the amount of the estimated fee.

3.6 For requests where the fee will be significantly less than \$25, the department may waive the requirement of pre-payment of an estimated fee before performing work to make the records available.

3.7 If the department will require advance payment of the estimate, the public records officer shall inform the requester in writing of the estimated fee to recoup the county's actual costs.

3.8 Absent unusual circumstances, the public records officer shall perform no additional work in responding to a public records request after the requester has been informed of the requirement to pay an estimated fee in advance.

3.9 The requester must pay the amount owing before the requested records will be made available. If the deposit exceeded the actual costs, the department will provide the records along with a refund of the difference. If the deposit is insufficient to cover the entire costs of completing the public records request, or the requester was not required to pay a deposit, the amount owing must be paid by the requester before the records will be provided.

4. Deadline for Response:

As soon as reasonably possible, but not later than fifteen (15) business days after a public records officer has received a written public records request, the public records officer shall complete the response to the request or inform the requester in writing that the department is still processing the request and provide a reasonable estimated date when its response will be complete.

4.1 The 15 business days timeframe does not apply:

4.1.1 If compliance is impracticable;

4.1.2 During the time that the county waits for a requester to provide additional information or clarification requested by the public records officer; and

4.1.3 For those days the county waited for a requester to pay an estimated fee for the county's anticipated cost of making the public records available.

4.2 The public records officer will respond to the request in one or more of the following ways:

4.2.1 Providing copies of the requested record(s) when an exemption is not claimed;

4.2.2 Informing the requester that the department does not have custody of the requested public record(s);

4.2.3 Providing a statement that state or federal law prohibits the department from acknowledging that the record exists and a citation to the relevant state or federal law;

4.2.4 Providing a statement that the department is the custodian of some or all of responsive records but that some or all of the requested record(s) are exempt from disclosure and will not be provided, along with a citation to the exemption and a statement that the requester may seek review of the determination by appeal pursuant to [ORS 192.407 to 192.431](#); and/or

4.2.5 Providing a written statement that Marion County District Attorney's Office is still processing the request and provides reasonable estimated date by which the county expects to complete its response based on the information currently available.

5. Closing the Records Request

5.1 Marion County District Attorney's Office will close the records request upon the occurrence of one of the following:

5.1.1 The records are delivered, or access is provided, to the requester;

5.1.2 The requester is notified of a claim of exemption, and any appeal period has passed or the appeal is resolved.

5.1.3 The requester fails to pay a fee for the records within 60 days after being informed that the fee must be paid;

5.1.4 The requester fails to respond within 60 days to a request for information or clarification about the request.

5.2 Each Marion County department, through its public records officer(s), shall document and track public records requests that the department has received and the manner by which each request was closed.

6. Requests to Inspect Records

Requests to inspect public records should be processed in the same manner as outlined above. If the public record that the requester is seeking to inspect is only readable by machine or electronic form, the information shall be provided in the form requested by the requester if that form is available. If the electronic or machine-readable information cannot be provided in the format requested, then the public records officer shall make the public record available in the form in which the public record is maintained by Marion County. The public records officer shall provide an estimate of the costs to inspect public records in the same manner as described above.

7. Public Records Officers

Each department head within Marion County is responsible for: appointing one or more Public Records Officer(s) who shall be responsible for coordinating and assisting staff in carrying out Administrative Policy 213 and this procedure. Each Public Records Officer within Marion County is responsible for ensuring timely and reliable processing of public records requests as outlined herein.

8. Fee Waiver Requests

Upon receiving a request for a fee waiver, a public records officer shall consult a supervisor. Fee waiver requests may only be granted by the Chief Administrative Officer (CAO) or Deputy County Administrative Officer. If a public records officer considers granting a fee waiver request, legal counsel should be consulted.

Public Records Appeals

The Marion County District Attorney is designated to review any petition for denial of the right to inspect or to receive a copy of any public record of a public body other than a state agency or elected official in Marion County. [ORS 192.415](#).

Upon receipt of any properly filed petition for review, the District Attorney will notify the involved public body and request a copy of the public record as well as a statement supporting the non-disclosure. The District Attorney or designee will issue an order denying or granting the petition in full or in part within seven days from the date of receipt. If an order cannot be provided within 7 days, parties shall be informed that they may treat the non-compliance as a denial and appeal their case to Circuit Court. ORS 192.427. Parties may stipulate to a new timeline for issuance of an order or elect to appeal. A copy of the order will be sent to the Attorney General. Any order issued is subject to judicial review within Marion County Circuit. ORS 192.411 – 192.433, SB 418 § 7(3)(b).

Charging, Plea Negotiations and Sentencing

Aggravated Murder/Death Penalty Charging Decisions & Considerations - [ORS 163.095](#) / [163.150](#)

All Aggravated Murder prosecutions shall be reviewed under this policy for the appropriateness of applicability for maximum potential sentence.

1. Evidence-based charging decisions
2. Consider all possible defenses prior to charging where the state has the burden to disprove the defense(s) beyond any reasonable doubt
3. Consider all possible *affirmative defenses* prior to charging

SENTENCE CONSIDERATIONS

1. Consider the strength of the “aggravating” factor of the murder.
2. Conduct an evidence-based analysis of the 3 (possibly 4, depending on the date of the crime) death penalty questions. In particular consider:
 - a. Defendant’s age, character, criminal history and disciplinary history while incarcerated;
 - i. Review all available reports and records from prior police contact
 - ii. Review Pen Packet
 - iii. Review School records
 - iv. Review all Medical and Psychological records available
 - v. Review DHS and similar records, if any
 - b. Possible defenses / challenges to a death sentence such as ID or FAS etc. and the state’s ability to prevail;
 - c. Any other known factors concerning the defendant’s background, family, education and life circumstances;
 - d. The circumstances of the crime;
 - e. The victim impact evidence as well as evidence of the victim’s history and role, if any, in the murder.
3. Consultation with victims.
4. Public safety, including prior public safety interventions and public safety resources.
5. Final decision is made by the District Attorney after consultation with management and a review of the above-mentioned considerations. Previous aggravated murder cases in Marion County shall be informative, but not dispositive, in final determinations about sentence recommendations.

PLEA NEGOTIATIONS

1. The possibility of a death sentence should never be used as a threat or leverage to effectuate a plea.
2. Once a decision to seek death is made, any change shall be the result of an evidence-based analysis of the state's ability to prove the crime or to get affirmative answers to the death penalty questions, as discussed above, in light of any new circumstances or evidence.

Juvenile Waiver Cases Charging Decisions and Considerations – ORS 419C.349

Preliminary Charging Considerations

1. Charging Decisions will be evidence-based;
2. Consider public and victim safety, seriousness of the offense, and provability including defenses and affirmative defenses;
3. Youth's prior Juvenile Justice involvement
4. Victim considerations
5. Disruption to just disposition if state later seeks a waiver (i.e., new counsel, delayed subpoenas, delayed evals, etc.)

CONSIDERATIONS TO MAINTAIN WAIVER:

1. Whether the conduct was planned or spontaneous
2. Whether the Youth used a dangerous or deadly weapon in the incident and how the youth gained access to the weapon;
3. Appropriateness of sanction available to the juvenile court;
4. Results of a thorough, evidence-based analysis of the factors the State is required to prove at a waiver hearing under the current law:
 - a. The Youth had sufficient sophistication and maturity at the time of the incident; and
 - b. Likelihood the court, after considering statutory factors, will determine by a preponderance of the evidence standard that retaining jurisdiction will not serve the best interests of the youth and of society and is therefore not justified:
 1. factors include: the amenability of the Youth to treatment; community protection and seriousness of the crime; the aggressive, violent, premeditated or willful manner of the offense; Youth's previous history regarding treatment and physical/emotional/mental health; Youth's history of involvement in the Juvenile system; severity of the impacts of the crime; the merit of the case against the Youth; joinder of the case to adult codefendants
 - c. The analysis encompasses a review of available documentation of the Youth's history, including, but not limited to: ODHS records, Medical and Psychological records, education records, mitigation provided by the defense, victim position(s), public safety and youth's prior history within the Juvenile Justice system
5. Consultation with the Victim(s) of the crime
6. Similarly situated cases, if applicable.

Early Disposition Program (EDP)

EDP Charging and Plea Offer Guidelines

These guidelines are standard charging guidelines and plea offers for certain violation or misdemeanor offenses and probation violations determined to be eligible for the Early Disposition Program (EDP). Trial Team Supervisors (TTL) determine policy eligibility for EDP.

Restitution

Any restitution must be determined prior to and provided on the plea offer at arraignment. If the amount of restitution is more than \$500, the defendant is not eligible for EDP. A Restitution Notice must be provided to the defendant at arraignment. If unable to determine the amount of restitution prior to arraignment, consult with a TTL.

1. Plea Negotiations/What to do if EDP rejected

EDP plea offers are FINAL. EDP plea offers are valid for the day of arraignment **ONLY** (*except in rare circumstances*). A rejected EDP plea offer is revoked and a plea offer according to the standard plea offers guidelines, shall be provided.

2. Failure to Appear

Increase the base fine amount by \$50 per FTA, up to a maximum of \$750 or revocation of the EDP plea offer.

3. Retained Attorneys

If defendant has retained an attorney, the case may be set over one time to pay for discovery and review of the plea offer. Offer must be accepted at next appearance or the plea offer is revoked.

4. Jail Time

Crimes or defendants not otherwise eligible for EDP due to aggravating circumstances, may receive an EDP plea offer of an executed sentence (48 hours up to 10 days) at DDA discretion. If an executed sentence is offered, it includes the minimum offense fine.

These crimes may be determined ineligible for filing by a DDA absent sufficient criminal justice resources or aggravating factors (parentheses) existing:

- Theft 3 (shoplift stings or frequent offenders)
- Criminal Mischief 3
- Criminal Trespass 1, 2 (residence or non-domestic)
- Disorderly Conduct (non-domestic/non-gang related)
- Failure to appear 2
- Frequenting a place where controlled substances are used
- Harassment (non-domestic/non-sexual/non-law enforcement victim)
- Unlawful Entry into a Motor Vehicle
- Driving While Suspended (V) (referred to traffic court)
- Minor in possession of alcohol (V) (referred to traffic court)

Misdemeanors

If filed, these crimes may be determined to be eligible for EDP by a DDA:

CCW	Unlawful Purchase of a Firearm
Criminal Mischief 2	Furnishing Alcohol to Minor
Criminal Poss. Forged Inst. 2	GFI
Fleeing or Attempting to Elude	Interfering with a Peace Officer
Escape 3	Initiating a False Report
FTPD/D – property damage	Improper use of 911
Fel. Poss. Rest. Weapon	Prostitution
Forgery 2	Reckless Driving
FUCC	Theft 2

GENERAL MISDEMEANOR EDP

Minimum Fine: \$100

General Misdemeanor EDP Recommendation

Conviction	Conditions
1 st conviction	Restitution (if applicable) Min. fine / \$20 court costs Book and print ODL suspension (if applicable)
2 nd and subsequent convictions	Restitution (if applicable) Min. fine / \$20 court costs Fine equal to \$50 per each prior criminal conviction and each FTA on file, up to a maximum of \$750 Book and print ODL suspension (if applicable)

ODL Suspension per ORS 809.428

Offense type	Offense #	Suspension
Elude · FTPD/D · Reckless Driving · Criminal Mischief w/ vehicle	1 st in 5 years 2 nd in 5 years 3 rd in 5 years	90 days 1 year 3 years
GFI	Any	1 year

DRIVING WHILE SUSPENDED — DUII-Based Suspension

Mandatory fine amounts per [ORS 153.018\(3\)](#) and [ORS 811.182\(5\)](#)

Conviction	Conditions
1 st conviction	\$1,000 mandatory fine — ORS 153.018(3) / ORS 811.182(5) Min. fine / \$20 court costs

Conviction	Conditions
2 nd conviction	\$2,000 mandatory fine Min. fine / \$20 court costs
3 rd and subsequent convictions	Maximum fine Min. fine / \$20 court costs
 These cases are normally sent to traffic court. This chart applies when DWS accompanies a non-traffic-court EDP charge.	

RECKLESS DRIVING

Reckless Driving [ORS 811.140](#)

Conviction	Conditions
Any conviction	\$250 fine, plus \$50 per each prior conviction and moving traffic violation Min. fine / \$20 court costs Book and print ODL license suspension

FURNISHING ALCOHOL TO A MINOR

Furnishing Alcohol to a Minor [ORS 471.410\(4\)\(a\)\(b\)](#) — statutory fines apply

Conviction	Conditions
Any conviction	Mandatory minimums: \$500 fine (1st) · \$1,000 (2nd) · \$1,500 (3rd) Min. fine / \$20 court costs

Standard Charging & Plea Offer Guidelines

The standard recommendations and charging guidelines below are to be used as guidelines only as various factors may affect a recommendation. Factors that may aggravate a recommendation include but are not limited to: extensive planning, use of co-defendants, use of violence/force/threats thereof during the commission of the offense, multiple charges arising out of one incident, pending charges which have yet to result in conviction, prior felony convictions, or numerous misdemeanor convictions. Conversely, certain factors may mitigate a defendant's conduct and therefore warrant a lesser sentence. These include but are not limited to: provocation by the victim, some mutual combat, and evidentiary complications.

These are standard plea offers for certain violation or misdemeanor offenses. Standard plea offers for felony offenses are subject to the current felony sentencing guidelines and applicable statutes. Plea offers for any offense may be given outside of these standards based on articulable aggravating or mitigating facts. At no time shall any plea offer be interpreted to violate any statute or the constitution. See [ORS 135.405, 135.415 & 135.418](#).

ALL RECOMMENDATIONS SHALL INCLUDE:

- Court Appointed Attorney's Fees (as defined by the court's limited judgment)*
- Minimum Offense Fine (\$100 misdemeanor, \$200 felony)
- Restitution
- Show Proof Date (for probation)
- Obey All Laws (for probation)
- Must accept by FIRST R7 unless specifically extended by the assigned DDA.

RECOMMENDATIONS MAY INCLUDE (based on individual case facts):

- Referral for appropriate treatment: substance abuse (drug or alcohol), mental health, anger, or traffic safety
- Community service hours
- Jail as a condition of probation
- Any other condition that promotes victim / community safety and defendant accountability

THE FOLLOWING MAY BE WARRANTED BY THE INDIVIDUAL CASE FACTS:

- Substance abuse evaluation and treatment (drug/alcohol)
- Do not possess weapons
- No contact with victim (sometimes without waiver &/or treatment compliance)
- Mental health evaluation and treatment (all medications)
- No contact with co-defendant
- Gang Conditions
- Other conditions that may be warranted based on particular case facts or circumstances

CIVIL COMPROMISE

Generally, we will not object to a motion for a civil compromise that comply with the requirements of [ORS 135.703](#) and is in the interests of justice. We will object to any motion for a civil compromise that negatively impacts public safety or is a bias crime.

CHARGING DECISIONS: MISDEMEANORS

The Marion County District Attorney's office may file any misdemeanor charge when upon review there is sufficient evidence to support a finding of guilt beyond a reasonable doubt, and the interests of justice and public safety will be served.

CHARGING DECISIONS: DV OFFENSES

The Marion County District Attorney's office may file any charge constituting domestic violence when upon review there is sufficient evidence to support a finding of guilt beyond a reasonable doubt and the interests of justice and public safety will be served.

CHARGING DECISIONS: PROPERTY OFFENSES AND AGGREGATION

A DDA may charge property offenses in aggregate pursuant to [ORS 164.115](#) when upon review there is sufficient evidence to support a finding of guilt beyond a reasonable doubt and the interest of justice and public safety will be served. See A/so 416 Program Description in Appendix

COURT APPOINTED ATTORNEY FEES

At minimum, assigned DDAs will seek the amount of court appointed attorneys' fees ordered by the court by way of a limited judgment upon the defendant's application for a court appointed attorney. This limited judgment is often a fraction of the full contract ordered fee for which the defense attorney is getting paid. The Marion County District Attorney's Office may seek the contract ordered court appointed attorneys' fees where there is sufficient evidence to show that the defendant has the present or future ability to pay them, and may make it part of a stipulated plea agreement. If the assigned DDA has additional evidence or information to support a request for the contract ordered court appointed attorney fee, they may ask the court to order the full amount.

CONSIDERATION OF COLLATERAL CONSEQUENCES

To ensure equitable resolution of cases pursuant to the plea negotiations, DDAs shall first follow the parameters set forth in [ORS 135.405](#) through [135.418](#). If defense counsel provides verifiable information of disproportionate collateral consequences of a negotiated plea agreement. DDAs shall weigh those consequences with other relevant factors.

Standard Sentencing Recommendations

Abbreviations

SIS = Suspended Imposition of Sentence

SES = Suspended Execution of Sentence

MCJ = Marion County Jail

CSW = Community Service Work

BP = Bench Probation

ODL = Oregon Driver License

NCVI = No Contact with Victim

VIP = Victim Impact Panel

EXE = Executed sentence

CAA = Criminal Assessment Account

DRIVING OFFENSES

DUII (A) – [ORS 813.010](#)

The Marion County District Attorney's office may file any Driving Under the Influence of Intoxicants charge ([ORS 813.010](#) or [813.011](#)) when upon review there is sufficient evidence to support a finding of guilt beyond a reasonable doubt and the interest of justice and public safety will be served.

Diversion Eligibility: ORS 813.215 et seq.

Defendant has no DUII charge pending in any jurisdiction; defendant has no prior diversion or DUII conviction (anywhere) in past 15 years; defendant has not participated in an alcohol OR drug treatment in past 15 years; defendant did not injure anyone (other than himself) in this DUII incident; defendant has no pending charge or conviction in the past 15 years for murder, manslaughter, criminally negligent homicide, or assault that resulted from vehicle operation; defendant does/has not possessed a commercial drivers license; defendant did not have a minor (>3 yrs difference) in the vehicle at the time.

DUII — Driving Under the Influence of Intoxicants [ORS 813.010](#) (Class A Misdemeanor). **If defendant is not diversion eligible, the following standards apply:**

#	Jail	Sentence	Fine	Mandatory conditions
1 st	SIS	18 mo BP	\$1000*	If no prior diversion, 48 hr. MCJ or 80 hr CSW; otherwise Chart (below) Std DUII conditions.
2 nd	SIS	24 mo BP	\$1,500 *	Chart (below) Std DUII conditions.
3 rd ‡	364 days SSX	36 mo SBP	\$2,000 *	60 days. Std DUII conditions.
4 th ‡	364 days EXE	—	\$6,200	—

**\$2000 FINE IF BAC .15% OR ABOVE | ALWAYS screen for felony DUII eligibility: 2 prior DUII CONVICTIONS within last 10 years.*

DUII — Jail as Condition of Probation Chart (MCJ days)

	Within 10–15 yrs	Within 5–10 yrs	Within 2–5 yrs	Within 2 yrs
1 st conviction	48 hrs	5 days	7 days	14 days
2 nd conviction	7 days	14 days	21 days	30 days

DUII — Diversion Termination If the defendant is on diversion and fails to comply with or complete the terms and conditions of diversion, request termination of diversion and imposition of the following sentence:

Reason	Probation	Jail	Fine	Conditions
Failure to comply with diversion terms	SIS · 18 mo BP	48 h MCJ or 80 h CSW	\$1,000	Std. DUII conditions
New DUII while on diversion	—	60 days MCJ exe	\$1,000	—

Additional Mandatory DUII Conditions:

- \$255 DUII Conviction Fee
- Victim Impact Panel
- Do not possess/consume alcohol/illegal drugs
- No bars/taverns
- Do not drive without valid license or insurance
- ODL Suspension (if this is the defendant's 3rd DUII, it is a lifetime ODL revocation per ORS 809.235)

Refusal Of Breath Test (V) – [ORS 813.095](#) (Fine Only)

- 1st \$650
- 2nd or more \$1000

Misdemeanor Driving While Suspended [ORS 811.175](#)

- May NAC with TTL approval if defendant has open/pending charges
- File if based on suspension for DUII

Driving While Suspended (Misdemeanor) [ORS 811.175](#)

#	Probation	Fine / Conditions
1 st	None	\$300 + Min Fine / CAA fees / Must accept by FIRST R7
2 nd	None	\$400 + Min Fine / CAA fees
3 rd	None	10–30 days MCJ executed

 If basis for suspension is a DUII conviction: mandatory \$1,000 fine (1st DWS) or \$2,000 fine (2nd DWS) — ORS 811.182(5).

Reckless Driving (without accompanying DUII) [ORS 811.140](#) (Class A)

Offense	Probation	Conditions
1 st — no restitution	None. EDP eligible.	ODL suspension per DMV · min. fine + CAA fees · restitution Must accept by FIRST R7
1 st — with restitution OR 2 nd	SIS · 24 mo BP	ODL suspension · traffic school · restitution · min. fine same as above + 40 h CSW or 1–10 days MCJ
<i>First offense may be screened for EDP eligibility.</i>		

Reckless Driving (with accompanying DUII) [ORS 811.140](#) (Class A)

Offense	Probation	Conditions
1 st — divr eligible DUII	None	ODL suspension per DMV · min. fine/prob fee + CAA fees
1 st — non-divr DUII OR 2 nd	None	ODL suspension per DMV · min. fine + prob fee + CAA fees same as above + 40 h CSW or 1–10 days MCJ

Eluding (A) – [ORS 811.540](#) (misdemeanor)

Offense	Probation	Conditions
1 st	EDP eligible	\$300 fine · ODL suspension per DMV · Min. fine + CAA fees Must accept by FIRST R7
2 nd	—	14 days MCJ · ODL suspension per DMV · min. fine + prob fee + CAA fees
<i>First offense may be screened for EDP eligibility.</i>		

Failure to Perform the Duties of a Driver (A) – [811.700](#) (misdemeanor)

Offense	Probation	Conditions
1 st	—	Min. fine + CAA fees
2 nd	SIS · 24 mo BP	ODL suspension per DMV · Traffic School · Restitution · min. fine + CAA fees
<i>*No objection to civil compromise if ODL/CCH/facts not aggravated (assessed on case-by-case basis). May also be screened for EDP eligibility.</i>		

Giving False Information (A) – [ORS 807.620](#) or [162.385](#)

Offense	Probation	Conditions
1 st	—	Min. fine · CAA fees · ODL suspension
2 nd	—	5 days MCJ EXE · Min. fine · CAA fees · ODL suspension
3 rd	—	5-15 days MCJ EXE · Min. fine · CAA fees · ODL suspension
<i>Offenses may be NACd by TTL if no DV/Violence/Damage/Other aggravating circumstances exists.</i>		

PROPERTY OFFENSES

Fraud Offenses (Misd. Theft · Forgery · Criminal Possession of a Forged Instrument · Fraudulent Use of a Credit Card · Negotiating a Bad Check). May be screened for EDP eligibility.

Offense	Probation	Conditions
1 st	—	Min. fine + CAA fees · Restitution
2 nd	—	1–30 days MCJ executed · Restitution · min. fine + CAA fees
3 rd	—	1–90 days MCJ executed · Restitution · min. fine + CAA fees

Criminal Mischief II (A) [ORS 164.354](#) or **III (C)** [ORS 164.345](#)

#	Probation	Conditions
1 st *	None	Restitution · min. fine + CAA fees · Must accept by FIRST R7
2 nd	SIS · 18 mo BP	40 hours CSW · restitution · NCVI · min. fine + CAA fees
3 rd	None	1–90 days MCJ executed · restitution · min. fine + CAA fees
<i>*May be screened for EDP eligibility.</i>		

Criminal Trespass I (A) [ORS 164.255](#)

#	Probation	Conditions
1 st	SIS · 18 mo BP	Appropriate treatment · NCVI · ban from premises · min. fine + CAA fees
2 nd	SIS · 24 mo BP	Same as above + 40 h CSW or 1–10 days MCJ
3 rd	None	1–90 days MCJ executed · min. fine + CAA fees
<i>Offenses may be NACd by TTL. Charges will be considered if DV/violence/damage/other aggravating circumstance exists. May also be screened for EDP eligibility.</i>		

Criminal Trespass II (C) [ORS 164.245](#)

#	Probation	Conditions
Any	SIS · 24 mo BP	Appropriate treatment · NCVI · ban from premises · min. fine + CAA fees
<i>Offenses may be NACd by TTL. Charges will be considered if DV/violence/damage/other aggravating circumstance exists. May also be screened for EDP eligibility.</i>		

WEAPON OFFENSES

Carrying a Concealed Weapon (B) [ORS 166.240](#)

#	Probation	Conditions
1 st	SIS · 18 mo BP	Stip. forfeit weapon · gang conditions if applicable · no weapons · min. fine + CAA Fees
2 nd	None	Stip. forfeit weapon 1–30 days MCJ executed · min. fine + CAA fees forfeit weapon

Unlawful Possession of a Firearm (A) [ORS 166.250](#)

#	Probation	Conditions
1 st	SIS · 18 mo BP	Stip. destruction of weapon Same as 1st CCW. · min. fine + CAA Fees
2 nd	None	Stip. forfeit weapon 1–90 days MCJ executed · stip. destruction of weapon · min. fine

PERSON OFFENSES (NON-DV, NON-SEX OFFENSE)

Harassment (B) [ORS 166.065](#) (Class B)

#	Probation	Conditions
1 st	SIS · 18 mo BP	Anger program · NCVI · additional appropriate treatment · min. fine + CAA Fees
2 nd	SIS · 24 mo BP	Same as above + 1–15 days MCJ

Telephonic Harassment (B) [ORS 166.090](#)

#	Probation	Conditions
1 st	SIS · 18 mo BP	NCVI · additional appropriate treatment · min. fine + CAA Fees
2 nd	SIS · 24 mo BP	Same as above + 1–10 days MCJ

Assault in the 4th Degree (A) [ORS 163.160](#)

#	Probation	Conditions
1 st	SIS · 18 mo BP	Anger program · NCVI · additional appropriate treatment · min. fine + + CAA Fees
2 nd	SIS · 24 mo BP	Same as above + 1–30 days MCJ
3 rd	None	1–180 days MCJ executed · min. fine + CAA fees

Resisting Arrest (A) [ORS 162.315](#)

#	Probation	Conditions
1 st	None	Min. fine · CAA fees
2 nd	SIS · 24 mo BP	1–14 days MCJ · min. fine + CAA Fees

Menacing (A) [ORS 163.190](#)

#	Probation	Conditions
1 st	SIS · 18 mo BP	Stip. forfeit weapon · no weapons · · appropriate treatment · NCVI · 1–10 days MCJ · min. fine + CAA Fees
2 nd	SIS · 24 mo BP	Same as above + 1–30 days MCJ

If the offense includes a weapon, charges of UUW shall be considered.

If the offense includes a firearm, charges of UUW with a firearm under 161.610 shall be considered.

Recklessly Endangering Another Person (A) [ORS 163.195](#): SEE SUPERVISOR

MISCELLANEOUS OFFENSES

Disorderly Conduct II [ORS 166.025](#) (Class B)

Scenario	Probation	Conditions
Any — defendant I/C	None	MCJ executed (CTS) · min. fine + CAA fees
1 st offense	None	min. fine / CAA Fees · Must accept by FIRST R7
2 nd offense	None	Same as above
<i>Offenses may be NACd by TTL. May be screened for EDP eligibility.</i>		

Unauthorized Departure [ORS 162.175](#)

Scenario	Probation	Conditions
Any	None	60 days MCJ executed (C/S to time served – ORS 137.123(3)) · no work crew or work center · <i>no 936 by operation of law</i> · min. fine + CAA fees

Drug Charging Policy

Updated July 2026

“USERS GET TREATMENT. DEALERS GET PRISON.”

Following legislative amendment to BM 110 (HB 4002), the Marion County District Attorney’s office operates under the “Users Get Treatment. Dealers Get Prison” framework. Drug offenses shall be charged, and plea offers shall be extended, consistent with the drug policies of the office.

Other Drug Offenses

- Firearm Offenses. Drug offenses involving possession of a firearm are controlled by firearm policy(ies). Possession or use of a firearm during unlawful conduct involving controlled circumstances is a significant aggravating factor.
- Person Crime Offenses. Drug offenses involving person crimes (assaults, sex crimes and Burg 1 level 9 and 10) are controlled by person crime policy(ies) and are only eligible for a downward departure with TTL approval.
- Property Crime Offenses. Drug Offenses involving property crimes can be resolved under drug policy or property policy depending on criminal history and circumstances.

POSSESSION OF CONTROLLED SUBSTANCES

The intent behind any “possession” criminal charge is to direct the user into treatment.

Generally, prison beds will be reserved for manufacture or delivery conduct. The Marion County District Attorney’s office will not seek prison for possession conducting extremely aggravated circumstances (i.e., the offender is an otherwise unacceptable public safety risk and possession charges are the only charge to manage public safety).

BELOW Specific Quantity Exceptions

DRUG ENFORCEMENT MISDEMEANORS (DEM)

Absent extraordinary circumstances, the Marion County DA will not file Drug Enforcement Misdemeanors for amounts below the specific quantity exceptions. The preferred disposition is referral to Pre-Charge Diversion (i.e., LEAD).

Specific Quantity Exceptions

Amounts below these thresholds are DEMs/amounts at or above these thresholds are Class A misdemeanors:

Less than: LSD 40 user units · Psilocybin 12g · Methadone 40 units · Oxycodone 40 pills · Heroin 1g · MDMA 1g or 5 pills · Cocaine 2g · Meth 2g

ABOVE Specific Quantity Exceptions

CLASS A MISDEMEANOR

Standard Conditions apply:

- a. 18 months court probation
- b. Treatment via Bridgeway or CACS (per referral)
- c. Standard Drug Package
- d. Forfeit items seized
- e. Standard misd fine, and CAA fee
- f. Defendant to accept at the first Rule 7

Substantial Quantity or Commercial Drug Offense (CDO)

FELONY – If PCS is a substantial quantity or CDO (ORS 475.900), it shall first be reviewed for eligibility of DCS or MCS charges (see below). Only when DCS or MCS cannot be charged should the case proceed as a PCS Felony with:

- a. Gridblock (usually level 6)
- b. Dispositionally depart downwards, absent articulated public safety concerns.
(Prison will remain an option with failed probation)
- c. 36 months Supervised Probation
- d. (Generally, any PV will be dealt with through PO sanction.)
- e. Referral to Specialty Court(s)
- f. Standard Drug Package
- g. Defendant to accept by the first Rule 7

Substantial Quantity (ORS 475.900)

Amounts above these thresholds:

Cocaine/Meth 10g · LSD 200 units · Heroin/Fentanyl 5g · Psilocybin/Psilocin 60g · Ecstasy 5g/25 pills

MANUFACTURING AND DELIVERY OF CONTROLLED SUBSTANCES

The Marion County District Attorney's Office will aggressively seek a prison sentence on individuals who manufacture or deliver controlled substances for commercial gain, distribute substantial quantities, or possess/use a firearm in connection with controlled substances. Conduct involving fentanyl will be considered an aggravated circumstance, surpassed only by firearm possession.

Drug users who deliver to support their individual habit, and/or mitigated delivery conduct (as opposed to "dealers" in the colloquial sense) may be referred to Drug Court if they are presumptive prison.

Probation offers are only made in cases where the defendant is presumptive probation, the amount manufactured or delivered does NOT involve a super-substantial quantity of a controlled substance, is not fentanyl, no firearm is used or possessed during the manufacture or delivery and the drug crime appears to be primarily motivated by addiction rather than profit. However, *delivery activity will remain a delivery conviction.*

The state will not consider Optional Probation Evaluations.

The following six categories govern all MCS/DCS charging and plea recommendations. Each category addresses three standard questions: pretrial release, downward departure eligibility, and the state's sentencing recommendation.

CATEGORY 1. Super-Substantial Quantities (level 10 or Level 9 crimes which involve quantities above statutory delineated substantial quantity amounts) or conduct involving firearms.

Pretrial Release? Object to pretrial release

Downward Departure? Not eligible.

State's Recommendation? All recommendations must be at or above the defendant's true grid block.

- Neither OPE nor pretrial treatment will be considered as mitigation.
- Not eligible for Drug Court

CATEGORY 2. Substantial Quantity / Commercial Drug Offense (Level 8)

Pretrial Release? Individualized Pretrial Release Determination based on grid block

Downward Departure? Only if optional probation grid block AND

- a. Substance is NOT fentanyl; and
- b. No firearm; and
- c. Actively engaged in or successfully completed pretrial release treatment program.

State's Recommendation? OPE will NOT be considered as mitigation

- a. Prison (grid block) recommendation if not optional probation eligible
Length:
 - At grid block with persistent criminal involvement or if substance is fentanyl.
 - Upward Durational Departure if firearm used (weapon or shots fired) or excessive criminal history.
 - Optional Probation Supervised probation: (length?) Drug Package, forfeiture of all items seized.

Drug Court Eligible only at Optional Probation Grid blocks.

CATEGORY 3. DCS to a Minor. Any additional charges relating to minors (Sex Abuse II, for example) are governed by those policies.

Pretrial Release? Individualized Pretrial Release Determination based on grid block

Downward Dispositional Departure? Yes, if no prior person felony AND all of the following:

- a. Minor is peer equivalent;
- b. Substance is NOT fentanyl;
- c. No firearm; and
- d. Actively engaged in or successfully completed courts pretrial release treatment program.

OPE will NOT be considered as mitigation. NOT Drug Court Eligible.

State's Recommendation?

- a. Presumptive Prison Sentence.
- b. Downward departure w/ TTL approval.
 - Drug Package, 30 days Jail, Forfeiture of all items seized.
 - No Drug Court Recommendations permitted.

CATEGORY 4. DCS for Consideration w/in 500 feet of Treatment Facility, Temporary Residence Shelter, or 30 feet of a Public Park (Level 7)

Pretrial Release? Individualized Pretrial Release Determination based on grid block

Downward Dispositional Departure? Yes, only if all of the following:

- a. Defendant agrees to Drug Court;
- b. Grid block is 7/C or lower;
 - Location was not chosen to target vulnerable population;
 - Substance is NOT fentanyl;
 - No firearm; and
 - Actively engaged in or successfully completed courts pretrial release treatment program.
 - OPE will NOT be considered as mitigation.

State's Recommendation?

- a. Presumptive Prison Sentence at 7/E or higher.
- b. DA will seek Upward Dispositional Departure to prison if any of the conditions (above) are present.
- c. Downward departures only upon TTL approval.
 - True grid block imposed upon revocation.
 - Drug Package, 30 days Jail, Forfeiture of all items seized

Category 5. MCS / DCS – For Consideration (Level 6)

Pretrial Release? Referral to Pretrial Release absent aggravators.

Downward Dispositional Departure? Yes, if all of the following:

- a. Defendant agrees to Drug Court (if presumptive prison);
- b. Substance is NOT fentanyl;
- c. No firearm; and
- d. Actively engaged in or successfully completed courts pretrial release treatment program.
- e. OPE will NOT be considered as mitigation

State's Recommendation?

- a. Presumptive Prison Sentence
- b. Downward departure w/ TTL approval. True grid block imposed upon revocation.
 - Drug Package, 30 days Jail, Forfeiture of all items seized
 - No Drug Court Recommendations permitted

CATEGORY 6. DCS w/in 500 feet of Treatment Facility, Temporary Residence Shelter, or 30 feet of a Public Park (Level 5)(No Consideration)

Pretrial Release? Referral to Pretrial Release absent aggravators

Downward Dispositional Departure? Yes, if all of the following:

- a. Substance is NOT fentanyl; and
- b. No firearm; and
- c. Actively engaged in or successfully completed courts pretrial release treatment program.

OPE will NOT be considered as mitigation

State's Recommendation?

- a. Presumptive Prison Sentence.
- b. Downward departure w/ TTL approval. True grid block imposed upon revocation.
- c. Drug Package, 30 days Jail, Forfeiture of all items seized.
- d. No Drug Court Recommendations permitted.

Mandatory Minimum Sentencing, Determinate Sentencing & ORS 137.700 (Ballot Measure 11)

Charging Generally:

1. Evidence-based charging decisions
2. Consider all possible defenses prior to charging where the state has the burden to disprove the defense(s) beyond any reasonable doubt
3. Consider all possible *affirmative defenses* prior to charging
4. Generally, as determined by the evidence, the number of charges should reflect the following considerations:
 - a. The breadth and extent of the defendant's criminal conduct.
 - b. Allegations of lesser offenses in more challenging scenarios (i.e. *forcible compulsion* or *physical helplessness* related to sexual offenses; serious physical injury vs. physical injury; proving an item is a *dangerous weapon*, etc.).
 - c. Trial management – consider the number of counts you are prepared to litigate at trial. This is particularly true in instances of ongoing and repetitive criminal conduct as typically seen in child sexual abuse.
 - d. Do not charge a large number of counts to intimidate a defendant or leverage a plea.
 - e. Do not charge a large number of counts with the intent to dismiss a large number of counts.

Exceptions If the circumstances presented do not warrant seeking a mandatory minimum sentence, a lesser charge may /be filed.

5. If the circumstances presented raise a question of whether a mandatory minimum sentence should be sought, a lesser charge should be filed with a request to waive indictment and provide discovery, so that the parties can attempt to resolve the case pre-indictment.
6. Circumstances to consider when deciding whether a case presents an exception include, but are not limited to:
 - a. The factual circumstances of the crime.
 - b. Evidence of provocation by the victim.
 - c. Concerns with the admissibility of evidence (i.e. suppression issues).
 - d. Age of the defendant (youth and/or senior)
 - e. Absence of criminal history
 - f. Jury considerations

Plea Negotiations

1. Plea offers should be based on constitutional and statutory considerations. A plea offer should seek to punish each offender appropriately and ensure the security of people and property. Plea offers should seek to uphold constitutional principles: protection of

society, personal responsibility, accountability for one's actions and reformation. Plea offers should consider the safety of the victim and society as a whole. Plea offers should consider the defendant's willingness to accept responsibility.

2. Plea negotiations may take into consideration any evidence or information provided by defense counsel, whether in the form of a defense, factual evidence related to the case, or mitigation evidence related to the defendant.
3. Any plea offer negotiated outside of the mandatory minimum of [ORS 137.700](#), ORS 161.610, or any determinate sentence must be approved by the District Attorney, Chief Deputy District Attorney, or Trial Team Supervisor
4. Plea offers should provide notice to defense counsel that mandatory or presumptive minimum statutes may apply (including [ORS 137.645](#), [137.690](#), [137.717](#), [137.719](#) and [137.725](#), [161.610](#), [475.907](#), [475.925](#), etc.) notwithstanding [ORS 137.700](#) or in addition to the sentence proscribed by [ORS 137.700](#). However, failing to provide this notice does not negate the state's ability to request that mandatory or presumptive sentence.

Firearm Offenses

- Evidence based charging decisions
- In general, any case involving the *use* or *threatened use* of a firearm should be charged as Unlawful Use of a Weapon with a Firearm ([ORS 166.220](#)/[ORS 161.610](#))
- Cases involving the *use* or *threatened use* of a firearm outside this policy occur **only** with TTL understanding and approval
- If the defendant is a convicted felon, the additional charge of felon in possession of a firearm should always be charged
- Any felony involving the *use* or *threatened use* of a firearm should be charged as a firearm offense under 161.610 and include the sentencing enhancement language discussed below. (E.g. Any Degree of Homicide or Attempt, Robbery in the First Degree, Burglary in the First Degree, etc.)
- To be consistent in charging language, the following guidelines should be used:
- [ORS 166.220](#): Unlawful Use of a Weapon:
 - Attempting to use unlawfully against another, or carrying or possessing with intent to use unlawfully against another, any *dangerous* or *deadly weapon* as defined in [ORS 161.015](#); or
 - Intentionally discharging a firearm within the city limits of any city or the residential area of an urban growth boundary at or *in the direction of* any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge
- [ORS 161.610](#): Enhanced Penalty for Use of a Firearm During Commission of a Felony
 - The use or threatened use of a firearm (*personally* use), whether operable or inoperable, by a defendant during the commission of a felony, may be pleaded and proved as an element in aggravation

Every felony where a firearm was used or threatened to be used should include the firearm enhancement language.

Plea Negotiations

- Generally, when the state has alleged the gun enhancement under [ORS 161.610](#), the defendant must *admit* that fact and be sentenced to a term of imprisonment pursuant to that statute
 - Any firearm case should include a term of incarceration
 - The plea offer should provide notice to the defense that the incarceration is pursuant to [ORS 161.610](#).
 - All cases shall include a stipulation that the firearm will be forfeited and destroyed.
 - The length of incarceration in firearm cases, in addition to policy considerations applicable in every case, should consider the following static factors:
 - A firearm is a *deadly* weapon (designed to kill), not a dangerous weapon (capable of causing death)
 - Every case involving a firearm is dangerous
 - Firearms implicate public safety in all situations; even situations where the firearm was not discharged
 - Firearm cases involve, *at a minimum*, the threatened use of deadly physical force
 - Firearm cases increase risk to innocent bystanders and first responders, especially law enforcement.
 - Whether the defendant has a previous criminal history involving the unlawful possession, use or threatened use of a firearm
 - If the defendant is convicted of any felony requiring a mandatory minimum term (i.e. [ORS 137.700](#)) or a presumptive prison sentence (i.e. Burglary in the First Degree), the judgment must still reflect that some part of the incarceration is imposed pursuant to [ORS 161.610](#).

Institution Charging Guidelines

The charging decision for crimes occurring within Marion County Correctional institutions will be made by weighing the evidence available, available resources for prosecution, and the specific institutional, mental health, and criminal history of the offender. Absent extraordinary circumstances, misdemeanor charges will not be considered for prosecution.

DOC

Supplying Contraband

Charging of cases involving contraband will be based upon threat to the safety and security of the institution. Absent extraordinary circumstances, the DA will focus on cases in which the Adult In Custody has less than 10 years left on their sentences.

Weapons

The DA will consider charges for possession of a weapon or supplying contraband when the item is one which would be capable of causing a serious physical injury, there is a provable intent the item was created for use as a weapon, a clear chain of custody is documented, and the apparent intent of possessing the item was for a purpose other than self-harm .

Controlled Substances

The DA will consider charges for possession or delivery of quantifiable amounts of any controlled substance.

Cell Phones

The DA will consider charges for possession of cell phones upon connection of the phone to a specific individual.

Staff Assaults

Charges will be evaluated with adequate documentation of physical injury (Pain scale) and any physical evidence such as medical records, photographs, and video if available, along with documented chain of custody for all physical evidence.

Inmate on Inmate

Charges will be evaluated based on severity of documented injury by evaluating interviews, photographs, video, and medical records if available, cooperation of victim, and presence of corroborating documentation of the assault such as staff witnesses and video evidence.

Inmate on Staff

Charges will be evaluated based on assaultive conduct of an AIC and documentation of the injury through interviews, photographs, video, and medical records if available. Injuries occurring to staff arising from non-assaultive conduct, such as an AIC struggling when being put into a cell, will likely not meet the legal definition of 'Knowing' or 'Intentional' conduct to

prosecute this level of assault. The DA's Office will heavily consider victim's position on proceeding with criminal charges for assaults on staff.

Aggravated Harassment

Charges will be evaluated based on ability to prove substance is what it purports to be with evidence other than lab testing – for example, testimony that the AIC made a throat clearing noise before propelling a substance onto the staff member.

OSH

Crimes committed by an offender who has been committed to the Oregon State Hospital for restoration services to Aid and Assist in their defense or committed to the Oregon State Hospital under the Jurisdiction of the PSRB will be considered on a case by case basis, evaluating the nature of the crime, preservation and availability of evidence, severity of the injury inflicted, the cooperation of the victim, and the preliminary mental status of the offender at the time of the offense. Absent extraordinary circumstances, misdemeanor charges will not be filed.

Crimes Against Staff

Charges for crimes committed against staff members will be evaluated based on whether a serious physical injury occurred, the availability and preservation of physical evidence such as pictures and video, and the mental status of the offender.

Crimes Against Patients

Staff on Patient

Charges for crimes committed against patients will be evaluated based on whether a physical injury occurred, the availability and preservation of physical evidence such as pictures and video, and the fitness and ability of the victim to testify. Misdemeanor level assaults will be considered for prosecution when the victim is a patient and the suspect is a member of OSH staff.

Patient on Patient

Charges for crimes committed by a patient against another patient will be evaluated based on the level of injury which occurred, the availability and preservation of physical evidence such as pictures and video, the fitness and ability of the victim to testify, and the mental status of the offender.

Contraband

Because of the variety of items a person may lawfully possess while committed to the Oregon State Hospital, the DA's office will evaluate prosecution of cases involving contraband on a case-by-case basis based on the availability and preservation of physical evidence such as pictures and video, and the mental status of the offender.

OYA

Crimes committed by an offender who has been committed to the custody of Maclaren will be evaluated on a case-by-case basis, evaluating the nature of the crime, severity of the injury inflicted, and risks to institution security. Additionally, the District Attorney may consider the individual characteristics of the offender such as age, criminal history, history of institutional rule compliance including participation in programming and violations of institutional rules when making a decision to charge a crime occurring within the institution. Absent extraordinary circumstances, misdemeanor charges will not be filed.

Supplying Contraband

Charging of cases involving contraband will be based upon threat to the safety and security of the institution.

Weapons

The DA will consider charges for possession of a weapon or supplying contraband when the item is one which would be capable of causing a serious physical injury, there is a provable intent the item was created for use as a weapon, a clear chain of custody is documented, and the apparent intent of possessing the item was for a purpose other than self-harm.

Controlled Substances

The DA will consider charges for possession or delivery of quantifiable amounts of any controlled substance.

Cell Phones

The DA will consider charges for possession of cell phones upon connection of the phone to a specific individual.

Assaults

Staff Assaults against Youth

Charges will be evaluated with adequate documentation of physical injury (Pain scale) and any physical evidence such as medical records, photographs, and video if available, along with documented chain of custody for all physical evidence.

Youth on Youth

Charges will be evaluated based on severity of documented injury by evaluating interviews, photographs, video, and medical records if available, cooperation of victim, and presence of corroborating documentation of the assault such as staff witnesses and video evidence.

Youth on Staff

Charges will be evaluated based on assaultive conduct of a Youth in Custody and documentation of the injury through interviews, photographs, video, and medical records if available. Injuries occurring to staff arising from non-assaultive conduct, such as a Youth in Custody struggling when being put into a cell, will likely not meet the legal definition of 'Knowing' or 'Intentional' conduct to prosecute this level of assault.

Aggravated Harassment

Charges will be evaluated based on ability to prove substance is what it purports to be with evidence other than lab testing – for example, testimony that the Youth in Custody made a throat clearing noise before propelling a substance onto the staff member.

AIP, Earned Time & Earned Discharge

NEGOTIATION LIMITATIONS: ORS 135.418 explicitly prohibits a prosecutor from conditioning a defendant's plea offer on:

Eligibility for transitional leave under ORS 421.168 (Transitional leave).

Eligibility for a reduction in the term of incarceration under ORS 421.120 (Reduction in term of sentence) or 421.121 (Reduction in term of incarceration).

Eligibility for any reduction in sentence, leave or release from custody or any other program for which the executing or releasing authority may consider the defendant, including programs for which the executing or releasing authority determines eligibility and programs for which consideration must be ordered by the sentencing court under ORS 137.750 (Sentencing requirements concerning defendant's eligibility for certain types of leave, release or programs).

The ability to set aside the conviction under ORS 137.225 (Order setting aside conviction or record of criminal charge).

AIP (including Short Term Transitional Leave)

[ORS 137.751](#) requires the court to determine eligibility for AIP (& STTL). A plea offer must comply with the terms of [ORS 135.418\(1\)](#) related to AIP.

To be eligible for AIP, the court must find:

1. The crime is not a crime listed under [ORS 137.700](#), a Sex Crime, Criminally Negligent Homicide, Assault in the Third Degree involving Serious Physical Injury by means of a Dangerous or Deadly Weapon or as a result of Extreme Indifference to the Value of Human Life
2. The defendant was not on probation, parole or post-prison supervision for an offense listed in [ORS 137.712\(4\)](#) [Measure 11 offense (including attempt/solicitation), Escape I (including attempt/solicitation), Agg Murder (including attempt/solicitation), Crim Neg Hom, Assault 3, Crim Mistreatment I (physical injury), Rape 3, Sodomy 3, Sex Abuse 2, Stalking, Burg I (person, including attempt/solicitation), Arson I (including attempt/solicitation), Robbery 3, Bias Crime I, Promoting Prostitution] or [811.705\(2\)\(b\)](#) [Failure to Perform Duties of a Driver to Injured Persons] at the time of the commission of the current crime of conviction;
3. The defendant has not previously been in an AIP program;
4. The harm/loss caused by the crime **is not** greater than usual for that type;
5. The crime was not part of an organized criminal operation ("Organized crime" is "Organized crime" means any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, theft, abuse of controlled substances, illegal alcohol, cannabis or controlled

substance distribution, counterfeiting, extortion or corruption of law enforcement officers or other public officers or employees. [ORS 180.600\(2\)](#));

6. After considering the nature of the offense and the harm to the victim, the defendant's successful completion of the program would: (A) increase public safety; (B) Enhance the likelihood that def would be rehabilitated; (C) Not unduly reduce the appropriate punishment.

Earned Time

[ORS 137.750](#) authorizes earned time reduction for all sentences not otherwise prohibited by law. The court has the authority to deny eligibility for earned time reduction upon a finding of substantial and compelling reasons to deny eligibility.

A plea offer must comply with the terms of [ORS 135.418\(1\)](#) related to earned time reduction. At the time of sentencing, the following factors should be considered in determining where to argue that substantial and compelling reasons exist to deny earned time eligibility:

1. The facts of the instant offense.
2. Any factor listed as an "aggravating factor" under the Oregon Sentencing Guidelines.
3. Whether the defendant's criminal history score accurately reflects the extent of the defendant's criminal history.
4. Whether the defendant has a prior history of incarceration with eligibility for earned time and/or AIP.
5. Whether the defendant has a prior history of institutional violations while incarcerated.
6. Other public safety considerations.

Prosecutors may not discuss their anticipated recommendation to the court regarding earned time nor AIP, as that discussion can be viewed as negotiation with opposing counsel.

Case Handling and Case Review

Discovery Process & Fees

Discovery is available electronically and may be downloaded from the MCDA Web Portal via a link sent to the defense attorney after a defendant has been appointed an attorney. Files that are too large for download may be picked up in person at our downtown office. *See also* Karpel User Agreement.

All discovery (“material and information *within the possession or control of the district attorney*”) will be provided as required by [ORS 135.805-135.873](#).

All discovery constitutionally required (i.e. *Brady* material) will be provided without delay.

All discovery potentially subject to a protective order will be provided when a signed protective order has been issued by the court.

All criminal files will be subject to viewing and inspection by defense counsel at any time *excepting* work product or confidential material.

Law enforcement agencies are required to provide evidence disposition forms to obtain approval from the Marion County District Attorney’s Office to dispose of evidence in both adjudicated and non-adjudicated cases consistent with Oregon Law.

DISCOVERY FEES - 2026

Price is a flat rate fee based on type of crime. Highest charge on a case will be used to determine flat rate fee. All materials/costs are included in flat rate fee price (unless noted below).

Type of case/charge	Price
Probation Violation	\$15
Misdemeanor	\$50
Felony (Basic & Complex)	\$125
Measure 11 Crime	\$250
Homicide Tier 1 (up to 6,000 pages)	\$500
Homicide Tier 2 (6,001 pages or more)	Additional \$500
Re-issue of e-discovery link (link expired)	\$5
Re-issue of discovery packet (to new lawyer)	Initial packet price (above)
Re-issue of lost media (discs and drives)	Cost of storage device
Pro Se Cases	\$25
Public Records Request	Per County policy and labor costs
Postage	Actual cost

Pre-Trial Release

The Marion County District Attorney's office makes recommendations to the court for pretrial release pursuant to [ORS 135.230 – 135.290](#), the Oregon Constitution, victim input and appropriate public safety considerations with the following general guidelines:

1. upon identifying limited concerns related to primary release criteria, we recommend a defendant be released on personal recognizance with appropriate conditions on a release agreement;
2. upon identifying concerns related to primary release criteria, we recommend a defendant be released with appropriate conditions on a release agreement if approved by a Marion County Pretrial Release Officer who investigates and considers primary and secondary release criteria;
3. upon identifying significant concerns related to primary release criteria or as required by law, we recommend a defendant be held with or without security according to [ORS 135.240](#) or the Marion County Circuit Court presiding judge bail schedule;
4. upon notice that a defendant has violated a condition of a release agreement we move the court to revoke the release agreement and recommend the defendant be held with security according to [ORS 135.240](#) or the Marion County Circuit Court presiding judge bail schedule.

Process for Reviewing Criminal Charges in Mental Health Cases

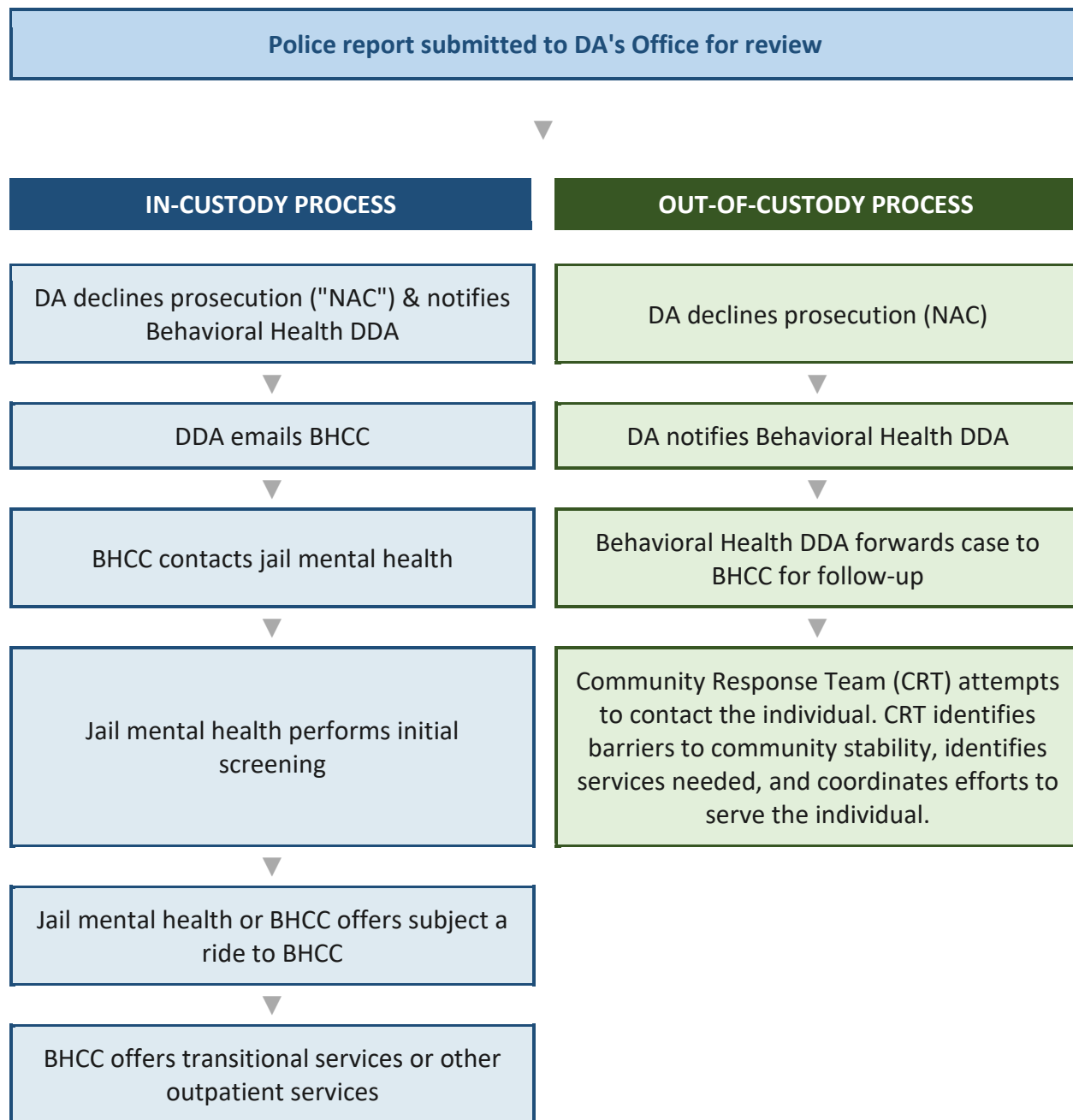
Cases are routinely reviewed for potential referral to community mental health programs upon submission for charging. If prosecution is declined, the reviewing Deputy District Attorney (DDA) will assess whether there is an indication that the individual may be experiencing a mental illness. If so, the case may be referred to the DDA assigned to mental health matters for appropriate follow-up, resource coordination, or diversion consideration.

Under [Oregon Revised Statutes Chapter 161](#), a defendant must be able to understand the nature of the legal proceedings and assist in their own defense. If the court determines that the defendant is unable to do so due to a mental disease or defect, the proceedings are suspended and the court may order evaluation and restoration services until competency is regained.

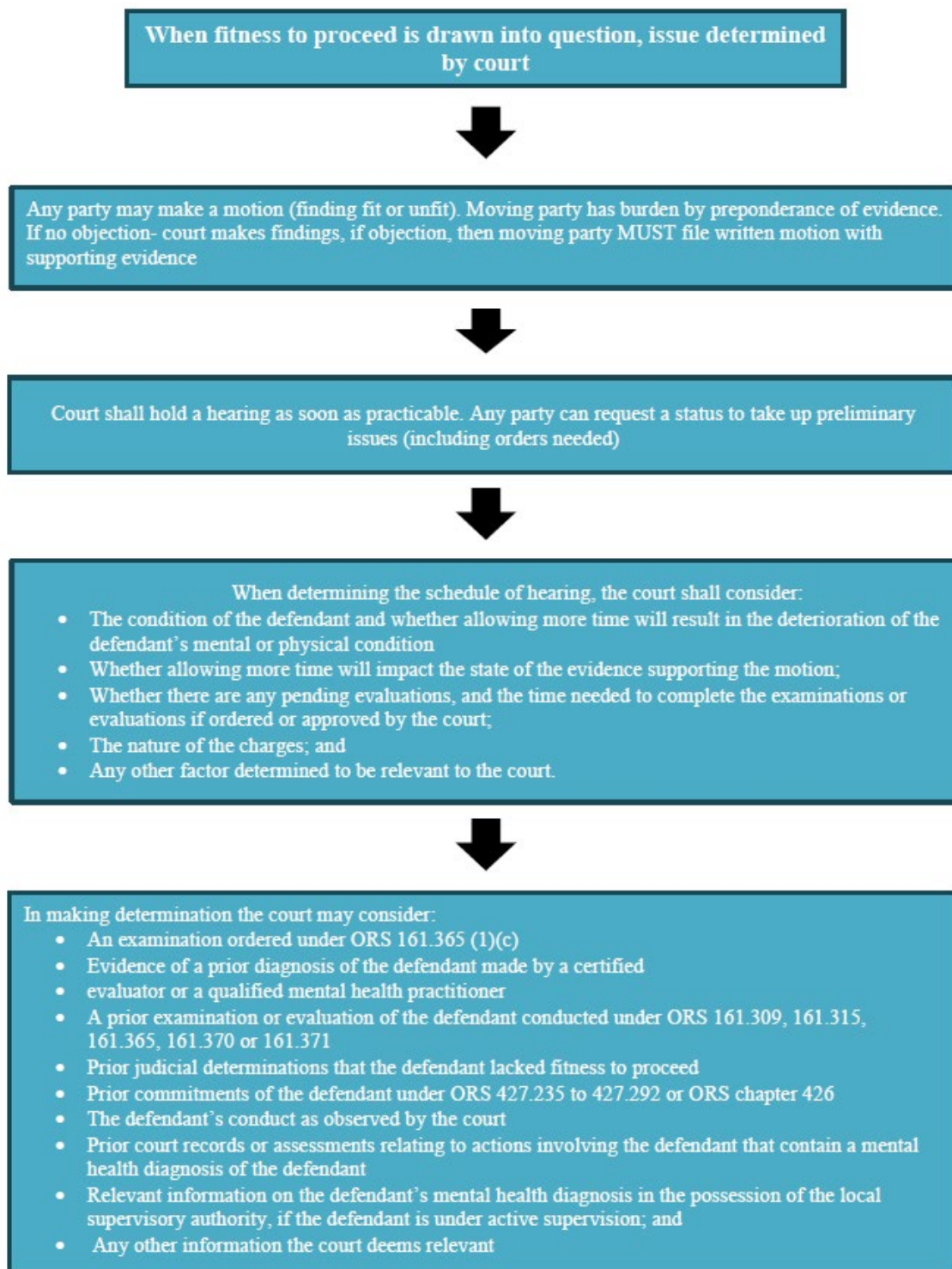
[Chapter 161](#) also provides for the affirmative defense of Guilty Except for Insanity (GEI), which applies when, at the time of the offense, the defendant lacked substantial capacity to appreciate the criminality of their conduct or to conform their conduct to the requirements of law.

No Criminal Charges — Process Map

Marion County District Attorney's Office · May 2026



Aid and Assist Procedure in Marion County



Aid/Assist flow chart January 2026

Defense attorney believes there is an aid/assist issue

1. Obtain private evaluation
2. File motion proceed with 161.365 (TABLE ON THE BACL)
3. Refer to RAPID A/A Docket i) Def in custody ii) not BM 11

If the court determines def is **not** able to aid/assist, the court may hold a hearing (161.370(2)(a)) and the court shall order a Community MH Consult order

At the hearing

The court shall consider (161.370(2)(c)):

- primary & secondary release criteria (135.230)
 - Victim input
- the least restrictive option appropriate for def
- the needs of def, and
- interests of justice

**** Shall notify of Federal firearm prohibition (161.370)(17)**

Actions may include, but are not limited to (161.370(2)(c)):

- (A) i/c 370 order to OSH for restoration
- (B) Community Restoration
- (C) Release on supervision
- (D) Commencement of civil commitment
- (E) Commencement of guardianship
- (F) Dismissal

OSH Commitment

Ct may order i/c 370 if (161.370(3)(a)):
Felony: Requires Hospital Level of care:
 1)Due to public safety concerns **OR** the acuity of symptoms of the def. qualifying mental disorder

And 2)Based on findings from community consultation, no appropriate community restoration services present and available in the community..

Misdemeanor, (161.370(4) **EITHER:** (1) a recommendation from evaluator that D requires a hospital-level-of-care due to the acuity of symptoms of Ds QMD; and (b) a recommendation from the CMHP that appropriate community restoration services are not present and available in the community for Defendant;
OR
 (1)D requires a hospital-level-of-care due to the acuity of symptoms of Defendant's qualifying mental disorder; (2) there are public safety concerns; and (3) appropriate community restoration services are not present and available in the community.

****NOT ALL MISDO OSH ELIGIBLE**

In Custody

If i/c def is ***not dangerous or***does not require hospital care due to acuity, but ***services not available** in community, the court shall set a review hearing every 7 days from original fitness determination while defendant waits in custody (161.370(2)(d))

Comm Rest'n

If i/c def is ***not dangerous or***does not require hospital care due to acuity, and ***services are available** in community, the court may order defendant to participate in Community Restoration. --161.370(6) Court may place conditions that court deems appropriate.

Civ Cmt

If court has probable cause that def is immediately dangerous to self or others or gravely ill due to qualifying MH disorder, the court may initiate civil commitment proceedings.

Specialized Cases, Courts and Diversion Programs

Treatment Court Policies

The Marion County Circuit Court runs three treatment court programs for adults and one treatment court for juveniles. The Mental Health Court, Veterans Treatment Court, and Drug court serve adult populations, while the STAR court serves juveniles. Each treatment court has admissions criteria and exclusionary criteria which are aligned to the goals of the particular program. The admissions and exclusionary criteria for each program are outlined below.

Mental Health Court

Admission Criteria

Cases are evaluated for participation in the Mental Health Court program on a case by case basis. Participants must reside in Marion County, have charges currently pending in Marion County Circuit Court, and have a mental health diagnosis. All misdemeanors and non-violent felonies are considered for referral to the mental program except as provided by the exclusionary criteria listed below. Violent felonies may be referred to the Mental Health Court program where there appears to be a nexus between the crime committed and a mental illness. The nexus between the crime and a mental illness is determined by reviewing police reports and any mental health or psychological evaluations provided to the assigned Deputy District Attorney.

Exclusionary Criteria

Defendants charged with sex crimes are excluded from participation in the Mental Health Court Program.

Defendants registered as sex offenders excluded from participation in the Mental Health Court Program.

Defendants currently charged with a crime of domestic violence against an intimate partner are excluded from participation.

Defendants with previous convictions for domestic violence against an intimate partner are generally excluded from participation but may be considered on a case-by-case basis.

Defendants currently charged with crimes involving the use of a firearm are excluded from participation in the program.

Veterans Treatment Court

Admission Criteria

Participants must reside in Marion County, have charges currently pending in Marion County Circuit Court, and have a substance use or mental health concern which can be addressed through participation in the treatment court. Participants must have sufficient mental capacity to participate in the program. The program is open to Veterans which, for purposes of the Veterans treatment Court, is a person who meets the following requirements:

1. Has served in the active military, naval, or air services and was discharged or released from service under conditions other than dishonorable, or
2. Currently serves or served formerly in the Reserves or National Guard and accomplished the following:
 - a. Completed Basic Military Training
 - i. Met basic technical training requirements for awarding their AFS, MOS or RATE;
 - ii. Completed 12 months of their obligated military service in either the Reserves or National Guard;
 - b. Received a service-connected disability rating from the US Department of Veteran's Affairs.

Exclusion Criteria

Defendants with charges carrying a mandatory prison sentence under Ballot Measure 11 are excluded from participation in the program except under extraordinary circumstances.

Defendants who have been previously convicted of sex offenses are excluded from participation in the program except under extraordinary circumstances.

Drug Court

Admission Criteria

Participants must reside in Marion County and have charges pending in Marion County Circuit Court. All participants must meet ASAM criteria for a substance abuse issue requiring intensive outpatient treatment. Prior to admission into the program, participants must complete an LS/CMI or WRNA assessment indicating individual is medium to high risk of re-offense. Finally, participants must be charged with a drug or property crime where the sentence is presumptive prison.

Exclusionary Criteria

Defendants who have pending felony person crimes charges are excluded from participation in the program.

Defendants currently charged with crimes involving the use or possession of a firearm are excluded from participation in the program.

Defendants who present a safety threat to the community based on evaluation of the defendant's criminal history are excluded from participation in the program.

STAR Court

Eligibility Requirements

1. The potential participant must reside in Marion County.
2. The potential participant must be between the ages of 14 to 17.
3. The potential participant is in adjudication on either a felony or misdemeanor charge.
4. The potential participant's JCP or OYA Risk Need Assessment score is medium-high to high risk.
5. The potential participant has a substance use disorder.
6. Youth's pending charges or probation violation **MUST** be resolved before participating in STAR Court. Youth is allowed to observe STAR Court hearings until resolution of charges or probation violation.

Disqualifying Factor(s)

1. Sexual offenses: Adjudications of sexual offenses.
2. Cognitive ability: Youth needing a higher level of care for mental health/DD services.
3. Active gang involvement: The level of the youth's gang affiliation and the ability to maintain the safety of youth with different affiliations in court, services, and STAR activities. Referral will be evaluated on a case-by-case basis prior to admission and during the time in STAR Court.

The Marion County Circuit Court Judge makes the ultimate decision regarding entry into the juvenile treatment court program. *See also:* STAR court Manual in Appendix C.

Pre-Arrest Diversionary Program Eligibility (LEAD)

The Law Enforcement Assisted Diversion (LEAD) program is a collaboration between law enforcement agencies, the Marion County Health Department, City of Salem Attorney's Office, and the Marion County District Attorney's Office that seeks to promote public safety by diverting citizens suspected of certain drug possession and other misdemeanor charges to other community resources, rather than using the criminal justice system. While each candidate's eligibility to the LEAD program is decided on a case-by-case basis, registered sex offenders are not eligible for the LEAD program. Candidates for the program are identified by law enforcement officials in the field and referred directly to resources. Police reports associated with the contact that document the criminal behavior are later forwarded to LEAD assigned deputy district attorneys for review. The LEAD program is managed by the Marion County Sheriff's Office, and the Marion County Sheriff's office sets policy for participation in the program while the Marion County District Attorney's office participates in case staffing.

The deputy district attorney retains the right to file or no-action potential charges contained in the police report upon receipt and review. If a deputy district attorney chooses not to file upon receipt, they retain the right to file at a later date based on public safety concerns, including but not limited to non-compliance with LEAD requirements or rules, or continued criminal activity.

SB 416 Program Summary

The [Marion County 416 Program](#) is an alternative rehabilitative probationary program for non-violent drug or property offenders who have an identifiable drug issue and motivation to change their behavior and addiction. By providing low cost to free treatment opportunities, mentors, and intense monitoring through parole and probation, the program seeks to reverse long standing, drug driven criminal thinking by offenders who are at a medium to high risk to recidivism without a high level of intervention. In creating this intervention through readily available services, the goal is to increase public safety by addressing the driving force behind the continued criminal acts and ultimately decrease recidivism.

The 416 program operates through a continued partnership with the Marion County District Attorney's Office and the Sheriff's Office Parole and Probation Division. While the DA's Office plays the role of gatekeeper, identifying potential candidates through reviewing the current offense with the offender's criminal background, the Sheriff's Office does a series of evaluations and interviews with potential participants to see if they are appropriate for the program and prepared to change. Through this procedure, the 416 program seeks to enhance community safety by providing affordable services that address the underlying substance abuse issues in these defendants, decreasing the likelihood that they will reoffend in the future.

Relief

Post-Conviction Relief ([ORS 138.510](#))

A person convicted of a crime under the laws of this state may file a petition for post-conviction relief pursuant to [ORS 138.510 \(Persons who may file petition for relief\)](#) to [138.680 \(Short title\)](#).

Expungements

The Oregon Statute (law) concerning this process is [ORS 137.225](#). Expungement forms, or Requests to Set Aside Record of Arrest or Conviction, may be obtained from the Marion County Circuit Court website.

<https://www.courts.oregon.gov/courts/marion/help/Pages/setaside.aspx>

Sex Offender Reporting Relief (ORS 163A.140)

A person that is required to report as a sex offender under [ORS 163A.010, 163A.015, 163A.020, or 163A.025](#) may file a petition for relief from the reporting requirement with the Marion County Circuit Court if the conviction or adjudication that requires reporting came from the Marion County Circuit Court⁴ or the person has a conviction or adjudication from another court in the United States (outside of Oregon) that requires reporting and the person currently resides in Marion County⁵.

Upon receiving a petition for relief from sex offender reporting, the Marion County District Attorney's Office reviews the petition to determine if it will contest the request for relief. The Marion County District Attorney's Office determines whether to contest the request for relief based on if the person meets the eligibility requirements described in [ORS 163A.140](#).

Firearm Rights Restoration (ORS 166.274)

A person prohibited from possessing firearms may petition the court for restoration based on evidence they no longer pose a risk to public safety.

⁴See [ORS 163A.150\(1\)\(a\)](#).

⁵ See [ORS 163A.150\(1\)\(b\)](#).

SB 819 Policy

It is the policy of the Marion County District Attorney's Office to uphold Oregon's constitutional and statutory principles related to sentencing of convicted persons. Those principles include protection of society, victims' safety, personal responsibility, accountability, reformation, and public faith in the criminal justice system.

Effective January 2022, applications for petitions pursuant to SB 819 (2021) became effective.

Incomplete applications will not be considered. Applications must comply with the requirements listed below. Consistent with this policy, completed applications will be screened and reviewed by designated personnel. Any decision to file a joint petition will be made by the District Attorney.

Section 1

Who may apply under the language of SB 819?

- Any person previously sentenced in Marion County, Oregon for a felony offense that is not eligible to be set aside under ORS [137.225](#)⁶, *except* a person convicted of Aggravated Murder

Section 2

Whose application will not be considered by the Marion County District Attorney's Office?

- Any person who may apply to the court pursuant to [ORS 161.705](#) to reduce a felony to a misdemeanor.
- Any person convicted of any degree of homicide (Aggravated Murder, Murder, Murder in the First Degree, Murder in the Second Degree, Manslaughter in the First Degree, Manslaughter in the Second Degree, Criminally Negligent Homicide) after April 1, 1995, *unless* the person is asserting actual innocence.
- Any person whose conviction is on direct appeal or who is challenging their conviction in a post-conviction or habeas corpus proceeding or appeal from a post-conviction or habeas corpus judgement.

⁶ The following links can provide access to Oregon laws related to set aside (aka "expungement"):
https://oregon.public.law/statutes/ors_137.225;
<https://www.courts.oregon.gov/courts/marion/help/pages/setaside.aspx>. The Marion County District Attorney's Office is prohibited from giving legal advice on eligibility for set aside.

Section 3

Contents of Application

Applications **must** include the following documentation; incomplete applications will not be considered.

- A copy of the Judgment from any case where the applicant is seeking relief **(Item 1)**.
- A copy of any appellate judgment or post-conviction/habeas judgment related to the underlying conviction(s), or a statement that no appeal, post-conviction, or habeas proceeding was filed **(Item 2)**.
- A copy of the applicant's DOC supervision, disciplinary, programming, educational and vocational record, available upon request to:

OISC Information Request Specialist
Oregon Department of Corrections
24499 SW Grahams Ferry Road
Wilsonville, OR 97070-5670
Email: OISCINFO@doc.state.or.us
Phone: (503) 570-6919, Fax: (503) 570-6902

If the applicant is in custody, the request should be directed to the housing facility's Legal Information Officer (LIO).

The applicant may, but is not required to, include a copy of any DOC substance abuse or mental health treatment records **(Item 3)**.

- A statement of facts, written by the applicant, concerning the crime(s) of commission resulting in the judgment of conviction. The statement should include the applicant's account of any crimes dismissed or not filed as a result of plea negotiations known to the applicant. The applicant's statement should focus on personal responsibility and accountability, or, in the case where the applicant asserts actual innocence, why the applicant is innocent of the crimes of conviction. This document should be titled, "*Statement of Accountability*" or "*Statement of Actual Innocence*" **(Item 4)**.
- A statement by the applicant of the relief sought and why (e.g. release from custody, reduction in sentence, dismissal of charge). In explaining why the relief sought should be allowed, the applicant should focus on: protection of society, victim safety, personal responsibility, accountability, reformation, and public faith in the criminal justice system. This document should be titled, "*Statement of Relief*" **(Item 5)**.

Section 4

Application Considerations

The Marion County District Attorney's Office will only consider complete applications. If an application is incomplete, the application will be returned to the applicant along with a rejection letter. Any person seeking reconsideration will have to resubmit a completed application; the Marion County District Attorney's Office will not hold incomplete applications awaiting additional information.

Only the rare and extraordinary case will be considered for a joint petition for reconsideration of a conviction or sentence.

Absent extraordinary circumstances, the Marion County District Attorney's Office will not consider sentencing modifications for any sexual offense, violent felony involving the use or threatened use of a firearm, cases where the defendant's criminal history or history of violence is extensive, cases where the defendant was afforded a downward departure or participation in a treatment court or 416 program, cases where the defendant stipulated to the sentence in exchange for dismissal of charges or avoidance of a departure sentence, and cases where the victim opposes modification or the victim's safety is compromised by the applicant's release.

Section 5

Review Process

Applications will be received and reviewed for completeness as defined in **Sections 1, 2 and 3**. Incomplete applications will be returned to the applicant.

Completed applications will be screened by personnel from the Marion County District Attorney's Office to determine if the application is eligible for review.

A designated deputy district attorney will be assigned to review the application. Particular attention will be given to any case where newly identified or discovered evidence calls into question the integrity of the original conviction. The investigating law enforcement agency should be notified about the new evidence and any further request for investigation should go through the agency, absent extraordinary circumstances. The designated deputy district attorney will recommend denial or further review of the applicant's request by the SB 819 Review Committee based on the criteria set out in SB 819.

The SB 819 Review Committee will be comprised of at least one Deputy District Attorney, one Trial Team Supervisor and/or one Major Case Chief. The SB 819 Review Committee will make the final decision regarding denial of an applicant's request or decide whether the applicant's request should be forwarded to the District Attorney for consideration of a Joint Petition for Reconsideration of a Conviction or Sentence.

In making its determination, the SB 819 Review Committee should make an evidence-based decision about whether the court would grant the petition at a hearing based on the criteria designated in SB 819.

If the SB 819 Review Committee forwards an application to the District Attorney recommending that a joint petition be filed, the SB 819 Review Committee shall explain why the conviction(s) and/or sentence no longer advances the interests of justice.

If the District Attorney determines that a joint application may be warranted, the District Attorney shall request that the Victim Assistance Division contact the victim or victims of the crime and the District Attorney will meet personally with any victim who requests such a meeting to hear their position on the petition.

Only after consideration of the victim's or victims' position will the District Attorney make a final decision on the matter.

Section 6

Re-application

I. Applicants whose applications are rejected as incomplete may re-apply at any time with a completed application for consideration.

1. Previously denied petitions will not be re-considered until 5 years have lapsed from previous denial. An applicant must re-submit a new application in compliance with **Section 3.**

Special Protocols and Administrative Policies

Domestic Violence Council Protocol

The Marion County District Attorney's Office participates in the Marion County Domestic Violence Council. The Marion County Domestic Violence Council works collaboratively to address the community's response to domestic violence. The protocol is intended to reflect the Council's commitment to improving the system's response and improving the level of safety for victims and accountability for offenders.

I. PRIORITIES OF THE COUNCIL

- A. First, we believe that dealing with the epidemic of domestic violence requires, as a fundamental premise, that those in charge of the criminal justice system make domestic violence a priority and communicate this priority to line workers.
- B. Second, we believe the criminal justice system must be adjusted in some important ways in order to account for the special problems of prosecution when victim and perpetrator are related.
- C. Third, we believe that a response based solely on prosecution must be supplemented by effective victim assistance in order to deal with the special problems of a victim and a perpetrator that are in, or have recently been in, an intimate relationship.

Multi-Disciplinary Team Vulnerable Adult Abuse Protocol

The Marion County District Attorney's Office participates in the Marion County Vulnerable Adult Multi-Disciplinary Team (MDT). The mission of the MDT is to develop a collaborative team of partnered professionals who are committed to protecting elders and adults with disabilities, herein collectively referred to as "vulnerable adults."

A. Purpose Statement

Multidisciplinary Teams are a team approach to the assessment, investigation and prosecution of abuse cases involving vulnerable adults. MDT members work in collaboration to address the abuse of vulnerable adults served in Marion County, and to facilitate a process in which professionals from diverse disciplines are able to work together more effectively and efficiently.

The MDT has a written protocol signed by representatives of all Team agencies. The purpose of this protocol is to clarify each agency's duties and responsibilities and to improve agency coordination. The goals are to provide services:

- that are in the best interest of the vulnerable adult;
- to conduct abuse investigations in an expedited and effective manner;
- to prevent the abuse of other potential victims;
- to increase the effectiveness of the prosecution of criminal cases,

- to provide increased safety through victim advocacy, and
- to provide information to all involved agencies in a coordinated and efficient manner.

Each agency's participation shall be consistent with its commitment to the interests of vulnerable adults within the context of the agency's statutory, administrative and policy obligations.

Marion County Domestic Violence Response Team

The Marion County Domestic Violence Response Team (DVRT) is a multi-disciplinary, inter-agency collaboration that unites its members in a coordinated response to DV victims and DV offenders which allows the collective experiences of community stakeholders to offer diverse viewpoints in the effort to mitigate routine responses. Members include Salem PD officers and advocates, MCSO deputies, Community Corrections, Keizer PD officers, Woodburn PD officers, Marion and Polk Co DV prosecutors and advocates, advocates from the Center For Hope & Safety, and DHS. The meeting agenda allows each member to bring issues related to LE, prosecution, community corrections, and victim services response to and needs surrounding DV investigations, criminal cases, people of interest/concern, and risk assessment and management of high risk offenders/cases in an effort to improve local response to and prevention of domestic violence.

Marion County Child Abuse Multidisciplinary Team

The Marion County Child Abuse Multidisciplinary Team is an interagency response to child abuse occurring in Marion County. The Child Abuse MDT consists of several members and agency partners including law enforcement personnel, Department of Human Services child protective services workers, school officials, medical professionals, mental health counselors, child forensic interviewers, child advocacy center employees, victim advocates, and deputy district attorneys from Marion County District Attorney's Office.

The Child Abuse MDT collaboratively investigates reports of child abuse to coordinate evidence gathering; enhance quality decision-making; provide effective victim, family, and caregiver support; and reduce potential trauma to children and families by avoiding duplicative efforts. By working together, the Child Abuse MDT aims to increase efficiency, obtain corroborating evidence, facilitate optimum case outcomes, reduce trauma for victims, and ensure access to appropriate follow-up services.

Marion County Sexual Assault Response Team (SART)

The Marion County Sexual Assault Response Team is a multidisciplinary, interagency team that focuses on adult sexual assaults occurring in Marion County. The Marion County SART consists of several members and agency partners including law enforcement personnel, medical professionals (including Sexual Assault Nurse Examiners), community-based and system-based victim advocates, and deputy district attorneys from the Marion County District Attorney's Office.

The Marion County SART works to ensure an effective, collaborative response to adult sexual assault that is victim-centered and offender-focused. The Marion County SART prioritizes victims' needs and attempts to reduce the traumatic aftereffects of sexual assault by utilizing

investigators and SANEs that are specially trained in sexual assault investigations and connecting the victim with appropriate victim advocate services. Additionally, the Marion County SART focuses on strengthen investigations in sexual assaults by gathering corroborating evidence to help hold more offenders accountable.

Prosecutor by Karpel Usage Agreement

This Intergovernmental Agreement (hereinafter the “agreement”) is made by and between Marion County, a political subdivision of the state of Oregon, acting by and through its District Attorney’s office (hereinafter the “County”), and the [Agency Name] (hereinafter, “Agency”), collectively referred to herein as the “Parties,” for the purpose of allowing [Agency Name] to access and print case information from the County’s District Attorney’s Prosecutor by Karpel system (hereinafter “PbK”).

RECITALS

- A. The County and Agency are both public bodies engaged in providing municipal services, including law enforcement, to their citizens; and
- B. The County maintains a records management system referred to as PbK which is utilized in providing law enforcement services; and
- C. The County wishes to allow approved employees of Agency with access to PbK: “read only” access for the purpose of viewing and printing data that is stored on certain portions of the County’s PbK database. Agency’s use of PbK shall be solely for law enforcement purposes; and
- D. The Parties find that the performance of this Agreement will benefit the public; and
- E. This Agreement is entered into pursuant to Oregon Revised Statutes Chapter 190.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and benefits contained herein, the County and Agency agree as follows:

- **Agency OBLIGATIONS:**
 - 1.1 Agency shall ensure that any and all employees accessing PbK (hereinafter “Authorized Users”) shall utilize an exclusive username and password.
 - 1.2 Agency shall submit a written list of all Authorized Users of PbK to the Marion County District Attorney for approval. Such written list shall contain each Authorized User’s unique username for accessing PbK. Agency acknowledges that the County has complete discretion to deny access to any employee.
 - 1.3 Agency agrees to follow all applicable statutes, rules, and court orders regarding the use of PbK.
 - 1.4 Agency agrees that it is responsible for its Authorized Users’ proper use of PbK and for the safekeeping of all usernames and passwords.
 - 1.5 Agency agrees to notify the Marion County District Attorney or the designee immediately if any unauthorized use of PbK by an employee is found or suspected. Agency acknowledges that any suspected misuse of PbK may result in the suspension of its access to and use of PbK.
 - 1.6 Agency agrees that the County may/will monitor all access to and use of PbK by its Authorized Users.

- 1.7 Agency agrees to take any and all reasonable steps to ensure that any computer used to access PbK contains no malicious computer code or virus that might be harmful to PbK.
- 1.8 Agency agrees to update its contact information and Authorized User list required in Subsection 1.2 when any information set forth therein changes. Agency will promptly provide updated information to the Marion County District Attorney or her designee for approval.
- 1.9 Agency is solely responsible for ensuring that its equipment is compatible with the requirements needed to upload information into PbK, or to view or print information contained in PbK.
- 1.10 Agency shall ensure that all internet connections and firewalls used in accessing/or viewing PbK are secure.
- 1.11 Agency shall ensure that any access and use of PbK is done in conformance with current case law.
- 1.12 Agency is solely responsible for training its Authorized Users in the lawful use of PbK.
- 1.13 Agency understands and agrees that PbK may contain errors and uses any information or report contained in PbK at its own risk.
- 1.14 Agency understands and agrees that PbK may be unavailable at times due to regularly scheduled maintenance or unexpected system problems. The County disclaims any liability due to the unavailability of PbK.
- 1.15 Upon termination of this Agreement, Agency agrees to take all necessary steps to sever any access to PbK by its Authorized Users and to restore any needed firewalls.
- 1.16 Agency is not required to pay any licensing costs associated with its use of PbK at this time. If it is determined that additional licensing costs arise for Agency use of PbK software, County will, to the extent possible, provide Agency with advance notice so that Agency may plan appropriately.

- **COUNTY'S OBLIGATIONS:**

- 1.1 The County agrees to allow County-approved Authorized Users of Agency with "read only" access to PbK for the purpose of viewing and printing data that is stored on certain portions of the County's PbK database.

- **TERM AND TERMINATION:**

- 3.1 This Agreement shall be effective upon the date of execution by both Parties. If the Parties sign on separate dates, the later date shall be the effective date. This Agreement shall remain in effect for five (5) years unless terminated as provided herein.
- 3.2 The County may, in its sole discretion, for any or no reason, and without notice, terminate this Agreement and take all necessary steps to stop Agency access to PbK. The County shall not be liable to Agency for any third party for any termination of access to PbK.

3.3 Agency may terminate this Agreement for any or no reason upon not less than ten (10) days' prior written notice for the County.

• **INDEMNIFICATION:**

4.1 Agency agrees to defend, indemnify, and hold harmless County, its officers, agents and employees from damages arising out of the tortious acts of the Agency, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitations and conditions of the Oregon Tort Claims Act, [ORS 30.260](#) through [30.300](#), and the Oregon Constitution, Article XI, Section 7.

4.2 Likewise, the County agrees to defend, indemnify, and hold harmless Agency its officers, agents, and employees from damages arising out of the tortious acts of the County, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitation and conditions of the Oregon Tort Claims Act, [ORS 30.260](#) through [30.300](#), and the Oregon Constitution, Article XI, Section 7.

4.3 Nothing in this agreement shall be deemed to limit the right of either party to make a claim against the other for damages and injuries incurred by one party as a result of the actions of the other party's officers, agents and employees.

4.4 Each party shall maintain insurance or self-insurance for general liability. Each party shall provide worker's compensation insurance in compliance with [ORS Chapter 656](#) for all employees performing work under this agreement.

5. **DISCLAIMER OF WARRANTIES:** The use of any material or information downloaded, printed or otherwise obtained from PbK is at Agency's own discretion and risk, and Agency will be solely responsible for any damage to Agency's computer system or loss of data that may result from the use of PbK.

6. **NOTIFICATIONS:** Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile at the address or facsimile number set forth below:

If to the County:

Paige Clarkson
Marion County District Attorney's Office
PO Box 14500
Salem, OR 97309

If to Agency Name

Contact Name
Agency mailing address
City, State, Zip

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

7. GENERAL PROVISIONS:

- 7.1 Each party working under this Agreement is either an employee that will comply with [ORS 656.017](#) or an employer that is exempt under [ORS 656.126](#). Each party agrees that it is solely responsible for obtaining and maintaining insured or self-insured coverage for its own employees as required by that law.
- 7.2 This Agreement represents the entire integrated agreement between the Parties concerning the subject matter hereof. This Agreement supersedes all prior agreements, negotiations and representations relating to the same subject matter between the Parties.
- 7.3 This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.
- 7.4 Agency agrees that it shall comply with all federal, state, and local laws, regulations, executive orders and ordinances that may be applicable to this Agreement. Agency agrees that no person shall, on the grounds of race, color, religion, age, mental or physical disability, sexual orientation, creed, national origin, sex, marital status, familial status or domestic partnership, gender identity, or source of income, suffer discrimination in the performance of this Agreement when employed by it. Agency further agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and agrees not to discriminate against minority-owned, women-owned or emerging small business enterprises certified under [ORS 200.055](#) or a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in [ORS 408.225](#), in awarding subcontracts as required by [ORS 279A.110](#).
- 7.5 This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Marion County unless exclusive jurisdiction is in federal court, in which case

7.6 Neither party to this Agreement shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees or agents.

7.7 One or more waivers or failures to object by either party to any breach, violation or default of any provision, term, condition or covenant contained in this Agreement shall not be construed or operate as a waiver of any subsequent breach, violation or default of that or any other provision, term, condition or covenant.

MARION COUNTY:

Confidentiality Agreement

I, the undersigned, agree to the following requirement of confidentiality while working for the Marion County District Attorney's Office:

Due to the volume of sensitive and confidential information that flows through the office of the District Attorney, I agree that information related to the cases received by this office, both in written and oral form, is sensitive in nature and thus considered confidential. I understand that I must maintain the confidence of any information I receive about any case, whether it be through direct or indirect (over-heard) conversation, or in any document that I may see or handle. Information will not be improperly communicated with others without a valid work-related purpose and will not be used for personal gain.

I understand that all staff members need to be careful in discussing cases. Case information should not be discussed or disclosed in the office reception area or any other public places such as: elevators, restaurants, restrooms, on the bus, walking down the hall with any co-worker, or on social media. I understand that because of confidentiality, there will be times when information is shared with me only on a "need to know" basis. If I have questions about the facts or whether particular information or circumstance is confidential, it is my responsibility to seek out my supervisor for appropriate answers and direction. Any improper disclosure of confidential information may be cause for disciplinary action, up to and including termination.

My signature below certifies that I have read and fully understand the information above. I further understand and agree that, as an employee, volunteer, or student intern for Marion County, I have a duty to abide by this policy governing the preservation of confidential information.

Employee Signature

Date

Supervisor Signature

Date

Appendices

A. ODAA “The Right Thing” – An Ethics Guide for Prosecutors

B. Best Practices for Navigating *Brady v. Maryland* in Oregon – March 31, 2014

Disclosure of Material, Exculpatory or Impeachment Evidence

Executive Summary for Prosecutors

The Statewide Protocol Workgroup was convened to engage a broad spectrum of law enforcement entities in a discussion of *Brady v. Maryland*. The primary objective was to determine if consistent, statewide practices could be developed for Oregon’s public safety communities.

The universal message was to develop a process that was consistent and fair, rooted in good communication, applied across Oregon, and endorsed by District Attorneys.

The attached documents reflect the Committee’s work product. The first document (Attachment A) creates a menu of best practices, underscoring necessary elements endorsed by the Workgroup. Different county jurisdictions may choose to meet these benchmarks using individualized procedure. The second document (Attachment B) is a guideline, providing law enforcement with examples to better assess whether a particular set of circumstances or conduct may implicate *Brady* and its progeny. The third document (Attachment C) articulates those scenarios that may or may not implicate *Brady*, but nonetheless result in a prosecutorial decision not to call a professional as a witness in a court of law.

The following considerations are imbedded in the recommendations:

1. Compliance with the law
2. Ensure that Law Enforcement is provided an opportunity to be heard
3. Respect labor practices and labor agreements
4. Honor the legal and ethical obligations of prosecutors
5. Communicate effectively with Law Enforcement Management, impacted law enforcement officers and their representatives
6. Retain local flexibility and autonomy developing and implementing *Brady*-related procedures
7. Recommendations for Law Enforcement

Understanding that a *Brady* designation for a law enforcement witness occurs solely at the discretion of the prosecutor, law enforcement agencies must take steps to address circumstances as a result. This must be approached from two perspectives; first, prevention of such issues, and second, management of *Brady* challenges imposed upon law enforcement. These steps necessarily include keeping sound internal affairs policies that are supported by consistent, fair and balanced accountability and disciplinary processes. Law enforcement leadership must take the initiative to partner with prosecutors, and train personnel on the

Brady issue. Agencies should implement comprehensive and consistent *Brady* policies reflective of best practice such as those recommended as models by organizations such as the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF).

Further, under state and federal law, a law enforcement agency's obligation to disclose exculpatory or impeachment information arises in the context of a particular prosecution. Law enforcement partners are nonetheless encouraged to consider adopting policies and employment practices that allow disclosure when an agency makes a determination that an employee has been untruthful, has committed a crime, is biased, or has suppressed evidence. Sound procedure should include review of relevant allegations to consider whether they are sustained, whether their nature requires disclosure, and whether the impacted witness has pending cases that require immediate discovery of potential *Brady* material. Recognizing that prosecutors have a further ethical obligation to disclose any such material, open communication lines between law enforcement leadership, labor leadership and the prosecutor must be established and maintained.

Training

Finally, the Workgroup identified training as a necessary component of sound *Brady* policy. Comprehensive training designed to ensure a consistent, statewide approach to *Brady* and its adopted procedures that reaches every impacted law enforcement discipline is thus recommended. It is further prudent to ensure on-going assessment of Oregon's implementation and compliance with the relevant law.

Best Practices and Recommendations for DA *Brady* Disclosure & Lack of Confidence Process Regarding Professional Witnesses

DA Decision-Making Process: comprehensive *Brady* procedure should include ways to identify and discern potentially discoverable information and/or identify witnesses whose conduct may disqualify them as testifiers. Best practices for this process should include:

1. Identification of potential *Brady* cases or disqualification concerns
 - a. consider standards for dishonesty [see *guidelines for Brady Disclosure*]
 - b. consider standards for lack of confidence cases [see *Guidelines for Assessment*]
2. Gathering of relevant information-DA is responsible for material known to DA and/or
3. in DA's possession or control
 - a. not merely allegation or rumor
 - b. seek investigatory reports/Internal Affairs information
 - c. request further information via affected witness/counsel
4. Review of information with a *Brady* 'resource team' and/or *Brady* MAP (see below)
 - a. consider using senior DDA staff to roundtable individual cases; seek
 - b. opinions and input; employ comparative analysis to similar situations; consider ramifications
 - c. for past, present and future cases
 - d. consider Law Enforcement Command Staff input (see also below)

5. Tiered level of *Brady* designations
 - a. *Brady* obligations *NOT* implicated by conduct
 - b. *Disclosure of Brady Material Required*
 - c. Witness is *disqualified* from testimony (non-usable witness)

DA Notification Process:

1. Create and maintain method to identify and preserve affected witnesses and their level of appropriate *Brady* disclosure. Review open/pending/affected cases so proper notice may be made.
 - a. Methodology requires:
 - i. frequent updating
 - ii. accessibility by all DDAs
 - iii. reliable way to advise DDAs of changes/additions
2. Maintain open communication with Law Enforcement Command Staff
 - a. seek input from command staff *prior* to any formal *Brady* decision
 - b. consider status of Internal Affairs investigation-when will it be complete?
 - i. Can disclosure decision wait for investigation's completion?
3. Consider convening **multidisciplinary advisory panel (*Brady* MAP)** for *confidential, non-binding consultation* prior to final decision:
 - a. consider including: other DA representative with *Brady* decision- making experience, law enforcement administration representative from uninvolved agency, non-management law enforcement representative from uninvolved agency
 - b. Mechanics of discussion, information dissemination, and recommendations can be at DA discretion
4. Create opportunity for affected witness to be heard as soon as practicable
 - a. formal letter to affected witness that notifies of *Brady* inquiry and allows for that person to present further information to DA for additional review:
 - b. Review process, procedure and deadlines at DA discretion depending on case. If requested, an in-person meeting with affected witness is recommended.
5. Send formal decision letter to agency that clearly delineates *Brady* designation and ramifications for DA's use of that employee as a witness.
6. Employ use of Judicial Review when necessary
 - a. when appropriate, seek *in camera* review for potential disclosure information.
 - b. Request order from court for discovery.
 - c. utilize protective orders prior to disclosure to defense.
 - d. seek Pre-Trial rulings on admissibility; consider including witness' counsel in admissibility
 - e. litigation.
7. Communicate with Defense Bar-it is the duty of the DA. As appropriate, consider:
 - a. individualized case by case disclosure
 - b. blanket letter notification to all local defense counsel
8. Communicate with Other Affected Agencies/Partners.

Guidelines for *Brady* Disclosure

'Dishonesty'

The following non-exclusive list serves as a guideline to determine whether a particular set of circumstances or conduct implicate *Brady*.

(generalized tiers: 1. witness disqualification; 2. disclosure; 3. non-*Brady* material)

Intentional and Malicious Deceptive Conduct (Tier 1) - will likely result in termination from employment and disqualification as witness. This type of dishonesty usually has a direct nexus to employment. For example:

1. Deceptive conduct in formal setting: testimony, affidavit, police report, official statement, internal affairs investigation (was there a finding of dishonesty in IA investigation?)
2. Tampering with or fabricating evidence
3. Deliberate failure to report criminal conduct by other officers
4. Willfully making a false statement to another officer on which other officer relies in official setting
5. Criminal conduct resulting in conviction that is fraudulent in nature-e.g. perjury, forgery, theft
6. Repeated, habitual or a pattern of dishonesty, however minor, during internal affairs investigation
7. Persistent dishonesty following *Garrity* warning or following administrative action
8. Other deceitful acts that demonstrate disregard for constitutional rights of others or the laws, policies and standards of proper police practice

Conduct Intended to Deceive but Not Malicious in Nature (Tier 2) - will likely require disclosure but may not disqualify as a witness and may not result in termination. While not condoned, this type of dishonesty is limited to a specific time and circumstance and may be explained in one extenuating circumstance. For example:

1. A simple exculpatory 'no' when faced with an allegation of misconduct
2. A deceptive statement made in an effort to conceal minor unintentional misconduct (such as negligent loss of equipment)
3. A purely private, off-duty statement intended to deceive another about private matters (such as being involved in extra-marital affair)
4. An isolated dishonest act that occurred years prior
5. A spontaneous, thoughtless statement made under stressful circumstances that is later recognized as misleading and is corrected
6. Isolated 'Administrative Deception' related to minor employment matters (e.g. a
7. call in sick when not really ill, a misleading claim of unavailability for a shift)

Excusable or Justified Deception (Tier 3) - will likely not require *Brady* disclosure of any type and will not be considered impeachment material even if it results in some sort of disciplinary action. For example:

1. Inaccurate or false statements based on misinformation or a genuine misunderstanding of the applicable facts, procedures or law
2. Investigatory tactics that are deceptive but lawful (e.g. lies told to a suspect in interrogation or interview)
3. Lies told in jest concerning trivial matters or to spare another's feelings
4. Negligence in reporting facts or providing misleading information to the public that later turns out to be false
5. Nonmaterial exaggerations, boasting or embellishments in descriptions of events or behaviors of others

Guidelines for Assessment of 'Lack of Confidence' Professional Witnesses

The DA maintains the discretion and authority to disqualify a professional witness from testimony based upon a lack of confidence that the witness can withstand the strict scrutiny necessary for law enforcement professionals. While these witnesses may not require *Brady* disclosure under the law, the DA may decide that their background, criminal behavior or reputation is such that they cannot be called by the State.

The same process as outlined in Attachment A is recommended.

Consider the following under the totality of the circumstances:

1. Witnesses with pending criminal cases
2. Witnesses with criminal convictions
3. Witness who may have committed a crime, but investigation or prosecution is barred (e.g. by statute of limitations)
4. Scope and seriousness of crime committed or alleged to have been committed
5. (e.g. person or bias crimes versus strict liability offenses)
6. Admissibility of crime or bad act
7. Bias (is there evidence of bias or prejudice contained in more than an isolated complaint, investigation, report or in social media?)
8. Opinions of colleagues (e.g. what would testimony be by others in agency as to the individual's reputation for honesty?)

It is further recommended that the DA provide the foundation and basis of knowledge upon which a lack of confidence decision is made to the affected witness upon notification [See DA Notification Process under Attachment A].

Brady Ethics Subgroup Report

The Ethics Subgroup identified certain issues and hopefully developed some ideas as to how the issues should be decided. When discussing the obligation, a prosecutor has in regards to what is referred to as *Brady* material, there are two components that must be examined. The first obligation regarding exculpatory evidence is described within the disciplinary rules of the bar association of which the prosecutor is a member. Their research found that while there are specific disciplinary rules governing prosecutors and their duties concerning exculpatory evidence, there are constitutional requirements regarding exculpatory evidence that appear to be outside the scope of the disciplinary rules. While these are two distinct obligations, often times they become intermixed. Our purpose is to solely examine the ethical responsibilities of the prosecutor.

Ethical Obligation

In considering the ethical obligations of a prosecutor as it pertains to the disciplinary rules of the Oregon State Bar, we have developed several questions to address. They are:

1. What do the disciplinary rules of the State Bar require a prosecutor to do? Is there a duty under the rules to look for exculpatory evidence? If such a duty does exist, to what extent does the prosecutor have to go? For example, must the prosecutor personally review the agency's case file to learn if there is exculpatory evidence, or can the prosecutor rely on the police to do that? Must the prosecutor look at the personnel file of an officer to determine if there is impeachment material in the file, or can the prosecutor rely upon the agency head to notify the prosecutor of this information?
2. Assuming such evidence is found, to what extent does the prosecutor's office have to maintain such evidence for disclosure in future cases? For example, does the material that should be maintained pertain only to government employees or agents, or must it also include any such evidence about any civilian witness who may or may not be a witness in the future?
3. Does this obligation extend beyond investigative and personnel files of the prosecutor's office, or an agency working on behalf of the government for civilian witnesses, such as a victim or an eyewitness to the crime? Specifically, outside of providing criminal convictions and material in the investigative file, does the prosecutor have a duty to search out other material? For example, would the prosecutor need to talk to neighbors, co-workers, family etc., to determine if the civilian witness is not trustworthy?
4. An additional potential ethical obligation that needs to be addressed pertains to a witness that the prosecutor does not believe to be trustworthy. For example, what is the prosecutor to do when he does not believe that a particular police officer is trustworthy? The belief may not be based upon a specific set of facts and may be nothing more than a personal opinion. Is the prosecutor ethically required to disclose that opinion? Is the prosecutor ethically prohibited from calling the witness?

Discussion

We need to point out that in Oregon there is a dearth of case law, disciplinary board opinions, and ethics opinions that specifically define the obligations of a prosecutor under the appropriate rules. The specific rule is ORPC 3.8(b). There is not any Oregon Supreme Court case law interpreting this rule or its predecessor under the Oregon Code of Professional Responsibility (DR 7-103).

ORPC 3.8(b) states: The prosecutor in a criminal case shall: ...(b) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

Knowledge means actual knowledge which may be inferred from the circumstances. See, ORPC 1.0(h). The rule does not use the phrase “exculpatory evidence”. Instead, the rule uses the phrase “all evidence or information ...that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor.”

This rule is identical to ABA rule 3.8(d). The first issue is whether the rule is more extensive than the constitutional obligation of disclosure. For example, *Brady* and its progeny hold that the evidence to be disclosed has to be “material”. The ABA has taken the position that the rule does not limit the evidence to be disclosed to be material. The ABA opines that the rule requires prosecutors to disclose favorable evidence to the defense, regardless of whether it is material or not, so that the defense can decide on its utility. It is our opinion that the State Bar will interpret ORPC 3.8(b) in the same manner. (Accord, *In re Tuttle*, 19 Oregon DB Reporter 216 (2005), where a prosecutor was suspended for 30 days for failing to give information to the defense regarding the credibility of a victim. The prosecutor, as part of her defense, indicated that one of the reasons she did not disclose the evidence was that she did not believe the evidence was true. The trial panel apparently believed that her opinion that the evidence was not true did not matter.)

The literal reading of ORPC 3.8 does not establish a duty to undertake an investigation in search of exculpatory evidence. Relying upon ORPC 3.8 would indicate that a prosecutor only has a duty to disclose exculpatory evidence actually known by the prosecutor and that the prosecutor has no duty to seek out that information. However, we would note that the Bar’s General Counsel believes this rule will be violated if a prosecutor is willfully ignorant of this material and fails to investigate or disclose such information.

We could find no direct definition of willful ignorance. However, the issue was discussed in the case of *In re Albrecht*, 333 Or 520 (2002). Using language discussed throughout the opinion, most notably the dissent, the following seems to be the best definition. In order for a lawyer's ignorance to be deliberate or willful, the lawyer must have been presented with facts that put him on notice that exculpatory type evidence probably exists, and then the lawyer must have

failed to investigate those facts, thereby deliberately declining to verify or discover the exculpatory evidence.

In short, ORPC 3.8 requires the disclosure of exculpatory evidence, regardless of whether it is material or not. The rule does not require that the prosecutor conduct an investigation to look for such evidence. However, the prosecutor cannot be willfully ignorant of such material.

There are other ethical rules that can be violated when a prosecutor fails to disclose exculpatory evidence. ORPC 3.4(1) states that a lawyer shall not: “(a) knowingly and unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value.

A lawyer shall not counsel or assist another person to do any such act.” The Oregon Supreme Court in *State v. York*, 291 Or 535, 540 (1981), implied that a violation of DR 7-109, the predecessor of ORPC 3.4(b), could result in discipline of a prosecutor if the prosecutor improperly withheld *Brady* material.

Other rules may also be applicable to this analysis. ORPC 1.1 states that a lawyer “shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” This rule may have *Brady* implications if a prosecutor does not live up to his/her *Brady* obligations. As our client is the State, failure to provide *Brady* material can jeopardize prosecutions, which is not in the best interest of our client. (See, *Connick v. Thompson*, 131 S.Ct. 1350 (2011), the US Supreme Court set aside a \$14 million jury verdict against the New Orleans District Attorney for failure to properly train his prosecutors in their *Brady* obligations. In setting aside the verdict, the US Supreme Court noted that the district attorney could rely on the fact that his prosecutors, as lawyers, have had training as part of their schooling and continuing legal education as to *Brady* principles and that he could rely on that training to decide if he needed to provide training on *Brady* issues. Given this principle, it would seem that a prosecutor’s failure to provide *Brady* material out of ignorance that he/she should do so would bring this rule into play.)

Questions

With the above information, we will attempt to answer the questions set forth above.

Question #1 - It is our opinion that a prosecutor must disclose all evidence that prosecutor has knowledge of that is favorable to a defendant regardless of whether it is material or not. The rule does not require that prosecutor to conduct an investigation to find such evidence, but at the same time, the prosecutor cannot be “willfully ignorant” of such information. To that extent, we believe the prudent prosecutor will notify the various police agencies it works with that they should disclose to the prosecutor any information that would “tend to negate the guilt of the defendant” so that it can then be disclosed to the defense. This notification should be made in writing to document that such a request was made. Absent a prosecutor’s knowledge that such evidence exists in relation to particular case, we do not believe that under this rule the prosecutor has a duty to inspect personnel files or other sources to determine if such evidence exists.

Question # 2 - We believe that the prosecutor's office must maintain some sort of data base that all prosecutors in the office have access to. Because "actual knowledge" can be inferred from the circumstances, we believe that the knowledge of one prosecutor in the office likely will be imputed to be known by all other prosecutors in the office. This data base should include specific facts that would have bearing on *Brady* issues. For example (this is not an exclusive list): a. Identifying witnesses who have been given any sort of incentive or a deal in return for testimony; or b. Witnesses, civilian or police, who based upon specific facts, have been found not to be trustworthy.

The question has been raised as to whether this list would be a public record. The most likely answer is that the list would be a public record. We could find no exemption that would specifically exempt such a list. If there is a need for legislation, perhaps an exemption for the list would be helpful.

Question #3 - As stated above, the rule does not impose an affirmative obligation on the prosecutor to conduct an investigation to locate the existence of exculpatory evidence. Again, the prosecutor cannot be willfully ignorant. If the prosecutor has reason to believe that it does exist, the prudent prosecutor would determine if in fact such evidence did exist.

Question #4 - This question addresses the ethical obligation of a lawyer when faced with the situation that a witness is not trustworthy. We believe the situation is governed by ORPC 3.3(a)(3). It states: A lawyer shall not knowingly: "...offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if permitted, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."

It is our opinion that a prosecutor can call a witness who in the opinion of the prosecutor is not trustworthy so long as the prosecutor does not reasonably believe that the testimony to be provided in the specific case by the witness is false.

However, the prosecutor must disclose the evidence to the defense that shows that the witness is not trustworthy regardless of its materiality.

We do not believe the rule requires a prosecutor to disclose a personal opinion of the prosecutor as to the trustworthiness of the witness if the opinion is based solely such things as a "gut instinct" or personal intuition.

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Anil Karia - Tedesco Law Group/Portland Police Association

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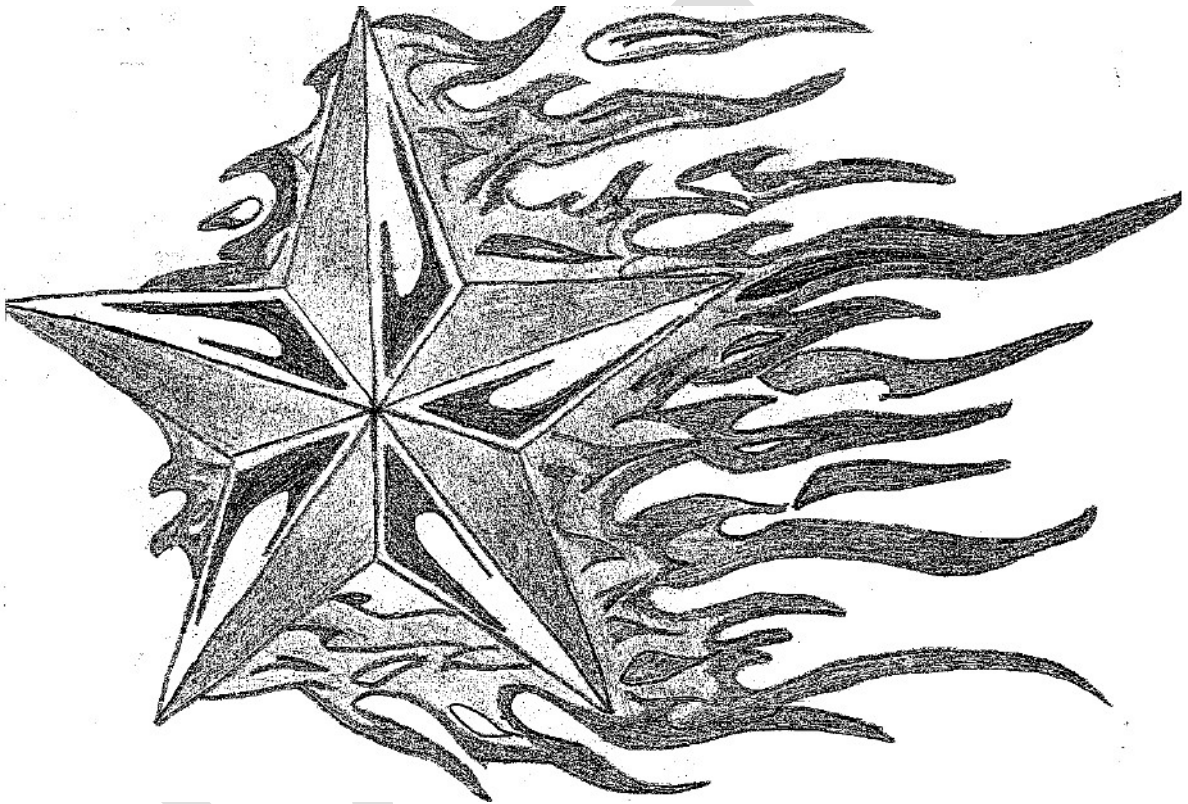
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C. Star Court Manual

[Begins on next page]

MARION COUNTY

SUPERVISED TREATMENT AND RECOVERY (STAR) YOUTH TREATMENT COURT PROGRAM



Created by Jordan Frerk, STAR graduate

POLICIES and PROCEDURES MANUAL

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Introduction

Mission Statement:

STAR's mission is to provide youth an opportunity to engage in their recovery, reduce their involvement in the juvenile justice system, and acquire the skills and knowledge necessary to achieve their self-determined goals.

Goals for STAR Court:

- Create an opportunity for youth to obtain and maintain their sobriety.
- Provide support to aid youth in resisting further criminal activity.
- Provide support, education, and treatment to youth and their family.
- Support youth in succeeding in school and develop positive relationships in the community.
- Help youth build skills that will aid them in leading productive, substance-free, and crime-free lives.

Anti-Racism Statement

STAR Court strives to create an environment in which people of color do not experience racism or prejudice. This requires focused efforts to honor every human being's culture, identity, and ethnicity. Systemic experiences of racism and oppression continue to exist, and we embrace our responsibility to strive toward equality, justice, and dignity.

Key Objectives for Juvenile Drug Treatment Courts

1. **Rehabilitation Over Punishment:** The primary focus is rehabilitation rather than punishment. Juvenile treatment courts aim to help young offenders address the underlying issues that contribute to their delinquent behavior, such as substance abuse, trauma, or mental health issues.
2. **Support and Supervision:** These courts offer ongoing support and supervision to juveniles, often through individualized treatment plans, mentoring, and therapy. The goal is to keep young people out of the criminal justice system while providing them with the tools they need to succeed.
3. **Accountability:** Juvenile treatment courts aim to hold offenders accountable for their actions, but in a way that encourages personal growth and responsibility. This is typically done through regular progress reviews, drug testing, and status hearings where the youth's progress is evaluated.

4. **Family Involvement:** Engaging families in the treatment process is essential. Juvenile treatment courts often work with families to provide support and guidance, helping to create a stable home environment and strengthen familial bonds.
5. **Education and Life Skills Development:** The courts may provide educational programs and life skills training to juveniles, helping them to build a positive future. This includes helping them stay in school, obtain employment, and develop healthy social relationships.
6. **Collaboration with Community Resources:** These courts work with local agencies, treatment centers, social workers, and other community resources to ensure juveniles receive the necessary care and services.
7. **Prevention of Recidivism:** One of the long-term goals is to reduce the likelihood of reoffending. By addressing the root causes of criminal behavior and offering ongoing support, juvenile treatment courts aim to reduce repeat offenses and facilitate the successful reintegration of young people into their communities.
8. **Diversion from the Traditional Justice System:** Juvenile treatment courts are an alternative to the traditional juvenile justice system, aiming to avoid formal prosecution and incarceration. The courts provide treatment and services to prevent juveniles from entering a cycle of detention and criminal behavior.

In summary, juvenile treatment courts focus on rehabilitation, accountability, and community support to help young people overcome challenges and build a positive future, all while reducing recidivism and improving public safety.

History and funding:

Marion County Juvenile Treatment Court was established in 2001 by the Honorable Judge Thomas Hart. The program solicits grant funding through the Criminal Justice Commission every two years. The funding provides drug collections and testing, training, participant needs, and treatment provider's hours not covered by the Oregon Health Plan or other insurance companies.

Juvenile Treatment Court Management System (JTCMS):

The JTCMS uses a statewide database to track participant program progress, a centralized location for case-related information for the team, and stakeholders, and automated alerts for sanctions. The data collected allows the team and stakeholders to track outcomes such as recidivism rates, successful completion of treatment programs, and educational progress. It permits the team to make informed decisions based on up-to-date and comprehensive data about behavior, treatment progress, and compliance with program requirements.

The data collected allows the team to recognize trends and patterns, such as the effectiveness of specific programs, common type offenses, and the prevalence of substance abuse, mental health issues, and dynamics of families.

This information monitors compliance and fidelity to the juvenile treatment court model. SCMS promotes transparency by allowing all relevant team members, to access the same information about a case helping ensure fair and consistent treatment of participants in the program.

SCMS allows for collaboration between the team and community partners to share relevant data between entities in a secure and coordinated way. Tracking resources and accessing the needs of the participants. The data collected provides pertinent information for mandatory grant reporting requirements for the Criminal Justice Commission and federal funding.

Eligibility Standards

Policy:

The Marion County STAR Court program uses the following eligibility criteria:

A) Eligibility Requirements for STAR Court Participants:

1. The potential participant must reside in Marion County.
2. The potential participant must be between the ages of 14 to 17.
3. The potential participant is in adjudication on either a felony or misdemeanor charge.
4. The potential participant's JCP or OYA Risk Need Assessment score is medium-high to high risk.
5. The potential participant has a substance use disorder.
6. Youth's pending charges or probation violation **MUST** be resolved before participating in STAR Court. Youth is allowed to observe STAR Court hearings until resolution of charges or probation violation.

B) Disqualifying factor(s):

1. Sexual offenses: Adjudications of sexual offenses.
2. Cognitive ability: Youth needing a higher level of care for mental health/DD services.
3. Active gang involvement: The level of the youth's gang affiliation and the ability to maintain the safety of youth with different affiliations in court, services, and STAR activities. Referral will be evaluated on a case-by-case basis prior to admission and during the time in STAR Court.

The Marion County Circuit Court Judge makes the ultimate decision regarding entry into the juvenile treatment court program.

REFERRAL AND INTAKE PROCESS (under review)
(minimum 15 judicial day process; max 20 judicial day process)

Probation Officer: Submits referral packet. The referral packet can come from a treatment provider, defense attorney, youth/parent/friend, CASA, DHS, child's attorney in a dependency case, service providers in the community, or district attorney. The program manager will email the probation officer for supporting documents. STAR Court team and current probation officer's supervisors will be cc'd in the email request for supporting documents.	1. Have the youth sign an Oregon Specialty Court Consent for the Release of Confidential Information (ROI). 2. Print a current face sheet making sure it includes: a. All charges b. Current address c. Current contact information d. Current school information e. Whether an interpreter is needed, for whom, and what language 3. Print the current Oregon-JCP RN or OYA RN. 4. Print all mental health assessments/evaluations. 5. Include payment plan for Restitution amounts over \$500 6. Referral packet can be sent via secured email to the coordinator, left in the coordinator's mailbox in 2960 Bldg., or coordinator's mailbox in 2970 Bldg.
STAR Court Program Manager (within 5 judicial days from receipt of completed referral)	7. Review the referral packet for eligibility requirements. The referral is uploaded into SCMS for team members to review by the next staffing. 8. Referrals can be decided at staffing or via email if the next staffing is more than a week out. a. Accepted- The coordinator will schedule Orientation with the youth /parent. Send an email to STAR probation officers, supervisor, and referring PO of acceptance and 1st appearance date & orientation date. The referring probation officer has an opportunity to

	attend 1 st staffing of youth for a 10-minute overall view of new participants. b. Denied - The coordinator will email the referring probation officer.
District Attorney (Within 5 judicial days from receipt of complete referral)	9. Review the referral packet regarding expunction eligibility. Make inquiries with the victim(s) whether they object to the youth entering STAR Court. Restitution is reviewed. Decide which track the youth will participate in, such as bifurcation, expunction, or higher supervision.
Team (Within 5 judicial days from receipt of complete referral)	10. Review the referral packet. Voices their opinion as to acceptance or denial via email or at staffing.
Judicial Officer	11. Overall authority of acceptance or denial into STAR Court.

Procedure to transfer case(s) from ODYSSEY:

1. The coordinator transfers the case from Odyssey into the current Juvenile Treatment Court (JTC) Management System when the STAR Court Release of Information is signed.
2. Referral packet will be uploaded and pertinent data collected from the referral will be entered into the management system.

Team Notification of new referral:

Team is notified via email to review the new referral with the participant's unique ID number.

MCJD Probation Officer transfer:

Participant is not transferred to STAR Court probation office until orientation has been completed and has attended their first STAR Court hearing. If STAR Court probation officer is on vacation or on sick leave, then the transfer happens after the STAR court probation officer has returned to work.

STAR COURT TRACKS:

1. Track 1
 - a. Expunction eligible
2. Track 2
 - a. Bifurcation
3. Track 3
 - a. Higher supervision

Bifurcate:

Some adjudications will not be expunged. If your adjudication involves domestic violence against an intimate partner, it will not be expunged. If your adjudication is for the use of a weapon during the commission of the underlying act, your adjudication will not be expunged. There may be other underlying acts that prevent your adjudication from expungement even after the successful completion of STAR Court you will be informed before you commit to participation in STAR Court.

STAR Treatment Court Operations

STAR Team Members:

Marion County Circuit Court Judge	Substance Use Treatment counselor
Juvenile Treatment Court Program Manager	District Attorney
Mental health counselor	Oregon Youth Authority Probation Officer
Marion County Sheriff Officer	Marion County Juvenile Department Probation Officer
Marion County Juvenile Advocacy Counsel	(1 English and 1 Bilingual)
Various Community Partners	Community mentors/peer mentors

Policy:

Each agency shall assign staff (alternate only if defined in ROI) who are dedicated to the STAR Court concept based on training, personal interest in the program, interpersonal skills, motivation, and professional abilities to act as a member of the STAR Court team.

See attached MOU for a more thorough description of the roles and responsibilities of each team member.

Procedure:

1. Agencies will commit a full or part-time staff to the STAR Court program to ensure stability and continuity of day-to-day operations and to strengthen collaborative relationships between all involved agencies in the STAR Court program.
2. All agencies agree to allow staff, when feasible, to attend drug court training for assigned staff. This includes in-state, and out-of-state trainings and/or webinars.
3. STAR Court weekly operations:
 - a. Service providers, mentors, and probation officers will enter attendance, engagement in services, and any field visits each Tuesday before noon into the current Juvenile Treatment Court Management System (JTCMS).
 - b. Program manager will submit court reports created from the information entered in JTCMS on the 1st, 2nd, and 4th Tuesday (subject to change due to Holidays) to the team for review for the next scheduled STAR Court session. Reports will be made available in JTCMS in the NOTE tab.
 - c. All Petitions and Life Skills will be submitted 1st, 2nd, and 4th Tuesday before noon for review and consideration for the next scheduled STAR Court session. **All requirements must be met before submission of Petition.** Check with the program manager, if requirements have been met, if questionable.
 - d. Graduation Petitions are to be submitted Tuesday before noon to be considered the next scheduled STAR Court session before the 1st Wednesday of the month. For Track 2 participants, if court sobriety time will be achieved during a Graduations are held 1st Wednesday of the month.

COURTROOM OPERATIONS:

Policy:

The Marion County Courthouse recognizes the JTC court calendar as a priority and dedicates a specific docket time for treatment court, serving eligible JTC court participants.

Procedure:

1. JTC court sessions will include the admittance of new participants into the program in conjunction with the progress of current participants. New participants can be accepted via email outside of regular JTC hearings.
2. Urinalysis results shall only be used to evaluate the participant's progress in the JTC court program.
3. Statements made by JTC participants shall not be used in subsequent adversarial proceedings.
4. All treatment-related documents, including progress reports, test results; etc. shall be ordered sealed after the participant's engagement ends in JTC.

PROGRESSIVE THERAUPUTIC STRATAGIES AND INCENTIVES

Policy:

The STAR Court program will include a plan of progressive therapeutic strategies as well as incentives, which may be applied as an immediate and direct consequence of a participant's non-compliance with treatment court requirements. The following list of strategies is advisory only and the STAR Court Judicial officer at his/her discretion will employ final strategies. *

Procedure:

1. The following graduated **therapeutic strategies/interventions** to assist participants in complying with the program:
 - Increased drug testing
 - Treatment re-assessment of appropriate level of care for treatment services.
 - Increased frequency of court appearances before Judicial officer
 - Community service work/Matrix
 - House arrest or voluntary enrollment in GAP placement
 - Commitment to residential treatment
 - EPICS/EBP work with probation officer

***All other strategies that appear appropriate are at the sole discretion of the STAR Court Judicial officer.**

2. The following **incentives** by the STAR Court Judicial officer to engage, motivate, and continue to praise participants in complying with the program:
 - Participant's ability to move/graduate between phases
 - Coins and tokens commemorating achievements in sobriety
 - decreased frequency of court appearances before Judicial officer
 - Miscellaneous court closet items
 - Gift cards for local community activities/resources
 - Accumulation of bonus points
 - Open praise and recognition of good choices in the courtroom

DATA COLLECTION AND PROGRAM EVALUATION

Policy:

Marion County STAR Court program shall use the Specialty Court Management System for data collection and participate in the Criminal Justice Commission's Peer Review process. Whenever resources are available, contract with outside evaluation agencies for process, outcome, and cost-benefit analysis.

Procedure:

The Specialty Court Management System includes:

1. Safeguards to ensure data integrity
2. Safeguards to ensure privacy and security of all records
3. Data to be collected and maintained by STAR Court Coordinator:
 - a. Participant's demographics (name, SID#, age, gender, race/ethnicity, etc.)
 - b. Date of program entry
 - c. Date of program transitions through phases
 - d. Date and type of program completion (graduation, termination, transfer or deceased)
 - e. Date and type of each incentive, sanction, and for what achievement/violation
 - f. Date, type, and risk for assessments
 - g. Date of Release of Information
 - h. Services- Type and attendance
 - i. Criminal charges being referred to program
 - j. Date of referral, referring agency, and outcome of referral
 - k. Participant contact information, school information
 - l. Prescriptions
 - m. Drug of choice, age of drug use, and severity of use

- n. Drug test date random/scheduled, collected by whom, observed, test results (dilute or positive-drug or missed) creatinine level
- o. Court session outcomes (attendance & incentive/response)
- p. Court sobriety date
- q. Any new law violations
- r. Treatment agency: diagnosis using ASAM and GAIN assessment tools and treatment level
- s. Phase requirements and probation conditions

Behavioral Health Treatment (substance use disorder and Mental Health Disorders)

SUBSTANCE USE DISORDER TREATMENT AGENCIES:

Policy:

The Juvenile Drug Treatment Court (JDTC) Program shall utilize only established drug treatment agencies that are licensed and/or certified by the State and have contractual agreements with STAR Court for treatment services.

Procedure:

1. The treatment provider shall designate a specific staff person to serve as liaison to the STAR Court Program.
2. Attends pre-court staff meetings, court, and policy/procedural meetings.
3. Within 48 hours of participant contact, the treatment provider will update the Specialty Court Management System (SCMS) of compliance or non-compliance with treatment sessions, and individual sessions and provide Treatment Court Coordinator with drug test results collected at treatment.
4. At the time of the intake the treatment provider shall prepare an individualized treatment plan for each JDTC participant.
5. The treatment provider and mental health provider will meet and create a Wellness plan for the participant.
6. The treatment provider shall maintain for each participant, documentation including, but not limited to initial assessment and treatment plans, progress notes, service provided, attendance records, and drug testing results.
7. The treatment provider shall enter SCMS the participant's drug(s) of choice, severity of drug use, and age of first drug use. The Assessment tool used and the ASAM score.

8. Maintains integrity of evidenced-based treatment through quality assurance.
9. Follows all federal confidentiality laws as it pertains to the Health Insurance Portability and Accountability Act.
10. Will follow the effective use of evidence-based practices (that address co-occurring mental health issues and other co-occurring issues such as family dysfunction) in substance use treatment.

MENTAL HEALTH TREATMENT PROVIDERS/PARENTING EDUCATION PROVIDERS

Policy:

The JDTC Program shall utilize only established mental health treatment agencies that are licensed and /or certified by the State and have contractual agreements with STAR Court for treatment services.

Procedure:

1. The treatment provider shall designate a specific staff person to serve as liaison to the STAR Court program.
2. Attends pre-court staff meetings, court, and policy/procedural meetings.
3. Within 48 hours of participant contact, the liaison will update the Specialty Court Management System (SCMS) on attendance and engagement in individual sessions.
4. At the time of the intake the therapist shall prepare an individualized treatment plan for each STAR Court participant.
5. The treatment provider and mental health provider will meet and create a Wellness plan for the participant.
6. The treatment provider shall maintain for each participant, documentation including, but not limited to initial assessment and treatment plans, progress notes, service provided, and attendance records.
7. The liaison shall enter SCMS the Assessment tool used and the ASAM score and any diagnosis.
8. Maintains integrity of evidenced-based treatment through quality assurance.
9. Follows all federal confidentiality laws as it pertains to the Health Insurance Portability and Accountability Act.
10. Shall provide family counseling along with individual sessions.

LONG TERM RECOVERY SUPPORT:

A Relapse Prevention Plan is created by the participant and Alcohol and Drug Treatment provider before the completion of treatment. Relapse Prevention plan will be submitted for entry into the treatment court management system.

Drug Testing

Policy:

The JTC program shall contract with a collection agency and laboratory to collect and test all treatment court-provided urinalysis. The testing guidelines shall meet Oregon Treatment Court Standards of best practices.

Collection Agency:

A Worksafe Service Inc., located at 1696 Capitol St NE, Salem, OR 97301, shall collect urinalysis for testing at the direction of the JTC program within Best Practice Standards for Oregon Treatment Courts as funding allows. All five Treatment Courts contract with Worksafe for the collection, maintenance, and administration of the UA hotline.

Laboratory for testing:

Abbott Toxicology Laboratory Aka Redwood Toxicology Laboratory, located in Santa Rosa, CA 95402. JTC program contracts with Abbott Toxicology through the State of Oregon. Test results will be returned within 48 hours. Confirmed positive test results within 5-6 business days.

Collection Procedure:

Worksafe shall have participants sign in at the front desk upon arrival. When signing in participants will write their first and last name, date/time of arrival, and which treatment court they are in. Participant's identity will be verified by a picture connected to their electronic file submitted by the JTC program manager through ToxAccess. Worksafe shall provide a gender-specific collection officer per participant to walk through the check-in process and collection. All collections are observed via mirror(s) strategically situated in the bathroom. Mouth swabs may be available under certain circumstances, including lack of same gender collection personnel and concerns regarding SA triggers.

The donor will verify their name on the chain of custody form prior to proceeding to the restroom and again verify their name on the patient ID label that is placed on the sealed specimen bottle of urine. This occurs after the urine has been transferred from the collection container to the specimen bottle, the cap is closed, and the cap label is

placed on the bottle. After verifying the name, the donor then initials the lab on the seal over the bottle cap.

If a participant is unable to leave a sample, they will receive 8oz of water every 30 minutes until they feel they are able to leave a sample. The participant must provide 30ml of urine in the test cup for testing to be completed. If a participant leaves Worksafe without providing a sample an email will be sent to the program manager. Leaving Worksafe before submission will cause Track 1 participants to restart their court negative time. Track 2 participants will have their court negative time paused till a negative UA is collected.

The participant has access to call the program manager via the Worksafe phone to discuss their reasoning for wanting to leave without leaving a sample. Placing the call does not guarantee an excusal from submitting a sample or permission to return later the same day to submit a sample.

Consumption of poppy seeds while in the program is prohibited. Any positive test results due to consumption will restart a participant's court negative time.

NOTATION: Urinalysis testing results will only be used by the STAR Court team in evaluating the client's progress. The result will only be used to determine if the participant is progressing satisfactorily, to determine the level of care of the treatment series, **and/or if the individual should be terminated or graduated from the program.** **Therefore, under no circumstances shall urinalysis results be used as evidence of a new crime or in any other way not consistent with the goals of the JTC Program.**

UA Hotline and Court Negative Time

Policy:

The UA hotline will be administered and monitored by A Worksafe Service Inc. All issues regarding the UA hotline will be directed to the JTC program manager. Participants are instructed to call the hotline number seven days a week. Participants will need to contact the JTC program manager when requesting to be excused from the hotline. All team members must emphasize the importance of calling the UA hotline and creating a plan regarding transportation to Worksafe with participants. The Oregon Treatment Court Standards for best practices is a minimum of 90 court negative days to graduate from a JTC Program.

Excusal from UA hotline:

Participants will need to contact the JTC program manager with exact dates for vacation or surgery. Participants will be instructed to submit a UA before leaving and submit a UA upon returning from vacation. If the participant is having surgery, they will be required to take a ua the day they can return to normal activities. If a participant is ill, they will need to submit a UA the following day. J C program manager will email Worksafe when a participant needs to submit a UA outside of the UA hotline. Worksafe will not collect a sample without the email from the JTC program manager.

A restart of Court Negative Time:

Court negative time will restart due to a missed, dilute (Creatinine level is below 20), insufficient sample, and/or positive urinalysis.

Request to Waive Missed UA:

Policy:

The request may only be used once and only applicable in Phase 3- Reinforcement or Phase 4-Maintenance. The form is available in the handbook or can be provided by a team member. **Submission does not guarantee a waiver will be granted.** The participant must notify the JTC program manager when a UA has been missed to arrange to submit a UA the day after, to start court clean time. Due Tuesday by Noon before the next STAR Court session. Non-completed forms will be denied.

Procedure:

1. Request Form
2. Fill the form out completely (ask a team member if you need clarification)
3. Parent MUST complete their section and sign the form
4. Participants MUST sign the form

Sanction for Missed UAs:

Start with a graduated response to detention. Decided on a case-by-case basis.

1. Loss of points & Court Clean time
2. Weekend detention writing an Essay reflecting their level of commitment towards being in STAR Court. Pros and Cons.

Residential Appearances:

1. OYA youth appear on the 2nd Wednesday at 4:30 pm
2. MCJD youth appear on the 4th Wednesday at 4:30 pm

Graduation Ceremonies:

Program Manager will do a quick check-in with participants. No one will be released if on Rocket Docket.

Meet with Program Manager after ceremony:

1. Sobriety time
2. Review What happened today sheet
3. If on Rocket docket- receive Po gift card

Graduation will be started at 3:30 pm:

1. Presentation of Service-Learning Project
2. Comments by judge, team, peers, and family
3. Shredding of Petition and Judgment (Track 1)
4. Pictures with a judicial officer, youth, and family will be taken
5. Food and beverages are provided

Track 2 Graduate: Expungement Expectations

- Review hearing will be scheduled at the time of graduation 3-months out
- Review hearing will be on STAR Court docket at 3:30 pm (3-7 minutes)

Review Hearing:

- Youth will be called upon and the criminal file will be shredded/expunged – The judge will give congratulations
- 3- 7-minute time cap
- Return to normal STAR Court docket

MCJD Probation Officer:

- Will prepare the file for closure
- No case planning or services will be provided to STAR Court graduate
- Education Advocate referrals will be closed
- Youth will be reassigned to Probation Supervisor, who will
 - a. Conduct monthly E-Court checks for new arrests/criminal charges
 - b. If new charges are found, send an email to the STAR Court Coordinator
 - c. The program manager will discuss at the next STAR Court staffing and cancel the Review hearing

Engagement in Services:

Engagement means attending intake plus two consecutive sessions.

Rocket Docket with a positive UA:

Will acquire the 3 points for obtaining Rocket but will not spin the incentive wheel and no early release.

Rocket Docket:

Youth on Rocket docket will have their name written on the whiteboard and on the Wheel of Names viewed on the TV monitor. Youth will appear and leave as their name lands in order on the wheel.

Nominations:

Nominations can come from service providers, team members, judicial officer, school staff, and family members. Nominations will be discussed during staffing and nominees will receive a gift card and a KUDO slip.

Use of Detention for Behavior:

Detention is used as a graduated response/alternative response for behaviors by youth who are not deterred by a verbal warning, EBT homework, and loss of points. NPC research confirms the use of detention for behavior modification.

1st offense

- a. Verbal warning with EBT work with PO

2nd offense

- b. Loss of 5 points

3rd offense

- c. Weekend detention (report Friday with release Monday morning)

Missed Appointments (no show):

There will be 5 points deducted from the total points. Appointments must be canceled or rescheduled within 24 hours.

Filing A Show Cause:

1. Discuss the reasoning for filing the show cause during staffing
2. If granted
 - a. Schedule arraignment on a Wednesday (1st, 2nd, or 4th) at 2:45 pm, 3:00 pm, or 3:15 pm
 - b. 2:45 pm, 3:00 pm, or 3:15 pm is for both in-custody and out-custody arraignments
 - c. Give DA and Defense attorney copies of said show cause

Probation violation filed with new allegations:

- Youth will be suspended till resolution of the probation violation.
- If violation for new crimes is founded- team discussion regarding status in the program.
- A conviction or founded allegation of Delivery of a Controlled Substance, will be grounds for termination.

Verbal, written, physical, and social media threats or assaulting another participant or team members:

- Consequence is immediate termination.
- Verbal and/or written termination will include detailed threat and/or assault
- Youth can request a hearing upon receiving a verbal or written termination notice within five judicial days
- Hearing will be scheduled on STAR docket either at 2:45pm or 3:00pm (15m).
- STAR attorney will represent the youth.
- If youth is returned to the program, the participant or team member (victim) can object, and final decision will come from the Judge.
- If returned a safety plan will be implemented to attend groups, court, and activities.

Policy

Petition to Enter Marion County's Juvenile Treatment Court:

1. Petition is submitted **after** referral is accepted
 - a. STAR Court referral can be submitted for review and decision prior to jurisdiction
 - b. STAR Court referral can be submitted for review and decision prior to resolution of a probation violation
 - c. IF accepted into STAR Court, then orientation will be scheduled upon jurisdiction and/or disposition of probation violation
2. Petition can be submitted ex parte **IF**
 - a. youth is currently on probation
 - b. No current probation violation is pending
 - c. No current charges are pending
 - d. Program Manager will schedule orientation once the petition is submitted
3. Petition can be submitted with the following documents
 - a. Jurisdictional Judgement at the time of disposition
 - b. Order Technical Probation Violation at the time of disposition

Multiple Probation Violations and New Crime

After several behavior modification responses and the participant continues to choose to make negative choices with the outcome being the filing of multiple probation violations and/or new criminal petition, then the team will discuss the following options.

1. Notice of Termination
 - a. Youth have five business days to request a hearing
 - b. STAR attorney represents the youth
 - c. If hearing is requested (scheduled on a Wednesday at either 2:45pm, 3:00pm, or 3:15pm)
 - i. Youth state why they deserve to continue in the program and what they will do differently (entire team present)
 - ii. Team decides to terminate or continue participation
 - iii. If participation is continued participant's status will be paused until final resolution of the probation violation and/or new criminal petition
2. Termination from STAR Court
 - a. STAR attorney substitution will occur at the time of arraignment on the probation violation and/or new criminal petition
 - b. Participant will receive a letter of termination regarding the team's decision to terminate and their reasoning for the decision
 - c. Phase Movement Action- Unsuccessful Completion Reason- New conviction/Other/Inappropriate Behavior

STAR Attorney Ethical Conflict

If the STAR Court attorney asserts that there is an ethical conflict in representing a current or potential participant, the current or potential participant's previously appointed attorney, or the backup STAR Court attorney, may be appointed to take over the representation of current or potential participant in further STAR Court proceedings.

STAR Attorney Representation

The program manager will submit a substitution of counsel at the participant's first STAR Court appearance. First appearance is after orientation is completed.

Representation by the STAR Court attorney ends when the participant graduates and/or is terminated.

If the youth were to return to the justice system on a probation violation and/or new criminal charges, then the attorney prior to entry into STAR court will be assigned.

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