

Benton County District Attorney's Office Policy Manual

Adopted December 1, 2020*



*The Benton County District Attorney's Office Policy Manual is a dynamic living document that will continue to evolve as laws, programs, best practices, resources, and work demands evolve. In addition to periodic updates, pursuant to ORS § 8.705, no later than 5 years after the initial adoption of the policies, and every 5 years thereafter, the Benton County District Attorney shall review the policies, make revisions to the policies as necessary, and readopt the policies.

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I. Introduction

The Benton County District Attorney's Office promotes the pursuit of justice for all people through the truth.

A fundamental value of the Benton County District Attorney's Office is the self-evident truth expressed in the preamble of the Declaration of Independence, that all people are created equal, and that they are "endowed by their Creator with certain unalienable Rights." Among these rights are "Life, Liberty and the pursuit of Happiness." These rights are at the core of the purpose expressed in the preamble of the United States Constitution, that is "to form a more perfect Union, establish justice, insure domestic Tranquility..., promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity...." The rights set forth in the Declaration of Independence, and the purpose asserted in the United States Constitution are underscored by the purpose expressed in the preamble of the Oregon Constitution, which states, "...to the end that Justice be established, order maintained, and liberty perpetuated, do ordain this Constitution."

The Oregon Constitution establishes that the Benton County District Attorney shall be the law officer of the State for the 21st Judicial District (Benton County), and shall perform such duties as pertaining to the administration of Law, and general police as the Legislative Assembly may direct. Constitution of Oregon, Article VII § 17.

The Benton County District Attorney's Office embraces its overarching charge of pursuing justice for all through the truth. Our vision is to make Benton County a safe and just place to live and work. Our mission is to fairly, effectively and efficiently enforce the law, to protect the public from crime, to safeguard children from abuse and neglect, to assist and advise crime victims; and to foster respect for the rule of law. The Benton County District Attorney's vision and mission are embedded in Oregon's foundational principles of the protection of society, personal responsibility, accountability for one's action, and reformation. Constitution of Oregon, Article I §15.

The policies, practices, and processes of the Benton County District Attorney’s Office are governed and defined by the Constitution of the United States, the Constitution of the State of Oregon, the canons of professional ethics of the Oregon State Bar, and the laws and rules arising thereunder. For purposes of compliance with the provisions of ORS §8.705, the Benton County District Attorney’s Policy Manual incorporates by reference herein the legal and ethical mandates established through the Constitution of the United States, the Constitution of the State of Oregon, the canons of professional ethics of the Oregon State Bar, and the laws and rules arising thereunder, including, but not limited to, the following:

- United State Constitution
- United States Code
- United States Supreme Court Precedence
- Federal Court of Appeals Precedence
- Federal District Court Precedence
- Oregon Constitution
- Oregon Revised Statutes
- Oregon Administrative Rules
- Oregon Criminal Code
- Oregon Motor Vehicle Code
- Oregon Evidence Code
- Oregon Trial Court Rules
- Oregon Uniform Jury Instructions
- Oregon Rules of the Court – Federal
- Oregon Rules of the Court – State
- Oregon Rules of the Court – Local
- Oregon Attorney General’s Public Records and Meetings Manual
- Oregon Attorney General Opinions
- Oregon Rules of Professional Responsibility
- Oregon State Bar Statement of Professionalism
- National Association of Drug Court Professionals 10 Key Components
- National Association of Drug Court Professionals Evidence-Based Best Practices

The Benton County District Attorney’s Office Policy Manual is meant to guide employees in understanding the overall policies and expectations of the office. It should be used in conjunction with above-listed law and rules, as well as the Benton County Employees Manual. If any specific policy provision conflicts with the ability to pursue justice within the parameters of law, then the pursuit of justice will take precedence over any specific policy provision. The policies set forth in the Benton County District Attorney’s Office Policy Manual are designed as principles to follow rather than strict edicts.

II. Professionalism and Prosecutorial Ethics

All employees of the Benton County District Attorney's Office hold a public trust and represent the Office of the District Attorney. Employees are expected to abide by the Benton County District Attorney Office's core values. The Benton County District Attorney's Office's core values include the following:

Integrity: Integrity is the bedrock upon which all our actions must be anchored. We will respect and obey the law and the lawyer's Code of Professional Responsibility. We will be honest with ourselves, our colleagues, and the public. We will act with honor.

Fairness: We respect the right of all people to fair and equitable treatment under the law. We will enforce that right.

Public Service: We serve the people. We will do so efficiently and courteously.

Teamwork: We are a team. We will support and encourage each other as we work toward the accomplishment of our mission and the achievement of our vision.

Continuous Improvement: We will seek to continuously improve the fairness, efficiency, and effectiveness of our office and the justice system we serve.

All employees are expected to exercise good judgment, common sense and professionalism in their everyday dealings with the public, representatives of other departments, agencies, organizations, and each other.

All employees are expected to maintain the highest ethical standards. All staff are expected to be mindful that public service is a public trust, and our job as public servants is to serve with integrity. All employees of the Benton County District Attorney's Office are expected to adhere to the highest level of professionalism and competence as they can achieve. Maintaining a courteous attitude with the public is required.

As employees of the Benton County District Attorney's Office, it is important to remember that, as professionals, our responsibilities do not end at the close of the workday. We are responsible for our behavior outside of the organization. We have a responsibility to perform our duties as public servants with integrity and to serve the public trust at all times.

All employees will be familiar with the canons of professional ethics of the Oregon State Bar and perform their duties in a manner consistent with those standards. In addition, attorneys are expected to know and follow all rules promulgated by the Oregon Supreme Court and by the Circuit Court of Benton County.

A. Dress and Appearance

The Benton County District Attorney's Office is a professional law office representing the State of Oregon and the citizens of Benton County. There is an expectation that all staff will represent, not only in their behavior, but also in their dress, the high professional standards established for the organization.

Staff of the District Attorney's Office are expected to wear professional business attire during regular working hours. On occasions, more casual attire may be allowed with prior District Attorney approval.

B. Certified Law Students

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

C. Confidentiality

One of the most important aspects of professionalism in the Benton County District Attorney's Office is confidentiality. Employees are prohibited from discussing cases with unapproved individuals. All media contacts are approved through the District Attorney in compliance with the guidelines regarding press relations contained in this manual.

D. General Provision for Media Contact

All law enforcement agencies should follow the bar press guidelines when dealing with the media. The Benton County District Attorney's Office has the responsibility to give the media truthful information on matters of public interest and to comply with public records laws. At the same time, the Benton County District Attorney's Office has a responsibility to ensure that reputations are not improperly damaged and victims, as well as the accused, are afforded a fair trial free from improper pretrial publicity.

Major crimes: The District Attorney's Office is the designated spokesperson for the major crime team. These events will usually include major crimes or homicides.

All other crimes: With the exception of homicides and crimes involving the major crime team, the law enforcement agency handling a matter should release initial information to the press in accordance with the bar press guidelines.

Guidelines for Disclosure and Reporting of Information to the Press

It is generally appropriate to disclose or report the following:

1. The arrested person's name, age, residence, employment, marital status and similar biographical information.
2. The charge.
3. The amount of bail.
4. The identity of and biographical information concerning both complaining party and victim.
5. The identity of the investigation and arresting agency and the length of the investigation.
6. The circumstances of arrest, including time, place, resistance, pursuit and weapon used.

E. Disqualification of a Judge

Only the District Attorney or the Chief Deputy District Attorney, at the direction of the District Attorney, may sign a motion to disqualify a judge from hearing a case.

F. Acceptance of Gifts, Favors

Employees of the Benton County District Attorney's Office may not accept gifts, gratuities, or favors from firms, organizations, their employees, agents, or other individuals who conduct or may conduct business with the Benton County District Attorney's Office.

III. Prosecution Process

A. Charging

It is the goal of the Benton County District Attorney's Office to enforce Oregon law in a manner that maximizes community safety, respects individual rights and serves justice. To that end, we will endeavor to charge cases and advocate for outcomes in a manner which treats similarly situated defendants similarly.

As a general rule, charging decisions should be made in a way that emphasizes protection of the community and offender accountability. Using this guidance, the Benton County District Attorney's Office shall consider such things as the strength of the state's case, the cost of prosecution, any mitigation in the defendant's background, input from the victim, input from the investigating agency, and any other appropriate information the assigned Deputy District Attorney considers relevant. In any case charged by the Benton County District Attorney's Office, there must be a reasonable belief, based on evidence likely admissible at trial, that the crime occurred, and that sufficient evidence exists to prove the crime beyond a reasonable doubt. This general policy is reflected in more specific guidelines on all offenses described below.

1. Screening and Charging Decisions Guidelines/Factors

- a. The nature of the offense.
- b. Probability of conviction.
- c. Possible deterrent value of prosecution.
- d. The characteristics of the offender.
- e. The interests of the victim.
- f. Recommendations of the law enforcement agency involved.
- g. Any provisions for restitution.
- h. The age of the offender.
- i. Doubt as to the guilt of the accused.
- j. A history of non-enforcement of the statute.
- k. Excessive costs of prosecution in relation to seriousness of the offense.
- l. The age of the case.
- m. Insufficiency of evidence to support the case.
- n. Aid to other prosecutorial goals through non-prosecution.
- o. An expressed wish by the victim not to prosecute.
- p. Possible improper motives of the victim or witness.
- q. Likelihood of prosecution by another criminal justice authority.
- r. Any mitigating evidence.
- s. The attitude and physical and mental state of the defendant.
- t. Whether aggregating property victims into the same charge is in the best interest of the victims.
- u. Undue hardship caused to the accused.
- v. Any additional factor pertinent to the pursuit of justice.

In making charging decision, Deputy District Attorneys shall file only those charges that are reasonably substantiated by evidence likely admissible at trial. Deputy District Attorneys shall not attempt to use the charging decision as a leverage device (that is, overcharging) in an attempt to obtain a guilty plea to a lesser charge. These charging guidelines shall apply to all felony and misdemeanor crimes, including, but not limited to, Driving Under the Influence of Intoxicants under ORS § 813.010 and ORS § 813.011; Controlled Substance crimes; the aggregation of property offenses under ORS §§ 164.043, 164.045, 164.055, 164.057, 164.061, 164.098, 164.125, 164.140, 164.397, 165.013, 165.055, 165.694, and 165.803; crimes constituting domestic violence as defined in ORS § 135.230; and crimes requiring mandatory sentences.

2. Possession of Controlled Substances

- a. Misdemeanor Treatment Guidelines: Prior to the passage of Measure 110, the Benton County District Attorney’s guidelines for misdemeanor treatment were as follows: Pursuant to House Bill 2355 (2017), the following are guidelines that must be considered, uniformly, when a Deputy District Attorney in this office is evaluating whether to elect to treat a felony drug possession charge as a misdemeanor. In making such a decision, the Deputy District Attorney must consider the following factors; however, this list is not exhaustive, and the Deputy District Attorneys are encouraged to use their prosecutorial discretion. The factors include:
 - 1) The nature and circumstances of the underlying crime but not limited to the quantity of drugs. A person in possession of a substantial quantity of drugs would not be eligible for misdemeanor treatment.
 - 2) A defendant’s criminal history. The DDA should specifically focus on the number of convictions, the type of convictions, the age of the convictions, and the outcome. A defendant convicted of any violent crime(s) or person felony crimes would not be eligible for misdemeanor treatment.
 - 3) A defendant who committed the new possession of drug crime(s) who was on probation at the time of the commission of the new crime would not be eligible for misdemeanor treatment.
 - 4) The defendant’s willingness to engage in and complete substance treatment and whether the defendant entered and/or completed treatment in the past.

In applying these guidelines and considering other relevant factors, the Deputy District Attorney will ultimately determine based on these factors and other relevant factors, to elect to treat a felony possession of drug charge as a misdemeanor when that attorney believes it would be unduly harsh to convict the defendant of a felony.

b. Ballot Measure 110

On November 3, 2020, Oregon voters passed Measure 110, entitled “Drug Addiction Treatment and Recovery Act.” Generally, Measure 110 decriminalizes

the possession of user amounts of controlled substances. Manufacturing and delivery penalties remain unchanged.

Pursuant to Measure 110, effective February 1, 2021, Possession of a Schedule 1, 2, or 3 Controlled Substance is a Class E Violation, with the following exceptions:

- 1) PCS Schedule I remains a Class B Felony if the possession is part of a Commercial Drug Offense;
- 2) PCS Schedule II remains a Class C Felony if the possession is part of a Commercial Drug Offense;
- 3) PCS is a Class A Misdemeanor with:
 - a. Two grams or more of a mixture or substance containing a detectable amount of *cocaine*.
 - b. Two grams or more of a mixture or substance containing a detectable amount of *methamphetamine*.
 - c. Forty or more user units of a mixture or substance containing a detectable amount of *lysergic acid diethylamide*;
 - d. Twelve grams or more of a mixture or substance containing a detectable amount of *psilocybin or psilocin*.
 - e. 40 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of *oxycodone*.
 - f. One gram or more of a mixture or substance containing a detectable amount of *heroin*.
 - g. One gram or more or five or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:
 - 1) *3,4-methylenedioxyamphetamine*;
 - 2) *3,4-methylenedioxymethamphetamine*; or,
 - 3) *3,4-methylenedioxy-N-ethylamphetamine*.

- c. Policy for the time period between November 3, 2020, and February 1, 2021

During the time period after the passage of Measure 110 (November 3, 2020), and prior to its effective date of February 1, 2021, the Benton County District Attorney's Office will charge PCS cases as follows:

- 1) PCS cases that would be defined as violations under Measure 110:
 - a) For pending stand-alone PCS cases (whether in FTA status or not), we will make a violation offer and provide to the defendant contact information and/or referral to a local drug treatment program.
 - b) For new stand-alone PCS cases we will charge the case as a violation and provide to the defendant contact information and/or referral to a local drug treatment program.
 - c) For pending cases that involve a mix of PCS and other charges or involve PCS charges that are not defined as violations by Measure 110, we will follow the law that was in effect at the time the crime was committed, and proceed forward in accordance with our established process.

B. Decision to Pursue Death Penalty

The District Attorney and any Deputy District Attorney responsible for the prosecution of aggravated murder cases must consider the law and evidence of each case and make a determination as to whether seeking the death penalty would be a just outcome. This determination is to be made in consultation with the District Attorney and at least one other supervising attorney. The decision to pursue the death penalty shall be informed by all pertinent evidence before the District Attorney's Office, including any information the defense may wish to provide in mitigation.

C. Declining Prosecution

If a Deputy District Attorney elects to decline prosecution, she or he shall state the reasons in the case management system. This information will be used to notify law enforcement agencies and victims of the disposition of the criminal incident and reasons for the decision.

D. Charging Instruments, Grand Jury and Preliminary Hearings

The Benton County District Attorney's Office may file criminal charges by indictment, information, or complaint. With respect to cases involving felony charges, a District Attorney's Information serves as a charging instrument until the case is indicted by the grand jury, bound over through preliminary hearing, bound over through stipulation of all parties, or dismissed.

Beyond the District Attorney's Information, Amendment to Article VII, Section 5, of the Oregon Constitution provides two separate procedures for charging defendants with a crime punishable as a felony in Circuit Court. Amended to Article VII provides that defendants may be charged either by:

1. Indictment of the grand jury, or
2. By information gathered by the state after a preliminary hearing.

In order to ensure that the choice between indictment and information is made according to consistent criteria and that the privilege of either a grand jury indictment or a preliminary hearing is equally available to all, the Benton County District Attorney's Office takes all cases punishable as a felony to a grand jury unless there is a specific evidentiary need, such as eyewitness identification or preservation of testimony, in an individual case. A decision to take a case by means of a preliminary hearing must be approved by the District Attorney or Chief Deputy. Deputy District Attorneys are to be familiar with and follow the statutory provisions found in ORS §§132.010-132.990.

At the beginning of each Grand Jury term, the grand jurors will receive orientation from the District Attorney, or their designee. The orientation will cover information about the legal procedures of the Grand Jury.

Each witness is placed under oath, before presenting testimony to the Grand Jury. The Deputy District Attorney assisting the Grand Jury will ensure witness testimony is limited to evidence likely admissible at trial. Additionally, the Deputy District Attorneys will limit grand juror questions which will produce evidence likely to be inadmissible at trial. All witness testimony must be recorded pursuant to ORS 132.260). However, Oregon law only allows the audio recordation of grand jury witness testimony. The names or initials of each witness will be listed on the indictment, if an indictment is returned pursuant to ORS 132.580, 132.540(5).

A represented defendant who requests to testify voluntarily before the Grand Jury shall be allowed to testify pursuant to ORS § 132.320(12). A Deputy District Attorney is under no obligation to affirmatively offer an opportunity to testify to a defendant.

E. Arraignment and Pre-Trial Release

The following provisions directly govern Oregon's rules for pre-trial release:

1. Article I, § 14 of the Oregon Constitution;
2. Article I, § 43 of the Oregon Constitution; and
3. ORS §§135.230 – 135.290.

In addition, the Benton County Circuit Court sets presumptive bail schedules. All Deputy District Attorneys are expected to be familiar with the Court's bail schedule, the Oregon Constitution, and the laws arising thereunder. Furthermore, all Deputy District Attorneys are expected to advocate the implementation of these provisions.

F. Discovery

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

Except as otherwise provided in ORS § 135.855 (Material and information not subject to discovery) and ORS § 135.873 (Protective orders), the District Attorney's Office shall provide the defendant the following material and information within the possession or control of the District Attorney pursuant to ORS § 135.815, copied below:

1. The names and addresses of persons whom the district attorney intends to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons.
2. Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one.
3. Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons that the district attorney intends to offer in evidence at the trial.
4. Any books, papers, documents, photographs or tangible objects: Which the district attorney intends to offer in evidence at the trial; or which were obtained from or belong to the defendant.
5. If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.
6. All prior convictions of the defendant known to the state that would affect the determination of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Commission.
7. Any material or information that tends to:
 - a. Exculpate the defendant;
 - b. Negate or mitigate the defendant's guilt or punishment; or
 - c. Impeach a person the district attorney intends to call as a witness at the trial.

Each Deputy District Attorney has a duty to review their cases and disclose any material that is clearly exculpatory or favorable, and material to the defendant. Furthermore, the Deputy District Attorney "has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." Strickler v. Greene, 527 US 263, 281 (1999).

All discovery is open and available at the Benton County District Attorney's Office for defendants and their attorneys to come and review, by appointment, free of cost. Copies of discovery materials are also made available to defendants and their attorneys once payment for the same has been made in full. Fees for discovery copies are set by the Benton County Commissioners in compliance with the Benton County Code. Discovery released to defense attorneys shall be billed in a consistent manner.

Discovery should not be released to the defendant's attorney until after arraignment. Discovery can be released to defendant's attorney prior to arraignment only if authorized by a Deputy District Attorney and the release is in the best interests of justice, or aids in the efficient resolution of the criminal case. Discovery will be released to defendants without lawyers only after the defendant has been arraigned, has waived his or her right to counsel in court, and only after the cost incurred in supplying the discovery has been paid.

G. Record Retention

Any and all written agreements entered into between Benton County law enforcement agencies that relate to data retention and data sharing will be open and available to inspection by the public. All District Attorney office's records must be maintained in compliance with the Records Retention & Destruction Schedule published by the Secretary of State or by State law.

H. Crime Victim's Rights

The Benton County District Attorney's Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice system. In the criminal justice system, the legal title of "victim" confers certain rights and is not intended to disparage or make less of the harm a person endures and often survives when a crime is committed. The Benton County District Attorney's Office treats victims with dignity and respect, and makes every effort to provide victims with as large a part as possible in each phase of a criminal case. The interests of the victim should be kept in mind when setting hearing dates and during plea negotiations in any felony involving a person.

1. Victim Considerations in Negotiations

Deputy District Attorneys should consider the circumstances and attitude of the victim and witnesses in deciding whether and how to negotiate with a defendant. Deputy District Attorneys should weigh the following factors:

- a. Extent of injury to the victim;
- b. Economic loss incurred by the victim;
- c. Victim and witnesses availability for trial; and
- d. The victim's and witnesses' physical or mental impairment that would affect testimony.

Deputy District Attorneys shall attempt to contact the victim prior to making a formal offer. The victim's opinions should be considered in developing the terms of the negotiations.

2. Victim's Rights Under Oregon Law

Oregon law gives crime victims rights that protect their interests in criminal investigations and judicial proceedings. This office makes every effort to see that victims benefit from them. Among these rights are:

- a. The right to be informed of these rights as soon as practicable.
- b. The right, if requested, to keep the victim's address and phone number from the person charged (ORS §135.970);
- c. The right, if a defense attorney or representative contacts the victim, to be told who they are, that the victim does not have to talk to them, and that the victim may have a Deputy District Attorney present if they do decide to speak with a defense attorney (ORS § 135.970);
- d. The right to a court hearing if harassed or intimidated by the person charged (ORS §135.970);
- e. The right to be considered when court dates and hearings requiring the presence of the victim are scheduled or rescheduled (ORS §136.145);

- f. The right to be inside the courtroom during the trial (ORS § 40.385); and
- g. The right to appear personally or with their own attorney, in addition to a Deputy District Attorney, and express their views at the time of the disposition (ORS § 137.013).

3. Victim's Rights under the Oregon Constitution, Art. I §§ 42 and 43.

The Oregon Constitution also explains victim's rights. Among these are:

- a. The right to be reasonably protected from the defendant throughout the criminal justice process;
- b. The right to be consulted, upon request, regarding plea negotiations involving any violent felony;
- c. The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present;
- d. The right, if requested, to be informed in advance when the defendant will be present at a critical stage of the judicial process and to be allowed to speak at particular stages;
- e. The right, if requested, to information about the conviction, sentence, imprisonment, criminal history, and future release of the defendant;
- f. The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present;
- g. The right to be heard at the pretrial release hearing and sentencing or the juvenile court delinquency disposition;
- h. The right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant; and
- i. The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury.

4. Victim Participation in Proceedings

Deputy District Attorneys should make every effort to see that victims are given the opportunity to be active participants in criminal proceedings. This office is committed to providing victims with all assistance or referral information available.

I. Plea Offers

1. Considerations

When making a plea offer in a pending case, Deputy District Attorneys may consider the following (non-exclusive list):

- a. The age, background, maturity and criminal history of the offender;
- b. The attitude, physical and mental state of the offender;
- c. The use of past use of threats or violence by the offender;
- d. The age or vulnerability of the victim;
- e. The physical and mental state of the victim;
- f. The victim impact of the offenses;
- g. The interest and desires of the victim;
- h. The relationship between the victim and offender;
- i. Early acceptance of guilt or responsibility by the offender;
- j. The degree of remorse shown by the offender;
- k. The likelihood that the defendant will reoffend;
- l. Early payment of restitution or return of the stolen property;
- m. The costs or resources involved in prosecution;
- n. The recommendation of law enforcement agencies;
- o. The sufficiency of evidence;
- p. Orderly and readily understandable presentation of charges and evidence;
- q. The incentive early resolution of charges;
- r. The age of the case;
- s. Availability of witnesses;
- t. The involvement of multiple police agencies;
- u. Collateral consequences of conviction, including immigration consequences;
- v. Any other circumstances or factors unique to the case.
- w. Any other circumstances or factors relevant to the pursuit of justice in the case.

2. Civil Compromise Agreements

Civil compromises are available under Oregon law (ORS § 135.703 and ORS § 135.705) in instances in which a defendant is charged with a crime punishable as a misdemeanor. The injured party may seek to handle the matter as a civil proceeding. The Court, on payment of costs and expenses incurred, may order the complaint dismissed.

The Oregon State Bar states that it is unethical under certain circumstances for a prosecuting attorney to advise an injured party against opting for a civil compromise of a criminal case. However, in the interest of justice and in the interest of protecting community safety, Deputy District Attorneys have wide discretion on whether to object to a civil compromise.

Deputy District Attorneys should point out to crime victims considering a civil compromise that the criminal case cannot be revived if the defendant fails to meet the terms of the civil compromise. Deputy District Attorneys may also answer any questions victims may have when consider whether to accept a civil compromise. However, Deputy District Attorneys are not to encourage or discourage (in any way) a victim from accepting or declining a civil compromise. Providing this information to the injured party, in the view of the District Attorney's Office, does not violate the Oregon State Bar rule.

3. District Attorney Diversions

Pursuant to ORS §§135.881 to 135.901, the Benton County District Attorney's Office may offer District Attorney diversions to statutorily eligible defendants where the diversion of a charged defendant would be in the interests of justice and of benefit to the defendant and the community.

4. Conditional Discharge: First-Time Possession Drug Offenses

Deputy District Attorneys may generally offer defendants facing first-time user amount drug offenses or drug-fueled property offenses, a conditional discharge opportunity that requires them to complete an appropriate treatment program. Conditional discharges are strict compliance agreements. Deputy District Attorneys work with the court and parole and probation to ensure proper monitoring and compliance with conditional discharge agreements.

Conditional discharges should not be offered for second or subsequent drug offenses. Additionally, a conditional discharge offer may not be appropriate in instances where the defendant already has an extensive criminal history, or where the interests of justice would not be met.

5. Drug Treatment Court Program

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

The Deputy District Attorney assigned to the Drug Court team works to ensure that the limited seats in Drug Court are occupied by individuals who are serious about overcoming their addiction. The Drug Court Deputy also works to ensure that participants who continue to victimize society are terminated from the program. This clears the way for other offenders, more serious about overcoming their addiction, to participate in this intensive program.

J. Sentencing

1. Oregon Principles of Criminal Law: The foundation principles of criminal law for the punishment of crime are set forth in the Constitution of Oregon. “To the end that Justice be established,” the foundation principles include:
 - a. Protection of society;
 - b. Personal responsibility;
 - c. Accountability for one’s actions; and
 - d. Reformation.

Justice and integrity are fundamental values of the Benton County District Attorney’s Office. Truth in sentencing is fundamental to the integrity of our justice system. The Benton County District Attorney’s Office seeks to make the most highly informed decisions possible in an effort to ensure that the sentences ordered by the court is just, and fundamentally served.

2. Mandatory Sentence Cases

All plea offers on felony cases with minimum sentences, including but not limited to, Ballot Measure 11 (ORS § 137.700), Ballot Measure 57 (ORS §137.717), Ballot Measure 73 (ORS §§ 137.719, 137.725, 813.010(5)), Aggravated Vehicular Homicide per ORS §163.149, Gun Minimums under ORS § 161.610, and Dangerous Offender under ORS § 161.725 et seq., will be reviewed with the appropriate Supervising Deputy District Attorney prior to plea or trial. These case reviews will examine the strength of the case, the victim’s concerns and opinions, any mitigating factors, and any aggravating factors.

3. Sentence Reduction Provisions

Deputy District Attorneys are careful to advocate that sentence provisions that reduce the initial sentence declared by the judge are only given after all required legal findings are made (e.g.: ORS §137.751 for Alternative Incarceration Programs.)

4. Fines, Fees and Taxpayer Reimbursement

In some instances, justice is best achieved by recommending that a defendant pay fines or fees. Dignity often increases whenever a defendant pays back to society what resources he or she has taken from society.

Deputy District Attorneys should look for appropriate instances to recommend defendants pay for some or all of their court-appointed attorney costs.

Deputy District Attorneys may recommend payment of fines and fees in those instances where doing so will serve to protect the public and deliver justice.

K. Juvenile Remands

1. Juvenile Defendants in Measure 11 Statutory Sex Cases

Cases involving a 15 to 17 year-old perpetrators accused of a Measure 11 statutory sex crime will be charged in juvenile court if the perpetrator would otherwise be sentenced under ORS § 137.712. Cases involving Measure 11 perpetrators who were 15 to 17 years old at the time of the criminal act, but because of a delayed report, are 18 or older at the time of case intake, and could otherwise be sentenced under ORS § 137.712 must be reviewed by a supervising Deputy District Attorney before Grand Jury presentation. Aggravating and mitigating factors will be considered when deciding appropriate action on the case. Any exceptions to this policy must be approved by the supervising Deputy District Attorney who will make community safety the primary consideration.

2. Juvenile Waiver to Adult Court

- a. As a result of the passage of House Bill 1008 in the 2019 legislative session, automatic waiver into adult court for Measure 11 crimes is no longer possible. This policy is written to address how juvenile cases, mostly Measure 11 crimes, will be handled in the future.

In general, the factors to consider when seeking to prosecute a juvenile offender in adult court are:

- i. The seriousness of the offense;
- ii. The wishes and position of the victims(s);
- iii. Protection of the community;
- iv. Whether, in the interests of justice, the potential punishments are proportional to the offense;
- v. The criminal history of the juvenile offender, including whether or not the juvenile offender has consistently demonstrated that the unique jurisdiction of the juvenile court and programs can ameliorate their criminal behavior;
- vi. Whether or not the juvenile justice system, due to possible alternative and less punitive alternatives being available, is more or less likely to achieve rehabilitation of the offender than the adult system.

The process for making these determinations is as follows:

When a case referral is received from law enforcement for crimes enumerated in ORS § 137.707 (Measure 11), the Chief Deputy District Attorney and Senior Deputy District Attorney will work with the assigned Deputy District Attorney to review the case and determine the appropriate charging decision, including whether or not to initially seek waiver into adult court. Given juvenile statutes set stringent time limits for these cases, initial decisions about charging and waiver must be made expeditiously. Any initial decision to not seek waiver can be reconsidered if further facts or circumstances develop.

Under House Bill 1008 and ORS § 419C.349, there are two categories of cases that may be waived into adult court by the juvenile court. Category 1 crimes fall under ORS § 419C.349(1)(a) and include crimes enumerated under ORS § 137.707 (Juvenile Measure 11 crimes) and aggravated murder. Category 2 crimes fall under ORS § 419C.349(1)(b) and are the lesser included offenses of Juvenile Measure 11 crimes not specifically enumerated in ORS 137.707(4). Crimes under ORS § 137.712, including Class A and Class B felonies and certain Class C felonies are included.

Category 2 crimes will generally remain in juvenile court. A waiver into adult court may be made for the protection of the public, the interest of justice (proportional disposition), or in cases where the juvenile offender has consistently demonstrated that the unique jurisdiction of juvenile court and its programs will not ameliorate their criminal conduct. These exceptions must be supported by justifications clearly articulated by the Deputy District Attorney assigned to the case and approved by the supervising Deputy District Attorney.

Case referrals under ORS § 419C.352 allegedly committed by juveniles under 15 years of age shall be subject to review by the Chief Deputy District Attorney and the Senior Deputy District Attorney.

3. Traffic offenses, including Driving Under the Influence of Intoxicants, shall be cited and charged in Circuit Court pursuant to ORS § 419C.370 and Benton County Blanket Waiver Order dated May 30, 1996.

L. Weapons Destruction

Except in the case of stolen firearms or certain hunting crimes, the District Attorney's Office will usually request that all firearms and dangerous weapons illegally possessed, carried, or used in the commission of a crime be forfeited to the appropriate law enforcement agency. See ORS § 166.279.

M. Forfeiture

It is the policy of the Benton County District Attorney Office that any profits from criminal activity shall be forfeited as shall all conveyances used to conceal or transport illegal drugs and narcotics.

If the illegal profits were stolen from innocent third parties, it shall be the policy of this office to return those sums in restitution or a compensatory fine where applicable.

N. Sexually Explicit Evidence

Frequently, the prosecution of sex abuse cases involves sexually explicit (pornographic) material as evidence. The following procedures detail the requirements of how such material shall be handled in the District Attorney's Office.

1. Pornography that is evidence should be stored in the police evidence locker and treated similarly as other evidence. It ordinarily does not belong in the District Attorney's Office file. The assigned Deputy District Attorney and the defense attorney may visit the police department prior to trial to view the material, similar to viewing other evidence. The investigating police officer may bring the pornographic evidence to court. It is especially important to follow this procedure when the sexually explicit material involves children.
2. Sexually explicit material involving children should not be given out as discovery, absent an explicit order of the court. If the defendant seeks such an order, the assigned Deputy District Attorney shall seek a protective order prohibiting copying by the defendant or the defendant's attorney and requiring return of the copies when the case is completed.
3. If it is necessary to have the material in the District Attorney's Office file, it shall be placed in an envelope clearly marked "Sexually Explicit Material." If the evidence is in electronic format, it should be in the file in an electronic format and not as printed material.
4. Once the file is closed, any sexually explicit material should be returned to the investigating agency or destroyed. The material should not be kept in closed files.
5. When files which are already closed are scanned or microfilmed, the Records Management personnel will return any files containing sexually explicit material to the assigned Deputy District Attorney so the material can be returned to the police agency or destroyed.

O. Bias/Hate Crimes

The Benton County District Attorney's Office recognizes Bias and Hate Crimes include a broad range of offenses and aggravating factors that extend beyond the scope of Bias Crime, as defined by ORS §§ 166.155 to 166.165. The Benton County District Attorney's Office also recognizes the purposeful nature of Bias and Hate Crime offenses, and is committed to the pursuit of accountability aimed at zero tolerance of Bias and Hate Crimes in our community.

For any crime in where the bias of the offender was a motivating factor in the commission of the crime, the Benton County District Attorney's Office, through its case management system, shall maintain a standardized method to record and report to the Oregon Criminal Justice Commission, the following data:

1. Charges presented to the district attorney for prosecution;
2. Cases issued by the district attorney;
3. Charges indicted;
4. Sentencing enhancements requested;
5. Sentences imposed, including conditions of supervision;
6. Charges to which a defendant enters a plea of guilty or no contest; and
7. Trial outcomes.

*This is a broader scope of Bias Crime, as defined by ORS §§ 166.155 to 166.165, is limited

IV. Resolution of the Benton County District Attorney's Office to Affirmatively Address Disparate Impacts in the Criminal Justice System.

The Benton County District Attorney's Office has an affirmative obligation to examine, in an ongoing manner, whether disparities exist based on race, ethnicity, nationality, religion, gender, gender identity, sexual orientation, disability, or national origin, and take reasonable actions to prevent or correct any disparities that are found to exist.

V. Diversity, Equity, and Inclusion

The Benton County District Attorney's Office is committed to an inclusive and diverse workplace for our employees and the people we serve. We welcome individuals who bring their own unique abilities, perspectives, innovative ideas and who share our values, our mission, and our commitment to the pursuit of justice for all through the truth. We embrace the following definitions of diversity, equity, and inclusion.

Everyone has a unique lived-experience and perspective. We approach diversity in its broadest terms. To us, diversity celebrates the value of each individual and group. We recognize that people identify with multiple and intersecting identities, and those identities can be fluid and shift over time. We are committed to fostering an open and accepting culture that evolves with our employees and the people we serve, including, but not limited to race, ethnicity, gender, gender identity, sexual orientation, veteran status, socio-economic status, geography, family dynamics and structures, education, physical appearance, perspectives, and life experiences.

We acknowledge that access, opportunity, and advancement are not experienced uniformly and universally in society. We acknowledge the existence of barriers which are supported by individual, group and institutional actions that prevent the full participation of some. Equity requires the identification and elimination of these barriers whenever possible. We are committed to justice and fairness for all.

Inclusion is the intentional creation and preservation of environments in which every individual and group feels welcome, respected and valued. In this office, all are seen, invited, encouraged, and supported to participate fully in the work of this office.