MARION COUNTY
DISTRICT ATTORNEY
POLICY MANUAL

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Introduction and Purpose

The Marion County District Attorney is the top law enforcement 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 for those employed in our office.

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, 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.

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 this confidentiality agreement-attached below*.

Court Relations

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 relationship with local elected judges. 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. No Marion County judge shall be the subject of an affidavit and motion for a change of judge without the express permission of the District Attorney.

Discovery Process & Fees

DISCOVERY PROCESS & FEES

Discovery is available electronically and may be downloaded from the MCDA Web Portal 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* E-Prosecutor User Agreement with Marion County Law Enforcement Agencies in Appendix.

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.

Marion County District Attorney Discovery Fees

Exhibit A

All cases first 50 pages (b&w paper or scanned)		**$**
Felony/Misdemeanor		25
Probation Violation		25
No Action Cases		10
Additional .25 per page after first 50 pages		
Measure 11 – base cost Plus .25 per page after first 50 pages		75
Homicide – base cost Plus .25 per page after first 50 pages		75
CD/DVD		20
Blu-Ray/Dual Sided		25
911/MP3		15
Flash Drive	8GB	20
	16GB	40
	32GB	60
	64GB	80
	Larger	100 +
Media Download		20

Misc:

Photographs	15
Color copies	$1 per page
Audio/Video tapes	20
Public Records Request:	Per policy
Postage = Actual Cost	
Hourly Rate to process public records requests:	labor cost
Administrative Fee – on all Discovery	Current Federal Rate

Victim Engagement & Advocacy

Marion County Victim Assistance Division

Victim Engagemant & Advocacy Policies & Procedures

PURPOSE

The purpose of these policies and procedures are 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 are required to provide notice as soon as practicable to victims regarding their rights. We are also required to provide access to information about how to remedy situations where their rights aren't honored. We provide notice to victims of their rights at several points of contact within the process:

(A) At the Time of On-Scene Response: We provide 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. The advocate does this 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 computer-generated victim notices. We include the Victims' Rights Guide with the first notice. If for some reason the victim's information is not entered by the time of charging, this rights information prints and is sent with any subsequent notice that generates after the victim information is entered. We also include the Victims' Rights Request Form so victims can assert those rights that must be requested. If a juvenile case is not submitted to the DA's office for charging, the Juvenile Department distributes the notice of victims' rights.

(C) Contact by Restitution Advocate: The restitution victim advocate, or volunteers working under that project, contact victims approximately ten days after their rights have initially been sent in the mail. Part of their conversation involves notification and discussion of the rights and the offer to complete the rights request form over the phone.

(D) During Quickset Phone Calls: Because the first court date may happen within a time period that does not allow a mailed notice to reach the victim in time, we try to contact victims by telephone when court dates are set within a short time frame (quickset). At this time we give victims notice of their rights and talk with them about the rights implicated for that particular hearing. We tell them they will be receiving the Victims' Rights Guide in the mail shortly along with the Rights Request Form.

(E) During Advocate Contact: If the case is one where an advocate is assigned to provide services for the duration of the case, the advocate also talks with the victim about their rights and informs them of the need to request some of the rights in order to assert them. The advocate offers to assist the victim with completing the request form. Throughout the case the advocate will continue to discuss the victim's rights and ensure they know they can assert their rights throughout the case.

The Victims' Rights Guide contains information about when a right is not honored. In addition, advocates explain to victims that there is a process available to them to assert a violations claim if their rights aren't honored and we would help connect them with the appropriate people to help them with 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. We accomplish this in three ways:

(A) Computer-Generated Victim Notices Sent in the Mail: Once a victim's information is entered into the DA Case Management System they will receive computer-generated notices every time the case is updated with a new date. These notices print during the night following the day on which the case is updated so they are ready to be mailed that next day. These notices go to all victims of crime. These notices provide information about every stage in the court process, such as arraignments, pleas, hearings, trials, and final dispositions, as well as information about the charges involved. The notices also include information about rights that may be relevant to that part of the process. We supplement these notices with relevant

enclosures. Arraignment notices include a copy of the Victims' Rights Guide, a copy of the Victims' Rights Request Form, a victim impact statement form, information about the court process, information about the Crime Victims' Compensation Program, and information about VINE. Enclosures in disposition letters may include sex offender registration information and the relevant form; VINE; Board of Parole & Post-Prison Supervision registration information; and copies of court orders indicating a restitution order and the procedure to report nonpayment.

(B) Quickset Calls: Sometimes a court date is set too close in time for a notice to reach the victim in the mail. To accomplish notice to victims who have requested advance notice of any critical stage hearing we generate two reports daily that identify those court dates that are set less than seven calendar days out. Because our experience tells us that a victim could consider any court date to be a critical stage of the proceeding, all court dates are included on this report. Additionally, this report captures newly-charged cases where a victim has not had time to assert their rights. These new cases will appear on the report for two weeks after a case is charged giving the victim time to request their rights. This report is generated at 11:00 am and 4:00 pm daily. We generate it twice daily because our court holds in-custody arraignments at 3:00pm each day. The DA support staff spends much of the morning preparing cases for these arraignments. In the afternoon other cases are updated with new dates that need to be treated as quicksets. This report contains the case number, the victim's name, the future court event with date, time and location, and the victim's phone numbers so it can be handed to advocates and they can work directly off the report and start calling people on the telephone to tell them about the hearing.

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

3. PROVIDING ADVOCACY

Regardless within which setting the advocacy is provided, the core services we provide include: crisis intervention and support; safety planning; connection with VINE; 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 Crime Victims' Compensation; assistance in establishing financial losses for restitution purposes; 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, and observing a trial in progress; accompaniment to court hearings, offering 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. We provide advocacy for victims and family members through the aftermath of a crime in several ways that include:

(A) Sexual Assault Response: We provide the 24-hour sexual assault response for Marion County. We have two advocates on call at all times to respond when either law enforcement or a hospital calls. We respond whether a victim is choosing to report their sexual assault to law enforcement or not. If we respond 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. Our advocates provide clothing for the victim to wear if their clothing is taken as evidence. The advocate also follows up with the victim within the following day to check in and address any additional concerns a victim may have or to connect the victim to additional community resources. Our office continues to be a resource for that victim while the investigation continues.

(B) Homicide Response: We provide 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. The advocates respond to provide death notification to surviving family members and provide immediate crisis intervention in the time immediately following the death. This response includes advocating for information for the family about the investigation, where their loved one's body will be taken and when it will be released to the family. The advocate also assists them in completing the application for Crime Victims' Compensation right away since there will be funeral expenses and immediate expenses that are a result of the crime. The advocate who responded at the time of the death is usually the advocate who advocates throughout the criminal case if a case is filed. Sometimes the person who caused the death also dies during the incident, (for example, a DUII case where the driver dies or a murder-suicide), so there is no criminal case that follows.

(C) Advocacy within Criminal Justice System:

(i) Long-term Advocacy: We assign 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, serious assaults, homicide, elder abuse and juvenile crimes.

(ii) One-time or Periodic Contacts: On cases where we do not assign an advocate for the duration of the case we still have at least a one-time contact with the victims. We potentially provide any of the services listed above during these contacts. These contacts happen in several ways:

(a) Assigned outreaches: We assign advocates to make a one-time outreach to victims on certain cases. The purpose of this contact is to reach out to victims and provide information about the case and court process, victims' rights, explain resources that may be available to them, as well as talk to them about any concerns they may have or identify ways in which they may need our assistance. On these outreaches we encourage them to contact us if they need further assistance or have questions. We assign advocates to do a one-time outreach on any misdemeanor domestic violence case that wasn't assigned for long-term advocacy, DUII cases where property was damaged, cases where we've received a Victim Impact Statement that indicates a victim may need additional assistance, and cases where prosecutors ask us to reach out to a victim who they have identified as needing extra assistance.

(b) Grand Jury: An advocate meets every victim who comes to grand jury. If a case is assigned to an advocate for long-term advocacy that assigned advocate attends grand jury with the victim. On all other felony cases that go to grand jury an advocate attends and meets with the victim to explain the process and provide information about the criminal justice system, restitution and relevant community resources, and provide other services needed by victim. The advocate also talks about how to access services with our program. Sometimes a case is assigned for long-term advocacy as a result of advocate contact at grand jury and identification of the need for extra assistance.

(c) Restitution calls: Within ten days of a case being filed an advocate calls every victim who does not have an advocate assigned for long-term advocacy. The purpose of this call is to talk to victims about their rights with a special focus on the right to restitution. The advocate explains restitution and if the victim has a loss the advocate explains the type of documentation that will be needed. This is the first of several contacts from our office that victim would have about restitution. Even though the focus of this call is restitution the advocate also talks about the case and explains the court process, and responds to any concerns or needs identified by the victim.

(d) Restitution Hearings: The restitution advocate attends every restitution hearing with victims. The restitution advocate contacts victims prior to the hearing and explains the purpose of the hearing as well as what additional documentation the victim may need to bring. The restitution advocate then accompanies the victim to the hearing.

(e) Quickset Contacts: As described previously, advocates contact victims when a hearing is set within too short a time frame for a notice to reach the victim in the mail. While the intent of these phone calls is to provide notice and discuss relevant rights, these phone calls often result in other advocacy services as well depending upon the needs expressed by the victim.

(f) Victim-initiated Calls or Drop-ins: Victims often call or drop in to our office for assistance. During these contacts advocates provide whatever services victims need, ranging from answering questions about a case or process to assisting with crime victim compensation forms or problem-solving and providing referrals to community resources. Sometimes the victim is

requesting an advocate to attend a hearing and this request would result in an advocate attending the hearing with them.

(g) 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 on all sexual assault, child abuse, domestic violence, elder abuse, and stalking cases that are not filed by prosecutors. Advocates also reach out on other cases as requested by prosecutors or other cases where we have had contact with a victim and have been providing advocacy during the pendency of the investigation.

(D) Protective Orders: Protective orders are part of the civil legal system not the criminal legal system, but our advocates regularly provide advocacy through the restraining order process. Advocates provide support completing the protective order paperwork, accompaniment to restraining order hearings when requested, and safety planning. These services are especially focused on the protective order process but commonly include many of the services described above especially crisis intervention, safety planning, problem-solving, and referral to community resources.

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

We assist victims in obtaining restitution in the following ways:

(A) Identify Relevant Cases:

(i) The prosecutor identifies the case by placing a red "R" on the lower right corner of the front of the case file. When support staff sees the file with the red "R" they send the file to Victim Assistance for restitution work up.

(ii) An advocate contacts every victim who does not have an advocate assigned for long-term advocacy and talks to them about the right to restitution. If a victim identifies a loss the advocate provides that information to the restitution advocate or restitution specialist.

(iii) Advocates meet with victims at grand jury. If a victim identifies a loss that case is identified for restitution work up.

(iv) Advocates assigned to advocate on cases talk with victims about their right to restitution and if a victim identifies they have a loss the advocate identifies that case for restitution work up.

(v) Our Victim Impact Statement forms contain questions about restitution. If a victim returns that form and indicates they have losses the case is identified for restitution work up.

(B) Contact Victims:

(i) We send notices to victims explaining the case status as well as relevant rights and information. These notices also tell victims that if they have losses they need to contact our office and provide that information.

(ii) Advocates talk to all victims about their right to restitution. Victims often provide loss information to the advocate who then provides it to the restitution advocate or specialist to create the necessary documentation.

(iii) Advocates meet with victims at grand jury. Victims may bring loss information with them or may identify at that time that they have losses and need follow up contact to provide that information.

(iv) The restitution advocate or specialist call victims on identified cases seeking information about the victim's losses and continue to follow up with them in order to obtain the information they need. "Victims" for purposes of restitution includes insurance companies, Crime Victim Compensation, hospitals, and others who may have incurred a loss on behalf of the victim.

(v) If the restitution advocate or specialist are not able to reach the victim by phone they send two letters (if necessary) explaining restitution and seeking loss information.

(C) Create Documentation: If the victim provides loss information, or if we are able to determine loss information from the police report or other sources, the restitution advocate and specialist create the required restitution documentation and place it in the case file for the prosecutor. If they do not have the file they send the documentation to the support staff for the prosecutor to place in the case file. All information is saved to and contained in the DA Case Management System so prosecutors can refer to it in court if needed.

(D) Accompany Victims to Restitution Hearings: The restitution advocate accompanies all victims to restitution hearings. The advocate notifies them of the hearing, explains the process and helps them identify any additional documentation they may need to bring with them. The advocate then accompanies them and supports them through this hearing.

(E) Nonpayment of Restitution: Our office addresses the nonpayment of restitution in the following ways:

i. If an offender is on supervised probation we connect the victim with the advocate at Parole and Probation so that she can advocate on their behalf for payment of restitution owed.

ii. We can provide referrals to victims who have not received their restitution to someone who may help them obtain a remedy for a violation of crime victims' rights.

5. PREPARE VICTIMS FOR VARIOUS COURT STAGES THROUGH WHICH A CASE PROGRESSES

We prepare victims for the various court procedures through which a case progresses in the following ways:

(A) Notices: Our victim notices provide information about each stage in the court process as it happens, such as arraignments, pleas, hearings, trials, and final dispositions, as well as information about the charges involved. The notices also include information about rights that may be relevant to that part of the process. We include our criminal justice brochure with the notices so victims have information about each part of the process.

(B) Quickset calls/Restitution Calls: Whenever an advocate contacts a victim, whether it's for a quickset call or whether it's a call being made to talk about the right to restitution, the advocate talks to the victim about the upcoming court date. The advocate explains what happens at that part of the process and helps the victim understand what rights might be relevant to that part of the process. If a victim plans to attend the advocate explains what avenues exist for them in participating in that part of the process as well as helping the victim develop a mental picture of what to expect when they attend.

(C) Victim Request: If a victim contacts us asking for help in preparing for a court proceeding and they do not have an assigned advocate, an advocate will provide that help. Depending

upon the need of the victim the advocate may talk with the victim on the phone or set a time to meet with them. The advocate will do their best to walk the victim through the process, whether it is grand jury, arraignment, trial or making a victim impact statement at sentencing. If the proceeding will take place in a courtroom, the advocate could show the victim a courtroom so they can become familiar with the setting.

(D) Assigned Advocate: On cases where an advocate is assigned to provide long-term advocacy the advocate is responsible for making sure the victim is prepared for all steps of the process to the best of their ability. We most often provide specific court preparation for grand jury, trial, sentencing, and the Parole Board process, however, if a victim is planning to speak when a release decision is being made we would also do our best to prepare them for that participation as well. Preparation generally entails, at a minimum, talking with the victim over the phone and may also involve a meeting and/or tour of the location where the event will occur. Trial preparation most often includes meeting in person with the victim to go over court procedures, go through the courtroom and observe a trial in progress. The prosecutor often participates in this part of trial preparation, especially when the victim is a child.

6. COURT ACCOMPANIMENT

We provide court accompaniment in many circumstances. Regardless of how this service or request for service is initiated, we provide court accompaniment unless we simply do not have an advocate available to fulfill the request. This is the circumstance under which it would not be practicable to do so. The circumstances under which we provide court accompaniment are as follows:

(A) Assigned Advocate: If an advocate is assigned to a case to provide long-term advocacy the advocate is responsible to accompany the victim to any court proceeding the victim attends.

(B) Request From Victim as a Result of Other Contact Initiated by Victim Assistance: As described above, there are many circumstances in which advocates from Victim Assistance reach out and contact victims when there is no advocate assigned to provide long-term advocacy. If as a result of that conversation a victim wishes to have an advocate accompany them to court that advocate would do so. If that advocate is unable to do so they would provide that information to a case manager who would then seek out an advocate who could accommodate that request.

(C) Request from Victim Calling or Dropping In: Sometimes victims call or drop into our office with questions about their case and are looking for some extra support or court accompaniment for a particular hearing. If the advocate to whom they're speaking can accommodate that request they will attend the hearing with the victim. If that particular advocate cannot accompany them they will seek out another advocate or talk with a case manager who will seek out an advocate who can fulfill the victim's request. These requests happen on both criminal case hearings as well as restraining order hearings, which are part of the civil legal process. In rare circumstances we may not be able to fulfill this request with our advocates. If it is a restraining order hearing and the victim is seeking support and accompaniment that we are unable to provide we would reach out to the Center for Hope and Safety to inquire whether they have an advocate who could attend with the victim.

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

(A) Prosecution Level: All victims have the opportunity to provide input regarding the prosecution of a case, including the filing of criminal charging. We include a Victim Impact Statement form with every initial arraignment notice. This is a voluntary form and we clearly inform victims that the information provided in that form will be discovered to the defense if they return it to us. This allows them to make an informed choice about what information they provide and clarifies what will happen with the information should they choose to provide it. All victims of all crimes have the opportunity to complete and return this to our office for consideration by the prosecutor as well as the judge. We also include the Victims' Rights Request Form with that first notice. Victims can request the right to consult with the prosecutor before a plea offer is made on a violent felony case. When we receive either the Victim Impact Statement or the Victims' Rights Request Form from a victim we immediately process them and send them to the prosecutor. It is the general practice of the District Attorney's office to consult with victims regarding plea negotiations in violent, person-crime cases (not necessarily just felonies). If the victim provides their input verbally to the advocate, the advocate will either relay information from the victim to the prosecutor or arrange a meeting where the victim can speak directly to the prosecutor.

(B) Judicial Level: We advocate for the involvement of victims in the sentencing process. Victims are informed of sentencing hearings and are told they have a right to be there as well as make a statement. If we know a victim wants to be present and make a statement the prosecutor asserts that right for the victim to ensure that the victim can be present and heard. The prosecutor informs the court when the victim is present and wants to be heard. Advocates encourage and support victims in providing information to the court about what type of sentence they would like to see imposed at sentencing in several ways. Advocates support victims in completing their victim impact statements by helping them understand the purpose behind it as well as identifying the ways in which the statement can be delivered. This can be done in writing, verbally, or both. Advocates support victims in the process of developing their statement. Advocates advocate for victims to be allowed to present their information in the

format that they request. If a victim is not able to make the statement themselves the advocate problem-solves with the victim to identify whether the victim wants to have someone else read it for them or whether they want to submit something in writing. Not every victim wants to simply read a statement. Some have requested to present pictures, provide a slide show, or a PowerPoint presentation. Because this is out of the "norm", these requests require the advocate to actively advocate on the victim's behalf to be allowed. While it is not usual in our county for a judge to order a pre-sentence investigation, if a judge does order one the advocate helps facilitate the victim's participation in that process if the victim wishes.

8. INFORM CRIME VICTIMS OF PROCESS FOR RETURN OF PROPERTY HELD AS EVIDENCE

When a victim's property is held as evidence advocates explain to the victim the process by which they would request their property back. Advocates do this as a matter of course when they are the assigned advocate on a case. Advocates also speak with victims who call or drop into the office asking this question. In addition to explaining the process for return of property, advocates often help facilitate this process if the victim needs assistance by speaking with the prosecutor or the evidence personnel at the law enforcement agency that is holding the evidence. The District Attorney's office has a system in place to notify law enforcement when property can be returned to the victim. In homicide cases, we provide the family members with a copy of the evidence sheet listing the personal property taken and held by law enforcement. They can then identify those items they wish to have returned and our advocates facilitate the return of those items. Additionally, advocates work to ensure that the property returned is clean and free of biological hazards such as blood. In other cases, advocates connect victims to the appropriate agency in order to obtain their property and help facilitate this process. Under special circumstances, advocates work with the prosecutor to help facilitate early release of property when needed or desired by the victim or victim's family.

9. ASSIST VICTIMS FACING LOGISTICAL BARRIERS TO APPEARING IN COURT

Our advocates play an integral role in problem-solving with victims to address logistical barriers to appearing in court and participating in the criminal justice process. Advocates assist victims facing many barriers including:

(A) Child Care: It's not appropriate for advocates to babysit a victim's children while the victim attends court so it is imperative that advocates identify this need early and work with the victim to identify a solution. Sometimes victims may not be able to find a person to officially watch their children but they are able to find a support person to come to court with them who is willing to sit with the children for the short time while the victim testifies. The children can stay

in our victim room with the support person so they have an area to play. When this isn't an option the advocate explores community options for the victim, whether it is local church respite programs, relief nurseries, or childcare programs that have offered free short-term spots. Beginning September 5, 2017 our county will have Court Care available. This will provide free child care to people who have business in the courthouse. We have worked with our court in the development of this process and are excited about the options it creates for victims participating in court.

(B) Transportation: Transportation can be a really difficult issue especially for victims living in the rural areas of our county. Advocates work closely with victims to identify options that may exist for transportation. If the victim is preparing to come to a grand jury proceeding and doesn't have transportation from a rural area we may contact one of the officers from the investigating agency who may also be coming to testify. The District Attorney's office will pay for taxis for victims who are required to attend court, but if the victim needs special accommodations, such as wheelchair transportation, this arrangement requires extra time and effort. If a victim is not required to come to court but wanting to attend a proceeding or wanting to come in to meet with a victim we can use our emergency victim funds (donated funds) to provide bus vouchers or gas cards or arrange a taxi to help victims attend. Our District Attorney's Office is fortunate to have several innovative investigators who help us problem solve these kinds of issues as well.

(C) Employers: Even though Oregon law gives protection to some victims to take leave from work to attend court, this protection does not extend to all victims. Additionally, even for those victims who are protected under the law, employers may not be familiar with the requirements of the law or may still give the victim a difficult time about being gone. If a victim requests, advocates will contact employers to try to help ease understanding about why the victim needs to be gone and explore ways the employer can accommodate the victim, as well as provide information about the law.

10. NOTIFY OF CVCP AND ASSIST WITH COMPLETION AND SUBMISSION OF APPLICATION

(A) Notification: We notify victims of the Crime Victims Compensation Program at several points in the process:

(i) Victims receive a copy of the Victims' Rights Guide that lists the right to compensation as well as a card briefly explaining the program and points of eligibility. All victims also receive a victim impact statement that includes a question as to whether they have applied for compensation. We review all returned victim impact statements to identify those victims who have not applied but may be eligible. We send a brochure to those victims who have not applied but may be eligible.

(ii) We give all victims who attend grand jury a notice that advises them of the program. The notice encourages them to take a brochure and apply online if they feel they meet the eligibility requirements.

(iii) Advocates work closely with the victims on cases to which they're assigned in applying for compensation. In addition, all child physical and sexual abuse victims, as well as domestic violence victims, whose cases are declined for prosecution, are informed of the program when an advocate informs them of the prosecutor's decision to not file charges. Additionally, our prosecutors frequently advise victims about the compensation program.

(B) Assistance with Completion of Application: Advocates support victims in completing the Crime Victims' Compensation application, whether they're working with a victim on a case to which they're assigned or whether it's a victim who has called or dropped in asking for assistance with the application. Advocates are instrumental in providing copies of police reports (with the prosecutor's permission) for application to help expedite the claims review process. Our bilingual advocate especially spends a great deal of time assisting Spanish-speaking victims with completion of the form, whether online or on paper. In addition, most staff and several volunteers with our program have completed the class with CVSD and this enables them to expedite applications for victims.

(C) Inquire Regarding Claim Status: If a victim requests, advocates inquire with CVCP regarding the status of a claim or regarding questions about payments. Because victim assistance programs have access to the CVCP claims system we can look some of this information up for ourselves, but in the event the victim needs different or more information the advocate will call as seek out that information from CVCP. In addition, advocates sometimes advocate directly on the victim's behalf with the Crime Victims' Compensation Program on claims that have been denied or in which there are questions regarding eligibility.

11. ADDRESS INTERESTS, NEEDS AND SAFETY OF CRIME VICTIMS TO ENCOURAGE AND FACILITATE CRIME VICTIM TESTIMONY

We perform the following activities in an effort to encourage and facilitate victim testimony:

(A) Orient Personnel within the Criminal Justice System to the Needs of Crime Victims in General and to the Needs of a Particular Victim as Needed: We've worked hard within the District Attorney's Office to promote an expectation that victims will be treated with respect. We do this by providing training and information to staff about some of the dynamics involved with victimization in an effort to help people understand what victims face. Additionally, we

take every opportunity to have conversations with court staff and judges about the needs of victims in general and offer assistance in helping them help victims. If a particular victim needs special accommodation or understanding our advocates work with prosecutors and court staff to inform and help ease the way for that victim.

(B) Provide Safe Waiting Area for Victims: Our office has a private waiting area for victims who attend grand jury. In addition, we have two private victim rooms in the courthouse for meeting with victims or for victims who are waiting to testify so that they have a space that is separate from the defendant or defendant's family. Our advocates very strongly advocate in whatever way they can to find private areas for victims. We have a great working relationship with our judges and their staff and they allow us to use their jury rooms for victims if they're not in use. Additionally, advocates very adeptly identify out of the way spaces in the courthouse where we can wait with victims if needed.

(C) Address Safety Issues of Victim: In preparing victims to come to court we address safety concerns they may have. If a victim identifies a safety concern we work with Judicial Security to tell them of the concern and make a plan to address the concern. This may result in activities such as having victims accompanied into the courthouse from their car, having Judicial Security let victims in the back door to avoid a situation, or simply having more deputies visible and available in the courtroom.

(D) Address Need for No-Contact Order: Oregon law requires that all release agreements state that the defendant is to have no contact with the victim. This is automatically done unless a judge changes the order. When a victim is concerned about contact once a case is completed, the advocate communicates this to the prosecutor so the prosecutor can request that the court include no-contact with the victim as a condition of the defendant's sentence.

(E) Address Witness Tampering: If a victim discloses that someone is trying to influence their testimony or scare or convince them into not testifying, the advocate communicates that to the prosecutor and advocates for the prosecutor to file appropriate charges against that person. The District Attorney's Office actively pursues these charges when someone is tampering with a victim.

(F) Notify of Cancellation: When a victim has been requested to appear at a hearing and that hearing is cancelled we have procedures in place to ensure a victim is notified or has access to that information. If the cancellation happens in a case where there is an assigned advocate, the prosecutor should inform the advocate so that they can contact the victim that a court date has been cancelled. In cases with no assigned advocate the prosecutor may call the victim directly or request Victim Assistance to contact the victim and tell them of the cancellation. In addition,

anyone who is given a subpoena is told to call the night before and listen to the recording. At the end of every day the DA's office makes a recording that identifies the cases that are scheduled for the following day. People are instructed that if their case does not appear on the recording their appearance is no longer required.

Media Policy

MARION COUNTY DISTRICT ATTORNEY'S OFFICE 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

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.

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, 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 comment on any open criminal case, which is a case that involves a pending criminal charge, beyond the following information:
    - 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.

5. The Marion County District Attorney's office will comment on any closed criminal investigation or case 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.

6. 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 will 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 involved use of force that involved the discharge of an officers' firearm, and any other completed criminal investigation 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. http://www.flashnews.net/pdx.html

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

DR 7107

Trial Publicity

(A) 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.

ABA Model Rules of Professional Conduct – Oregon adopted 01/01/05

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).

Rule 3.8(f) Special Responsibilities of a Prosecutor

[E]xcept 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.

Oregon Rules of Professional Conduct

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:

(1) reply to charges of misconduct publicly made against the lawyer; or
(2) participate in the proceedings of legislative, administrative or other investigative bodies.

(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.

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. See appendix.

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 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 will issue an order denying or granting the petition in full or in part within seven days from the date of receipt. 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).

Prohibition of Profiling Policy and Complaint Procedure

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:
    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

Use of Certified Law Clerks

MARION COUNTY DISTRICT ATTORNEY'S OFFICE 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 meaningful opportunity to learn and work in the criminal justice system. We strive to provide strong guidance, support, and mentorship. 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 in the adult prosecution and juvenile delinquency departments. Second year (2L) law clerks commit to joining the clerk program for two years, remaining as a third year (3L) certified law clerk. 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 sex offender registration relief;
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 (8)

Each year our office hires third year (3L) certified law clerks in the adult prosecution, juvenile delinquency, and support enforcement departments. 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

Pre-Trial Release

ORS 135.230 – 135.290

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.

BRADY & Professional Witnesses

Brady Notification Procedures
Marion County DA's Office

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 Appendix.

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 may reconsider Brady designations upon receipt of new, material information. Reconsideration 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 ORPC 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;
- At least 10 years have passed since the initial determination *and* 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.

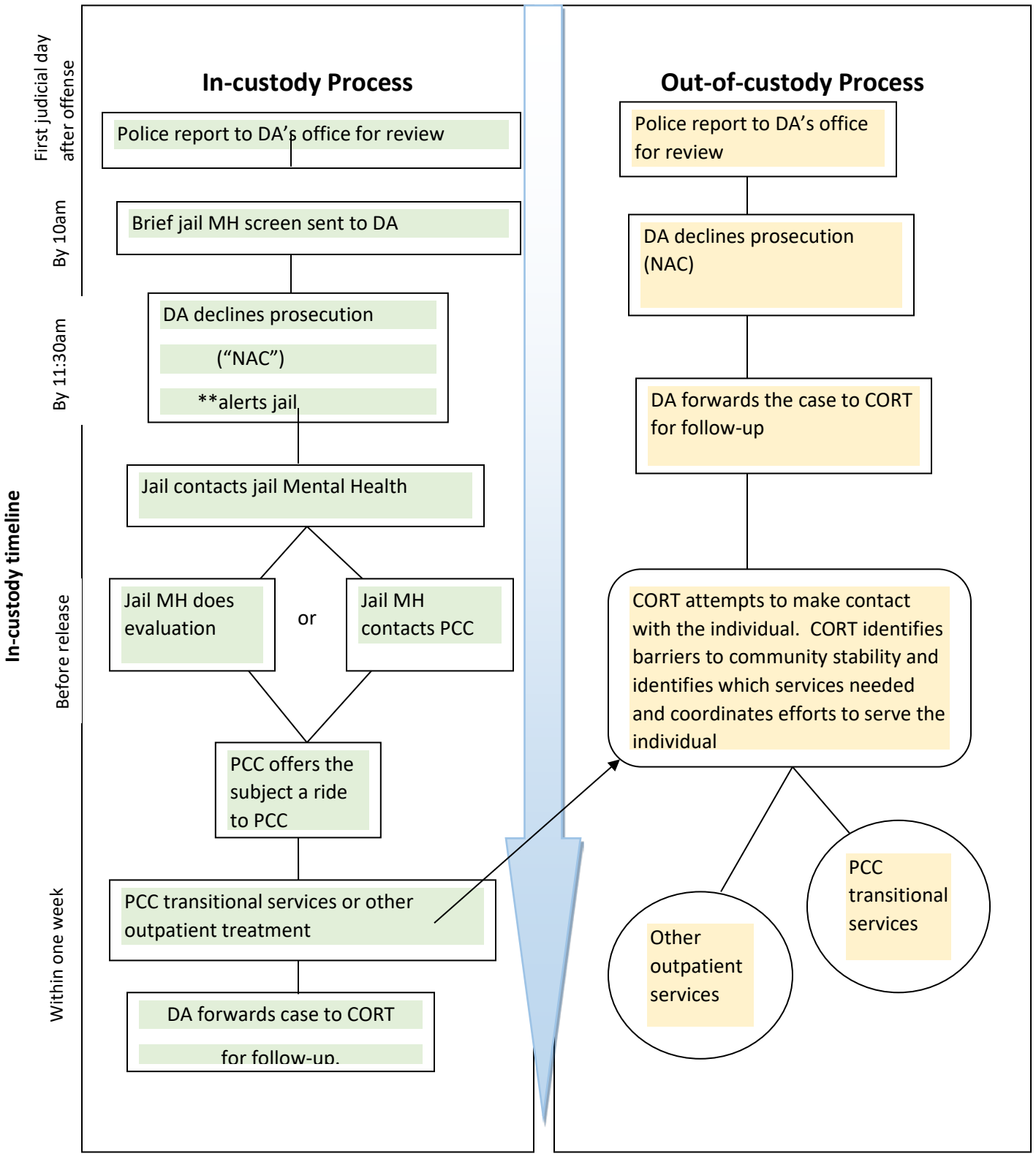
Any proposed order shall go to the Presiding Judge in Circuit Court via a motion accompanied by an affidavit attesting that the above-criteria are met. The court shall then make an independent finding as such. If the court agrees, a judge may sign a standing protective order of relief. See ORS 135.873(1). If the order is signed, the DA may remove the witness from the Tier 2 designation.

Rev. 10/2020 (BPM)

Process For Reviewing Criminal Charges in Mental Health Cases
(Map)

Cases are routinely reviewed for referral to community mental health programs when a case comes into the office for charging. If prosecution is declined, the reviewing Deputy DA reviews the case for any indication that the individual is suffering from a mental illness and refers the case to the Deputy District attorney assigned to handle mental health cases for further follow up or resources as appropriate.

No Criminal Charges – Process Map



Aid and Assist Procedure in Marion County
(Map)

The Marion County District Attorney's office employs a Deputy District Attorney whose focus is cases where a defendant may be unable to assist in their own defense. Once an aid and assist issue is identified, the Aid and Assist Deputy District Attorney works with defense attorneys and the court to determine whether the case would be appropriate for the rapid aid and assist docket. If a case is not appropriate for a Rapid Aid and Assist, the Aid and Assist Deputy District Attorney will keep the case through the evaluation process until the court makes a final determination about the defendant's ability to aid and assist in their own defense.

Marion County Aid/Assist Procedure 2017

Defense attorney believes there is an aid/assist issue

1. Obtain private evaluation, or
2. If not available in reasonable time, file 161.365 order (takes approximately >1-2 months)

If not able to aid/assist: Email dda & Aid/Assist dda w/ eval and any proposed orders at least 2 judicial days prior to filing, even if this requires a short set-over. Court to allow the state to give its position prior to signing orders

The defense files a Community Mental Health Consultation order pursuant to ORS 161.365 (5 days for eval to be completed on i/c def) on each aid/assist case, regardless of charges or release issues. **Note**: If the parties agree that defendant is likely not releasable, CMHC order and 161.370 order can be filed contemporaneously.

If community restoration **IS** recommended, and there is no objection to release, or defendant is already out of custody, defense files "out-of-custody 161.370 order for forensic diversion," providing notice to the dda.

If community restoration **IS** recommended, and there is an objection to release, the court holds a hearing to address release.

Note: CMH Consult addresses barriers to

If community restoration **IS** recommended, and the parties agree defendant is *not* relaseable, or

community restoration **IS NOT** recommended

Defendant is to be restored in the community on o/c 161.370 order.

Release granted

As soon as defendant is found able to aid/assist, the parties agree to fast track all efforts to resolve the case

Release denied

Defendant is to be committed and restored at OSH. Defense attorney files 161.370 order*. Dda/Aid/assist dda is given copy of order at least 2 judicial days prior to filing. The first evaluation will be within 60 days, filed with the court within 90 days

*If there is a victim in the case, the court shall address a no-contact provision on the order

Aggravated Murder & Death Penalty Considerations

Per ORS 163.095 / 163.150

Aggravated Murder/Death Penalty Charging Decisions & Considerations

1. Evidence-based charging decisions
2. Consider all possible defenses prior to charging; the state has the burden to disprove defenses beyond a 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 against them;
    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. Final decision is made by the District Attorney after consultation with management and a review of the above listed considerations in light of of previous aggravated murder cases in Marion County.

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 will 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.

Early Disposition Program

EDP CHARGING AND PLEA OFFER GUIDELINES

These 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 amount 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 your supervisor.

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.

1. Resource Based No-Actioned Crimes:

Unless deemed otherwise by DDA, the following will generally not be filed:

- Theft 3
- Criminal Mischief 3
- Criminal Trespass 1, 2 (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 in to 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

Criminal Mischief 2

Criminal Poss. Forged Inst. 2

Fleeing or Attempting to Elude

Escape 3

FTPD/D – property damage

Fel. Poss. Rest. Weapon

Forgery 2

FUCC

Unlawful Purchase of a Firearm

Furnishing Alcohol to Minor

GFI

Interfering with a Peace Officer

Initiating a False Report

Improper use of 911

Prostitution

Reckless Driving

Theft 2

Minimum Fine: $100

General Misdemeanor EDP Recommendation:

1st conviction	Restitution (if applicable) Min. Fine/$20 court costs Book and print ODL suspension (if applicable)
2nd 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 809.420(1):

Elude, FTPD/D, Reckless Driving, Criminal Mischief w/ vehicle:

1st offense in five years = 90 days

2nd offense in five years = 1 year

3rd offense in five years = 3 years

GFI: 1 year

DWS (based on DUII suspension) – mandatory fine amounts per ORS 153.018(3) and 811.182(5) ($1000 for first offense, $2000 for second offense).

Note: These would normally be sent to traffic court – this chart is included for those cases in which there is a DWS with a non-traffic-court EDP charge.

1st conviction	$1000 mandatory fine ORS 153.018(3) ORS 811.182(5) Min. Fine/$20 court costs
2nd conviction	$2000 mandatory fine Min. Fine/$20 court costs
3rd and subsequent conviction	Maximum fine, Min. Fine/$20 court costs

Reckless Driving

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

Furnishing Alcohol to Minor statutory fines apply-see ORS 471.410 (4)(a)(b)):

Any Conviction	Mandatory minimums: $500 Fine (1st), $1000 (2nd), $1500 (3rd) Min. Fine/$20 court costs

PROBATION VIOLATIONS

First or second probation violations may be determined to be eligible for EDP by a DDA for the following offer:

Minimum Assessment: $25

EDP Recommendation:

1st / 2nd probation violation	Violate and Continue, (extend as appropriate) If appropriate: Re-referral to treatment Check in with PO upon release 48 hours – 10 days mcj CTS or 40 hours csw Min. Assessment/$20 court costs

Standard Recommendations

STANDARD CHARGING & PLEA OFFER GUIDELINES

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.

ANY PLEA OFFERS SHALL INCLUDE:

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

ANY PLEA OFFERS MAY INCLUDE:

- 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

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 impact public safety or violate public policy.

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. *See Also* DV Council Protocol in Appendix.

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 Also* 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, including immigration, DDAs shall weigh those consequences with other relevant factors.

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.

1. defendant has no duii charge pending in any jurisdiction;
2. defendant has no prior diversion or duii conviction (anywhere) in past 15 years;
3. defendant has not been *ordered* into alcohol OR drug treatment in past 15 years; or
4. defendant did not injure anyone (other than self) 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 driver's license; defendant did not have a minor (>3 yrs difference) in the vehicle at the time.

If the defendant is not diversion eligible, the following standards apply:

1st	SIS	18 mo ct	$1000*	If no prior diversion, 48 h mcj or 80 h csw; otherwise Chart**	Std Duii Conds
2nd	SIS	24 mo ct	$1500*	Chart**	Std Duii Conds
3rd***	364 days ssx	36 mo sup	$2000*	60 days	Std Duii Conds
4th ***	364 days exe	N/A	$6200	N/A	N/A

*$2000 FINE IF BAC .15% OR ABOVE

****Jail as a condition of probation chart is based on when last DUII diversion or conviction occurred**

NUMBER w/in 10-15 YRS w/in 5-10 YRS w/in 2-5 YRS w/in 2 YRS

1st Conviction	**48 hrs mcj**	**5 days mcj**	**7 days mcj**	**14 days mcj**
2nd Conviction	**7 days mcj**	**14 days mcj**	**21 days mcj**	**30 days mcj**

***ALWAYS screen for felony DUII eligibility: 2 prior DUII CONVICTIONS within last 10 years

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

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:

SIS	18 mo ct	$1000*	48 hrs mcj or 80 hrs csw	Std Duii Conds

OR commits a new DUII while on diversion, request termination of diversion and imposition of the following sentence:

EXECUTED	PROB	BASE FINE	MCJ	CONDS
60 days mcj exe	N/A	$1000*	N/A	N/A

DRIVING WHILE SUSPENDED (V/A) – ORS 811.175

Violation DWS (fine only)

1st $250

2nd $350

3rd $450

4th $550

5th or more $720 (max)

Misdemeanor DWS

NUMBER	PROBATION	*FINES/CONDITIONS
1	None	$300 fine Min. Fine/CAA Fees
2	None	$400 Fine Min. Fine/CAA Fees
3	None	10-30 days mcj executed

***NOTE**: If the basis for defendant's misdemeanor suspension is a DUII conviction, a MANDATORY $1000 fine for first DWS conviction & $2000 fine for the second conviction must be imposed (ORS 811.182 (5)).

Reckless Driving (A) (w/o accompanying DUII) – ORS 811.140

NUMBER	PROBATION	FINES/CONDITIONS
1st offense, No restitution required	No probation or jail	ODL suspension per DMV Min. Fine/CAA Fees Restitution
1st offense with Restitution OR 2nd offense	SIS 24m bench prob	ODL suspension per DMV Traffic School Restitution Min. Fine/Prob Fee/CAA Fees Same as above plus:

		40 hrs CSW or 1-10 days mcj

Reckless Driving (A) (w/ accompanying DUII) – ORS 811.140

NUMBER	PROBATION	FINES/CONDITIONS
1st offense, divr eligible duii	SIS 12m bench prob (24m bench prob, if restitution)	No alcohol, bars, taverns (NEBT) Comply with diversion ODL suspension per DMV Min. Fine/Prob Fee/CAA Fees
1st offense, non-divr duii OR 2nd offense	SIS 18m bench prob (24m bench prob, if restitution)	Comply with std duii terms ODL suspension per DMV Min. Fine/Prob Fee/CAA Fees Same as above plus: 40 hrs CSW or 1-10 days mcj

Eluding (A) – ORS 811.540 (misdemeanor)

NUMBER	**PROBATION**	**FINES/CONDITIONS**
1	No probation/jail	$300 fine ODL suspension per DMV Min. Fine/CAA Fees
2	SIS 18m bench prob	14 days mcj ODL suspension per DMV Min. Fine/Prob Fee/CAA Fees

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

*No objection to civil compromise if ODL/CCH/facts not aggravated

NUMBER	PROBATION	FINES/CONDITIONS
1*	SIS 18m bench prob	ODL suspension per DMV Restitution Min. Fine/Prob Fee/CAA Fees
2	SIS 24m bench prob	ODL suspension per DMV 1-15 days mcj Restitution Min. Fine/Prob Fee/CAA Fees

Giving False Information (A) – ORS 807.620 or 162.385

NUMBER	PROBATION	FINES/CONDITIONS
1	None	Min. Fine/CAA fees
2	None	5 days mcj executed Min. Fine/CAA Fees
3	None	5-15 mcj days executed Min. Fine/CAA Fees

PROPERTY OFFENSES

Fraud Offenses (includes misdemeanor Thefts, Forgery, Criminal Possession of a Forged Instrument, Fraudulent Use of a Credit Card, Negotiating a Bad Check)

NUMBER	PROBATION	FINES/CONDITIONS
1st offense	None	Min. Fine/CAA Fees

1st offense and involves employee theft/juvenile co-def or actual $ LOSS OR 2nd offense	SIS 18m bench prob	Appropriate Tx Restitution Ban from premises Min. Fine/Prob Fee/CAA Fees
3	None	1-90 days mcj executed Min. Fine/CAA Fees

Criminal Mischief II (A) - ORS 164.354

NUMBER	PROBATION	FINES/CONDITIONS
1	None	Restitution Min. Fine/CAA Fees
2	SIS 18m bench prob	Appropriate Treatment Restitution No contact w/Victim Min. Fine/Prob Fee/CAA Fees
3	None	1-90 days mcj executed Min. Fine/CAA Fees

Criminal Trespass I (A) – ORS 164.255

NUMBER	PROBATION	FINES/CONDITIONS
1	SIS 18m bench prob	Appropriate Treatment No contact w/Victim (NCVI) Ban From Premises Min. Fine/Prob Fee/CAA Fees

2	SIS 24m bench prob	Same as above EXCEPT 40 hrs csw or 1-10 days mcj
3	None	1-90 days mcj executed Min. Fine/CAA Fees

CONTROLLED SUBSTANCE OFFENSES

PCS (A)

If Defendant is charged with PCS and a non-person misdemeanor, follow the chart for the PCS, adding any restitution to the terms of probation, and with a conviction and the minimum fine on the additional charge. If defendant is charged with a PCS and a person misdemeanor, staff offer with supervisor.

NUMBER	PROBATION	FINES/CONDITIONS
1st offense and BELOW LSC – 40 user units Psilocybin (mushrooms) – 12g Methadone – 40 user units Oxycodone – 40 pills Heroin – 1 g MDMA – 1g Cocaine – 1g or 5 pills Meth – 2 g	Deferred Sentence SIS 18m bench prob	"DAD Package" (MARPCS) 40 hrs csw Additional Appropriate Treatment Forfeit drug/items seized (FRPR) 30-day s/p date Must Accept by First R7 Min. Fine/Prob Fee/CAA Fees Stipulated
2nd offense or ABOVE LSC – 40 user units Psilocybin (shrooms) – 12g Methadone – 40 user units Oxycodone – 40 pills Heroin – 1 g	Conviction SIS 18m bench prob	Same as above

MDMA – 1g Cocaine – 1g or 5 pills Meth – 2 g		
3rd offense or Prior Felony Conviction	POSSIBLE FELONY	STAFF WITH SUPERVISOR

WEAPON OFFENSES

Carrying a Concealed Weapon (B) – ORS 166.240

NUMBER	PROBATION	FINES/CONDITIONS
1	SIS 18m bench prob	Stip to forfeit weapon (FRPR) Gang conditions (if app) No weapons (NWEP) Min. Fine/Prob Fee/CAA Fees
2	None	1-30 days mcj executed Min. Fine/CAA Fees

Unlawful Possession of a Firearm (A) – ORS 166.250

NUMBER	PROBATION	FINES/CONDITIONS
1	SIS 18m bench prob	Same as 1st offense CCW *if DV related, add DV conditions Min. Fine/Prob Fee/CAA Fees
2	None	1-90 days mcj executed stip to destruction of weapon Min. Fine/CAA Fees

PERSON OFFENSES (NON- DV)
Harassment (B) – ORS 166.065

NUMBER	PROBATION	FINES/CONDITIONS
1	SIS 18m bench prob	Anger program No Contact with victim Additional Appropriate Treatment Min. Fine/Prob Fee/CAA Fees
2	SIS 24m bench prob	Same as above plus 1-15 days mcj

Telephonic Harassment (B) – ORS 166.090

NUMBER	PROBATION	FINES/CONDITIONS
1	SIS 18m bench prob	No Contact with victim Appropriate Treatment Min. Fine/Prob Fee/CAA Fees
2	SIS 24m bench prob	Same as above plus 1-10 days mcj

Assault 4 (A) – ORS 163.160

NUMBER	PROBATION	FINES/CONDITIONS
1	SIS 18m bench prob	Anger program No contact with victim Min. Fine/Prob Fee/CAA Fees

2	SIS 24m bench prob	Same as above plus 1-30 days mcj
3	None	1-180 days mcj executed Min. Fine/CAA Fees

Resisting Arrest (A) – ORS162.315

NUMBER	PROBATION	FINES/CONDITIONS
1	None	Min. Fine/CAA Fees
2	SIS 24m bench prob	Appropriate Treatment Restitution 1-14 days mcj Min. Fine/Prob Fee/CAA Fees

Menacing (A) – ORS 163.190

Pointing a Firearm at Another (U) – ORS 166.190

NUMBER	PROBATION	FINES/CONDITIONS
1	SIS 18m bench prob	Stip forfeiture of weapon No weapons Gang Conditions (if app) Appropriate Treatment No contact with victim 1-10 days mcj

		Min. Fine/Prob Fee/CAA Fees
2	SIS 24m bench prob	Same as above plus 1-30 days mcj

Recklessly Endangering Another Person (A) – ORS 163.195: **See supervisor.**

NUMBER PROBATION FINES/CONDITIONS

1	None	Min. Fine/CAA Fees
2	SIS 18m bench prob	Appropriate Treatment No contact with victim 1-14 days mcj Min. Fine/Prob Fee/CAA Fees

MISCELLANEAOUS OFFENSES
Disorderly Conduct II (B) – ORS 166.025

NUMBER PROBATION FINES/CONDITIONS

ANY, if defendant is i/c	None	MCJ executed (CTS) Min. Fine/CAA
1	SIS 18m bench prob	Appropriate Treatment Gang conditions (if app) Min. Fine/Prob Fee/CAA Fees
2	None	MCJ executed (CTS)

		Min. Fine/CAA

Unauthorized Departure – ORS 162.175

NUMBER	PROBATION	FINES/CONDITIONS
ANY	None	60 days mcj executed (C/S) No work crew or work center *No 936 by operation of law* Min. Fine/CAA Fees

PCS Standard Recommendations

PCS Standard Recommendations
(Effective for acts occurring on or after 8/15/17)

Notice: Individual cases will be assessed based upon the nature of the offense and criminal history of the defendant. The following recommendations are to be used as guidelines.

Per HB 2355 (2017 Ch. 706) PCS of a usable quantity of a controlled substance is a misdemeanor unless it meets an exception listed below.

General Exceptions: Usable quantity +

1. Defendant has prior felony conviction;
2. Defendant has 2 or more prior convictions for PCS of a usable quantity; or
3. The PCS is a commercial drug offense

Specific Quantity Exceptions:

- 475.752: LSD – 40 + user units; Psilocybin (mushrooms) – 12 g +
- 475.824: Methadone – 40 + user units
- 475.834: Oxycodone – 40 + pills
- 475.854: Heroin – 1 g +
- 475.874: MDMA – 1 g + or 5 + pills
- 475.884: Cocaine – 2 g +
- 475.894: Meth – 2 g +

1. Charging cases involving PCS with a defendant with a criminal history scale G or less:

1. If PCS an amount below the specific quantity exceptions, charge as a misdemeanor with a stipulated deferred sentence (*D*istrict *A*ttorney *D*eferral) offer:
    a. 18 months court probation
    b. Treatment via Bridgeway or CACS (per referral)
    c. Standard Drug Package
    d. Report to Demuniz Resource Center for OHP enrollment
    e. 30-day show proof date
    f. 40 hours of community service
    g. Forfeit items seized
    h. Standard misd fine, bench probation fee, and CAA fee
    i. Defendant to accept at the first Rule 7
        i. This term is to encourage early resolution and engagement in treatment

ii. Generally, a *DAD* offer may remain open past the first R7 if the case is working towards resolution. The *DAD* offer will be revoked upon the filing of any motion to suppress or if a trial is set.

2. If PCS at or above the specific quantity exceptions, charge as a misdemeanor with a stipulated offer to the probation conditions listed in 1, but with a conviction.

3. If the defendant is charged with PCS and another non-person misdemeanor, follow criteria listed in 1 and 2, adding any restitution to the terms, and with a conviction for the minimum fine on the additional charge.

2. When the defendant FTAs during a *DAD* case:

1. Consider that the goal of the *DAD* program is to engage people in treatment to prevent recidivism. If a person is not engaged in treatment they are much more likely to engage in new criminal activity and fail to appear in court. An FTA should generally not be filed if a person is not engaged in treatment. A deferred sentence should still be considered as an option until a person shows behavior beyond choices related to drug addiction.
2. If the defendant returns with a new crime in addition to the FTA, review the sections above to determine if additional charges are appropriate.

3. Charging cases involving PCS and charges other than a non-person misdemeanor:

1. Review/staff to determine if a treatment court is appropriate
2. If PCS an amount at or above specific quantity exceptions consider if misdemeanor treatment upon successful completion of probation is appropriate.

4. Charging cases involving only PCS where defendant is at least an E or on supervision:

1. These cases are screened by a TTL and may result in no-action.

Mandatory Minimum Sentencing, Determinate Sentencing

& Sentencing Under ORS 137.700

(Commonly referred to as Ballot Measure 11)

Charging & Sentencing

CHARGING GENERALLY:

1. Evidence-based charging decisions.
2. Consider all possible defenses prior to charging; the state has the burden to disprove defenses beyond a 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.
5. Exceptions
    - **a.** If the circumstances presented do not warrant seeking a mandatory minimum sentence, a lesser charge may /be filed.
    - **b.** 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.
    - **c.** Circumstances to consider when deciding whether a case presents an exception include, but are not limited to:
        i. The factual circumstances of the crime.
        ii. Evidence of provocation by the victim.
        iii. Concerns with the admissibility of evidence (i.e. suppression issues).
        iv. Evidence of extreme intoxication evidencing aberrant behavior by the defendant.
        v. Age of the defendant (youth and/or senior)
        vi. Absence of criminal history
        vii. 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 insure 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 must be approved by the District Attorney, a Trial Team Supervisor, or a Major Case Chief.
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.

Firearm Offenses

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 may be charged as Menacing, Recklessly Endangering, or Pointing a Firearm at Another under exceptional circumstances and ***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 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
    - The plea offer should provide notice to the defense that the sentence is pursuant to ORS 161.610.
    - Any firearm case should include incarceration
    - The length of incarceration in firearm cases, in addition to policy considerations applicable in every case, should consider the following static factors:
      - *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
      - 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

AIP, Earned Time & Earned Discharge

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) 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 defined in 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.

EARNED DISCHARGE

1. This policy applies to felonies only.

2. This policy should be consistently imposed. A plea offer outside this policy should be approved by a trial team supervisor.

3. If the defendant is **presumptive prison** and we are extending a plea offer for a **stipulated downward departure to probation**, the defendant must stipulate that he/she is ineligible for earned discharge.

4. If the case involves **Felony DV**, and the plea offer is **stipulated**, the defendant must stipulate that he/she is ineligible for earned discharge.

5. If the case involves a **Felony Sex Offense**, and the plea offer is **stipulated**, the defendant must stipulate that he/she is ineligible for earned discharge.

6. If the charge or offense does not fit within one of the categories listed above, but you believe a defendant should be ineligible for earned discharge, you are not precluded from including that term as a condition of a stipulated sentence. If you have questions or concerns, you can talk to a trial team supervisor.

The judgment should include the following language: **"The defendant stipulates that he is not eligible for earned discharge under ORS 137.633 and OAR 291-209-0040."**

Treatment Courts & LEAD

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 charged with a crime of domestic violence with previous convictions for a crime of domestic violence are excluded from participation in the Mental Health Court Program.

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.

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

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

Admission Criteria

Admission is considered on a case by case basis. Participants must reside in Marion County, be between the ages of 14 and 17, fully adjudicated and under the jurisdiction of the Juvenile Court for a class A Misdemeanor or felony non-persons offenses (with certain limited exceptions). Substance use must be one of the identified criminogenic risk factors present and the Youth must meet ASAM criteria for substance use issues requiring outpatient treatment or higher as well as scoring medium to high risk on the JCP Risk assessment. The youth must also possess sufficient mental capacity to participate in the program.

Exclusionary Criteria

Youths with an adjudication for a sex offense will be excluded from referral to the STAR court program.

Youths with an adjudication for a person crime will be excluded from the STAR Court program absent specific exceptions including a nexus between the offense and substance use.

See also: STAR court Manual in Appendix

PRE-ARREST DISVERSIONARY 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 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.

APPENDIX

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 undersand 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

Best Practices for Navigating

Brady v. Maryland in Oregon

March 31, 2014

BEST PRACTICES for Navigating *Brady v. Maryland* in Oregon:

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.

Attachment A
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:

~Identification of potential Brady cases or disqualification concerns
-consider standards for dishonesty [*see guidelines for Brady Disclosure*]
-consider standards for lack of confidence cases [*see Guidelines for Assessment*]
~Gathering of relevant information-DA is responsible for material known to DA and/or in DA's possession or control
-not merely allegation or rumor
-seek investigatory reports/Internal Affairs information
-request further information via affected witness/counsel
~Review of information with a Brady 'resource team' and/or Brady MAP (see below)
-consider using senior DDA staff to roundtable individual cases; seek opinions and input; employ comparative analysis to similar situations; consider ramifications for past, present and future cases
-consider Law Enforcement Command Staff input (see also below)
~Tiered level of Brady designations
-Brady obligations *NOT* implicated by conduct
-*Disclosure of Brady Material Required*
-Witness is *disqualified* from testimony (non-usable witness)

DA Notification Process:

~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. Methodology requires:
-frequent updating
-accessibility by all DDAs
-reliable way to advise DDAs of changes/additions
~Maintain open communication with Law Enforcement Command Staff
-seek input from command staff *prior* to any formal Brady decision
-consider status of Internal Affairs investigation-when will it be complete? Can disclosure decision wait for investigation's completion?
~Consider convening **multidisciplinary advisory panel (Brady MAP)** for *confidential, non-binding consultation* prior to final decision:
-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

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-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

-Mechanics of discussion, information dissemination, and recommendations can be at DA discretion
~Create opportunity for affected witness to be heard as soon as practicable
-formal letter to affected witness that notifies of Brady inquiry and allows for that person to present further information to DA for additional review:
-Review process, procedure and deadlines at DA discretion depending on case. If requested, an in-person meeting with affected witness is recommended.
~Send formal decision letter to agency that clearly delineates Brady designation and ramifications for DA's use of that employee as a witness.

~Employ use of Judicial Review when necessary
-when appropriate, seek *in camera* review for potential disclosure information. Request order from court for discovery.
-utilize protective orders prior to disclosure to defense.
-seek Pre-Trial rulings on admissibility; consider including witness'
counsel in admissibility litigation.
~Communicate with Defense Bar-it is the duty of the DA. As appropriate, consider:
-individualized case by case disclosure
-blanket letter notification to all local defense counsel
~Communicate with Other Affected Agencies/Partners.

Attachment B
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

Attachment C

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
9. 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.

Brady Work Group Membership
Labor Concerns Work Group / Chair Jeff Lanz - Oregon State Police
Daryl Garrettson - Oregon Peace Officers Association
Anil Karia - Tedesco Law Group/Portland Police Association
Jeff Lanz - Oregon State Police
Elmer Dickens - Washington County Sheriff's Office Legal Counsel
David Woboril - Portland City Attorney's Office
Todd Anderson - DPSST
Daniel E. Thenell - Thenell Law Group/FOP Rob Bletko - Thenell Law Group/FOP
Rob Bovett – Lincoln County District Attorney
Ethics Work Group / Chair Paul Frazier - Coos County
Paul Frasier - Coos County District Attorney Helen Hierschbiel - Oregon State Bar Theresa King - DPSST
Evidence/Gateways / Chair Greg Horner - Clackamas County Greg Horner- Clackamas County District Attorney's Office Leon Colas - DPSST
Judge Courtland Geyer - Marion County Circuit Court
Kim Ybarra - Clackamas County Sheriff's Office Counsel
When & How It Gets to DPSST / Chair Lorraine Anglemier - DPSST Lorraine Anglemier - DPSST
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Walt Beglau - Marion County District Attorney
Paige Clarkson - Marion County District Attorney's Office
Rodney Edwards - Oregon State Lodge Fraternal Order of Police
Rich Evans - Oregon State Police
Alex Gardner - Lane County District Attorney
Daryl Garrettson - Oregon Peace Officers Association
Anil Karia - Tedesco Law Group/Portland Police Association
Jeff Lanz - Oregon State Police
Joel Lujan - Oregon State Police
Jerry Moore - City of Salem Police Department/OACP
Jason Myers - Marion County Sheriff/OSSA
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Travis Sewell - Multnomah County District Attorney's Office
Stephanie Tuttle - Oregon Department of Justice/Attorney General's Office
Darin Tweedt - Oregon Department of Justice/Attorney General's Office
David Woboril - Portland City Attorney's Office
Jim Ferraris - City of Salem Police Department/OACP

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Theresa Mills Oregon Department of Public Safety Standards and Training
Kristy Witherell Oregon Department of Public Safety Standards and Training

eProsecutor

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 eProsecutor system (hereinafter "ePros").

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 ePros which is utilized in providing law enforcement services; and
C. The County wishes to allow approved employees of Agency with access to ePros: "read only" access for the purpose of viewing and printing data that is stored on certain portions of the County's ePros database. Agency's use of ePros 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 ePros (hereinafter "Authorized Users") shall utilize an exclusive username and password.
  - 1.2 Agency shall submit a written list of all Authorized Users of ePros to the Marion County District Attorney for approval. Such written list shall contain each Authorized User's unique username for accessing ePros. 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 ePros.
  - 1.4 Agency agrees that it is responsible for its Authorized Users' proper use of ePros 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 ePros by an employee is found or suspected. Agency acknowledges that any suspected misuse of ePros may result in the suspension of its access to and use of ePros.

1.6 Agency agrees that the County may/will monitor all access to and use of ePros by its Authorized Users.

1.7 Agency agrees to take any and all reasonable steps to ensure that any computer used to access ePros contains no malicious computer code or virus that might be harmful to ePros.

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 ePros, or to view or print information contained in ePros.

1.10 Agency shall ensure that all internet connections and firewalls used in accessing/or viewing ePros are secure.

1.11 Agency shall ensure that any access and use of ePros is done in conformance with current case law.

1.12 Agency is solely responsible for training its Authorized Users in the lawful use of ePros.

1.13 Agency understands and agrees that ePros may contain errors and uses any information or report contained in ePros at its own risk.

1.14 Agency understands and agrees that ePros may be unavailable at times due to regularly scheduled maintenance or unexpected system problems. The County disclaims any liability due to the unavailability of ePros.

1.15 Upon termination of this Agreement, Agency agrees to take all necessary steps to sever any access to ePros 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 ePros at this time. If it is determined that additional licensing costs arise for Agency use of ePros software, County will, to the extent possible, provide Agency with advance notice so that Agency may plan appropriately.

- **COUNTY'S OBLIGATIONS:**

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

The County shall not be liable to Agency for any third party for any termination of access to ePros.

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 30260 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 ePros 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 ePros.

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 exclusive venue shall be in the federal district court for the District of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

AGENCY NAME:

_____

Singing authority Date

MARION COUNTY:

_____

Marion County District Attorney Date

_____

Jan Fritz Date

Chief Administrative Officer

APPROVED AS TO FORM:

_____

Marion County Contracts

_____

Marion County Legal Counsel

STAR Court

General Information

Marion County's Juvenile Drug Court, STAR Court (Supervised Treatment and Recovery) is a strength-based program available for adolescents between the ages of 14 and 17 who are on probation for non-violent offenses and who present with a substance abuse problem.

STAR Court takes a team approach to provide intensive outpatient treatment, mental health, case management, educational assistance, and family support in a court managed setting. Program capacity is 30 participants and their families.

Program Referral

STAR Court Referrals can be made by:

- Marion County Juvenile Probation
- Oregon Youth Authority Parole and Probation
- Defense attorneys
- Judge
- Parents
- STAR Court Team Members
- STAR Court Team

The STAR Court team consists of:

- Marion County Circuit Court Judge
- Marion County District Attorney
- Marion County Juvenile Probation Officers
- Oregon Youth Authority Parole Officers
- Drug and Alcohol Counselors
- Defense Attorney
- STAR Court Coordinator

OVERVIEW

STAR Court facilitates supervised strength-based treatment and services for high-risk, high-need youth who need substance abuse or alcohol treatment, by providing support, accountability and stability to youth and their families. STAR Court offers youth an opportunity to engage in their own recovery, reduce their involvement in the juvenile justice system and to acquire the skills and knowledge necessary to achieve their self-determined goals.

The goals of STAR Court are to:

- Create an opportunity for youth to be clean and sober;
- Provide support to aid youth in resisting further criminal activity;
- Provide support, education and treatment to youth and their family;
- Provide youth with support to perform well 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.

Program Description

STAR Court is a court-supervised adolescent drug treatment court for youth to help overcome drug and alcohol addiction. The program includes drug testing, drug and alcohol treatment, mental health counseling, regular attendance in educational services and court appearances. The STAR Court program is a combined effort by the District Attorney, Defense Attorney, Marion County Children's Behavioral Health, Marion County Health Department Drug and Alcohol Treatment, Oregon Youth Authority, Marion County Juvenile Department, Bridgeway, Marion County Juvenile Court and other community-based organizations. The program length is determined by each participant's progress and placement in treatment and can average three to eighteen months. Youth can be referred to the program by defense counsel, probation officer, parent, self-referral or treatment provider. To participate the youth must meet several criteria and meet the Right Fit, Right Now standards for STAR Court participation.

To qualify for STAR Court, the youth must score as moderate to high risk on the JCP assessment and a have minimum of Level I ASAM assessment. Youth in jurisdiction for sex offenses are not eligible. Persons offenses (and certain public order offenses*) are generally disqualified but certain limited circumstances may be made when the incident involves an immediate family member and is directly drug-related and are considered on a case-by-case basis. For other technically qualifying but non-unanimous candidates, a

"bifurcation track"* may be available where the Youth is allowed to participate but will not receive expungement of their record on successful completion.

S.T.A.R. Court Eligibility Criteria Checklist

RIGHT FIT

1. Does the youth have an adjudication for a sexual offense? ***If yes, youth is disqualified and referral will be denied if submitted***	☐ Yes ☐ No
2. Does the youth have an adjudication for a persons offense?	☐ Yes ☐ No
3. Is the youth between the ages of 14 and 17?	☐ Yes ☐ No
4. Does the youth score medium to high risk on the JCP Risk Assessment?	☐ Yes ☐ No
5. Is substance use one of the identified criminogenic risk factors?	☐ Yes ☐ No

RIGHT TIME

1. Has the youth used drugs or alcohol in the past 90 days OR Is the youth currently in Level 1 or higher treatment?	☐ Yes ☐ No
2. Is youth in jurisdiction on a felony OR a Class A misdemeanor charge?	☐ Yes ☐ No

RIGHT PROGRAM

1. Does the youth have an IEP or participate in DD services?	☐ Yes ☐ No
2. Has the youth's mental health issues interfered with daily functioning or ability to engage with services?	☐ Yes ☐ No
3. Is the youth's substance use negatively affecting the youth's life?	☐ Yes ☐ No

Additional Info:

- Drug of choice: _____
- Cohorts: _____
- Current school: _____
- Current programs/activities involved with: _____
- Parental involvement: _____
- Positives AND challenges of youth and/or family: _____
  _____

STAR COURT POINT SYSTEM

For the participant to move through the phases of the system and graduate from the program they must earn points. Each week the youth can earn points by fulfilling their weekly program obligations, such as attending school, making their UAs, meeting with their therapist, meeting with their Probation Officer and appearing in court.

Each participant must keep track of his/her points with reward checks and balance sheets (sheets located in your binder). The Coordinator will also keep track of points.

Unique to each case, the state will recommend a disposition that prioritizes reformation, accountability and restitution but the following guidelines are currently in our handbook and are implemented as appropriate:

Program Rules Violations

***** Team reserves the right to modify the COST*****

Probation officers can use this grid to impose a response when there is need for an immediate response before STAR Court session.

Rule Violation	Privilege lost	Cost	Earning Privilege Back
Missed treatment appointment	Weekend Curfew 5:00pm & points	Make up appointment	One weekend of compliant house arrest
Missed STAR COURT Activity	Curfew/points	8 hours of community service/ Short Term Matrix	Community service hours/STM are complete
Curfew Violation	Weekend Curfew 5:00pm	Weekend house arrest	One weekend of compliant house arrest
House Arrest Violation	Free time	8 hours of community service/ Short Term Matrix	Community service hours/STM are complete
Staying out overnight	Curfew	8 hours of community service/ Short Term Matrix and 1 week of house arrest	Curfew will be reinstated once community service hours/STM are complete and after 1 week of house arrest
Missing Classes	Points	Cannot earn any school points for 2 or more class absences	Participants can earn partial points if they have only one class absence
Not completing community service by due date	Curfew	House arrest	Curfew will be reinstated once community service hours/STM are complete
School Suspension	Free time / points	House arrest and community service/Short Term Matrix every day until participant is back in school	Any type of school suspension will result in a loss of school points for the week
Missing community service	Free time	House arrest	Curfew will be reinstated once community service hours/STM are complete
Positive UAs	Curfew/Points	House arrest & loss of court clean time	Participants can earn back curfew with next negative UA
Missed UAs	Curfew/Points	House arrest & loss of court clean time	Contact Coordinator to arrange to submit ua to start court clean time & a letter of Accountability-Why it was missed & plan not to miss

DOMESTIC VIOLENCE COUNCIL

PROTOCOL

The Marion County Domestic Violence Council continues to work 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. PRIORTIES 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.

II. DOMESTIC VIOLENCE DEFINED

This protocol is applicable to all cases of domestic violence as defined by statute. "Domestic violence is abuse between family or household members." ORS 135.230(3). "Family or household members mean any of the following: Spouses; former spouses; adult persons related by blood, marriage, or adoption; persons who are cohabiting with each other; persons who have cohabitated with each other or who have been involved in a sexually intimate relationship; unmarried parents of a minor child." ORS 135.230(4).

When working with limited resources and time constraints, the application of this protocol will be prioritized in instances where the relationship is or has been intimate.

Research has shown that 85% of batterers are male. For those reasons, we will use "he" for suspects/defendants and "she" for victims. This is not intended to discount the fact that there are females who offend of that abuse also can occur in male and female same-sex partnerships. **Bureau of Justice Statistics Crime Data Brief, Intimate Partner Violence, 2003*

III. MAKING DOMESTIC VIOLENCE A PRIORITY

To more effectively address the epidemic of domestic violence, there is a commitment by the criminal justice system to make domestic violence response a priority and to communicate this priority throughout all levels and disciplines of the system.

The District Attorney will model this priority by the following means:

a. Making protocol available to all local criminal justice and social service agencies that work with domestic violence victims and offenders.

b. Maintaining the Domestic Violence Council and charging the Council with the task of monitoring the implementation of the protocol; participating with the Local Supervisory Authority and the Courts in implementing batterer intervention standards and consult about batterer intervention programs; making recommendations for protocol and intervention standards revisions.

c. Providing staff time to assist in the goal of community-wide increased awareness and knowledge about domestic violence issues and the protocol.

d. Establishing and maintaining a Domestic Violence Unit of prosecutors.

Law Enforcement Agencies will model this priority by committing to participate in regularly-occurring training regarding best practices and protocol in the investigation of domestic violence.

IV. THE CRIMINAL JUSTICE SYSTEM

The criminal justice system has adjusted in some important ways in order to account for the special challenges of prosecution when victim and perpetrator are or have been related or in an intimate relationship.

The specific adjustments were made to address the following goals:

a. To promote timely intervention by fast-tracking the case through the criminal justice system.

b. To seek appropriate dispositions and consequences for batterers.

c. To access, use, and promote batterer intervention programs that follow state-of-the-art methodology (Evidence Based Practice) for changing attitudes and violent behaviors.

A. The "fast track": Shortening the Length of Time from Arrest to Disposition

Goal: To promote timely intervention by fast-tracking the case through the criminal justice system. The following section outlines the process for domestic violence cases from arrest to investigation to disposition. "Fast-track" is defined as the following:

Misdemeanor Cases:

EVENT	TIME (as defined by "judicial days")
Arrest to Arraignment	
Defendant in custody	With-in 36 hours of arrest

Defendant out of custody	With-in two (2) days of arrest
Arraignment to Plea (Rule 7)	With-in 14 days of arraignment
Plea to Trial	
Defendant in custody	With-in 60 days of arrest
Defendant out of custody	With-in 90 days of arrest
Conviction to Sentencing	Immediately (if the defendant waives the right to wait 48 hours), unless PSI ordered, or within a reasonable timeframe to allow for victim participation at a victim's request.

Felony Cases:

EVENT	TIME (as defined by "judicial days")
Arrest to Initial Arraignment	
Defendant in custody	With-in 36 hours of arrest
Defendant out of custody	With-in two (2) days of arrest
Arraignment to Grand Jury (GJ)*	
**Unless defendant agrees to waive preliminary hearing*	
Defendant in custody	With-in five (5) judicial days of initial arraignment
Defendant out of custody	With-in 10 days of initial arraignment
GJ to Arraignment on Indictment	
Defendant in custody	With-in 10 days of initial arraignment
Defendant out of custody	With-in 28 days of initial arraignment
Arraignment to Plea (Rule 7)	With-in 14 days of arraignment on indictment
Plea to Trial	
Defendant in custody	With-in 60 days of arrest (excluding BM11 cases)
Defendant out of custody	With-in 90 days of arrest (excluding BM11 cases)
Conviction to Sentencing	Immediately (if the defendant waives the right to wait 48 hours), unless PSI ordered, or within a reasonable timeframe to allow for victim notification per victim's request.

Arrest Procedures

While on the scene of a domestic violence call, upon finding of probable cause, law enforcement officers will:

A. Arrest

Arrest and transport the suspect to jail. The priority is always for custodial arrest (ORS 133.055(2)(a)). Numerous studies have shown arrest to be the most effective deterrent to repeated violence. Arrest will result in a release agreement that has a mandatory "no-contact" condition (ORS 135.260(2)). Immediate arrest and "no-contact" conditions may provide a critical safeguard for victims.

In rare occasions where a citation instead of an arrest is used, the citation should require a three (3) day appearance in court. Officers should consider utilizing the Ex-Parte Emergency Protection Order while on-scene with the victim.

Law enforcement officers have an obligation under ORS 133.055(2)(c) to attempt to determine who the predominant aggressor is. This is intended to prevent arrest of victims who were acting in self-defense. Officers are encouraged to receive training in understanding the dynamics of domestic violence.

In Harassment cases under ORS 166.065, the officer should consider the crime as a domestic violence arrest, not ask the victim if they are willing to press charges, and use the same procedures as any other DV arrest. The officer should also consider the crime of Attempted Assault 4 if the intent of the suspect was to cause physical injury.

B. Booking

All arrested suspects will be photographed and fingerprinted. Suspects who are cited into court will be sent to the jail intake by the court where they will be photographed and fingerprinted.

If a law enforcement officer determines that a suspect is in violation of a Release Agreement, which prohibits contact and attempted contacts with the victim, the officer shall arrest pursuant to ORS 133.310(6)(a)(b).

C. Victim

1) Arrange for the transportation to medical facilities, if needed by the victim, and inform the District Attorney's Office if medical treatment or hospitalization was required.

2) Gather as much information as possible from the victim to assist in future attempts to contact (including maiden or other names used, social security number, date of birth, driver's license number, place of employment, and whenever possible ***safe*** contact information such as: phone number, message number, and/or address).

3) Photograph the injuries of the victim and of the household disruption, such as broken or overturned items. Recommend to the victim that she obtain more photographs as bruises become visible. Law enforcement should attempt to obtain follow-up photographs with victims.

4) Complete domestic violence check-list and/or lethality screening if applicable by your agency.

5) With the use of the power and control wheel, discuss with the victim the dynamics of domestic violence and document how the power and control wheel is reflected in the offender's behavior.

6) Advise the victim to contact the VINE system should they desire custody status information or to register to be notified of a defendant's release from custody. Phone; 1-877-674-8463, website www.vinelink.com, or download the app; "Vinelink"

7) Encourage the victim to contact the District Attorney's Victim Assistance Division for resources, safety planning, information regarding domestic violence dynamics, cases-specific information, and assistance with Temporary Restraining Orders. Address: 555 Court St NE, Salem. Phone 503-588-5253 or 1-866-780-0960.

8) Provide the victim with the agency's domestic violence information. The law requires law enforcement to provide the information that is included on the card (ORS 133.055(3) and 147.365).

9) Provide the victim with notice of their constitutional rights under Article I, Section 42 of the Oregon Constitution (ORS 147.417(1)). Contact Department of Justice for card; www.doj.state.or.us/crime-victims/victims-rights/victims-rights-guides/ .

D. Investigations/Reports

1) Provide reports that are as detailed as possible including the information listed above and:

- Determine victim's relationship to the suspect
- Ask about weapons in the home
- A full description of the victim's physical injuries
- Ask if the victim has been strangled. Recommend medical treatment for victims of strangulation
- Determine through pictures or victim/suspect statements if the victim is pregnant. Document if the suspect is aware of the pregnancy
- Determine the predominant aggressor
- Determine whether the victim has previously been victimized by the suspect
- Determine if the suspect has previous assaults, strangulations, or menacing against other victims
- Gather a detailed history of the relationship, conduct a CCH, and document any previous arrests or convictions to consider felony enhancements
- Ask if victim was ever forced to have sex
- Document power and control behaviors
- Document who was present in the home at the time
- Determine and document if children of the victim and/or suspect witnessed the incident through any of their senses (example: hearing or seeing);

statements from those child witnesses, if possible obtain statements and addresses from all possible witnesses as well as contact telephone numbers for all witnesses and the victim (keep confidential whenever possible)

- Determine the primary language of the victim and note in report (never use children or persons involved in the incident as an interpreter, rather use language line should an officer be unavailable to assist with translation)
- Gather evidence of the crime
- Complete a domestic violence checklist

2) Submit one (1) copy of all completed reports to the District Attorney's Office by 8:30am the following regular business day. Reports should be hand delivered, delivered by courier, faxed (503-576-7138) or delivered by other means arranged with the District Attorney's Office. This provision allows discovery to be provided at arraignment instead of days or weeks later.

3) Digital images, if any, should be submitted to the agency's property control at the same time as the reports are submitted.

4) In exceptional circumstances, probable cause statements may be sufficient to charge the case. However, they must contain information to establish each element of the crime for which the suspect has been arrested. The reports must follow immediately.

5) Route a copy of the reports to DHS when children are present at the time of the crime and if children are the listed victims of any of the crimes. If the victim is over the age of 65, then route a copy to Senior and Disabilities Services. This meets the mandatory reporting requirements as well as providing victims with community resources.

2. Protective Orders

A. Emergency Protective Orders (ORS 133.035)

An emergency protective order prohibits a respondent from contact with or attempt to intimidate, molest, interfere with, or menace with the petitioner

1) An officer may seek an emergency protective order if they have probable cause to believe that an emergency protective order is necessary to prevent the protected person from suffering the occurrence of abuse because either;

- The police responded to an incident of domestic violence meeting criteria for mandatory arrest under ORS 133.055(2)(a)

OR

- The person is in immediate danger of abuse by a family or household member

AND

- The protected person gave consent and/or permission for the application of the emergency protective order

2) If the respondent is being lodged in jail with an accompanying PC statement that meets the criteria for mandatory arrest under ORS 133.055(2)(a), the officer will apply for issuance of an emergency protective order following the court's electronic search warrant process.

3) If the respondent is not being lodged in jail with an accompanying PC statement that meets the criteria for mandatory arrest under ORS 133.055(2)(a) but the officer has probable cause to believe the person is in immediate danger of abuse by a family or household member, the officer will contact the on-call deputy district attorney (DDA) and consult with the DDA on the domestic violence team. The DDA will review the officer's basis for probable cause and discuss whether the threshold criteria for an emergency protective order is met. The officer will then apply for issuance of an emergency protective order following the court's electronic search warrant process.

4) Once an order is issued:
- The officer will provide a certified copy to the protected person
- The officer will personally serve the respondent
- Upon service, the officer will prepare Proof of Service and file it with the court
- Upon service, law enforcement will enter the order into LEDS

5) The emergency protective order expires seven calendar days from the date the court signs the order. The emergency protective order is fully enforceable in any county or tribal land in Oregon.

B. Extreme Risk Protection Orders (ERPO) (ORS 166.527)

An extreme risk protection order prohibits a named person from having in his/her custody or control, owning, purchasing, possessing, receiving, or attempting to purchase or receive a deadly weapon. A deadly weapon is defined as a firearm, whether loaded or unloaded, or any other instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury.

1) An officer who reasonably believes a person presents a risk in the near future, including an imminent risk of suicide or causing physical injury to another person, may petition the court for an ERPO. The petitioner may prove by clear and convincing evidence that the respondent presents a risk in the near future, including imminent risk of suicide or causing physical injury to another person.

2) An officer investigating an incident in which an ERPO may be applicable should consider including the below information as part of their investigation prior to applying for an ERPO:

- Does the respondent's CCH, history, or current incident show past violence and/or deadly weapon possession and/or use?
- Does the respondent have a history of violating restraining orders or stalking orders? Is the history of documented in his/her CCH?
- Is there a recent history of assaults, menacing, strangulation, or stalking (documented or undocumented)?
- Can threats by verified by others, such as text messages, notes, and child or witness statements?
- Information obtained from partner agencies or other business/service agencies which document threats to self/others. Are threats credible; does the person have access to a weapon; feel justified in acting out violently; have no other action or choice; or feel there are no consequences of feel comfortable with the consequences?
- Recent activity at the respondent or petitioner's address which leads officers to believe that the level or potential for violence may escalate? What kind of activity has necessitated police response? Suicidal threats to harm self; disorderly conduct; EPD calls for service; request for MCRT response due to suicidal or homicidal threats?
- Has the case or respondent been referred to a Threat Assessment Team for in-depth review?
- Has the respondent recently purchased or attempted to purchase or acquire a deadly weapon with the past 180 days?

3) The officer will file a petition and affidavit with the family law department of the Marion County Circuit Court and appear for a hearing to be scheduled the same day or within 24 hours.

4) Once an order is issued:

- The officer will personally serve the respondent
- A respondent has 24 hours to surrender all deadly weapons to law enforcement, a third party, or a gun dealer. If the respondent has no deadly weapons, he or she must file with the court within 3 court days an affidavit swearing to that fact
- Upon service, an officer will ask the respondent if they wish to immediately surrender their deadly weapons and concealed weapons permit if applicable
- If the respondent does not wish to immediately surrender their deadly weapon, the officer shall request the name of the third party who the respondent wishes to relinquish their weapons to, documenting the name in their report
- The order must be served within 10 days of the date the order is signed

5) The ERPO expires after 1 year and may be renewed 1 year at a time. The ERPO is fully enforceable in any county or tribal land in Oregon.

C. Stalking Protective Orders

An officer may initiate a stalking order complaint/citation if they have probable cause to believe:

- The person intentionally, knowingly, or recklessly engaged in repeated and unwanted contact with the other person or a member of that person's immediate family or household, thereby alarming or coercing the other person, and

- It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact, and

- The repeated and unwanted contact caused the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household

If the stalking involves verbal or written communication, the verbal or written contacts must satisfy all of the following requirements (Rangel requirements):

- Instills fear of intimate and serious personal violence
- Be unequivocal, and
- Be objectively likely that the threats will be followed by the unlawful acts

Once completed, the citation must be served on the respondent ordering them to appear in court within three judicial days and show cause why the courts should not enter a court's stalking protective order. The officer must notify the victim in writing of the place and time for the hearing. The officer must deliver a copy of the citation to the circuit court. Stalking order hearings are held every court day at 1:30pm.

3. Release Decisions

A. In Custody No Contact Orders

When a defendant who is charged with a sex crime or a crime that constitutes domestic violence is arraigned, the court shall enter an order prohibiting the defendant from contacting the victim while the defendant is in custody. This is required under ORS 135.247.

B. Lodging of Suspect

The defendant will be lodged in the Marion County Correctional Facility. The defendant should be held in custody until the following judicial day. Thereafter, the defendant should be released only upon posting appropriate bail. Increased bail of at least $50,000 should be set if there is a prior history of domestic violence or violations of no contact orders.

C. Release Agreements

1) Defendants who have been released from custody shall appear within two days of release for arraignment.

2) All release agreements shall include as a standard condition to not have direct or indirect contact, in any manner, with the alleged victim(s) or witnesses, which shall remain in effect until the disposition of the criminal case. This is required under ORS 135.260(2). A waiver of the no-contact condition can only be obtained under the procedure defined later in this section (subsection E., page 11). The officer of the court, or other designee, will provide the defendant and the District Attorney's office a copy of the release agreement and written information that describes prohibited "contact" as defined below:

- Coming into visual or physical presence of the victim;
- Following any victim or victims
- Waiting or driving by the outside of the home, property, place of work, or school of any victim or a member of the victim's immediate family or household;
- Sending or making communication with any victim, including in writing, by telephone, by computer, or any other form. This includes the use of e-mail, text, messaging, and communication through web sites;
- Communicating through a third party with any victim;
- Committing a crime against any victim;
- Communicating with a third person who has some relationship to any victim with the intent of affecting the third person's relationship with any victim;
- Damaging the home, property, place of work or school of any victim; or
- Delivering directly or through a third party an object to the home, property, place of work, or school of any victim.

3) When determined to be appropriate, release conditions shall include no contact with any children who were present in the home when the violence occurred, and any children who live in the home.

4) Pre-trial release is not recommended for felony domestic violence defendants.

D. Violations of Release Conditions

If a law enforcement officer determines that a suspect is in violation of a release agreement, which prohibits contact or attempted contact with the victim, the officer shall arrest pursuant to ORS 133.310(6)(a)(b). Release agreements are in effect until the disposition of the criminal case.

E. No-Contact Condition Waivers

1) Waivers of the "no-contact" condition will not be allowed prior to the disposition of the case. Waiver of the 'no-contact" condition will not be allowed post-disposition unless the victim request the waiver from a Judge in court (ORS 135.250(2)(b)).

- It is recommended that the court not waive the no-contact provision until the victim has attended a waiver group. All victims must phone and make an appointment to attend a waiver class. The advocate will provide the victim with a dated form indicating that the victim did meet with the advocate.

Female victims will be referred to:
The Center for Hope and Safety
605 Center St NE, Salem
503-399-7722 or 1-866-399-7722

Male victims will be referred to:
The District Attorney's Victim Assistance Division
555 Court St NE, Salem
503-588-5253 or 1-866-780-0960

- When speaking with a victim, law enforcement, district attorney, court and domestic violence services provider staff, or domestic violence advocacy program will inform the victim that if the defendant accompanies her to court or other appointments that such action is a violation of the defendant's release agreement and any other no-contact order in existence.

- The victim service agency will either provide the victim with the appropriate numbers to call or call the court to put the victim on the docket for an appearance before the Judge

  i. Court probation can only be waived or denied by the court

  ii. Supervised probation, court will waive at the discretion of the Probation Officer to follow the reunification process

2) The District Attorney's Office will oppose waivers of the no-contact condition in post-disposition cases in which:

- Children were injured or threatened at the time of the incident;
- The victim was injured at the level indicated in Violence Category III (see page 18);
- A restraining order or stalking order was in effect against the offender at the time of the incident;
- A weapon was used during the incident;

- The offender violated a release agreement, stalking order, or temporary restraining order;
- The defendant is not in regular attendance and/or in compliance with the requirements of the batterer intervention program;
- The offender has a significant history of domestic violence;
- The batterer intervention program objects

3) The Court may allow a "conditional-waiver" of the no-contact condition to allow contact during such times as exchanging children for visitation and counseling. The Court has the sole discretion on what types of situations will be applicable for the "conditional-waiver".

4) If the waiver is allowed, the victim is acknowledging she is signing of her own free will. The Court will advise victims that obtaining a waiver of the no-contact condition does not:

- Dismiss the criminal charges against the suspect;
- Preclude her from calling the police in the future;
- Preclude her from obtaining a temporary restraining order or stalking order; or
- Have any effect on a current restraining order or stalking order

4. Charging Decisions

A. District Attorney Case Preparation

1) The intake deputy will process and prepare domestic violence cases for appearance within 36 hours of arrest for in-custody defendants and within two days of arrest for out-of-custody defendants.

2) Upon review of the reports, an initial determination regarding the appropriate disposition for each case will include a decision on each of the following:

- Charges to be filed;
- Deferred sentencing eligibility (see deferred sentencing criteria, section IV(B)(1), page 16);
- The appropriateness of prison and/or jail time as part of the sentence (a jail sentence, including length of time to serve and amount suspended), (see sentencing recommendations, section IV(B)(2), page 17);
- The appropriateness of alcohol, drug, and/or mental health evaluation and intervention;
- The amount of fines, fees, and restitution;
- Whether or not there is a violation of probation/parole, diversion, or deferred sentencing, or an outstanding warrant that should be processed;

- Whether or not the defendant has other charges pending in Marion County (especially domestic violence, including child, elder, or sibling abuse);
- Whether or not a restraining order has been issued and whether a contempt will be sought on the violation;
- Whether a stalking order has been issued and whether or not criminal charges will be filed as a result of a violation of the order;
- The types of conditions that should be placed on contact with victim and children; and
- Whether or not DHS should receive copies of the reports

3) A computer check of the District Attorney's case management system will be done to determine if similar charges have ever been filed against the defendant in Marion County.

4) If the CCH shows an arrest but no disposition for a previous Marion County case, the deputy district attorney will see that the necessary paperwork is completed and forwarded to LEDS.

5) Warrant requests on domestic violence cases will be processed as soon as possible.

6) Deputy district attorneys should attempt to establish their cases even when the victim is not in a position to participate as a witness, particularly when the injury is substantial, the defendant is a repeat offender, or the defendant is facing significant incarceration. In these cases, the DDA should examine all admissible evidence including, but not limited to, any and all hearsay exceptions, (including the 911 dispatch tape), independent witnesses, medical records, photographs, and documented history of domestic violence.

B. No-Drop Policy

The decision to prosecute or dismiss a case rests solely with the District Attorney's Office. While the concerns of victims are important, victims or other interested parties do not have the power to dismiss a case.

5. Arraignment

A. Time and Date

All defendants will be arraigned on information within 36 hours of arrest for in-custody defendants and within two days of arrest for out-of-custody defendants. Defendants charged with felony assaults, and held in custody, should be arraigned on an Indictment within ten (10) judicial days of their initial arraignment, unless the defendant has agreed to waive the preliminary hearing. Defendants charged with felony assaults, and not held in custody, should be arraigned on an Indictment within 28 judicial days of their initial arraignment, unless the defendant has agreed to waive the preliminary hearing.

B. Information Provided to the Defendant

1) The DDA will confirm at this hearing that a release agreement has been issued and that fingerprints and photographs were taken of the defendant.

2) The DDA, as necessary, will request that the court instruct the defendant on the seriousness of the crime and conditions of release.

3) In misdemeanor domestic violence cases, if available, copies of the police reports will be provided to the defendant, through counsel if represented, at the arraignment. In felony domestic violence cases, copies of all available police reports will be provided to the defendant, through counsel if represented, at arraignment on information if the defendant has agreed to waive the preliminary hearing, or at arraignment on indictment if the District Attorney's Office has submitted the case to the grand jury. Any reports that have not been received from law enforcement by the arraignment dates will be made available immediately upon receipt by the District Attorney's Office to the defendant or defense attorney.

C. Release

1) Security release will continue at the level determined by the officer of the court unless the court determines otherwise.

2) If release has not been set, the court will impose appropriate security release.

D. Defense Counsel

The court will appoint defense attorneys who will commit to being prepared for trial within sixty (60) days from the date of arrest on misdemeanor or felony in-custody cases, nor ninety (90) days from the date of arrest on felony out-of-custody cases (excluding BM11 cases).

6. Pre-Trial Appearances

A. On misdemeanor of felony in-custody cases, the Rule 7 (plea date) or status conference will be set within fourteen (14) days of the initial arraignment.

B. On felony out-of-custody cases, the Rule & date will be set within forty-five (45) days of initial arraignment.

C. On misdemeanor or felony in-custody cases, a trial date will be set no more than sixty (60) days from the date of arrest when possible.

D. On felony out-of-custody cases, the trial date will be set no more than ninety (90) days from the date of arrest when possible.

E. Continuances will not be allowed except when absolutely necessary. All continuances will be set in keeping with the intent of the "fast-track" system.

F. Failure to appear on the part of the defendant for any interim appearance will be grounds for a bench warrant to be issued.

G. Misdemeanors: At the Rule 7 hearing, the defendant has the option to plead guilty and proceed to sentencing; plead no-contest, if appropriate under the circumstances, and proceed to sentencing; plead guilty and enter into the deferred sentencing program if offered by the DDA; or plead not guilty and set trial within 60 days of arraignment (advise the court on the status of trial preparation).

H. Felonies: At the Rule & hearing, the defendant has the option to plead guilty; plead no-contest, if appropriate under the circumstances; or plead not guilty. Upon a guilty or no-contest plea, a Pre-Sentence Investigation (PSI) may be requested. If no PSI is requested, the defendant shall be sentenced immediately, or within 48 hours as is the defendant's right, provided the District Attorney's Office has made reasonable attempts to notify the victim. Upon a not guilty plea, a status conference shall be scheduled and the court shall attempt to schedule a trial within 60 days of the arraignment.

B. Disposition Goals and Offender Consequences

Goal: To seek appropriate dispositions and consequences for defendants. The following section outlines the various dispositional options to be considered.

1. Deferred Sentencing Program

A defendant does not have the right to the deferred sentencing program. This dispositional option can only be offered by the District Attorney's Office, and should be used only with offenders who have not been previously arrested or prosecuted for domestic violence and who have a limited criminal history at the District Attorney's discretion.

A. Eligibility

1) In order to be eligible for the deferred sentencing program, the defendant must meet the following criteria:

- No person-crimes or other significant criminal history;
- No pending charges (excluding driving charges);
- The violence did not exceed the level as indicated in Violence Category I and II of the violence scale, described in section IV(B)(2)(d), page 18;
- There was no abuse directed at the children and no children were injured during the violence; and
- The defendant has not been charged with felony domestic violence

B. Standard Conditions of Deferred Sentencing

1) The defendant must enter a guilty plea to at least one charge

2) The period of deferred sentencing shall be for a minimum of eighteen (18) months

3) Specific conditions should include:
    - Evaluation and appropriate treatment for alcohol and substance abuse, if indicated by the facts;
    - Meets minimum requirements or completion of an approved batterer intervention program;
    - Misdemeanor and felony fines, restitution, and court-appointed attorney's fees;
    - Under special circumstances, an alternative program will be recommended;
    - No possession of weapons during the period of deferred sentence; and an order for the confiscation and destruction of all relevant weapons;
    - No possession of intoxicants or entry into bars or taverns;
    - No contact with the victim(s)

C. Monitoring

1) Deferred sentencing cases will be monitored by the District Attorney's Office and the court.

2) Domestic violence cases will have show proof dates 60 days from sentencing and again prior to the conclusion of the deferred sentencing.

3) The District Attorney's Office will monitor deferred sentencing cases by using the following procedures:
    - The file should include a letter from any provider as to compliance with the court order;
    - A computer check of the District Attorney's case management system to ascertain whether any new cases have been filed;
    - A computerized criminal history (CCH) will be run. The DDA will follow-up on "hits" from other jurisdictions and states where the defendant may have resided;
    - Confirmation with the court accounting department as to the status of fines, fees, court costs, and restitution; and
    - Confirmation that the defendant was fingerprinted and photographed, and that the fingerprint card and disposition card have been processed

D. Unsuccessful Completion

If the defendant fails to comply with the terms of the deferred sentencing agreement, the DDA shall file a motion to show cause as to why probation should not be revoked and the deferred sentence terminated and request a warrant for the defendant when

necessary. Failure by the defendant to show compliance may result in the charge(s) standing as a conviction and imposition of additional sanctions.

2. Sentencing Recommendations

A. Financial Responsibility

In all cases, the defendant should be held financially responsible for all expenses as a result of the violence. Costs may include restitution to the victim, court costs, fines, batterer intervention program, counseling, or treatment costs.

B. Weapons

1) An order for the forfeiture and/or destruction of all relevant weapons or confiscated weapons should be obtained.

2) Upon conviction for domestic violence assault, menacing, or strangulation a defendant should be informed he may no longer possess a firearm or ammunition in accordance with federal and state law. 18 U.S.C. §922(g)(9) and ORS 166.250 to 166.270

C. Offender Classification

The sentence requested by the DDA and considered by the court should reflect the degree of harm inflicted by the battering and the criminal history of the offender. The following three levels of sentencing take these into account:

1) **LEVEL I OFFENDERS:** Unsuccessful completion of deferred sentencing and other first-time offenders not otherwise eligible for deferred sentencing. These offenders should have a criminal history scale of “H” or “I”.

2) **LEVEL II OFFENDERS:** Second time offender and/or high degree of violence as indicated in Violence Category II and III. These offenders should have a criminal history scale of “F”, “G”, “H”, or “I”.

3) **LEVEL III OFFENDERS:** Multiple offenses and/or significant criminal history and/or high degree of violence as indicated in Violence Category III.

D. Violence of Incident

Violence Category I consists of those cases involving pushing, shoving, grabbing, spitting, and throwing inanimate objects. The conduct may or may not result in physical injury.

Violence Category II consists of those cases involving slapping, biting, kicking, hitting, striking, strangulation, placing another person in fear of substantial physical injury

(menacing), and all incidents of Category I violence. With the exception of menacing, Category II violence often results in physical injury.

Violence Category III consists of incidents involving a dangerous or deadly weapon, serious injury, incidents involving a danger to children, strangulation, and animal abuse in conjunction with domestic violence, credible threats to self or others, menacing with a dangerous or deadly weapon coupled with active use of that weapon, and aggravated acts of Category I and II violence. With the exception of menacing, Category III violence would result in physical injury.

E. Standard Sentencing Recommendations for Misdemeanor Crimes

1) LEVEL I OFFENDERS

- Suspended imposition of sentence
- 18 months probation supervised by the court
- Restitution, fines, and fees
- Appropriate jail sentence
- No contact with the victim(s)
- Evaluation and treatment for alcohol and substance abuse, if appropriate
- Batterer intervention program
- No weapons, intoxicants or entry into bars or taverns
- Parenting program, if appropriate
    - **a.** After completion of batterer intervention program
- Other conditions as imposed by the court

2) LEVEL II OFENDERS: Second time offender and/or high degree of violence as indicated in Violence Category II and III

- Suspended imposition of sentence
- Up to five (5) years probation supervised by Marion County Department of Community Corrections or the court
- Restitution, fines, and fees
- Appropriate jail sentence
- No contact with victim(s)
- Evaluation and treatment for alcohol and substance abuse, if appropriate
- Batterer intervention program
- No weapons
- Parenting program, if appropriate
    - **a.** After completion of batterer intervention program
- Other conditions imposed by the court

3) LEVEL III OFFENDERS

- Executed sentence up to 365 days; or
- Suspended imposition of sentence

- Up to five (5) years probation supervised by Marion County Department of Community Corrections Domestic Violence Unit
- Restitution, fines, and fees
- Appropriate jail sentence
- No contact with victim(s)
- Evaluation and treatment for alcohol and substance abuse, if appropriate
- Batterer intervention program
- No weapons
- Parenting program, if appropriate
    - **a.** After completion of batterer intervention program
- Other conditions as imposed by the court

F. Standard Sentencing Recommendations for Felony Domestic Violence Crimes that are not BM11. *(Including, but not limited to Assault IV, Strangulation, Assault 3, Attempted Assault 2, Unlawful Use of a Weapon, and Coercion)*

1) LEVEL I OFFENDERS: the presumptive sentence for offenders in this category is 3 years supervised probation with 180/90 sanction units available

- Appropriate jail sanction
- Restitution, fines, and fees
- No contact with victim(s)
- No weapons
- Evaluation and treatment for alcohol and substance abuse
- Batterer intervention program
- Parenting program, if appropriate
    - **a.** After completion of batterer intervention program
- Other conditions as imposed by the court

2) LEVEL II OFFENDERS: the presumptive sentence for offenders in this category is 3 years supervised probation with 180/90 sanction units

- Appropriate jail sanction
- Restitution, fines, and fees
- No contact with victim(s)
- No weapons
- Evaluation and treatment for alcohol and substance abuse
- Batterer intervention program
- Parenting program, if appropriate
    - **a.** After completion of batterer intervention program
- Other conditions as imposed by the court

3) LEVEL III OFFENDERS: offenders in this category could have any criminal history scale. Prison sentences should be considered for these offenders. If appropriate, a PSI (pre-sentence investigation) should be requested for purposes of departure in order to obtain a prison sentence of more than 12 months for these offenders.

G. Additional Terms to be Recommended when Children are Present:

1) Comply with all directives of DHS and Family Court;

2) Contact with children to be at the direction of PO/DHS;

3) Establish paternity and child support

3. Plea Negotiations

A. Domestic Assault I; Domestic Assault II; or Kidnapping

The DDA should proceed on these cases as Ballot Measure 11 crimes if they are provable as such.

B. Domestic Assault III, Coercion; Attempted Assault I; Attempted Assault II; Unlawful Use of a Weapon; and Extortion

The DDA should proceed on these cases following the sentencing guidelines.

C. Felony Assault IV and Felony Strangulation

The DDA will review these and determine if the defendant is eligible for misdemeanor treatment either at the time of sentencing or at the end of a successful probationary period. In considering whether to reduce these crimes to a misdemeanor the DDA should take into consideration the following:

1) The impact of a felony conviction on the victim and the victim's family;
2) The defendant's criminal history;
3) The level of violence involved in the current crime;
4) The necessity of child testimony

4. Probation

A. Supervised Probation

Offenders sentenced to supervised probation for domestic violence related crimes will be assigned to the Marion County Community Corrections, Domestic Violence Supervision Unit (DVSU). The DVSU works closely with law enforcement, batterer intervention programs, victim services, and other service agencies to enhance public

safety and hold the offender accountable while on supervision. Assessment of risk is a key component in the supervision process to ensure supervision resources are focused on offenders who pose the greatest risk to their victims and the community. High and medium-risk domestic violence offenders are supervised by a probation officer in the DVSU, while low-risk offenders are supervised by a DV limited supervision unit. Low-risk offenders are still held accountable for any violations, but may report via mail and with less intensity than medium and high-risk offenders.

The DVSU is responsible for making appropriate referrals to and monitoring an offender's progress in treatment programs designed to address offenders' individual needs. While most domestic violence offenders attend batterer intervention programming, many are referred to substance abuse treatment, mental health therapy, and parenting programs. The DVSU closely monitors offenders' adherence to the conditions of their supervision; especially protection/no-contact orders and their participation in intimate relationships
while on supervision. Unit officers are responsible for holding offenders accountable if violations of supervision conditions occur. Sanctions for violations can include; curfew, increased reporting, electronic monitoring, and incarceration at the jail or Transition Center. Officers determine the type of sanction imposed by matching the offender's violation behavior to their risk level and select an appropriate intervention intended to achieve the desired behavior change.

If the offender continues to violate the conditions of their probation, they may be returned to the court and set to attend a show-cause hearing. They may be asked to show proof of compliance with the terms of conditions of their probation. If a defendant fails to show proof of compliance, depending on the nature of the violation, the defendant may be ordered to serve an appropriate term of incarceration and (in the case of felony probation) a period of Post-Prison Supervision following release.

5. Protective Orders

The Council participates in ongoing collaboration with the courts to develop a protective order process that is trauma-informed and better accommodates the needs of victims without creating additional barriers. These orders involved in the protective order process include:

- Family Abuse Prevention Act (FAPA) Orders (aka Temporary Restraining Order)
- Stalking Protection Order
- Sexual Assault Protection Order (SAPO)
- Elderly Persons and Persons with Disability Prevention Act (EPPDAPA) Order
- Emergency Protection Order (EPO)
- Extreme Risk Protection Order (ERPO)

Through a collaboration between the Center for Hope and Safety (CHS) and the Marion County Victim Assistance Division (MCVAD), there is an advocate present in the courtroom each day for the protective order hearings. This advocate provides support, safety planning, information

about resources, and help to navigate the process. Additionally, the court allows protective order petitioners to request to appear for contested hearings by video from a separate, private location in the courthouse. An advocate from either CHS or MCVAD accompanies the victim through the process when it occurs.

C. Batterer Intervention Programs

Goal: To access, use, and promote batterer intervention programs that follow state-of-the-art methodology for changing attitudes and violent behaviors.

Marion County has adopted *Batterer Intervention Standards*. These standards are to be followed by all programs receiving court or Local Supervisory Authority referrals in domestic violence cases.

- A copy of the standards can be found on the Marion County Sheriff's Office website at http://www.co.marion.oc.us/SO/Probation/Pages/victims.aspx

- The procedure required for programs to obtain approval of the Local Supervisory Authority and the Council is outlined in the Batterer Intervention Standards and the attachments included.

V. VICTIM SUPPORT THROUGH SERVICES AND COMMUNITY TRAINING

The Council believes that a response cannot be based solely on prosecution and must be supplemented by effective victim assistance in order to promote victim safety and offender accountability. A reported incident of domestic violence should be viewed as an opportunity to assist the victim with her safety concerns. These interventions should be designed to make the victim aware of the cycle of violence and of responses that may contribute to her safety. Although these social services already exist, turning them toward the goal of eliminating domestic violence requires that the providers of services and the criminal justice system participants be trained to recognize and cope with domestic violence as part of their service orientation. The Council will promote a commitment by this community toward the identification of victim support services and training of social service and criminal justice participants in responding to incidents of domestic violence.

A. CURRENT SERVICE PROVIDERS

A variety of organizations currently provide services to victims of domestic violence, as described in the following paragraphs.

1) Crisis Services

Center for Hope and Safety
605 Center St. NE
Salem, OR 97301
Hotline 503-399-7722 or 1-866-399-7722; Business 503-378-1572

http://www.hopeandsafety.org

The Center for Hope and Safety, a nonprofit organization serving Marion County, provides the most extensive, consistent, and relevant services to victims of domestic violence, sexual assault, stalking, and human trafficking. These services include a 24-hour crisis line, emergency shelter, safety planning, crisis intervention, assistance with protective orders, information and referrals, support groups, community education, emergency transportation, court accompaniment, co-located DHS child welfare and self-sufficiency offices, and other supportive services. This agency also engages in extensive advocacy and networking with other agencies and programs, both on behalf of victims and survivors and in aid of social/legal change in the community. Clients are generally self-referred, although referrals also come from law enforcement and state agencies. Female victims are seen on referral from the Marion County Correctional Facility when the client has asked to have the "no-contact" provision of the offender's release agreement waived.

2) District Attorney's Victim Assistance Division

555 Court St. NE, Third Floor
Salem, OR 97301
503-588-5253 or 1-866-780-0960
http://www.co.marion.or.us/DA/victimassistance.aspx

The Family Violence Program of the Marion County District Attorney's Victim Assistance Division offers direct victim services to victims of domestic violence. The services include notification of victims' rights and assistance asserting rights, crisis intervention, follow-up contact, information and referral, criminal justice support, emergency financial assistance, emergency legal advocacy, assistance with Crime Victims' Compensation, VINE information, assistance with protective orders, court accompaniment, safety planning, and men's waiver class. In addition, Victim Assistance staff work directly with victims of domestic violence who have a co-occurring case within the juvenile dependency process due to allegations of domestic violence. This advocate works closely with DHS and the District Attorney's office to create a team approach to surround the victim with assistance in re-establishing a safe and stable home for the return of her children. This advocate provides the same services listed above but also provides a companion voice with the victim through the additional dependency processes and requirements.

3) Law Enforcement Agencies

Law enforcement agencies provide widely varying levels of information and assistance to victims. Victim information cards that meet the requirements under ORS 133.055(3) and ORS 147.365 are available to officers through their agencies.

Domestic Violence Response Team
Salem Police Department
555 Liberty Street SE, Room 130
Salem, OR 97301

503-588-6433 x3 or x4

The Domestic Violence Response Team (DVRT) at the Salem Police Department offers 24-hr on-scene crisis response to victims of domestic violence and stalking within the City of Salem's jurisdiction at the time of police contact and/or offender arrest. The ultimate purpose of the DVRT is to provide victims the immediate intervention needed to begin to break the cycle of violence, thus heightening victim safety, encouraging offender accountability through prosecution and ultimately reducing on-going violence within the same relationship or household. The direct services provided by the DVRT include information on victim's rights, offender arrest and release procedures, the criminal justice system, assist victims with crisis intervention, safety planning, problem solving on immediate needs, offer emotional support, and provide a link between victims and local community resources and referrals.

Marion County Sheriff's Office Community Corrections Division Victim Services
4040 Aumsville Highway
Salem, OR 97317
503-540-8041

The Marion County Sheriff's Office Community Corrections Division Victim Services has been working with victims of crime since June of 2001. This office was created in response to the realization that victims continue to need service after official court proceedings are over. Services provided consist of assisting in the enforcement of No Contact Orders, Restraining Orders and Stalking Orders; updating significant changes in offender case status; tracking offender's court hearings, sentence orders, financial obligations and other case information; supplying recent photographs of offenders; and providing counseling or community resource referrals. Community Corrections Division Victim Services also collaborates with other agencies to provide a continuum of service.

4) Department of Human Services Self-Sufficiency Programs, State of Oregon

Woodburn Self-Sufficiency Office
120 E Lincoln, Suite 120
Woodburn, OR 97071
503-980-6677

Keizer Self-Sufficiency Office
3420 Cherry Ave NE, Suite 110
Salem, OR 97303
503-373-0808

Winema- North Salem Self-Sufficiency Office
4074 Winema Place, Bldg. 53, Suite 100
Salem, OR 97305
503-378-2731

South Salem Self-Sufficiency Office
1185 22nd Street SE
PO Box 14200
Salem, OR 97309
503-378-6327

Santiam Self-Sufficiency Office
11656 Sublimity Road SE, #200
Sublimity, OR 97385
503-769-7439

Self-Sufficiency provides emergency financial assistance to domestic violence victims (called Temporary Assistance for Domestic Violence Survivors, or TA-DVS), and can provide assistance more quickly to domestic violence victims than to others seeking financial assistance. Other Self-Sufficiency Programs, such as TANF (Temporary Assistance to Needy Families), those directed at assisting clients to obtain job training and employment, as well as certain counseling services and day care, are also available to domestic violence survivors who meet eligibility requirements.

5) Department of Human Services Child Welfare Programs, State of Oregon

4600 25th Street NE, Suite 110,
Salem, Oregon
503-378-6800
Child Abuse Hotline: 503-378-6704

DHS Child Welfare, together with law enforcement agencies, receives and investigates reports of child abuse and neglect. DHS receives many referrals about children reportedly threatened with harm due to domestic violence exposure. Police agencies route reports to Child Welfare as part of their mandatory child abuse reporting obligation when children are present during a violent incident or are injured or neglected in the course of an incident. Reports can also come from other sources in the community, including the District Attorney's Office, Victim Assistance Division, system-based domestic violence service providers, school staff, and private citizens.

DHS intake staff screen the reports and assign for face-to-face assessment by a child protective services worker those that fall within the statutory definition of child abuse or neglect, where the child is currently exposed to a safety threat or the perpetrator is one of the child's parents. These include cases where a child has been directly involved or injured in the violence, where the violence appears, chronic, severe and/or escalating in frequency and severity and children are present in the violent environment.

In these cases, the Child Welfare worker determines whether there is a current safety threat to vulnerable children, and whether the non-offending parent is willing/able to protect the

children. DHS encourages and assists the adult victim to make a safety plan for her children and herself, and gives information about domestic violence and referrals to local resources.

In cases of serious threatened harm where the victim is unable to adequately protect the children, the Child Welfare worker may seek the intervention of the Juvenile Court to assure the children's safety. DHS also seeks to collaborate with other agencies in a community-coordinated response, including police, probation and parole, the District Attorney's Office, Center for Hope and Safety, batterer intervention programs and the civil and criminal courts.

6) Crime Victims' Compensation Program

Department of Justice
1162 Court Street NE
Salem, OR 97310
503-378-5348

The state program provides financial assistance for counseling, medical treatment, and loss of salary to eligible victims. Applications must be filed within one year of the crime, but can be waived up to one year for "good cause." Applications and assistance can be obtained through the Victim Assistance Division, the Center for Hope and Safety, and DHS. The law also requires law enforcement officers to advise victims of the program (ORS 147.365).

7) Marion County Correctional Facility

4000 Aumsville Highway SE
Salem, OR 97317
Jail Intake 503-588-8595

Release staff will provide the defendant with a release agreement that includes a "no-contact" provision and an explanation of what contact means as defined under ORS 163.730(3). Staff refers victims requesting waivers to the "no victim contact" release condition to the Center for Hope and Safety (for female victims) and the Victim Assistance Division (for male victims). Staff at the correctional facility occasionally provides information and referrals to victims. Additionally, staff is currently providing a periodic informational presentation on domestic violence to incarcerated women.

8) Senior and Disabilities Services

3410 Cherry Ave NE
PO BOX 12189
Salem, OR 97309

503-304-3456, fax 503-304-3434

Senior and Disabilities Services investigate reported abuse, neglect, self-neglect or financial exploitation against a senior or someone with a disability. Police agencies are required to route reports to Senior and Disabilities Services when suspected abuse has occurred. This office is also responsible for planning, developing, coordinating and arranging services for seniors and peoples with disabilities.

9) Legal Aid

Legal Aid Services of Oregon
Salem Regional Office
105 High St SE
Salem, OR 97301
503-581-5265

Legal Aid Services of Oregon (LASO) provides advice and representation to low-income citizens in Marion and Polk County in the State of Oregon. The types of cases that LASO typically provide advice and/or legal representation for include landlord-tenant (housing) cases, public benefits cases, including some Supplemental Security Income (SSI) cases, and various family law cases. The family law cases include divorce, custody and Family Abuse Prevention Act (FAPA) orders. LASO staff frequently represent clients at FAPA objection hearings, which may include custody and parenting time issues. LASO also offers assistance with Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Orders and Stalking Order cases.

B. IMPROVING ASSISTANCE TO VICTIMS

1) Handout Materials for Victims

The Center for Hope and Safety (CHS) has developed a packet of information for victims that is available in English, Spanish, Russian, Vietnamese, Chinese, large print and audio. This packet is made available to victims through CHS (at the office and the website at www.hopeandsafety.org), the Victim Assistance Division, the Salem Police Department's DVRT, and some other local agencies. Material printed in Braille is available at CHS only. Each law enforcement agency should develop a card or brochure that is provided to victims at the scene of the crime. These cards should meet the legal requirements under ORS 133.055(3). Agencies are also to provide victims with notice of their constitutional rights under Article I, Section 42 of the Oregon Constitution to comply with ORS 147.417(1), available through the Department of Justice.

2) Community and Agency Training

The Council strives to organize community-wide training following the implementation of the revised protocol, and continues to be committed to providing state-of-the-art training that will serve to keep the community informed of the most up to date information about domestic violence. The DV Council will continue to offer Domestic Violence Protocol training to all local criminal justice agencies on a yearly basis.

3) Assistance to Child Victim/Witnesses

The Marion County Victim Assistance Division provides services and support to child victims and witnesses. These services include an explanation of and preparation for the Grand Jury process, preparation for and accompaniment to trial, as well as referrals to agencies in the community which can offer services to help children process what they are experiencing in their lives.

VI. CONCLUSION

The Council believes that domestic violence should be viewed as a priority for all participants in the criminal justice system. This is a guide of best practices and procedures for conducting consistent domestic violence cases from investigation through adjudication and beyond.
By working cohesively together as criminal justice partners we can enhance victim safety and offender accountability in our community.

MULTI-DISCIPLINARY TEAM VULNERABLE ADULT ABUSE PROTOCOL

Marion County Multi-Disciplinary Team

I. Protocol Statement

A. Marion County MDT Mission Statement

The mission of the Marion County Vulnerable Adult Multi-Disciplinary Team (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."

B. 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.

C. Composition of the Multidisciplinary Team

The MDT includes, but is not limited to, representatives from: law enforcement, social service agencies, prosecution, mental health, and victim advocacy. See Member Agencies on Page 4.

D. Responsibilities

- Provide a forum for education and discussion, assessment and review of cases.
- Provide a forum for identifying, discussing and resolving interagency issues.
- Overseeing the implementation of the interagency vulnerable adult abuse protocol. This includes review and update of the protocol as needed.
- Minimize trauma to victims.
- Review the progress of the working team.

- Assist in the development of education/training for MDT agency members with an emphasis on consistency and quality.
- Review and address system issues and evaluate system response.
- Build and maintain effective working relations.
- Strengthen county-wide communication.
- Understand each other's roles and barriers.
- Staff difficult and/or high-risk cases.
- Ensure compliance with these protocol guidelines and with statutory mandates.
- Identify and pursue resources.
- Identify needed legislation.
- Maintain clear focus on mission/purpose.
- Address other relevant matters relating to vulnerable adult abuse cases.

The District Attorney shall designate a member of his or her staff to chair the MDT. The MDT Chair shall have the responsibility and authority for setting up subcommittees to review and make recommendations to the MDT, when and where appropriate.

E. Records & Minutes

All information and records acquired by the MDT in the exercise of its duties are confidential. They may only be disclosed in the course of vulnerable adult abuse case review.

Minutes will be kept by the MDT Coordinator and will be distributed to the members either before or at the next meeting.

The Marion County Vulnerable Adult MDT meets on the 3rd Tuesday of the month at 9:00 am at the Northwest Senior & Disability Services building in the conference room on the second floor located at 3410 Cherry Ave. NE, Salem, Oregon. The Marion County MDT Chair is Deputy District Attorney Keir Boettcher.

Marion County Multi-Disciplinary Team

Vulnerable Adult Abuse Protocol

II. DEFINITIONS

A. Elderly Person: Any person 65 years of age or older.

B. Abuse

1. Any physical injury to a vulnerable adult caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

2. Neglect.

    A) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a vulnerable adult that may result in physical harm or significant emotional harm to the person;

    B) The failure of a caregiver to make a reasonable effort to protect a vulnerable adult from abuse; or

    C) Withholding of services necessary to maintain the health and well-being of a vulnerable adult which leads to physical harm of that person.

3. Abandonment, including desertion or willful forsaking of a vulnerable adult or the withdrawal or neglect of duties and obligations owed a vulnerable adult by a caretaker or other person.

4. Willful infliction of physical pain or injury upon a vulnerable adult.

5. An act that constitutes the crime of:

    A) Rape in the First Degree;
    B) Sodomy in the First Degree;
    C) Unlawful Sexual Penetration in the First Degree;
    D) Sexual Abuse in any degree;
    E) Public Indecency; or
    F) Private Indecency.

6. Verbal abuse of a vulnerable adult.

7. Financial exploitation of a vulnerable adult.

8. Involuntary seclusion of a vulnerable adult for the convenience of a caregiver or to discipline the person.

9. A wrongful use of a physical or chemical restraint of a vulnerable adult, excluding an act of restraint prescribed by a licensed physician and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

10. Any death of a vulnerable adult caused by other than accidental or natural means.

C. Adults with Disabilities: A person 18 years of age or older with:

1. A developmental disability who is currently receiving services from a community program or facility or who was previously determined eligible for services as an adult by a community program or facility;

2. A mental illness who is receiving services from a community program or facility; or

3. A physical disability.

D. Caregiver: An individual, whether paid or unpaid, or a facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

E. Community program: A community mental health and developmental disabilities program as established in ORS 430.610 to 430.695.

F. Facility

1. A **long-term care facility**, that is, a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of Human Services, to provide treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing facilities and

intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

2. A **residential facility**, that is, a residential care facility, residential training facility, residential treatment facility, residential training home, residential treatment home, or an assisted living facility as those terms are defined in ORS 443.400.

3. An **adult foster home**, that is, a family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

G. Financial Exploitation

1. Wrongfully taking the assets, funds or property belonging to or intended for the use of a vulnerable adult;

2. Alarming a vulnerable adult by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out;

3. Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by a vulnerable adult; or

4. Failing to use the income or assets of a vulnerable adult effectively for the support and maintenance of the person.

H. Intimidation: Compelling or deterring by threat.

I. Law enforcement agency (LEA):

1. Any city or municipal police department;
2. Any county sheriff's office;
3. The Oregon State Police;
4. Oregon Department of Justice; or
5. Any district attorney.

J. Public or private official:

1. Physician, naturopathic physician, osteopathic physician, chiropractor or podiatric physician and surgeon, including any intern or resident, psychologist (adult abuse only);

2. Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

3. Employee of the Department of Human Services, county health department or community mental health and developmental disabilities program;

4. Peace officer;

5. Member of the clergy;

6. Licensed clinical social worker;

7. Physical, speech or occupational therapists;

8. Senior center employee;

9. Information and referral, outreach or crisis worker;

10. Attorney (adult abuse only);

11. Licensed professional counselor or licensed marriage and family therapist;

12. Any public official who comes in contact with elderly persons or adults in the performance of the official's official duties; or

13. Firefighter or emergency medical technician.

K. Services: Includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person or adult.

L. Sexual abuse:

1. Sexual contact with a vulnerable adult who does not consent or is considered incapable of consenting to a sexual act due to mental defect, mental incapacitation or physical helplessness;

2. Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

3. Any sexual contact between an employee of a facility or paid caregiver and a vulnerable adult served by the facility or caregiver;

4. Any sexual contact between a vulnerable adult and a relative of the vulnerable adult other than a spouse; or

5. Any sexual contact that is achieved through force, trickery, threat or coercion.

Note: Sexual abuse does not mean consensual sexual contact between a vulnerable adult and a paid caregiver who is the spouse or partner of the vulnerable adult.

M. Sexual contact: Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

N. Social Service Agency: Includes, but is not limited to:

1. Northwest Senior & Disability Services: Adult Protective Services;
2. Marion County Behavioral Health;
3. Marion County Developmental Disabilities Services; and
4. Department of Human Services/Oregon Health Authority (OAPPI)

O. Verbal abuse: To threaten significant physical or emotional harm to a vulnerable adult through the use of:

1. Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

2. Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

P. Vulnerable Adult:

1. Any person 65 years of age or older; or

2. A person 18 years of age or older with:

A) A developmental disability who is currently receiving services from a community program or facility or who was previously determined eligible for services as an adult by a community program or facility;

B) A mental illness who is receiving services from a community program or facility; or

C) A physical disability.

III. REPORTING ALLEGATIONS OF ABUSE

A. Reporting Parties:

1. Voluntary reporters (e.g., victim, family, friends, neighbors, others);

2. Mandatory reporters (e.g., medical providers, law enforcement, clergy, psychologists, and firefighters (See Appendix A)

A) Any mandatory reporter who has reasonable cause to believe that any vulnerable adult with whom the official comes in contact, while acting in an official capacity, has suffered abuse shall report or cause a report to be made by following the procedure set forth in section B. (See Appendix A and B: ORS 124.065; 430.737).

B) Any mandatory reporter who has reasonable cause to believe that any person with whom the official comes in contact while acting in an official capacity has abused a vulnerable adult, shall report or cause a report to be made by following the procedure set forth in section B. (See Appendix A and B: ORS 124.065; 430.737).

C) NOTE: A psychiatrists, psychologists, members of the clergy and attorneys are not required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

A. Who to Call: Allegations of abuse against vulnerable adults must be reported immediately to the appropriate agency as listed below, or to a law enforcement agency.

1. Adults 65 years or older and/or adults with physical disabilities: DHS/Adult Protective Services – **1-800-846-9165**

2. Adults with Developmental Disabilities: Marion County Developmental Disability Services or Marion County Adult Abuse Investigations – **503-576-4532 or 503-763-5711**

3. Adults with Mental Illness: Marion County Mental Health County: **503-361-2771 or 1-855-503-SAFE (7233)**

B. *Required Information: Reports of abuse must include the following information, if known:*

1. The name and address of the elderly person or abused adult;

2. The name and address of any person(s) responsible for the care of the vulnerable adult;

3. The nature and extent of the abuse including any evidence of previous abuse;

4. The explanation given for the abuse;

5. Any information that led the person making the report to suspect that abuse has occurred;

6. Any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator;

7. The date of the incident; and

8. The venue where the abuse occurred.

IV. REPORT RECEIVED

A. Social Service Report to Law Enforcement

1. When a report of a possible crime is received by the social service agency, the individual who made the initial contact and/or report shall notify, where practicable, in writing, the LEA having jurisdiction within the county where the report is made.

2. If the social service agency determines there is reason to believe a crime of abuse has been committed, the social service agency shall immediately notify, in writing or by phone, the LEA having jurisdiction within the county where the report is made. The LEA must confirm to the social service agency, in writing, its receipt of the notification within 4 business days.

   NOTE: If the social service agency determines that the nature of the crime or circumstances constitutes an emergency (*i.e.*, requires law enforcement

investigation within 24 hours), the social service agency shall also report the incident to 9-1-1.

3. When a report of abuse is received by a LEA, a peace officer shall have direct contact with the reporter to coordinate further efforts.

4. If the receiving LEA does not have jurisdiction, the LEA must immediately notify, in writing, the LEA having jurisdiction and the appropriate social service agency in the county where the report was made.

B. Investigating Abuse Allegations

1. Upon receipt of an allegation of abuse of a vulnerable adult, an appropriate social service agency or LEA shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse.

NOTE: When practical, the social service agency and LEA should investigate the allegations together. This will satisfy both agencies requirements while avoiding the duplication of interviews.

2. Investigations shall be conducted in a manner set forth by the policies of the respective agencies and must include:

A) A visit to the named vulnerable adult, and

B) Communication with those individuals having knowledge of the facts of the particular case.

C) NOTE: If the alleged abuse occurs in a residential facility, the social service agency must conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.

3. If the social service agency finds reasonable cause to believe that a crime of abuse has occurred, the agency must promptly notify the appropriate law enforcement agency in writing.

A) Within 4 business days of receiving this notification, the LEA shall notify the department in writing:

1) that there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

2) that the investigative findings have been given to the district attorney's office for review; or

3) that a criminal investigation will take place and the assigned case number.

4. **Cross-Reporting by Law Enforcement to Social Service Agency**: If a law enforcement agency finds reasonable cause to believe that abuse has occurred, the LEA shall notify the appropriate social service agency, in writing, in accordance with the requirements described in IV (B) above.

5. *Upon completion of the evaluation of each case, the social service agency shall prepare written findings that include recommended action and a determination of whether protective services are needed.*

C. **Investigations of Abuse in Care Facility**: Such investigations shall be carried out in compliance with the applicable Oregon Revised Statutes, administrative rules and this Protocol.

V. Criminal Prosecution

A. Pre-Charge Investigation

1. *Investigators are encouraged to consult with the Deputy District Attorney (DDA) regarding any legal issues that arise during or from the investigation.*

2. *If a LEA gives the findings of the social service agency to the District Attorney's Office for review, within 5 business days the assigned DDA shall notify the social service agency that the DDA has received the findings and shall inform the social service agency whether the findings have been received for review or for filing charges. A DDA shall make the determination of whether to file charges within 6 months of receiving the findings of DHS.*

B. Initiation of Legal Proceedings by the Deputy District Attorney:

1. The DDA has discretion and responsibility for initiating legal proceedings.

2. The DDA reviews reports submitted by police and social service agency to determine appropriate charge(s) to file.

    - Incomplete reports are returned to the LEA for completion of documentation or evidence analysis.
    - When further investigation is required, the case is returned to the LEA for follow up.
    - The DDA may consult with police, victim, witnesses, attorneys, victim advocate, social service agency, family, or friends as necessary.
    - Investigating officers may resubmit cases to the DDA with the additional information that will assist in the prosecution.

3. If charges are filed, the case will be assigned to a victim advocate with the District Attorney's Office.

4. Procedures when prosecution is declined.
    - The DDA sends a written notice to the police agency and social service agency.
    - The DDA directs victim advocates to inform the victim(s).
    - The DDA informs other interested parties of the decision.
    - The decision to decline may be subject to reevaluation depending on new information received in the investigation.

C. Pre- Trial

1. If requested, the DDA will consult with the victim(s) before completing negotiations on a case.

2. If the DDA files charges stemming from the findings of the social service agency and makes a determination not to proceed to trial, the district attorney shall notify the social service agency of the determination and shall include information explaining the basis for the determination.

D. Trial

1. The DDA must decide whether or not to proceed to trial and makes all the decisions during the course of the trial.

2. Both DDA and the victim advocate are available to support the victim during the course of the trial.

3. The defendant has the right to elect to have the case decided either by a jury or a judge.

4. Depending on the victim's mental ability and necessity for successful prosecution, a pre-trial competency hearing may be required to determine whether the witness is competent to testify in court.

5. A jury in a jury trial or a judge in a court trial decides the defendant's guilt or innocence and renders a verdict on each charge.

VI. Data Collection and Reporting

A. At the December meeting of the MDT, member agencies shall, where applicable, submit information regarding the preceding 12 months in Marion County; specifically, the number of:

1. Substantiated allegations of abuse of adults;

2. Substantiated allegations of abuse referred to law enforcement because there was reasonable cause found that a crime had been committed;

3. Allegations of abuse that were not investigated by law enforcement;

4. Allegations of abuse that led to criminal charges;

5. Allegations of abuse that led to prosecution;

6. Allegations of abuse that led to conviction.

B. By April 30th of each year, the MDT shall report this information to the Department of Justice and the Oregon Criminal Justice Commission.

Marion County 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 (DA'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.

ADMINISTRATIVE POLICIES

Public Records Requests

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.
213.2
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. Each department head within Marion County 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 their department, in compliance with this policy.

2.2. Each public records officer within Marion County 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 has received a written public records request, the county 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 county 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 county 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 county asserts that an exemption within ORS 192.311 to 192.478 applies to the requested records; or

3.7.3. The county informs the requester that it is not the custodian of the requested records.
3.8. If the county 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 Marion County 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, Marion County 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. Marion County 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, Marion County 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 county 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 Chief Administrative Officer (CAO) or Deputy County Administrative Officer. The CAO or Deputy CAO 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 Marion County 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 county 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 Board of Commissioners Office has the sole authority and responsibility to implement this policy and assure compliance by county departments.

9. Tracking Public Records Requests
Each department's public records officer shall document the number and type of public records requests the department has received and completed.

10. Periodic Review
The Board of Commissioners Office shall review this policy every three years, or as state and federal regulations are revised and necessitate a change in the policy. The Board of Commissioners Office shall review the public records officers list at least annually, and notify each department of any changes.

ADOPTED: 02/18

ADMINISTRATIVE PROCEDURES

Public Records Requests

OBJECTIVE: To establish a county-wide procedure for responding to public records requests.
REFERENCE: Policy #213
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 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, a 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 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 or legal counsel.
1.1.3 If the records relate to pending claims or litigation the public records officer shall consult with a supervisor and legal counsel shall be notified.
1.2 The public records officer shall promptly determine if the requested records are in the department's custody.
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 department is not the custodian of the requested record(s); or
2.1.2 Notify the requester that the department is uncertain whether it is the custodian of the requested record(s); or
2.1.3 Confirm that the department 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 department 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 or legal counsel 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 county 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 is still processing the request and provide 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 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.

LAW ENFORCEMENT

INTENTIONAL USE OF

DEADLY PHYSICAL FORCE RESPONSE PLAN

(SB 111 Plan)

Marion County
Intentional Use of Deadly Physical Force Planning Authority

Revision Date 7/2016

Members of the Planning Authority

Marion County District Attorney (co-chair)
Marion County Sheriff (co-chair)
Oregon State Police Administrative Representative
Salem Police Chief
Keizer Police Chief
Silverton Police Chief
Woodburn Police Chief
Police Labor Union Representatives
Public Member

On March 20, 2008, this Plan was approved by the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Marion County---------- Approved on 4/23/2008 City of

Aumsville------ - -----------Approved 5/12/2008

City of Aurora----------Approved 5/13/2008

City of Detroit---------- Approved 4/8/2008

City of Donald---------- Approved 5/13/2008

City of Gates---------- Approved 3/20/2008

City of Gervais----------_____ ---Approved 5/1/2008

City of Hubbard -----------Approved 4/8/2008

City of Idanha-- Approved 4/14/2008

City of Jefferson---Approved 3/27/2008

City of Keizer--------- --Approved 5/19/2008

City of Mill City--- Approved 4/8/2008

Approved 4/8/2008

City of Mt. Angel--

City of St. Paul--

City of Salem____________________________________ Approved 5/5/2008

City of Scotts Mills--

City of Silverton - - - - - ------------- - - - ----------------------Approved 5/5/2008

City of Stayton---Approved 4/7/2008

City of Sublimity ________________________________Approved 4/14/2008

City of Turner--Approved 4/10/2008

City of Woodburn_______________________________Approved 4/28/2008

Upon receiving a vote of approval from 2/3 of the above jurisdictions, this Plan was submitted to the Attorney General, who approved the Plan on July 3, 2008.

Preamble

Marion County law enforcement agencies recognize the importance to both their agencies and our communities to ensure that any intentional use of deadly physical force by a peace officer is investigated in a professional, competent and impartial manner. The openness with which we proceed in these investigations is critical to establishing and maintaining trust within the community. It is clear our citizens examine closely the actions any law enforcement agency takes when their officers intentionally use deadly physical force, and it is our goal to ensure the community is confident and accepting of the actions Marion County law enforcement agencies take when involved in these situations.

Section 1: Administration

(1) In the event that a member of the planning authority is unable to continue to serve, a replacement shall be appointed as provided in Section 2(1) of Senate Bill 111, Oregon Laws 2007.

(2) There shall be six voting members of the Planning Authority. The approval of the Plan, elements or revisions thereof, shall be by majority vote.

(3) The presence of 2/3 of the voting members shall be required in order to hold any vote.

Section 2: Applicability of the Plan

This plan shall be applicable, as set forth herein, to any intentional use of deadly physical force by a peace officer acting in the course of and in furtherance of his/her official duties, occurring within Marion County.

Section 3: Definitions

Agency	Means the law enforcement organization employing the peace officer who intentionally used deadly physical force.
Plan	Means the final document approved by the Planning Authority, adopted by two-thirds of the governing bodies employing law enforcement agencies, and approved by the Attorney General. Any approved revisions shall become a part of the Plan.
Deadly Physical Force	Means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

Serious Physical Injury	Means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. (ORS 161.015(8))
Physical Injury	Means impairment of physical condition or substantial pain that does not amount to "serious physical injury."
Involved Officer	Means the peace officer whose official action was or whose official order precipitated an intentional use of deadly physical force. Also includes a peace officer who was involved before or during the intentional use of deadly physical force, and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

Section 4: Immediate Aftermath

When a peace officer intentionally uses deadly physical force, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety and health of the officer and any member of the public.

After taking such steps, the officer shall immediately notify his or her agency of the intentional use of deadly physical force.

Thereafter, the officer, if able, shall take such steps as are reasonably necessary to preserve the integrity of the scene and to preserve evidence.

Upon request, the officer shall provide information regarding the circumstances as necessary to protect persons and property, preserve any evidence, and to provide a framework for the investigation.

Section 5: Intentional Use of Deadly Physical Force

When intentional deadly physical force is used against any person, in addition to the requirements of Section 4 (1) of this Plan and notwithstanding agency policy, the following provisions apply:

(1) Upon the arrival of additional peace officers, sufficient to manage the scene, each Involved Officer shall be relieved of the above duties set forth in Section 4(1) of the Plan, and the duties shall be re-assigned to uninvolved peace officer personnel.

(2) The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain information relevant to public safety (e.g. outstanding suspects, location of evidence, direction of travel, etc.).

(3) As soon as practicable, each Involved Officer shall leave the scene with a companion officer, as directed by his or her supervisor, and be offered an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to a location designated by the investigative agency. Following the intentional use of deadly physical force,

the officer's union representative shall be notified. Management or non-represented employees shall be afforded the same opportunity to consult with legal representation.

(4) After consultation with the involved officer, the agency or officer shall notify the officer's family according to the agency's policy regarding such notification.

(5) Notification shall be made to the District Attorney as provided in Section 7(1) of this Plan. This provision does not prevent the agency from requiring additional notification requirements within their respective agency policies.

(6) As soon as practicable, any weapon used by an involved officer shall be seized by investigators and, if appropriate, replaced with a substitute weapon. Other involved officers' weapons, even if not used, are also subject to seizure by the investigative agency.

(7) Interview of an Involved Officer:

As used in this section "interview" refers to formal interview of an officer by assigned investigative personnel that occurs a reasonable time after the incident, and after the officer has had an opportunity to consult with counsel, if so desired. It's noteworthy that there may be multiple involved officers, and this process shall be followed with each of them.

(a) The interview of the involved officer who intentionally used deadly physical force shall occur after a reasonable period of time to prepare for the interview and considering the emotional and physical state of the officer(s). The interview shall occur no sooner than 48 hours after the incident, unless this waiting period is waived by the officer.

(b) The waiting period does not preclude an initial on-scene debriefing with the officer to assess and make an initial evaluation of the incident.

(c) The scene shall be secured and managed consistent with the control of any other major crime scene. Only personnel necessary to conduct the investigation shall be permitted access to the scene. When it is determined

that no evidence will be contaminated or destroyed, the involved officer may conduct a "walk through" to assist in the investigation.

(8) Immediately after the initial on-scene debriefing (see Section 5(7)(b)), an involved officer shall be placed on administrative leave until sufficient information exists to justify the intentional use of deadly physical force and the officer has had an opportunity for initial mental health counseling.

(9) Notwithstanding subsection (8) above, for no less than 72 hours immediately following an incident in which deadly physical force was intentionally used by a peace officer, a law enforcement agency may not return an Involved Officer to duties that might place the officer in a situation in which the officer has to use deadly force. (See also related subsection (10) below.)

(10) In the six months following an intentional use of deadly physical force incident that results in a death, the agency shall offer each Involved Officer a minimum of two opportunities for mental health counseling. The officer shall be required to attend at least one session of mental health counseling.

(a) At agency expense, the involved officer (s) shall be scheduled for an appointment with a licensed mental health counselor for a counseling session with a follow-up session scheduled at a date determined by the mental health professional.

(b) The counseling sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and counselor.

(11) In the event of an intentional use of deadly physical force, it is recommended that members of an organization outside the involved officer's agency conduct the investigation under the direction of the District Attorney. Members of the involved officer's agency may assign personnel to assist in the investigation as directed by the lead investigative agency.

(a) An outside agency may include the Oregon State Police, the Marion County Homicide Assault Response Team (HART), or any other agency which has the expertise necessary to investigate a deadly force situation.

(b) The District Attorney shall be consulted whenever one agency requests another to investigate any intentional use of deadly physical force.

(c) At least one officer from an outside agency shall be assigned to the investigative team in the event an agency investigates their own officer's intentional use of deadly physical force.

(12) The assignment of outside investigative personnel does not preclude the agency involved from conducting a concurrent investigation for administrative purposes as established by that agency. Such investigations may be necessary for civil preparation, determination of policy violations or training issues.

(13) In order to preserve the integrity of the investigation, the scene supervisor and investigative supervisor shall notify all involved officers to refrain from making public statements about the investigation, until such time as the investigation has concluded and the District Attorney has made a determination regarding the criminal responsibility of all involved persons.

(14) As soon as practical, and in conjunction with the District Attorney's Office and the lead investigative agency, the involved officer's agency shall release an initial public statement about the incident. The statement shall include, as appropriate:

(a) The time and location of the incident;

(b) The condition of any suspect;

(c) The nature of the intentional use of deadly physical force;

(d) Any other information the District Attorney, lead investigative agency, or the involved officer's agency deems necessary given the particular circumstances of the incident.

Section 6: Investigation Protocols

(1) The investigation, at a minimum, shall consist of the following:

(a) Eyewitness and involved party interviews

(b) Evidence collection

(c) Scene documentation

(d) Involved Officer(s) interview(s)

(2) The investigation shall be documented in written reports, and all police reports and taped statements shall be provided to the investigative agency, the Involved Officer(s) agency(ies), and the District Attorney.

Section 7: District Attorney

1) When an intentional use of deadly physical force by an officer occurs, the agency shall immediately notify the District Attorney's Office. Notification shall be made through the established on-call procedure.

2) When an intentional use of deadly physical force by an officer occurs, the District Attorney or his or her designee will consult with the agency regarding the investigation and implementation of elements of this plan.

3) The District Attorney has the sole statutory and constitutional duty to make the decision on whether to present a matter to a Grand Jury.

(a) The District Attorney will consult with the investigating agency and decide on whether to present the case to a Grand Jury.

(b) The timing of the decision will be made by the District Attorney based upon all considerations.

(c) If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the investigating agency, the involved officer's agency, and the involved officer through his or her representative.

(d) Upon a final decision by the Grand Jury or the District Attorney, the District Attorney shall notify the investigating agency and the involved officer's agency of the conclusions of the Grand Jury proceeding under this plan.

(e) The District Attorney shall release the Grand Jury conclusions to the public.

Section 8: Debriefing

The intentional use of deadly physical force by a peace officer has the potential to create strong emotional reactions which have the potential to interfere with an officer's ability to function. These reactions may be manifested immediately, or over time. Further, these reactions may occur not only in an officer directly involved in the incident, but also in other officers within the agency.

The requirements of this section provide a minimum framework and are not intended to take the place of agency policy. Agencies are encouraged to develop formal procedures to deal with an officer's stress response following an intentional use of deadly force incident. Such policies should include a procedure that are implemented from the time of the incident and continue over time.

(1) Upon a final determination by the District Attorney, the agency shall conduct an internal review of the matter for compliance with agency policy. Such review, at a minimum shall include a review of the incident with the involved officer(s).

(2) Each agency shall provide a process for any officer(s) who make(s) a request, to participate in a critical incident debriefing.

(3) If available, agencies should encourage officers to take advantage of Employee Assistance Programs, and if appropriate, agencies should request assistance from other agencies that may have in place formal programs for dealing with critical incidents.

Section 9: Agency Reporting, Training, Outreach

(1) Each law enforcement agency within Marion County shall make available a copy of this Plan to every officer and shall incorporate the Plan into agency policies and provide training to officers on the implementation of the plan.

(2) Upon the conclusion of an investigation, the announcement by the District Attorney pursuant to Section 7(3) of the Plan, and the debriefing, the agency shall complete the Attorney General's report regarding the use of force, and submit the report to the Attorney General.

(3) Each agency subject to this Plan shall comply with the Department of Public Safety Standards and Training rules on use of force training, as well as establish department training requirements on the use of force. The training must include education on the agency's use of force policy. This training may also include, but is not limited to the following:

(a) Defensive Tactics

(b) Tactical Shooting

(c) SWAT training

(d) Use of force in making an arrest

(e) Use of non-lethal force

Each agency shall have a written policy and monitoring system to ensure that the training standards are met.

(4) After adoption of this Plan, to the extent they are fiscally able, each agency shall take steps to publicize the Plan to their respective communities, by providing information to the media, general public, community organizations, and quasi-governmental bodies.

Section 10: Fiscal Impact

The Planning Authority has noted only de minimis fiscal impact resulting from the above process.

Section 11: Plan Revision

The Planning Authority shall conduct a biennial review of the Plan. If a revision of the Plan becomes advisable, the Planning Authority shall meet and discuss such a revision. If the Planning Authority adopts a revision, such revision shall be submitted for approval as provided by statute.