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Klamath County District Attorney’s Office –
Mission Statement

It is the purpose of the Klamath County District Attorney’s office to serve the community interests of safety and security by seeking just resolution of criminal matters. The Klamath County District Attorney’s office seeks to promote good judgment and hold offenders accountable through ethical prosecution. Klamath County District Attorney (hereinafter KCDA)’s office seeks to address collateral consequences of crime that negatively impact our community members. We work toward long term resolutions that reduce recidivism and create a more secure and safe community.

Introduction

This Policy Manual is intended solely for the guidance of prosecutors in the KCDA’s office and is not intended to create substantive or procedural rights or benefits for any person or entity.

The prosecutor does not act as counsel for any particular person or party. Their client is neither the State nor County government, nor the victim nor law enforcement. Rather, the prosecutor’s client is society and, as such, all citizens — victims, the court, the accused and all citizens are entitled to expect that, in performing their function, a prosecutor will act with fairness and detachment, with the sole and unadulterated objective to establish the whole truth in accordance with the law. The Klamath County Deputy District Attorneys are expected to review materials received from a criminal investigation and make ethical and appropriate charges reflective of what they feel they can prove beyond a reasonable doubt at the time. They are to remain sensitive to the development of the case and, if further aggravating or mitigating information arrives, to hone their prosecution and objectives to accurately reflect justice in that individual circumstance. This policy manual contains policies regarding employee professionalism as well as charging and disposition policies for specific cases. Violation of any of the Department’s policies may result in disciplinary action up to and including termination.

General Office Professionalism

All employees of the KCDA’s office are expected to adhere to the highest level of professionalism reflective of their obligation to the community at large. Courteous interactions with individual citizens are expected. Professional communication and courteous interaction with community partners, from law enforcement to Klamath Basin Behavioral Health, Klamath Community Corrections to the staff at the Klamath County jail, as well as court staff, treatment providers and individual defense attorneys, is also expected.

Klamath County District Attorney employees are honest, fair, and respectful of others. Staff members acknowledge and respect the fundamental rights, dignity and worth of all people. They respect the rights of individuals to privacy, confidentiality, self-determination and autonomy,
mindful that legal and other obligations may lead to operational challenges with the exercise of these rights.

Staff are valued and seen as having something important and unique to contribute. We treat all people with kindness, warmth and dignity. We honor and make room for everyone's ideas and opinions and believe every person has the capacity to positively contribute. When conflicts occur, we attempt to resolve these conflicts and to perform our roles in a responsible fashion that avoids or minimizes harm. We are sensitive to the real and ascribed differences in power between ourselves and others, and we do not exploit or mislead other people during or after professional relationships.

Standards for a Prosecutor

**Professionalism:** A prosecutor should conduct himself or herself with a high level of professionalism and integrity in all professional relationships, both in and out of court. Appropriate behavior includes, but is not limited to, the following:

- **Candor:** A prosecutor should act with candor, good faith, and courtesy in all professional relations.

- **Integrity:** A prosecutor should act with integrity in all communications, interactions, and agreements with opposing counsel, the court and law enforcement.

- **Discretion:** A prosecutor should not publicly express personal animosity toward the judiciary, opposing counsel or law enforcement regardless of personal opinion.

- **Respect:** A prosecutor should at all times display proper respect and consideration for the judiciary, the defense bar and law enforcement.

- **Punctuality:** A prosecutor should be punctual for all court appearances. When absence or tardiness is unavoidable, prompt notice should be given to the court and opposing counsel. “Punctual” means arriving at least 5 minutes before the start of the scheduled court appearance.

- **Dignity:** A prosecutor should conduct himself or herself with proper restraint and dignity throughout the course of all proceedings and contacts related to those proceedings. Disruptive conduct, as well as excessive or unnecessary argument, are always improper. Disruptive conduct includes name calling, profanity, threats, yelling and/or any conduct unbecoming of a prosecutor.

- **Consideration:** A prosecutor should treat witnesses fairly and professionally and with due consideration. A prosecutor should not engage in a line of questioning
intended solely to abuse, insult or degrade any witness. Examination of the credibility of a witness should be limited to legally permitted impeachment techniques.

**Fairness:** A prosecutor should avoid obstructive and improper tactics. Examples of such tactics include, but are not limited to, knowingly: making frivolous objections, or making objections for the sole purpose of disrupting opposing counsel; attempting to proceed in a manner that is obviously inconsistent with a previous ruling of the court; attempting to ask clearly improper questions; attempting to introduce clearly inadmissible evidence; engaging in delay tactics; or creating or taking unlawful advantage of prejudicial or inflammatory arguments or publicity.

**Respect for the Sanctity of the Courtroom:** A prosecutor should appear in court in appropriate attire. Casual clothing and footwear are not permitted for court appearances. Women may not appear in sleeveless attire. Unless permission is granted by the Presiding Judge, hats shall not be worn in court. Cell phones and electronic devices may only be used in courtrooms for professional purposes with the permission of the court whether or not the prosecutor is at counsel table or in the gallery.

**Responsibilities of the Prosecutor:** The prosecutor is an independent administrator of justice. The primary duty of a prosecutor is to seek justice. A DDA shall abide by all applicable provisions of the rules of ethical conduct in Oregon. A DDA is obligated to respond to professional misconduct that has the potential to interfere with the proper administration of justice.

**Confidentiality:** A prosecutor shall keep prosecution information confidential and may not access Criminal Justice Information Systems (CJIS) or related information for any purpose other than performance of their assigned work.

**CJIS Compliance:** DDAs shall comply with all CJIS testing and requirements.

**No Conflicts of Interest:** A DDA should not hold an interest in or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of conflict with the duties and responsibilities of the District Attorney’s office.

**Self-Reporting Criminal Conduct:** If a prosecutor has knowledge that they are the subject of a criminal investigation, or they are arrested or cited for any crime, the prosecutor shall immediately report to the DA.

**Observation of Work Hours:** A prosecutor is present for work and engaged in work responsibilities every weekday unless otherwise scheduled.
**Attendance:** A prosecutor is regularly in attendance which is important to keep the team operating effectively, as well as to keep work quality high and consistent. A prosecutor provides notice as soon as possible of TML requests and considers obligations and impact of schedule before making the request.

**Compliance with Rules:** Prosecutors are aware of and compliant with laws, rules, regulations, ethical obligations and policies and procedures.

**Safety Practices:** A prosecutor observes established safety rules and uses common sense and reason, erring on the side of safety, when a specific rule does not apply.

**Co-worker Contacts:** A prosecutor communicates effectively, honestly and professionally with other prosecutors and staff of all levels. A prosecutor is able to work as a member of a group and demonstrate professional respect and discretion. A prosecutor is able to work with a variety of personalities and does not distract others from their work.

**Knowledge of Work:** A prosecutor demonstrates knowledge of policies and procedures and accomplishes their tasks in a satisfactory and timely manner with little direction.

**Work Judgment:** A prosecutor is able to make consistent and reliable judgments without constant supervision and demonstrates the capability of making appropriate decisions independently. A prosecutor uses discretion and common sense in all decision-making.

**Planning and Organizing:** A prosecutor takes time daily to plan and organize tasks to maximize productivity, while maintaining flexibility needed to address urgent matters.

**Quality of Work:** A prosecutor’s job duties are accurately, thoroughly and timely completed. Work is professional and correct and is consistent with the norms and practices and policy and procedures of the office.

**Volume of Acceptable Work:** A prosecutor demonstrates knowledge of skills and duties required to complete all job tasks, manages and organizes workload to consistently complete job responsibilities, and demonstrates a strong work ethic by staying focused, staying motivated, finishing responsibilities and helping others.

**Meeting Deadlines:** A prosecutor, through organization and planning, completes all assigned duties on time with minimal supervision. A prosecutor assists other prosecutors in meeting difficult deadlines.
Work Coordination: A prosecutor maintains a smooth flow of work and coordinates with others as a team, producing reliable work product upon which others may rely. When an obstacle or issue arises, the prosecutor will use common sense to overcome the obstacle or resolve the issue in an effective and timely manner. This may include asking for help or direction from others.

Accepts Responsibility: A prosecutor takes ownership in the success of the office and accepts responsibility for oneself and their contribution as a team member, and admits mistakes and informs others when one is not able to meet a commitment.

Accepts Direction: A prosecutor respects and acts on direction from the District Attorney, supervisors and team leads; a prosecutor follows policies and procedures, as directed. A prosecutor communicates professionally through appropriate channels and chain of command.

Accepts Change: A prosecutor is ready to take on new tasks as needed. A prosecutor supports new ideas, goals and working methods within the office. A prosecutor works respectfully with others and offers support to accomplish desired goals. A prosecutor is open to feedback that ensures better performance in all tasks.

Effectiveness under Stress: A prosecutor is able to perform under rapidly changing situations or emergencies without compromising their professionalism or distracting others from their own work. A prosecutor takes advantage of training, support systems and supervisors to seek help when the prosecutor is having difficulty managing stress.

Reporting Prosecutorial Misconduct: When a prosecutor has knowledge of misconduct or incompetence by another prosecutor, or themselves, in the Klamath County District Attorney’s Office, he or she shall report that information to a Chief Deputy or the District Attorney. When the misconduct or incompetence involves the conduct of a prosecutor from another prosecutorial entity and it has the potential to interfere with the proper administration of justice, the DDA shall report that information to a Chief Deputy or the District Attorney.

Opportunity for Interns and Externs: The Klamath County District Attorney recognizes the value of allowing law school, graduate and college students access to hands-on learning. To the extent possible and putting the needs of the office first, the DA’s Office will endeavor to participate in formal and informal intern and extern programs. The District Attorney will comply with the Fair Labor Practices Act; externs, who receive credit from their law school will be considered for volunteer positions.
Care and respect for KCDA Resources: The prosecutor shows respect for the resources provided to the Prosecutor to complete their work. The prosecutor demonstrates good judgment by respecting policies and procedures for the use and care of equipment and compliance with CJIS and other rules.

Relations/Collaboration

Other Prosecutorial Entities: In recognition of their mutual goal of serving the interests of justice, the District Attorney will cooperate with other federal, state, military, tribal and local prosecutorial entities in the investigation, charging, dismissal, or prosecution of cases that may be of common concern to their respective offices and in the interest of justice.

Information Sharing: Where practical, lawful and in the interest of justice, the District Attorney will share resources and investigation information with other prosecutorial entities.

Oregon Attorney General: The office of the District Attorney and the office of the Oregon Attorney General, while separate and distinct entities, should cooperate whenever practicable in the furtherance of justice.

Community-Based Programs: Prosecutors should be cognizant of and familiar with all community-based programs to which offenders may be sentenced, referred as a condition of probation, or referred as a diversionary disposition.

Law Enforcement: The District Attorney recognizes the importance of a positive working relationship with Law Enforcement and continues to maintain communications between KCDA and law enforcement agencies.

Jail/Prisons: Prosecutors should be cognizant of, and familiar with, all penal facilities located within Klamath County and Oregon. KCDA should be available as a source of information for prisons and jails and their intake divisions. The KCDA should assist in the identification of multiple and career offenders.

Court and Judges: Prosecutors are administrators of justice, advocates and officers of the court. As such, the prosecutor shall seek justice, not solely convictions. In court, the prosecutor shall continually seek to reform and improve the administration of justice.

Courthouse Security: The District Attorney’s Office will work with the Klamath County Trial Court Administrator to achieve efficiencies with court processes and courthouse security.
**Suspects and Defendants:** A prosecutor should respect a suspect’s and defendant’s constitutional right to the assistance of counsel. A prosecutor should also take steps to ensure that those persons working at his or her direction respect a suspect’s and defendant’s constitutional right to the assistance of counsel. Notwithstanding the foregoing: A prosecutor may communicate with, or assist others in communicating with, a defendant or suspect in the absence of his counsel when either (1) counsel has consented to the communication or (2) the communication is authorized by law or court rule or order.

**Social Media:** Prosecutors must be vigilant about their use of social media. Social Media use should be limited to personal time and not used during work hours. Prosecutors should be wary of inadvertent communication with defendants via social media and compliance with CJIS rules, including the posting of images. Further, as Deputy District Attorney’s serve in the public eye care should be taken not to post any image inconsistent with the standards of professionalism contained herein.

**Defense Counsel:** DDAs shall comply with the provisions of professionalism in their relations with defense counsel at all times. The prosecutor should attempt to maintain a uniformity of fair dealing among different defense counsel. In all contacts with members of the defense bar, the prosecutor should strive to preserve proper relations by responding promptly to communications, and cooperating with defense counsel to the extent possible within the bounds of their respective roles and ethical duties.

**Timeliness:** Prosecutors should respond promptly to voice messages, emails and requests for positions for filing of motions from defense counsel. Compliance with victims’ rights and other obligations shall not be compromised for a timely response, but a prosecutor shall advise defense counsel if a delay is expected. The prosecutor shall make timely disclosure of exculpatory or mitigation evidence, as required by law and/or applicable rules of ethical conduct. If a prosecutor is going to be out of the office for more than a day, a Team Lead or another prosecutor should be identified as a point of contact. The point of contact should be included on the voicemail message and an automated email reply.

**Cooperation with Defense Counsel:** The prosecutor should cooperate with defense counsel at all stages of the criminal process to ensure the attainment of justice and the most appropriate disposition of each case. The prosecutor need not cooperate with defense demands that are abusive, frivolous, or made solely for the purpose of harassment or delay.

**Victims:** The District Attorney recognizes the importance of respecting the rights of victims of crime. Equally important, the District Attorney recognizes that providing accurate and timely information to victims and answering victims’ questions may assist in reducing the impact and trauma of crime.
Assisting Victims: Prosecutors should assist victims, to the extent possible under the law, with the return of property, restitution, coordination of appearance in court with employers and/or school, transportation, and lodging. To the extent possible, DDAs should work to reduce inconvenience and anxiety for victims of crime and provide realistic expectations about the process of criminal prosecution.

Working with KCDA Victim Advocates: Victims of crime should be informed of important stages of the criminal justice proceedings to the extent they request or as required by law. The DDA shall work with the Klamath County Victims’ Assistance Program to ensure victims’ needs are being met in a timely manner. Victim contact, information and notifications should be documented in PbK.

Defense Investigator Contact with Victims: The prosecutor shall not advise a witness or victim to decline to respond to inquiries from the defense. The prosecutor may advise a victim that they have the right to have the DDA present when the defense investigator talks to them. The prosecutor may also inform a witness of the implications and possible consequences of providing information to the defense.

Victims Represented by Counsel: When the prosecutor is informed that a victim has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of-court contacts with the witness regarding the subject of that proceeding through the attorney representing the witness.

Compensation of Victims: KCDA should not compensate a victim for giving testimony, but it is not improper to reimburse an ordinary witness for the reasonable expenses of attendance upon court, attendance for hearings pursuant to statute or court rule, or attendance for pretrial interviews. Payments to a witness may be for transportation and lodging, provided there is no attempt to conceal the fact of reimbursement. Expert witnesses are to be compensated for their time at a rate approved by the District Attorney and the amount of compensation shall not be concealed.

Victim Safety: KCDA will work with victims and our community partners to make victim safety a priority; specifically, the DDA will encourage victims to engage in safety planning with the Victims Assistance Program when appropriate. The DDA shall be mindful of witnesses’ safety and sense of security at all times. Necessary accommodations should be made to make witnesses feel safe and secure.

Witnesses: The District Attorney recognizes the importance of supporting witnesses of crime. The support of community members who witness criminal conduct in holding offenders accountable is important to the KCDA. Equally important, the District Attorney
recognizes the importance of being respectful of witnesses’ time, answering their questions and assisting them when possible by accommodating their schedules.

**Informing Witnesses:** The prosecutor should keep witnesses informed of: all pre-trial hearings which witnesses may be required to attend; trial dates and the scheduling of witnesses’ appearance.

**Witness Safety:** The DDA shall be mindful of the witnesses’ safety and sense of safety at all times. Necessary accommodations should be made to make witnesses feel safe and secure.

**Witnesses Represented by Counsel:** When the prosecutor is informed that a witness has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of-court contacts with the witness regarding the subject of that proceeding through legal counsel.

**Witness Rights:** A prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to counsel whenever the law so requires. It is also proper for a prosecutor to so advise a witness whenever the prosecutor knows or has reason to believe that the witness may be the subject of a criminal prosecution in some way implicated by the subject of the witness’ expected testimony. However, a prosecutor should not so advise a witness for the purpose of influencing the witness in favor of or against testifying.

**Witness preparation:** The prosecutor shall not advise or assist a witness to testify falsely. The prosecutor may discuss the content, style, and manner of the witness’ testimony, but should at all times make efforts to ensure that the witness understands his or her obligation to testify truthfully.

**Witness Compensation:** KCDA should not compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse an ordinary witness for the reasonable expenses of attendance upon court, attendance for hearings pursuant to statute or court rule, or attendance for pretrial interviews. Payments to a witness may be for transportation and lodging, provided there is no attempt to conceal the fact of reimbursement.

**Expert Witnesses:** When a prosecutor determines that the testimony of an expert witness is necessary, the independence of the expert should be respected and if it is determined that a fee be paid to an expert witness, the fee should be reasonable and should not depend upon a contingency related to the outcome of the case. The approval of the Senior Deputy District Attorney or the District Attorney is required before securing an expert witness.

**Expert Witness Opinion:** A prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the
formation of the expert's opinion on the subject. To the extent necessary, the
district attorney should explain to the expert his or her role in the trial as an impartial
counsel called to aid the fact finders and the manner in which the examination of
witnesses is conducted.

**Expert Witness Fees:** A prosecutor should not pay an excessive fee for the purpose
of influencing the expert's testimony or to fix the amount of the fee contingent
upon the testimony the expert will give or the result in the case.

**Media:** The District Attorney will seek to maintain a relationship with the media that will facilitate the appropriate flow of information to and from the public. An appropriate and professional relationship with the media is necessary to promote public accountability and transparency in government while complying with all legal and ethical obligations.

**District Attorney and the Media:** The District Attorney is the primary point of contact for the media.

**DDA Responsibility:** DDAs shall keep the District Attorney informed of matters they reasonably believe may be of importance to the media and the public. DDAs should defer to the District Attorney when contacted by the media, unless the inquiry is related to the date and time of a future appearance.

**Timeliness:** DDAs shall respond to media requests about court appearances (date and time) in a timely manner. All other inquiries shall be forwarded to the DA and the Chief Deputy DA immediately upon receipt.

**Klamath County Board of County Commissioners & County Administrator:** The District Attorney will cooperate with his or her funding entity, the Klamath County Board of County Commissioners (BOCC) by providing an assessment of resources needed to effectively administer the duties of the office.

**Primary Point of Contact:** The DA is the primary point of contact for the BOCC and the County Administrator.

**Public/Community Members:** The District Attorney encourages the formation and growth of community-based organizations interested in criminal justice, crime prevention, and the punishment and rehabilitation of offenders.

**Public Records Requests and Records Requests:** The District Attorney or the appointed designee is responsible for reviewing Public Records Requests.

**Non-Governmental Entities:** In all dealings with a non-governmental entity, the District Attorney should place the public interest above all other considerations.
Prosecution Involvement in Law Enforcement Investigation

**Investigations:** The Klamath County District Attorney has the discretionary authority to initiate investigations of criminal activity in Klamath County. The exercise of this authority will depend upon many factors, including, but not limited to, what justice requires, adequacy of law enforcement agencies’ investigation in a matter, office priorities, and potential civil liability. Any independent investigation initiated by the KCDA will be approved by the DA or her designee.

**Law Enforcement:** A prosecutor ordinarily relies on police and other investigative agencies for investigation of alleged criminal acts, but the prosecutor has an affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.

**Responsibility:** A prosecutor is ultimately responsible for evidence that will be used in a criminal case. A prosecutor who knows or who is aware of a substantial risk that an investigation has been conducted in an improper manner, or that evidence has been illegally obtained by law enforcement, must take affirmative steps to investigate and remediate such problems.

**Integrity:** A prosecutor should not knowingly obtain evidence through illegal means, nor should the prosecutor instruct or encourage others to obtain evidence through illegal means.

**Brady Material:** A prosecutor has an ethical obligation to hand over to defense counsel, or in the case of unrepresented defendants, the defendant him or herself, any and all material that is clearly exculpatory or favorable, and material to the defendant. Furthermore, the deputy district attorney “has a duty to learn of any favorable evidence known to others acting on the government’s behalf in the case, including the police.” *Strickler v. Greene*, 427 US 263, 281 (1999)

**DA Investigator:** The District Attorney’s Investigator may assist with case preparation, supplement law enforcement investigations, conduct original investigations, and carry out other duties as assigned by the District Attorney or the Senior Deputy District Attorney.

**SB11/Use of Deadly Physical Force Investigations:** The District Attorney takes lead on officer use of deadly physical force investigations and in doing so, will comply with all the requirements of Senate Bill 111. The Klamath County District attorney will utilize the Grand Jury in their investigative capacity to review any and all officer involved shootings.
Investigation of Law Enforcement Brady List: It is the policy of the District Attorney to ensure that when it calls police officers to the witness stand, we have confidence what they tell juries and judges is true. Any time there is an allegation that an officer has been dishonest, unreliable or engaged in behavior that calls into question his or her credibility, the District Attorney will investigate. The District Attorney will use Best Practices for Navigating Brady in Oregon as a guide in completing the investigation, along with Brady v. Maryland, 373 US 83 (1963); Giglio v. United States, 405 US 150 (1972); Strickler v. Greene, 427 US 263, 281 (1999) and provide Brady material, if any ascertained, to defense counsel, or take such other actions as are required.

The Charging Decision

Policy: The process of determining and initiating criminal charges is the responsibility of the prosecuting attorney. The prosecuting attorney will determine what charges will be filed, how many charges will be filed, and how charges will be presented.

Capturing the Nature of the Criminal Conduct: The prosecuting attorney also has a responsibility to see that the charge selected adequately describes the offense or the offenses committed and provides for an adequate sentence for the offense or offenses. Charging shall be consistent with ethical standards for prosecutors and the duty to seek justice. In making the charging decision, Deputy District Attorneys shall file only those charges which are reasonably substantiated by admissible evidence at trial. Deputy District Attorneys shall not attempt to use the charging decision as a leverage device (that is, overcharging) in an attempt to obtain a guilty plea to a lesser charge.

Deputy District Attorneys shall also avoid charging an excessive number of counts, Indictments, or Informations merely to provide sufficient leverage to persuade a defendant to enter a guilty plea to one or several charges.

Burden of Proof: The standard for whether to file criminal charges will normally be based primarily upon the existence of admissible, reliable evidence to prove beyond a reasonable doubt that a crime was committed. Criminal charges will normally be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. This standard is intended to direct the prosecuting attorney to charge those crimes which adequately demonstrate the nature and seriousness of a defendant's criminal conduct.

Declines: The prosecuting attorney may decline to prosecute when evidence is insufficient to prove a charge beyond a reasonable doubt. The prosecutor may also decline to prosecute when, though technically sufficient evidence to prosecute exists, prosecution would serve no public purpose, would defeat the underlying purpose of the
law in question or would result in decreased respect for the law. The decision to decline a case should be documented with the completion of the case summary and a reason for the decline that provides sufficient information for supervisors, law enforcement, and the public to understand the reasoning. Declines should not be used to circumvent prosecution responsibility or policies and procedures. Cases should not be initiated and filed for the purpose of dismissing them.

**Documentation of Decline:** The DDA should record the reasons for declining a prosecution in PbK.

**Intake Philosophy:** The Klamath County District Attorney’s Office is responsible for enforcing Oregon law in a manner which maximizes community safety, respects individual rights, and serves justice. To that end, we will endeavor to charge and advocate for punishment in a manner which treats similarly situated defendants similarly. As a general rule, charging decisions should be made in a way which emphasizes protection of the community and offender accountability and will promote a just result. Within that general context we must also consider such things as the strength of the state’s case, any mitigation in the defendant’s background, input from the victim, input from the investigating agency, and any other appropriate information the assigned prosecuting attorney considers relevant.

**On-going Obligation:** The prosecutor should attempt to gather all relevant information that would aid in rendering a sound screening decision. We should take steps to ensure that other government and law enforcement agencies cooperate in providing the prosecutor with such information. The prosecutor has a continuing duty to evaluate the case when new information is learned. New information may either prove the need to increase or decrease the negotiated resolution sought, or may result in dismissal of the charges when justice so requires.

**Timely Intake:** The timely review of intake is a priority of the District Attorney.

**Prosecutor responsibilities:** Compliance with PbK Procedures: to ensure consistency and efficiency, DDAs shall comply with the PbK Intake procedures, including correctly identifying victims and witnesses; Entering Prior Convictions; Reviewing and updating the case flags; Completing a Case Summary; accuracy of charges to include location, modifiers, enhancers, joinder and other factors. Release recommendations shall be included.

**Re-Issuance of Charges After Dismissal:** A DDA has an on-going obligation to evaluate criminal charges, if a charge is filed after being dismissed without prejudice, the prosecutor shall notify the defendant, or his or her attorney if known, of the charges with a letter to appear unless a letter to appear would be contrary to justice or community safety.
Prosecutor Not Ready for Trial: All cases dismissed pursuant to ORS 136.120 (prosecutor not ready for trial) shall be reviewed for re-issuance by the District Attorney, or designee. In evaluating whether to re-file previously dismissed charges, the standards set out in this policy for intake of criminal charges shall apply, evaluated in the light of any information learned during the previous pendency of the case.

Complainant Notification: If there is a complainant identified in a case that is declined for prosecution, if that complainant reaches out for explanation, the assigned DDA or the DA or her designee, shall respond to the request for clarification. The prosecutor should promptly respond to inquiries from those who are directly affected by a declination of charges.

Grand Jury/Preliminary Hearing

Grand Jury Function: Grand jurors are guests of the District Attorney’s Office during their term, but they are not part of the District Attorney’s Office. Grand juries perform a separate function from the District Attorney’s Office and the courts. It is their function to interpose their judgment (and thereby the judgment of the community) between the person accused of crime and the State. Deputy District Attorneys must respect that separate function and treat grand jurors, and their decisions, with respect. If the grand jury makes a request for additional evidence or witnesses, the District Attorney’s Office shall accommodate the request, if practicable. If the grand jury renders a decision on a case at odds with the wishes of the Deputy District Attorney, as in a trial before a petit jury, the grand jury should be shown no negative reaction. Any admonishing statement or expression of disagreement must be avoided. Overt displays of anger or upset at a grand jury’s decision may be grounds for discipline of the Deputy District Attorney engaging in such conduct.

Grand Jury Procedure for Felonies: In order to ensure that the choice between indictment and information is made according to consistent criteria and that the privilege of either a grand jury indictment or a preliminary hearing is equally available to all, the DA’s Office will take all cases to grand jury unless there is a specific evidentiary need, such as eyewitness identification, preservation of testimony, or an evidence admissibility issue that is best addressed by a judge, in an individual case, or because a grand jury proceeding could not be scheduled before a preliminary hearing is set.

Responsibility of DDAs Before Grand Jury:

Deputy District Attorneys are to be familiar with and follow the statutory provisions found in ORS 132.010-132.990.
All witnesses will be placed under oath before presenting testimony before the grand jury. The names of each witness will be listed on the indictment, if an indictment is returned.

Only evidence that is admissible at trial will be presented to the grand jury. The Deputy District Attorney will ensure witness testimony is limited to admissible evidence. Additionally, Deputy District Attorneys will limit a grand juror’s question if it would procure answers that are inadmissible at trial.

Deputy District Attorneys will not present evidence which was clearly obtained in violation of a suspect’s constitutional rights.

Unless clearly authorized by statute, witness testimony is not to be presented by written report.

Oregon law only allows the audio recordation of grand jury testimony. All witness testimony must be recorded.

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

The compelled testimony before the grand jury of any witness who might objectively be considered a criminal suspect must be approved by the District Attorney or the District Attorney’s designee.

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

Release Recommendations

**Least Onerous Conditions:** DDAs shall make a release recommendation that imposes the least onerous conditions reasonably likely to ensure the safety of the public, the victim and the defendant’s later appearance. DDAs should consider and take seriously the recommendation of the Klamath County Sheriff’s office Pretrial Release Officer and defer to his/her recommendation unless a significant concern can be articulate, in which case the DDA should approach the District Attorney, or designee.

**Prosecutor’s Responsibility to Identify Victims:** The DDA shall, to the best of their ability, identify all victims, designate the person or business as a victim in PbK and request a no-
contact provision. The safety and well-being of crime victims should be one of the primary considerations in all cases.

**Pretrial Supervision for Certain Property and Drug Offenses:** The availability of pretrial supervision for certain property and drug offenders may be available under the Klamath County Justice Reinvestment Program; when supervision is available and deemed appropriate, the assigned DDA should follow the recommendation.

**Discovery**

**Discovery Policy:** KCDA will provide discovery when approved reports have been received and the initial investigation has concluded. Discovery will generally be provided at Arraignment on Indictment for in-custody cases.

**Timeliness:** A DDA should, at all times, carry out his or her discovery obligations in good faith and in a manner that furthers the goals of discovery.

**Goals of Discovery:** to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel and comply with the requirements of ORS 135.805-135.873.

**On-going responsibility:** If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure or inspection, the prosecutor should promptly notify defense counsel and provides the required information. Furthermore, the deputy district attorney “has a duty to learn of any favorable evidence known to others acting on the government’s behalf in the case, including the police." *Strickler v. Greene*, 427 US 263, 281 (1999)

**Trial**

**Ethical Conflicts:** Any conflicts discovered for a scheduled trial shall be brought to the attention of a Senior Deputy District Attorney immediately upon discovery. Due to the volume of cases and trial in the office, management relies on the due diligence of the DDAs in screening for conflicts. The District Attorney’s Office uses PbK to screen for potential conflicts, but the DDA is ultimately responsible.

**Preparation:** Deputy District Attorneys shall be prepared for trial to the best of their ability. Preparation requires review of the case in advance of trial, the filing of timely
motions, preparation of exhibits, review of evidence, including communication with witnesses, and compliance with the rules of court.

**Trial Call:** A DDA shall accurately report, to the best of their ability, trial readiness. A case dismissed after a report of “ready” at Trial Call requires the approval of a CDDA (SAME) or the District Attorney and notation of the reason for the dismissal in PbK.

**Recusal of Judge for Trial:** A motion for recusal of a Judge for trial shall be approved by the Senior Deputy District Attorney or the District Attorney before filing.

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**Plea Negotiations**

**General Philosophy:** The DA’s Office will conduct plea negotiations in a professional manner. Plea negotiations take the following forms: pleas to one or more charges, reduction of charges, sentence negotiation, and the dismissal or non-prosecution of other indicted or unindicted charges. In all plea negotiations, the DA’s Office shall be guided by the considerations set forth in ORS 135.405 et seq. and all relevant ethical considerations.

**Willingness to Negotiate:** Prosecutors should make it known to the defense attorney that the District Attorney’s Office has a policy of willingness to consult with the defense concerning plea negotiations, especially in cases involving the early acceptance of responsibility, and set aside times to meet with defense attorneys for the purpose of discussing cases whether in person or by phone.

**Actual Innocence:** All prosecuting attorneys shall be alert for cases where the evidence indicates that the accused is innocent of the offense charged. If such is discovered, dismissal will be sought immediately.

**Pre-Filing Discussions with Defendants:** Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached. However, when the defendant is not represented by counsel, the prosecuting attorney should be careful to comply with ORS 135.405(2) and DR 7-104 (A) (2).

**Victim Considerations:** The prosecuting attorney shall attempt to contact the victims of violent felonies and explain any negotiations. For all other cases involving victims, the DDA should attempt to contact the victim and explain negotiations. DDAs shall work with the Klamath County VAP by communicating plea offers, changes in plea offers and make themselves available to speak with victims. The assigned prosecuting attorney should consider a victim’s wishes, but the final decision regarding the disposition of the case
rests with the prosecuting attorney, in the exercise of professional judgment and obligations to apply justice equitably and fairly.

**Equality of Plea Negotiations:** Similarly, situated defendants, as determined by admissible evidence, level of involvement in the crime, criminal history, cooperation with the state, and similar factors, shall to the extent possible be afforded equal plea and sentence agreement opportunities. The choice of defense counsel shall not be a factor in the prosecuting attorney’s decision to negotiate with a defendant. A defendant shall not receive an advantage or disadvantage in negotiations based upon past or present relationships between defense counsel and this office.

**Timing of Plea Negotiations:** Plea negotiations shall occur as soon as practicable. Plea offers, absent a documented reason, shall be included with the original charging decision. The PbK plea offer form shall be used for the substantive offer, any changes or modifications may be done via email, but the emails shall be in the physical file and PbK.

**No-Contest Pleas:** a DDA will not oppose a plea of No-Contest in negotiated settlements, unless the following exceptions apply:

A plea of No-Contest would not further the purposes of ORS 161.025 (Purposes of sentencing); and

Is inconsistent with or does not further the rights of victims granted by sections 42 or 43 of Article I of the Oregon Constitution.

**Reduction of BM 11 Cases:** There will be times when it is necessary to reduce or to dismiss ballot Measure 11 charges. No ballot Measure 11 charge will be reduced to a non-Ballot Measure 11 charge or dismissed unless the resolution meets the standards of this policy and has the approval of the District Attorney, or his designee.

**Homicide Cases:** In all homicide cases, the District Attorney shall be notified of and approve any plea offer involving a reduced charge or any other significant concession to the defendant. The assigned prosecuting attorney shall consult with the District Attorney prior to tendering the plea offer to the defendant. Prior to arriving at a homicide plea offer, the assigned prosecuting attorney should, in all but exceptional circumstances, consult with the primary detectives and the family of the victim so as to hear and consider any opinions or suggestions they may have.

**District Attorney Diversion:** The District Attorney’s Office does utilize DA Diversions for certain non-injury misdemeanor and felony matters when defendants have little to no criminal history and treatment and restitution can be accomplished. These Diversions are done specific to ORS 135.881 to 135.901. Further, pretrial resolutions similar to the
type of resolutions legislated in this statutory scheme may be permitted with the approval of the District Attorney or designee. Klamath Works Diversions are encouraged when an individual is interested in obtaining job skills training and entering into the work force as well as receiving community support. The District Attorney encourages the utilization of the Klamath Works diversion for Misdemeanors where formal probation is not funded.

**Treatment Courts**

The Klamath County District Attorney’s office does support the utilization of intensive treatment court resolutions to individuals who qualify according to the team members involved with each court. These programs include: Veterans Court, Drug Court, Behavioral Intervention Court and Family Court. In all these courts, treatment provider approval of entry is critical and the individual defendant attends numerous meetings, treatment sessions and court appearances over at least an 18-month period prior to final resolution of their cases.

The Klamath County District Attorney’s office acknowledges the development and support of specialty courts has been legislated under ORS 137.680 and will make every effort to meet the evidence-based practices developed by the Oregon Criminal Justice Commission. This shall include, when appropriate, targeting medium and high risk offenders.

**Civil Compromise Agreements:** The District Attorney’s Office will consider a civil compromise when it is allowed by statute under Oregon law (ORS 135.703 and ORS 135.705) and meets the District Attorney’s goals of community safety and justice.

Deputy District Attorneys should point out to crime victims who are considering a civil compromise that if the obligations undertaken by the defendant in the compromise are not met, the criminal case cannot be revived. Deputy District Attorneys may also answer any questions that victims may have when entertaining whether to accept a civil compromise. However, deputy district attorneys are not supposed to encourage or discourage (in any way) a victim from accepting or declining a civil compromise. Providing this information to the injured party, in the view of the District Attorney’s Office, does not violate the Oregon State Bar rule.

**Sentencing**

**Fair Sentencing:** The District Attorney’s Office will recommend sentences that are lawful, in the interest of justice and promote community safety.

**Guidance Sources:** Deputy District Attorneys must have a complete working knowledge of the sentencing grid block when addressing felony matters. Further, they should remain
aware of their discretion under ORS 161.566, ORS 135.881 et seq., and other statutory authority. Further DDAs should acknowledge the discretionary authority of the Court in making sentencing decisions.

**Sentencing Input:** The District Attorney’s Office will consider input as to sentencing from victims, witnesses, community partners (including law enforcement) and others impacted, however, ultimately it is the responsibility of the assigned DDA to make the sentencing recommendation to court based on their knowledge of the case, the applicable law and the goals and mission of the District Attorney’s Office. Sentencing input that is subject to disclosure shall be provided to the defense in a timely manner.

**Victim Participation:** The District Attorney Office shall comply with the Constitutional and Statutory requirements for victim participation. Every Deputy District Attorney shall understand ORS 147.500 et seq. and when facing questions about its application reach out to the District Attorney or Designee. On occasion due to mistake a DDA may inadvertently fail to comply with their obligations. If that occurs, the DDA shall personally attempt to contact the victim and explain what occurred and if appropriate, advise the victim of their rights. The DDA shall also keep the assigned Victim Advocate up to date on the status of the case and document important information in PbK.

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**Treatment Courts**

**Domestic Violence Deferred Sentencing (DVDSP):** The District Attorney’s Office supports the Domestic Violence Deferred Sentencing Program. DVDSP rules are to be followed and no DV cases should be adjudicated outside of the program to avoid the rules and requirements of the program.

**Behavioral Intervention Court:** The District Attorney’s Office supports the Behavioral Intervention Court Program and will assign a knowledgeable prosecutor to be the assigned DDA. Behavioral Intervention Court is a voluntary program with the goal of increasing access to and engagement in treatment for persons with an eligible mental illness who have been charged with a crime.

**Drug Court:** Klamath County Drug Court is part of the Drug Court Program, an internationally recognized and empirical, evidence-based justice system strategy addressing drug addicted defendants. It is a specialized court program that is designed to use the authority of the court to keep addicted individuals in treatment long enough for it to work. The District Attorney’s Office will participate fully in drug court and assign a DDA or the Senior Deputy District Attorney as the primary representative for the office.

**Family Court:** Family Court is a special court set to address individual defendants facing criminal matters who have children and because of such are involved with the Department of Human Services. The program is designed to ensure that the individual
defendant complies with both DHS and Criminal Justice conditions in a manner that ensures the best health of the family. The Senior Deputy District Attorney shall be assigned to this specialty court.

**Veterans Court:** Veterans court is an empirically based program that ensures defendants who have served our country and otherwise qualify receive the best services to address often underlying conditions obtained during service that lend to their criminal charges. The Senior Deputy District Attorney shall be assigned to this specialty court.

**Appeals/Post-Convictions Relief:** Notice of Appeals and Post-Conviction relief shall be entered into PbK and a copy of the notice in the file. Upon notice, the location of any exhibits and evidence shall be noted in the notes section of PbK and all items should be secured and marked.

**Unanimous verdicts:** KCDA supports the unanimous verdict requirements; all post-conviction unanimity issues will be resolved by Oregon’s Attorney General and the Oregon Department of Justice.

**Requests from Innocence Project:** At the direction of the District Attorney, the Oregon Innocence Project may be asked to review closed cases if there is a concern regarding the integrity of the conviction. The District Attorney will consider the finding of the Innocence Project, but will conduct his own review and will make the final decision for the District Attorney’s Office as to what action if any to take as a result of the review.

**U-VISA Applications:** Applications for U-VISAs shall be reviewed for compliance with the law by the District Attorney or the designee of the District Attorney. The District Attorney’s Office will respond in a timely manner and provide all relevant information. The application for, or the intent to apply for, a U-Visa shall immediately be disclosed to any defendant who is charged with a crime against the person who is the subject of the U-Visa application.

**Juvenile Delinquency Referrals:** A prosecutor should appear at all hearings concerning a juvenile accused of an act that would constitute a crime if he or she were an adult. The duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without unduly compromising their primary concern. Formal charging documents for all cases referred to juvenile or adult court should be prepared or reviewed by a prosecutor.

**Remand to Adult Court:** District Attorney or Senior Deputy District Attorney approval is required before a discretionary decision whether to file a motion to transfer a juvenile to adult court is made.
**Role of Prosecutor:** The prosecutor should take an active role in the dispositional hearing and make a recommendation to the court after reviewing reports prepared by prosecutorial staff, the juvenile department, and others. In making a recommendation, the prosecutor should consider those dispositions that most closely meet the interests and needs of the juvenile offender, provided that they are consistent with community safety and welfare. At the dispositional hearing, the prosecutor should make the court aware of the impact of the juvenile’s conduct on the victim and the community.