

# Malheur County- Policy Handbook

## OVERIDING PRINCIPLES

As a district attorney's office, let us be clear about what we aim for: **To protect the public, by delivering justice.** Ultimately, that is the overriding principle that governs our decision-making. The legislative branch is responsible for writing law. The laws they write are our primary policy manual. If any specific policy provision below conflicts with our ability to achieve our aim within the parameters of law, then pursuit of our stated aim will take precedence over any specific policy provision below. These policies are to be viewed as principles to follow rather than as strict edicts.

### **I. Professionalism and Prosecutorial Ethics**

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

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

It is important to remember that, as a professional, your job does not end at the close of the workday. You are responsible for your behavior outside of the organization and need to be aware that public perception can be a powerful influence. We have a responsibility to perform our duties as public servants with integrity and to serve the public trust.

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

## Pursuing Just Outcomes

### Justice Delayed

In order to maintain ordered liberty for a free society, it is essential that society have confidence in its laws to produce justice for aggrieved persons, ie: crime victims. Inefficiency and excessive delay in our system erodes confidence that our system can produce justice. It is a legal maxim that justice delayed is justice denied. Deputy District Attorneys have a duty to ensure (when within our power) that society, and specifically victims, receive justice in a timely fashion.

### Charging Decisions

All charging decisions are to be made pursuant to the aim of protecting the public by delivering justice. Deciding if criminal charges should be filed and initiating the charging process is the responsibility of Deputy District Attorneys and the elected District Attorney. Screening is the process by which a determination is made whether to initiate or pursue criminal charges. Deputy District Attorneys should use discretion in screening to eliminate cases in which prosecution is not justified. Deputy District Attorneys also have the responsibility to see that charges selected adequately describes the offense(s) committed and the charges provide for an adequate sentence for the offense(s). Deputy District Attorneys are not obligated to file all possible charges that the evidence might support. The prosecutor

may properly exercise discretion to present only those charges which are consistent with the evidence and in the best interests of justice.

In making the charging decision, Deputy District Attorneys shall file only those charges which are reasonably substantiated by evidence likely admissible at trial. 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.

### **Innocence and Evidence**

All Deputy District Attorneys shall be alert for cases where the accused is innocent or proof falls below the beyond a reasonable doubt standard of the offense(s) charged. If such is discovered, the victim and police investigator will be contacted and then dismissal will be sought immediately.

### **Plea Offers**

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

The Malheur County District Attorney’s Office will conduct its plea negotiation efforts in a professional, nondiscriminatory and nonpartisan manner. In all plea negotiations, this office shall be guided by the relevant constitutional, ethical and statutory considerations.

The following are some of the factors to take into consideration in deciding whether a plea or sentencing negotiation is warranted (not in order of importance): nature of the offense; degree of offense charged; mitigating circumstances; age, background, and criminal record of the accused; age of the victim; undue hardship caused to the victim or the accused; expressed wish of the victim; relationship between the accused and the victim; sufficiency of admissible evidence to support a verdict; deterrent value of prosecution; feasibility of restitution being made; attitude and mental state of the accused at the present time; aid to other prosecution goals through non-prosecution; consequences to a defendant or victim; history of non-enforcement of the statute involved; age of the case; likelihood of prosecution in other jurisdictions.

### **Victim Input and Consultation**

Consistent with the Oregon Constitution and the philosophy of the Malheur County District Attorney’s office, the assigned Deputy District Attorney shall solicit input from the victim and consult with the victim during the plea negotiation process where required by law. In the exercise of the discretion to negotiate, the Deputy District Attorney in charge of the case should strongly consider the victim’s wishes.

### **Crime Victim's Rights**

The Malheur County District Attorney’s Office makes every effort to ensure crime victims play a meaningful role in the criminal and juvenile justice system. We treat them with dignity and respect. We make every effort to provide victims with as large a part as possible in each phase of a criminal case. Deputy District Attorneys shall familiarize themselves with the Crime Victims Bill of Rights as well as with

Article 1, Section 42 of the Oregon Constitution, the Crime Victim's Rights Amendment. The interests of the victim should be kept in mind when setting a hearing date and during plea negotiations in any crime involving a named victim.

### **Victim Restitution**

It is our policy to seek restitution equaling the amount of pecuniary loss for victims of all types of crimes. Seeking such restitution in no way supersedes or obviates any civil claims a victim might make against the defendant. Deputy District Attorneys should inform Victims Assistance of pending criminal cases. Victim Advocates shall supply victims with financial loss forms to facilitate restitution. Victim Assistance will then take responsibility tracking these forms, communicating with the victim(s) and Crime Victim Compensation. The financial loss documents will include monies paid or pending to be paid by victim insurance companies. After completion, the loss forms shall be put in the case file prior to the appropriate court date of case disposition. During the sentencing hearing, Deputy District Attorneys should refer to the completed loss forms to request that restitution be made part of the sentence. Restitution should be ordered based on the loss to the victim, not the offender's ability to pay at the time of sentencing. In cases in which more than one defendant is held responsible for a criminal act causing a pecuniary loss, this office views all defendants as being jointly and severally liable for paying restitution. As a result, Deputy District Attorneys should request that judges pronounce sentence in such a way that leaves all defendants jointly and severally liable for the victim's losses and equally responsible for the expenses incurred by all parties as a result of their criminal actions (ORS 147.005 – 147.365). When restitution is legally unattainable as no pecuniary loss is provable, Deputy District Attorneys should consider alternative options such as compensatory fines or community service.

### **Homicide Cases**

Prior to arriving at a homicide plea offer, the trial Deputy District Attorney should, in all but exceptional circumstances, inform and consult with the primary detectives and the family of the victim as to the appropriateness of the offer and any opinions or suggestions they may have.

Before any plea offer is extended in any homicide case, the Deputy District Attorney must meet with the District Attorney. During this meeting the case Deputy District Attorney will present a factual summary of the case and review the mitigating and aggravating factors in the case.

### **Decision to Pursue Death Penalty**

All attorneys responsible for the prosecution of aggravated murder cases must consider the law and evidence of each case and make a determination as to whether seeking the death penalty would be a just outcome. This determination is to be made in consultation with the District Attorney, who will make the final decision.

### **Mandatory Sentence Cases**

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

### **Fines, Fees and Taxpayer Reimbursement**

In some instances, justice is best achieved by recommending that a defendant pay fines or fees. Deputy District Attorneys may recommend payment of fines and fees in those instances where doing so will serve to protect the public and deliver justice.

Dignity increases whenever a defendant pays back to society what resources he or she has taken from society. Deputy District Attorneys should look for appropriate instances to recommend that defendants pay for some or all of their court appointed attorney costs.

### **Truth in Sentencing**

“Truth in Sentencing” is a fundamental value of this office, which includes attempting to ensure that the sentence ordered by the court is fundamentally served.

### **Sentence Reduction Provisions**

Deputy District Attorneys are careful to advocate that sentence provisions which reduce the initial sentence declared by the judge are only given after all required legal findings are made. (ie: ORS 137.751 for AIPs.)

### **Civil Compromise**

Civil compromises are available under Oregon law (ORS 135.703 and ORS 135.705) in instances in which a defendant is charged with a crime punishable as a misdemeanor. The injured party may seek to handle the matter as a civil proceeding. The Court, on payment of costs and expenses incurred, may order the complaint dismissed. As a policy principle, we generally oppose civil compromises. Civil compromises, if used frequently, tend to favor affluent criminals and provide them with more lenient treatment within the criminal justice system. Treating an accused more leniently because of their affluence is inappropriate. In the interest of justice and in the interest of protecting community safety, this office believes that criminal acts should be handled in criminal court.

The Oregon State Bar has ruled that it is unethical under certain circumstances for a prosecuting attorney to advise an injured party against opting for a civil compromise of a criminal case.

### **Conditional Discharge – First Time Possession Drug Offenses**

For first time user amount drug offenses, defendants are generally offered a conditional discharge opportunity that requires them to complete an appropriate treatment program. However, a conditional discharge offer may not be appropriate in instances where the defendant already has an extensive criminal history. Deputy District Attorneys work with the court and parole and probation to ensure proper monitoring and compliance with conditional discharge agreements. Conditional discharges are strict compliance agreements. Conditional discharges should not be offered for second or subsequent drug offenses.

### **Drug Court**

The Adult Drug Court (Safe Court) is an intensive program designed to assist drug addicted individuals to overcome their addictions. Drug courts require resources from a number of agencies and are expensive to maintain. Deputy District Attorneys have a duty to ensure the careful use of this resource. In accordance with best practice standards of the National Association of Drug Court Professionals, the Drug Court should be reserved for offenders in need of a full range of interventions offered by the Drug Court. It is for high risk, high need offenders. A high risk high need offender is someone who is addicted

to or dependent on illicit drugs and is at high risk to continue their drug use in less intensively supervised treatment programs.

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

### **Fast Track Disposition Program**

The Malheur County District Attorney's Office does not currently have a fast track disposition program.

### **Pre-Arrest Diversion Programs**

Law enforcement agencies retain discretion to present or not present most all misdemeanor cases to our office for prosecution. Whenever a municipality or other jurisdiction has a pre-arrest diversion program for misdemeanants, the respective law enforcement agencies implementing such programs should do so in consultation with the District Attorney. Any program established should ensure that delay in prosecution for failed diversions does not negatively impact public safety and the pursuit of justice. Currently, there is such a program in Malheur County for mental health involved defendants who commit low-level offenses.

### **Pre-trial release**

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

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

All Deputy District Attorneys are expected to be familiar with these laws and to advocate for implementation of their provisions.

### **Discovery**

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

It is the practice of this office to disclose appropriate police reports and other discoverable materials to defense counsel at the earliest opportunity once a case is filed (or after Grand Jury). Our office has an open file policy. All discovery contained in our criminal files are open and available at the Malheur County District Attorney's Office for defendants and their attorneys to come and look at, by appointment, free of cost. Copies of discovery materials are also made available to defendants and their attorneys once payment for the same has been made in full. Fees for discovery copies are set by the Malheur County District Attorney.

Any and all written agreements entered into between Malheur County law enforcement agencies that relate to data retention and data sharing will be open and available to inspection by the public.

### **Record Retention**

All district attorney office records must be maintained in compliance with the Records Retention & Destruction Schedule published by the Secretary of State or by State law.

### **Transparency and Confidentiality**

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

### **The Use of Certified Law Students**

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

### **Affidavits of Prejudice Against A Judge**

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