

Wheeler County- Policy Handbook

OVERIDING PRINCIPLES

The purpose of the Wheeler County District Attorney office is **to protect the public by seeking justice**. Ultimately, that is the overriding principle that governs our decision-making. The legislative branch is responsible for writing law. Ultimately, 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. You are expected to abide by the Wheeler County District Attorney Office's Declaration of Principles. 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 employees will be familiar with the canons of professional ethics of the Oregon State Bar and perform their duties in a manner consistent with those standards. In addition, attorneys are expected to know and follow all rules promulgated by the Oregon Supreme Court and by the Circuit Court of Wheeler 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, i.e.: 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. Prosecutors have a duty to ensure that society, and specifically victims, receive justice in a timely fashion.

Charging Decisions

Prosecutors make all charging decisions in an effort to protect the public by seeking justice. Deciding if criminal charges should be filed and initiating the charging process is the responsibility of prosecutors. Screening is the process by which a determination is made whether to initiate or pursue criminal charges. Prosecutors should use discretion in screening to eliminate cases in which prosecution is not justified. Prosecutors also have the responsibility to see that charges selected adequately describe the offense(s) committed and the charges provide for an adequate sentence for the offense(s). Prosecutors 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, prosecutors should file only those charges which are reasonably substantiated by admissible evidence at trial. Prosecutors should 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 prosecutors should screen out cases where the accused is innocent or proof falls below the beyond a reasonable doubt standard of the offense(s) charged. In those cases, the prosecutor should contact the victim and police investigator, explain the situation, then decline prosecution or move to dismiss the case immediately.

Plea Offers

This office values "Truth in Sentencing," which includes attempting to ensure that the defendants serve the sentence ordered by the court. Ultimately, negotiations should be made with an eye towards protecting the public by seeking justice. Prosecutors may but do not need to make plea offers in every criminal cases. Prosecutors can provide plea offers to defendants as a way to encourage efficient yet just outcomes. Prosecutors have discretion to negotiate dismissals, non-prosecution, and sentencing recommendations in all cases subject to the general standards for plea agreements.

The Wheeler County District Attorney's Office will conduct 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.

Prosecutors consider factors in deciding whether a plea or sentencing negotiation is warranted: the 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 Wheeler County District Attorney's office, the prosecutor 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 prosecutor should strongly consider the victim's wishes.

Crime Victim's Rights

The Wheeler 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 victims 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. The prosecutor shall be familiar 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 the hearing date and during plea negotiations in any felony involving a person.

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. The prosecutor should inform Victims Assistance of pending criminal cases. Victim Advocates will 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 victim advocate will give a copy of the restitution forms to the prosecutor prior to the appropriate court date of case disposition. During the sentencing hearing, the prosecutor 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, all defendants are jointly and severally liable for paying restitution. As a result, the prosecutor 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, the prosecutor should consider alternative options such as compensatory fines or community service.

Homicide Cases

Before making a plea offer in a homicide or violent personal crime case, the prosecutor will consult with the primary detectives and the victim, or the family of the victim in homicide cases, as to the appropriateness of the offer and any opinions or suggestions they may have.

During this meeting the prosecutor will present a factual summary of the case and review the mitigating and aggravating factors in the case.

Decision to Pursue Death Penalty

The prosecutor in aggravated murder cases must consider the law and evidence of each case and decide whether seeking the death penalty would be a just outcome.

Mandatory Sentence Cases

The prosecutor should review with law enforcement the plea offer in all 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., 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. The prosecutor should look for appropriate instances to recommend that defendants pay for some or all of their court appointed attorney costs.

Truth in Sentencing

This office values “Truth in Sentencing,” which includes attempting to ensure that the defendant fundamentally serves the sentence ordered by the court.

Sentence Reduction Provisions

Prosecutors 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. The prosecutor works 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 is an intensive four-phase program designed to assist drug addicted individuals to overcome their addictions. Drug courts require resources from a number of agencies and are expensive to maintain. The prosecutor has a duty to ensure the careful use of this resource if one becomes available in Wheeler County. 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 prosecutor with a Drug Court team should work to ensure the limited seats in Drug Court are occupied by individuals who are serious about overcoming addiction. The Drug Court prosecutor also works to ensure that participants who continue to victimize society are terminated from the program. This clears the way for others who are more serious about overcoming their addiction to participate in this intensive program.

Fast Track Disposition Program

Oregon law allows early disposition for first-time offenders who are charged with nonperson offenses. The legislature has termed this Fast Track Disposition. The goal of this program is to save indigent defense costs; hold offenders accountable for their actions; ensure prompt resolution of criminal matters; protect the rights of the public and the offender; get the most out of community resources to provide alternative sanctions to criminal behavior; and reduce the costs of the criminal justice system.

The Wheeler County District Attorney's Office shall identify at intake crimes eligible for violation treatment. At the defendant's first appearance, the defendant should be advised that she or he is eligible for the program and informed of the offer to treat the case as a violation. A fine will be recommended and may be required to be stipulated to by the defendant. If the defendant refuses the plea offer, the offer immediately expires. The plea offer shall not be renewed in ensuing proceedings.

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.

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.

The prosecutor will be familiar with these laws and advocate for implementation of their provisions.

Discovery

The discovery obligations of the Wheeler 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 the prosecutor to thoroughly consider how to meet the discovery obligations in each case.

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. Our office has an open file policy. All

discovery contained in our criminal files are open and available at the Wheeler County District Attorney's Office for defendants and their attorneys to come and look at, by appointment, free of cost. Digital copies of discovery materials are also made available for defendants. The prosecutor provides discovery to defense counsel following court appointment or when the attorney provides a notice or representation to the prosecutor. There is no charge for discovery.

Any and all written agreements entered into between the prosecutor and Wheeler 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 Wheeler County District Attorney'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 Wheeler 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 seek to 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 the District Attorney. All support staff interns will be overseen by support staff supervisors.

Affidavits of Prejudice Against A Judge

When a prosecutor believes that a sitting judge's prejudice against the state is such that the prosecutor should seek to disqualify a judge from hearing a case or cases, then the prosecutor should document the reasons in writing, including affidavits of prejudice, motions to excuse, or requests for judge recusal. The prosecutor files the affidavit of prejudice with the presiding Circuit Court judge, with a copy to the judge who is the subject of the affidavit.