

Sherman County - Policy Handbook

OVERIDING PRINCIPLES

Protecting the public, by delivering justice, is the overriding principle that governs the District Attorney's Office 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 Sherman 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 Sherman 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 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 the District Attorney. Screening is the process by which a determination is made whether to initiate or pursue criminal charges. The District Attorneys uses discretion in screening to eliminate cases in which prosecution is not justified. The District Attorney also has 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). The District Attorney is 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, The District Attorney shall file only those charges which are reasonably substantiated by admissible evidence at trial. The District Attorney 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

The 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. The District Attorney will retain the discretion to negotiate dismissals, nonprosecution, and sentencing recommendations in all cases subject to the general standards for plea agreements.

The Sherman 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: 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 Sherman County District Attorney’s office, the 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 District Attorney in charge of the case should strongly consider the victim’s wishes.

Crime Victim's Rights

The Sherman 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. 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 Victim Advocate 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. Restitution should be requested 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. When restitution is legally unattainable as no pecuniary loss is provable, the District Attorneys may consider alternative options such as compensatory fines or community service.

Homicide Cases

Prior to arriving at a homicide plea offer, the 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.

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 and at least one other supervising attorney.

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 by 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. The District Attorney 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 District Attorney 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

The District Attorneys is 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 District Attorney 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 may be offered for a second drug offenses but not for subsequent drug offenses.

Drug Court

Sherman County does not have a Drug Court program at the time of this writing.

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 District Attorney will advocate for implementation of the above provisions.

Discovery

The discovery obligations of the Sherman 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. Our office has an open file policy. All

discovery contained in our criminal files are open and available at the Sherman 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 Office Manager with input and approval as required by the Sherman County Commissioners

Any and all written agreements entered into between Sherman 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 Sherman 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 Sherman 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

This office does not employ certified law students or interns at this time. However, should that change in the future, all legal interns will be supervised by the district attorney. All support staff interns will be overseen by the office manager.

Affidavits of Prejudice Against A Judge

When the 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 the district attorney shall provide the reasons for the position in writing. Affidavits of prejudice, motions to excuse, or requests for a judge to recuse himself or herself can be filed only by 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.