

NOTICE OF INTENT TO SEEK UPWARD DEPARTURE

State v. Cherney DA 2450204

Pursuant to the rule announced in Blakely v. Washington the State hereby gives notice that it will seek an upward departure which exceeds the maximum presumptive sentence established by the Oregon Sentencing Guidelines. At trial the State will seek a jury finding on the following factors supporting an upward departure.

OAR criteria:

- 1. Deliberate cruelty Counts _____
- 2. Vulnerable victim Counts _____
- 3. Threat of actual violence Counts _____
- 4. Persistent involvement unrelated to current crime Counts _____
- 5. Use of a weapon Counts _____
- 6. Violation of public/professional trust Counts _____
- 7. Multiple unrelated victims/incidents Counts _____
- 8. Organized criminal operation Counts _____
- 9. Permanent injury to victim Counts _____
- 10. Harm or loss greater than usual Counts _____
- 11. Motivated by race/color/origin/sexual orientation Counts _____

Caselaw criteria:

- 1. On supervision status at time of crime Counts 1,2,3,4,5
- 2. Commission of crimes on release status Counts _____
- 3. Failure to appear history in instant case Counts _____
- 4. Absolute disregard of immigration laws Counts _____
- 5. Probability that defendant cannot be rehabilitated Counts 1,2,3,4,5
- 6. Greater use of violence than other robbery defendants Counts _____

Other _____ Counts _____

Date 9/6/22

[Signature]
Deputy District Attorney