



Utah County Attorney

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Utah County Attorney's Office Prosecution Policies

Purpose

This document contains the specific office policies required to be published by Utah Code 63M-7-216(7)

Screening and Filing Criminal Charges

FOUNDATIONAL PRINCIPLES

The foundation of a house is rarely seen; however, it is the most crucial part of the house as it serves to hold it in place. Moreover, a foundation that is level, plumb, and square ensures that the rest of the structure has a chance of being built straight. A foundation built to a lesser standard, however, gives no chance to build an entirely straight house.

Screening is to criminal prosecution what a foundation is to a house. It ensures that the prosecutor has sufficient admissible evidence to sustain a conviction prior to filing; it diligently seeks to understand the microcosms of every case in order to charge it correctly, or not to charge it at all. It learns something of the accused, the victims, and the public's need for protection. Screening, if done right, ensures that the criminal case, from the inception, is level, plumb, and square.

The filing of a criminal charge against an individual changes a defendant's life forever, with consequences that can never be known entirely. Moreover, the filing of a criminal charge affects the lives of many others beyond the defendant himself/herself whose identities we likely can never know. Conversely, failing to charge the appropriate charge in a case has the probability of negatively affecting seen and unseen fellow citizens.

Because the consequences of each charging decision affect many lives, it is essential that each screening decision be made with a thoroughness and solemnity worthy of a decision that affects many peoples' lives forever. It is easy to allow our screening discussions to descend into jocularity, given the frequency with which decisions are made regarding

cases. However, while humor is appropriate and welcomed, insensitive jocularity or banter is not.

CASE SCREENING GUIDELINES

The screening division shall consider the following guidelines in deciding what charge to file, where to file it, and at what level of offense to charge it:

- Admissible evidence
- Prior criminal history
- Extraneous facts of the case, which may or not be admissible, but which give context to the question of whether a criminal charge is brought
- Possible defenses
- The effect on ALL victims, both statutory and non-statutory
- The Defendant's constitutional rights
- The overall circumstances of the defendant, including whether the defendant's prospect of success in society will be benefitted by participation in the criminal justice system
- The criminal justice system's ability to handle the case effectively when viewing the totality of other cases currently in the system
- The balancing of the need for community protection vs. need for punishment
- Whether there is a reasonable likelihood of success at trial.
- Charges should reflect the threat posed by the defendant and address the long-term protection of society.
- Charges filed should place the prosecutor in a position of strength to conduct a one or two-day jury trial.
- Charging higher charges or number of counts (despite the ability to prove such charges) in order to facilitate plea bargaining is strictly prohibited.
- Long term societal protection outweighs judicial economy and prosecutor convenience and shall take priority over judicial or prosecutorial economy.
- There is a rebuttable presumption that retail theft, simple drug possession, and disorderly conduct will not be enhanced with prior convictions.
- Technical violations of criminal statutes without accompanying criminal intent and/or harm to other persons should not be filed.
- District court should be given priority for high-risk and/or violent offenders. Violence includes any kind of harm to a victim.
- There is a preference for lower risk, non-violent offenses to be charged in the justice court.
- Prior criminal convictions and pending cases are relevant, but primarily to give a more complete picture regarding the defendant or the situation.

Plea Bargains

As prosecutors, we are focused on community safety. All plea bargains should be considered with this in mind. Within the Utah County Attorney's Office, the criminal division is comprised of trial teams. Each criminal judge in the Fourth District in Provo and American Fork is assigned a certain number of trial attorneys (based on case load), legal assistants, and a victim-witness coordinator. Each trial team is required to meet weekly to discuss and manage the specific details of its cases. Every plea bargain offered in any trial team must be done with the consent of a majority of the attorney members of the trial team, unless the plea bargain includes reducing the highest charge in the information. In that case, a unanimous vote of the trial team is required. When considering plea bargains, take into consideration the factors listed in the screening determination, as well as the following: The criminal justice system has limited resources, and we should focus those resources on high-risk offenders.

Sentencing Recommendations

Within the Utah County Attorney's Office, any sentencing recommendations should always be focused on community safety. The Utah County Attorney's Office does not have any policies regarding sentencing recommendations.

Discovery Practices

This Office recognizes its duty to comply with Utah Rule of Criminal Procedure 16 and to provide all "Brady" (Brady v. Maryland, 373 U.S. 83 (1963)) and "Giglio" (Giglio v. United States, 405 U.S. 150 (1972)) material.

Giglio requires, in addition to disclosing exculpatory evidence, that information which could be used to impeach government witnesses must be disclosed, including when a witness is a police officer or government employee (e.g., lab personnel, evidence technicians, etc.). And because this Office is deemed to have constructive knowledge of potential impeachment material held by our law enforcement agencies, we have an affirmative obligation to ascertain such information from those agencies.

This Office maintains an open file policy for criminal cases. This means that upon request we will provide to the defense copies or written notice of all relevant, unprivileged information received by this Office. However, this does not mean that the defense has free access to our files. Office criminal files contain prosecutor work product and, frequently, information sensitive to victims and witnesses. Therefore, criminal files should not be made accessible to anyone other than law enforcement or Office staff members unless the assigned prosecutor, the prosecutor's supervisor or the Office GRAMA attorney specifically approves the access.

In order to ensure we have provided all evidence required by our Open File Policy, Rule 16, Brady and Giglio, no later than two weeks prior to trial the prosecutor shall meet

face-to-face with the case officer and assigned legal assistant. In this meeting the prosecutor will review with the case officer, in the current case management system, all evidence received by the County Attorney's Office and all evidence sent to the defendant. The prosecutor will verify with the case officer that we have received all evidence known to the police department and will verify that we have sent all known evidence to the defendant. The prosecutor will immediately disclose to the defendant any evidence not previously sent.

Additionally, unless ordered by the court, this Office will not send images of child pornography or explicit pictures of victims as discovery. Instead, the assigned prosecutor will arrange for and permit defense counsel and/or his/her representative to view the material at our offices or at the offices of the pertinent police agency.

Prosecution of Juveniles, including whether to prosecute a juvenile as an adult

The Utah County Attorney's Office does not maintain a policy regarding the prosecution of juveniles, including whether to prosecute a juvenile as an adult. The Juvenile Justice System is a restorative system with the focus on the offender. Prosecution of cases in the juvenile system will always be dictated by the evidence in the case. When determining whether to prosecute a juvenile as an adult, the Utah County Attorney's Office will look at the totality of the circumstances, including whether the services available in the juvenile justice system are sufficient for community safety.

Collection of Fines and Fees

The Utah County Attorney's Office does not maintain policies regarding the collection of fines and fees. However, all employees of the Utah County Attorney's Office who receive coins, currency, checks, and money orders in the course of their duties will comply with the Utah County Government Policy for Money Receipt Handling.

Criminal and Civil Asset Forfeiture Practices

The Utah County Attorney's Office does not maintain policies regarding criminal and civil asset forfeiture practices.

Services Available to Victims of Crime, Both Internal to the Prosecutorial Office and by Referral to Outside Agencies

The Utah County Attorney's Office is committed to serving the victims of crime in our community. We work to ensure that we are responsive to victim needs and that they are treated with the utmost respect, dignity, and professionalism. Within our office, we have dedicated Victim/Witness coordinators assigned to each case, to act as a liaison and help assist victims through the court process. For more details on services within the Utah County Attorney's Office and outside referrals, please see our Victim Services page.

Victim Services – Utah County Attorney

Additionally, communicating with victims is a top tier responsibility for each deputy county attorney. To this end, the lawyer primarily responsible for a case must ensure that every victim in that case is contacted and informed of upcoming hearings within twenty four hours of the case being set, so as to give the victim sufficient time to prepare. Victims should also be updated as to the status of the case by 5:00 p.m. the day after law and motion. Lawyers may utilize legal assistants, paralegals, and victim/witness coordinators to fulfil the requirements of this section; however, accountability for ensuring that it is done rests with the lawyer.

Diversion programs

At this time, the Utah County Attorney's Office has a prefile diversion program. The Utah County Attorney's Office (UCAO) Pre-Filing Diversion Program is an alternative method of holding offenders accountable for violations of the law. It targets low-level crimes and diverts eligible offenders from formal court proceedings to a program tailored to address or remedy issues related to the allegations. The Program is voluntary and not for offenders contesting their guilt. Successful participants will have their cases closed and formal charges will not be filed in court. The Program's primary goals are to: (1) prevent, eliminate, or reduce the rate of recidivism; (2) speedily collect restitution for crime victims; (3) reduce costs and caseload burdens on prosecutors and the criminal justice system; (4) provide learning opportunities and life-skills for participants; and (5) avoid criminal charges for successful participants.

Participants in the Program are required to complete a list of conditions supervised by a private provider designated by the UCAO, which may include: (1) community service hours; (2) paying full restitution to victim(s); (3) risk assessments and recommended

classes, counseling and/or treatment; (4) a supervision program normally between six and twelve months; and (5) not violating the law during the supervision period. TheUCAO does not collect a fee from participants but they are required to pay a nominal monthly supervision fee to a supervision provider, pay full restitution to victims where applicable and pay the costs associated with any recommended classes, counseling or treatment.

Eligibility requirements to participate and acceptance into the Program and the conditions required to be completed are within the sole discretion of theUCAO. Diversion is a privilege and not a right and strict compliance is required to successfully complete the Program. Participants who fail to complete the required conditions will be terminated from the Program and their cases will be returned to the traditional prosecution track. TheUCAO encourages all candidates of this Program to consult with an attorney prior to formally executing any supervision agreement with the supervision provider to determine any and all effects it may have upon them if they are accepted and choose to participate.

SCREENING PROCESS

TheUCAO will solicit input from the investigating officers and victims when determining whether to invite offenders to participate in the Program. Because the Program targets low-level offenders who are serious about making amends for their criminal behavior and not reoffending, the following crimes and offenders are excluded from participation.

- Crimes of violence including domestic violence and offenses against vulnerable or elderly persons
- Sex crimes (Utah Code Title 76 Chapter 4 Parts 5 and 5b offenses) and Sexual Battery
- Residential burglaries
- DUI offenses
- Offenses involving dangerous weapons
- Drug distribution
- Gang members
- Offenders currently on probation
- Offenders with a felony conviction or more than two misdemeanor convictions other than minor traffic violations
- Offenders with outstanding arrest warrants
- Offenders unable to complete community service or pay restitution where appropriate

- Traffic offenses
- Non-amenable offenders (those not open to correction or likely to reoffend according to the UCAO)

Candidates for the Program must disclose all prior charges, arrests, diversions and convictions during the in-take interview with the supervision provider. Failure to do so will make the candidates ineligible for the Program or provide cause for immediate termination. Participants convicted of or charged with a new crime where probable cause exists is cause for immediate termination from the Program. The UCAO may make exceptions to the above-listed eligibility requirements.

Cases referred to the UCAO for prosecution that appear to meet the eligibility requirements of the Program are referred to the Community Services Division. This Division reviews the cases and the candidates' criminal history to determine whether to provisionally accept them into the Program in lieu of traditional prosecution. If provisionally accepted, the Division will send a letter to the candidates inviting them to participate in the Program with information about it (including probable conditions required to be completed) and a date by which they must meet with the designated supervision provider for an in-take interview.

This Division will also provide notice to the supervision provider that the candidates have been referred to the Program and the date by which they must appear for the in-take interview. If the candidates fail to appear for the interview, they are subject to immediate disqualification from the Program. During this interview, the supervision provider will further assess the candidates' amenability for the Program, which may include adding required conditions according to their individual needs (subject to the approval of the UCAO).

If the candidates accept the list of conditions and decide to enter the Program, they will sign a supervision agreement with the supervision provider and formally enter the Program. If at any point during the supervision period the participants fail to meet the conditions of the agreement or otherwise terminate their participation in the Program, they will be terminated from the Program and their original cases will be returned to the traditional prosecution track and court involvement. Participants that complete all conditions of the Program will receive a certificate of completion and their cases will be closed.

Restorative Justice Programs

The Utah County Attorney's Office does not maintain a specific office policy for restorative justice programs. However, the Utah County Attorney's Office recognizes the importance

of restorative justice programs. Currently, the Utah County Attorney's Office participates in three specialty courts that are designed to work with high-risk/high-need individuals. These courts are **Drug Court**, **Mental Health Court**, and **Veterans Court**. Whether a defendant is recommended for participation in these programs will depend on an analysis of the charges, the defendant's criminal history, the defendant's needs, and the risk to the community.