

## **PAYSON CITY ATTORNEY'S OFFICE PROSECUTION POLICIES**

Pursuant to Utah Code Annotated §63M-7-216, the following is a summary of the prosecution policies of the Payson City Attorney's Office. (Updated February 2020)

### **A. Filing and Maintaining Criminal Charges:**

1. The prosecutor should not file or maintain charges if the prosecutor reasonably believes the accused is innocent.
2. The prosecutor should file and maintain criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge or maintain charges is in the interests of justice.
3. The prosecutor should only file and maintain charges in number and degree than are reasonably necessary to fairly reflect the gravity of the offense or deter similar conduct.
4. In the event that the prosecutor learns of previously unknown information that could affect a screening decision previously made, the prosecutor should reevaluate that earlier decision in light of the new information.
5. In addition to the strength of the case and admissibility of evidence, in considering whether prosecution is in the interest of justice, the prosecutor may consider the following factors when applicable:
  - a. The impact of a prosecution on a victim, witness or third party;
  - b. Whether the public's or victim's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.
  - c. The availability of suitable treatment, diversion and rehabilitative programs, the accused's willingness to enter such programs, and the accused's ability to qualify for entrance to and funding for such programs;
  - d. The accused's efforts toward voluntary restitution and/or treatment and rehabilitation prior to prosecution;
  - e. The availability of a noncriminal disposition, deferred prosecution or other diversionary disposition and the accused's willingness to participate in such a program;
  - f. Characteristics of the accused that are relevant, including:
    - 1) The mental status of the accused, including whether the accused committed the offense while substantially mentally ill;
    - 2) The accused's relative level of culpability in the criminal activity;
    - 3) Whether the accused held a position of trust at the time of the offense;
    - 4) The accused's criminal history;
    - 5) Whether the alleged crime represents a substantial departure from the accused's history of living a law abiding life;
    - 6) Whether the accused has already suffered substantial loss in connection with the alleged crime or whether prosecution would cause unwarranted hardship on the accused;
    - 7) The extreme youth or advanced age of the accused
  - g. The likelihood of prosecution by another criminal justice authority;

- h. Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
- i. The willingness of the accused to cooperate with law enforcement in the apprehension or conviction of others;
- j. The charging decisions made for similarly-situated accused persons;
- k. A history of non-enforcement of the applicable law;
- l. A reasonable belief of the prosecutor that the applicable law is unconstitutional;
- m. Any improper conduct by law enforcement in relation to the accused or the investigation, or failure of law enforcement to perform necessary duties or investigations in relation to the prosecution;
- n. The evidence strongly suggests improper motives of the complainant and there is minimal evidence in addition to the complainant's statements corroborating the offense;
- o. Whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;
- p. The extent of harm caused by the offense;
- q. Whether the size of the loss or the extent of the harm caused by the alleged crime is too small to warrant a criminal sanction;
- r. The impact of the crime on the community, including the potential deterrent value of a prosecution to the accused and to society at large;
- s. Excessive costs of prosecution in relation to the seriousness of the offense(s), including the availability of resources to the prosecutor to undertake a particular prosecution or the prosecution of a certain category of offenses;
- t. The possible influence of any cultural, ethnic, socioeconomic or other improper biases against the accused, witnesses or victims.

## **B. Plea Bargains**

1. The U.S. Supreme Court acknowledged in 2012 that, in the U.S., "criminal justice today is for the most part a system of pleas, not a system of trials." The Payson City Attorney's office recognizes that plea bargains have an important role in our justice system. Some experts have noted that without plea bargains, the entire criminal justice system would "grind to a screeching halt."
2. When considering whether to offer a plea bargain and what type of agreement to offer, the prosecutor shall consider whether a plea bargain would be in the interests of justice. In making this determination, the prosecutor may consider the various factors outlined in Section (A)(5) of this policy.
3. When considering a plea bargain, the prosecutor shall consider the rights and input of any victims pursuant to Utah Code Annotated §77-37-3, including the right to have restitution and other reparations ordered for damages caused by the perpetrator.

## **C. Sentencing Recommendations**

1. Where applicable, the prosecutor shall consider the Utah Misdemeanor Sentencing Matrix published by the Utah Sentencing Commission when making sentencing recommendations.
2. The prosecutor may also consider the various factors outlined in section (A)(5) of this policy in determining sentencing recommendations.

3. The prosecutor shall consider, but is not bound, by victim input related to sentencing recommendations. Additionally, the prosecutor shall seek to ensure that victims are afforded the opportunity to present a victim impact statement to the court at or prior to sentencing.

#### **D. Discovery Practices**

1. The prosecutor will comply with the obligations outlined in Utah Rule of Criminal Procedure Rule 16.
2. The prosecutor should carry out discovery obligations in good faith and in a manner that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and meet the requirements of due process.
3. In the event defense counsel makes discovery demands that are abusive, frivolous or made solely for the purpose of delay, unless otherwise required by law or rule, the prosecutor need not cooperate with such demands and should seek court guidance on what must be provided.
4. The prosecutor shall make timely disclosure of exculpatory and mitigating evidence pursuant to Brady v. Maryland, 373 U.S. 83, 87 (1963) and its progeny.
5. If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure and was not provided, the prosecutor should promptly notify defense counsel and provide the required information.
6. Notwithstanding the timelines dictated in Utah Rule of Criminal Procedure 16, the prosecutor should provide all discoverable materials in the prosecutor's possession or control as soon as reasonably possible.
7. Providing broad and early discovery promotes the truth-seeking mission of the prosecutor and furthers the speedy trial and due process rights of both the accused and victims.
  - a. Open File Policy: In pursuit of this mission, the Payson City Attorney's Office has adopted an "open file" policy for discovery, meaning that the prosecutor will provide to the accused copies of or access to all relevant, unprivileged information known to the prosecutor. The prosecutor or legal assistant may redact information prior to providing discovery as necessary for the protection of victims and witnesses.
8. NOTICE OF RIGHT TO DISCOVERY: Under Rule 16, Utah Rules of Criminal Procedure, a defendant has the right to inspect, test, and copy material and information directly related to the case of which the prosecution team has knowledge and control. To exercise that right, please contact the Prosecutor's office at 801-465-5209, Monday-Thursday 7:30 a.m.-6:00 p.m. or at [amandab@payson.org](mailto:amandab@payson.org).

#### **E. Prosecution of Juveniles**

1. The Payson City Attorney's Office is responsible for prosecutions of juveniles where the Payson City Justice Court has jurisdiction over the case pursuant to Utah Code Annotated § 78A-7-106, as follows:
  - a. class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver Licensing Act; and
  - b. class B and C misdemeanor and infraction violations of:
    - 1) Title 23, Wildlife Resources Code of Utah;
    - 2) Title 41, Chapter 1a, Motor Vehicle Act;

- 3) Title 41, Chapter 6a, Traffic Code, except Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving ;
  - 4) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;
  - 5) Title 41, Chapter 22, Off-Highway Vehicles;
  - 6) Title 73, Chapter 18, State Boating Act, except Section 73-18-12;
  - 7) Title 73, Chapter 18a, Boating - Litter and Pollution Control;
  - 8) Title 73, Chapter 18b, Water Safety; and
  - 9) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.
2. All other juvenile criminal offenses are referred to the Utah County Attorney's Office.

#### **F. Collection of Fines and Fees**

1. The Payson City Attorney's Office generally recommends that fines be imposed as part of its recommendations to the court at sentencing.
2. In general, the prosecutor shall recommend a fine amount that is consistent with the State of Utah Uniform Fine Schedule. However, in making this determination, the prosecutor may consider the factors listed in section (A)(5) of this policy to ensure that any recommended fine amounts are in the interest of justice.
3. The prosecutor shall also assist the court in collecting any fees related to bail forfeiture proceedings.

#### **G. Criminal and Civil Asset Forfeiture Practices**

1. The Payson City Attorney's Office generally does not pursue any criminal or civil asset forfeitures, so it therefore does not maintain a policy or procedure related to this activity.

#### **H. Services Related to Victims of Crime**

1. Pursuant to federal grant funding, the Payson City Attorney's Office employs a full-time victim advocate.
2. The victim advocate provides crisis intervention and emotional support to victims as well as referrals to appropriate resources.
3. The victim advocate assists victims through the criminal justice system by providing information, education, and notification about what is happening on the criminal case and communicating information on behalf of the victim to the prosecutor and to the court.
4. The victim advocate also assists victims with safety planning and obtaining protective orders as well as wide range of other services.
5. The victim advocate works with the prosecutor to ensure compliance with Utah Code Annotated § 77-37-3, otherwise known as the victim's bill of rights.

#### **I. Diversion Programs**

1. The Payson City Attorney's Office does not participate in any formal diversion programs.

#### **J. Restorative Justice Programs**

1. The Payson City Attorney's Office does not have access to any formal restorative justice programs. However, the City recognizes the value of the principles of restorative justice and the prosecutor seeks to apply these principles in consideration of the various factors outlined in section (A)(5) of this policy when making charging decisions, plea offers, and sentencing recommendations when such action is in the interests of justice.