SAN JUAN PROSECUTION POLICY

SCREENING

All criminal cases are screened with care and precision by individual Prosecutors on a 'vertical prosecution' basis. In other words, the attorney screening the case is the assigned Prosecutor through case completion. Vertical prosecution also places discretion with the assigned Prosecutor to dismiss any case where evidence convincing the Prosecutor the defendant is not guilty has come forward or sufficient that the interest of justice would be best served through dismissal.

The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including victims of crime, suspects, and defendants.

A prosecutor should seek or file 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 is in the interests of justice. After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt. A prosecutor may file and maintain charges even if juries in the jurisdiction have tended to acquit persons accused of the particular kind of criminal act in question. The prosecutor should not file or maintain charges greater in number or degree than can reasonably be supported with evidence at trial and are necessary to fairly reflect the gravity of the offense or deter similar conduct.

In order to fully implement the prosecutor's functions and duties, including the obligation to enforce the law while exercising sound discretion, the prosecutor is not obliged to file or maintain all criminal charges which the evidence might support. Among the factors which the prosecutor may properly consider in exercising discretion to initiate, decline, or dismiss a criminal charge, even though it meets the requirements above, are:

(i) the strength of the case;
(ii) the prosecutor's doubt that the accused is in fact guilty;
(iii) the extent or absence of harm caused by the offense;
(iv) the impact of prosecution or non-prosecution on the public welfare;
(v) the background and characteristics of the offender, including any voluntary restitution or efforts at rehabilitation;

(vi) whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;
(vii) the views and motives of the victim or complainant;
(viii) the improper conduct by law enforcement, if any;
(ix) unwarranted disparate treatment of similarly situated persons;
(x) potential collateral impact on third parties, including witnesses or victims;
(xi) cooperation of the offender in the apprehension or conviction of others;
(xii) the possible influence of any cultural, ethnic, socioeconomic or other improper biases;
(xiii) changes in law or policy;
(xiv) the fair and efficient distribution of limited prosecutorial resources;
(xv) the likelihood of prosecution by another jurisdiction; and
(xvi) whether the public's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.

In exercising discretion to file and maintain charges, the prosecutor should not consider:
(i) partisan or other improper political or personal considerations;
(ii) hostility or personal animus towards a potential subject, or any other improper motive of the prosecutor; or
(iii) bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status.

PLEAS AND PLEA BARGAINS

There is no right or entitlement to a plea bargain. However, a negotiated disposition agreement, or plea bargain, is one of the Prosecutor's most efficient tools in effecting justice. In addition, the limited resources of the Prosecutors Office, the Courts, and law enforcement agencies dictate that most cases will be resolved by a negotiated disposition agreement or plea bargain. Further, Defendant's resources are also expended in drawn-out litigation, and their lives placed in uncertainty while their case is pending. Agreed upon resolutions may be for beneficial Disposition agreements, may take the form of an agreement for a guilty plea, the reduction in the level of offense whether by amending the charges or under the processes listed in Utah Code §§77-2-1.2 or 76-3-402, partial dismissal, or a plea in abeyance agreement that results in a dismissal or a reduction in charges, diversion agreements, sentencing agreements, or a combination of the these.

1. Negotiated Pleas and Disposition Agreements

In using a disposition agreement, the Prosecutor should seek a just resolution for victims of crime, the defendant, any witnesses, and the community. The prosecutor should be open, at every stage of a criminal matter, to discussions with defense counsel concerning a negotiated disposition agreement. However, the Prosecutor is authorized to establish deadlines by which agreements must be made. A prosecutor should not engage in disposition discussions directly with a represented defendant. Where a defendant has properly waived counsel before the Court, the prosecutor may engage in disposition discussions with the defendant, and should make and preserve a record of such discussions.

The prosecutor should not enter into a disposition agreement before having information sufficient to assess the defendant's actual culpability. The prosecutor should consider collateral consequences of a conviction before entering into a disposition agreement. When working towards a negotiated disposition agreement, the prosecutor should consider the same factors as considered when screening the case for determining whether to pursue charges, and should not be influenced by the inappropriate factors. Additionally, the prosecutor should consider the following:

(i) the express desire of victims;
(ii) the safety of victims, witnesses, and the community;
(iii) restitution for victims;
(iv) the opportunity and amenability for rehabilitation of the defendant;
(v) the defendant's prior opportunity for and engagement in rehabilitation programs;
(vi) the defendant's prior probation or parole history;
(vii) the criminal history of the defendant;
(viii) other aggravating or mitigating factors; and
(ix) cooperation by the defendant in resolving other criminal cases.

The decision on a negotiated plea rests solely with the Prosecutor after consideration of the factors listed. The Prosecutor should never substitute their discretion to anyone, but may engage with other Prosecutors in the office for guidance.

2. Specific Pleas

Specific crimes mandate specific outcomes by statute. The Prosecutor should never negotiate a plea that would violate the sentencing statute. Further, all pleas should have a factual basis on which the negotiated plea is based. The creation of legal fictions without a basis in reality to facilitate a plea is an improper exercise of of Prosecutor discretion.

Diversion agreements are discouraged. No Diversion agreement will be entered into without express written permission from the County Attorney.

Plea-in-Abeyance agreements. It is the policy of the office that plea-in-abeyance agreements be entered into on a limited basis considering (but not limited to) the following factors:

a. Is the case outside the norm?
b. Is the behavior committed captured under the statute, but not necessarily the goal of the statute?
c. Are the extensive mitigating factors? (limited capacity, emergency situations, mistake of facts, etc).
d. Are there affirmative defenses available to the defendant, that while not dispositive of the outcome, demanding of consideration?
e. What is the desire of the victim of the crime?
f. What is the defendant's criminal history?
g. Has the Defendant made efforts to make victims of the crime whole without pressure from the State to do so?
h. Can the Defendant make the victims whole as part of the plea?
i. Can the Defendant engage in a program, behavior, or other type activity to correct the errors that led to the bringing of charges? (in-patient programs, proof of enrollment in school or other training programs while maintaining a high level of achievement, etc).

This office handles traffic violations as part of its duties. Plea-in-abeyance agreements are more common in traffic violations than other violations of law. This office by policy will offer a plea-in-abeyance on infraction level traffic violations on the following basis:

a. The violator is not the holder of a CDL.
b. The plea does not violate any federal or state law, including Federal masking laws.
c. The violation did not take place in a school zone.
d. The violator does not have any other traffic violations in the past three years.
e. The violator does not have an alcohol or drug related driving offense in the past 10 years.
f. The speed was not in excess of 15 miles and over on a highway or 10 miles an hour over on a city street.
g. The violator is willing to complete a defensive driving course.
h. The violator provides a certified copy of their driving record prior to the entry of the plea confirming their driving history.
i. The violator will provide to the Court a copy of the driving history at the end of the plea-in-abeyance term showing they have not accrued a new driving offense during the plea-in-abeyance period.

Any other plea-in-abeyance for traffic violations will be handled on a case-by-case basis at the discretion of the assigned Prosecutor according to all of the prior named restrictions.

SENTENCING

No person convicted of a crime or defense lawyer should expect to receive any specific sentencing recommendation. If sentencing recommendations are made, they will be made after

considering the charge(s), the facts of the case(s), the defendant's level of acceptance of responsibility, other aggravating and mitigating circumstances, as well as input from the victim.

JUVENILE PROSECUTION

This office will work closely with the juvenile probation office to determine whether delinquent acts committed by juveniles should be resolved by nonjudicial adjustment or through formal adjudication. These determinations will take into account the standards for screening set forth in Paragraph 1 above. Certification of a juvenile into the District Court will be determined on an individual case basis, this office will consider factors that may include, without limitation, the following:

a. The best interests of the juvenile offender;
b. The safety of victims, witnesses, and the community;
c. The seriousness of the offense;
d. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
e. The history and background of the juvenile offender; and
f. The likelihood of rehabilitation and the availability of rehabilitation and treatment resources.
g. The number of offenses and the number of victims over the course of time.

DISCOVERY

This office will comply with Rule 16 of the Utah Rules of Criminal Procedure and all other applicable statutes and rules by providing evidence in its possession or in the possession of law enforcement to defendants/defense counsel in a timely fashion. This office recognizes its special responsibility to provide exculpatory evidence, including evidence that may be used to impeach state witnesses, as an affirmative discovery obligation.

The Utah Rules of Criminal Procedure start the inquiry as to whether information should be disclosed, but the rules are not the only source of law to be considered. The following is to be considered only a brief outline, not an exhaustive review of the law of disclosure.

a. Brady v. Maryland, 373 U.S. 83, 87 (1963) all "material" information must be provided to the defense by the prosecution.

b. "Material" evidence includes exculpatory evidence as well as impeachment evidence concerning government witnesses. Strickler v. Greene, 527 U.S. 263, 281-82 (1999).

c. If any law enforcement agent possesses the information or evidence, the Prosecutor has an obligation to learn the information and turn it over to the defense. Kyles v.Whitley, 514 U.S.419 (1995).

d. The defense does not have to request the information; the Prosecutor has the obligation to turn it over. United States v. Agurs, 417 U.S. 97 (1976).

e. Suppression by the state, whether intentional or not, of material evidence favorable to the defendant violates the constitutional guarantee of due process.

Brady Material. Brady material refers to evidence or information that could be used by a defendant to make his/her conviction less likely or a lower sentence more likely. The following are some general categories of Brady material:

a. Evidence tending to show that someone else committed the criminal act.
b. Evidence tending to show that the accused did not have the requisite knowledge or intent.
c. Evidence tending to show the absence of any element of the offense, or which is inconsistent with any element of the offense.
d. Evidence that either casts a substantial doubt upon the accuracy of evidence including but not limited to witness testimony the Prosecutor intends to rely on to prove an element of any crime charged, or which may have a significant bearing on the admissibility of the prosecution's evidence.
e. Evidence tending to show the existence of an affirmative defense, such as entrapment or duress; and
f. Evidence tending to show the existence of past or present circumstances that may reduce the defendant's sentence.

Prosecutors must disclose this information even if they do not believe such information will make a difference between conviction and acquittal.

Giglio Material. Giglio material refers to evidence or information that could be used by a defendant to impeach a government witness or affiant. This may include but is not limited to:

Bias
Specific Instances of Misconduct
False written statement, report or other document
Misconduct that reflects on truthfulness
Misconduct that indicates a racial, religious or other personal bias
Misconduct that indicates promises, offers or inducements, including the offer of Immunity
Misconduct involving handling of evidence or property

Misconduct that involves the use of force
Misconduct that involves harassment
Misconduct that involves the inappropriate of unauthorized use of government data
Misconduct that reflects on credibility
Criminal Conviction
Prior Inconsistent Statements
Untruthful character
Issues in Perception and Recollection

Other Impeachment Evidence. The Brady disclosure obligation includes impeaching information for witnesses. United States v. Bagley, 473 U.S. 667, 676 (1985).

a. Where a witness's reliability may well be determinative of guilt or innocence, disclosure of evidence affecting credibility falls within the Brady rule.

b. Incentives offered to witnesses, including plea bargains, offers of favorable treatment and payments to witnesses must be disclosed. Plea bargains to cooperate must be disclosed even if made by another office.

c. Prosecutors are required to disclose prior written or recorded statements of witnesses and summaries of oral statements.

d. The complete criminal record of witnesses must be disclosed.

a. There is no obligation to communicate preliminary, challenged, or speculative information. United States v. Agurs, 417 U.S. 97, 109, n16 (citing Giles v. Maryland, 386 U.S. 66, 98 (1967)).

b. Whether evidence is admissible under state law is not dispositive of the question of required disclosure. If the evidence in question could have led to the discovery of admissible impeachment evidence, disclosure is required. See United States v.Morales, 746 F.3d 310, 315 (2014); Wood v. Bartholomew, 516 U.S. 1 (1995). As a result, evidence that would not be admissible under Utah law must still be assessed for the possibility that disclosure could lead to impeachment information on a case by case basis.

Disclosure. Law enforcement agencies are required to produce any impeachment information known about witnesses, including law enforcement witnesses, to the prosecution.

a. Disclosure shall be as prompt as possible.
b. Individual Prosecutors will determine whether or not a witness with known impeachment problems pursuant to Brady/Giglio is necessary to the presentation of the case, and make disclosures as required.
c. Law enforcement officers with known impeachment issues will not be relied upon by this office to sign a verified complaint, affidavit or search warrant application without disclosing all known impeachment issues to the court. See Franks v. Delaware, 438 U.S. 154, 171-72 (1978).