

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

In compliance with Section 63M-7-216 of the Utah Code Annotated, the Murray City Attorney's Office Prosecution Policies ("Policies") set forth below shall be used by the Murray City Attorney's Office to guide the exercise of prosecutorial discretion with the objective of achieving the fair, efficient, and effective enforcement of violations of State law and City ordinances within the City.

These policies and internal office procedures followed pursuant to them are intended solely for the guidance of city prosecutors. They are not intended to create a substantive or procedural right enforceable at law and may not be relied upon by a party to litigation with the City.

### **I. Screening and Filing Criminal Charges**

#### **A. Prosecutorial Responsibility to Charge**

Pursuant to Article VIII Section 16 of the Utah Constitution, Utah Code Title 67 Chapter 5, Utah Code Title 17 Chapter 18a, and Utah Code Title 10, Chapter 3, Section 928, it is the ultimate responsibility of the Prosecutors to determine when and which criminal charges should be prosecuted and against whom. Excepting cases authorized to proceed by citation pursuant to Utah Code 77-7-18 to -21, the decision to initiate a criminal prosecution should be made by the Prosecutor's office.

The City Attorney shall ensure that appropriate training and guidance is provided to City Prosecutors regarding the exercise of their discretion in charging decisions.

City Prosecutors should allow for adequate time and resources to evaluate cases prior to making charging decisions.

#### **B. Filing and Maintaining Criminal Charges**

Criminal charges should only be filed and maintained by City Prosecutors if they reasonably believe that:

1. the charges are supported by probable cause;
2. admissible evidence will be sufficient to support a conviction beyond a reasonable doubt; and
3. the decision to charge or maintain charges is in the interest of justice.

City prosecutors should not file or maintain criminal charges if they reasonably believe the accused is innocent.

Charges should be filed and maintained in the number and degree that are reasonably necessary to fairly reflect the gravity of the offense(s) and/or to deter similar conduct.

If a City Prosecutor learns of previously unknown information that could affect a filing or screening decision previously made, the Prosecutor should reevaluate that earlier decision in light of the new information.

### C. Factors to Consider when Screening and/or Charging a Case

In addition to the strength of the case and admissibility of evidence, in considering whether prosecution is in the interest of justice, City Prosecutors may consider the following factors (when applicable):

1. The impact of a prosecution on a victim, witness or third-party;
2. Whether the public's or victim's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies;
3. The availability of suitable treatment options, 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;
4. The accused's efforts toward voluntary restitution and/or treatment and rehabilitation prior to prosecution;
5. The availability of a noncriminal disposition, deferred prosecution or other diversionary disposition, and the accused's willingness to participate in such a program;
6. Characteristics of the accused that are relevant, including, but not limited to:
  - a. The mental status of the accused, including whether the accused committed the offense while substantially mentally ill;
  - b. The accused's relative level of culpability in the criminal activity;
  - c. Whether the accused held a position of trust at the time of the offense;
  - d. The accused's criminal history;
  - e. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
  - f. Whether the accused has already suffered substantial loss in connection with the alleged crime or whether prosecution would cause unwarranted hardship on the accused;
  - g. The extreme youth or advanced age of the accused.
7. The likelihood of prosecution by another criminal justice authority;
8. Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
9. The willingness of the accused to cooperate with law enforcement in the apprehension or conviction of others;

10. The charging decisions made for similarly situated accused persons;
11. A history of non-enforcement of the applicable law;
12. A reasonable belief of the Prosecutor that the applicable law is unconstitutional;
13. 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;
14. The evidence strongly suggests improper motives of the complainant and there is minimal evidence in addition to the complainant's statements corroborating the offense;
15. Whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;
16. The extent of harm caused by the offense;
17. 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;
18. The impact of the crime on the community, including the potential deterrent value of a prosecution to the accused and to society at large;
19. 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;
20. The possible influence of any cultural, ethnic, socioeconomic or other improper biases against the accused, witnesses or victims.

**D. Factors *Not* to Consider when Screening and/or Charging a Case**

In screening and charging decisions, a City Prosecutor should *not* consider the following when exercising his or her discretion:

1. The Prosecutor's individual rate of conviction;
2. The rate of conviction of the City Attorney's office;  
Personal advantages or disadvantages that a prosecution might bring to the Prosecutor or others in the prosecutor's office;
3. Hostility or personal animus towards an accused;
4. Political advantages or disadvantages that a prosecution might bring to the prosecutor;
5. Characteristics of the accused that have been recognized as the basis for possible bias or discrimination, insofar as those factors are not pertinent to the elements or motive of the crime;
6. When the primary purpose of filing charges is to obtain from the accused a release of potential civil claims or the forfeiture of seized property;
7. The acts or behavior of the accused's attorney.

**II. Plea Negotiations**

**A. Plea Negotiation and Agreements**

City Prosecutors are under no obligation to enter into a plea agreement that has the effect of disposing of criminal charges in lieu of trial. However, where it appears that it is in the public interest, a Prosecutor may engage in negotiations for the purpose of reaching an appropriate plea agreement.

**B. Willingness to Negotiate**

City Prosecutors should be willing to consult with the defense concerning the disposition of charges by plea and, as practicable, set aside times and places for plea negotiations, in addition to pre-trial hearings.

**C. Negotiations with Unrepresented Defendants**

If a Prosecutor enters into a plea negotiation with a defendant who is not represented by legal counsel, he or she should seek to ensure that the defendant understands his or her rights, duties, and liabilities under the plea agreement. City Prosecutors should never take unfair advantage of an unrepresented defendant. City Prosecutors shall not give legal advice to a defendant who is not represented by counsel. City Prosecutors may reiterate to an unrepresented defendant the right to obtain their own legal representation and the availability of court-appointed representation if they qualify.

**D. Negotiations with Represented Defendants**

City Prosecutors should not negotiate a plea agreement directly with a defendant who is represented by legal counsel in a criminal matter, unless defense counsel is either present or has given his or her express permission for the Prosecutor to negotiate directly with the defendant.

**E. Factors to Consider in Crafting Plea Offers**

When crafting a plea offer, City Prosecutors should consider the following factors:

1. The nature of the offense(s);
2. The degree of the offense(s) charged;
3. Any possible mitigating circumstances;
4. The age, background, and criminal history of the defendant;
5. The expressed remorse or contrition of the defendant, and his or her willingness to accept responsibility for the crime;
6. Sufficiency of admissible evidence to support a verdict;
7. Undue hardship caused to the defendant;
8. Possible deterrent value of trial;
9. Aid to other prosecution goals through non-prosecution;
10. A history of non-enforcement of the statute violated;
11. The potential effect of legal rulings to be made in the case;
12. The probable sentence if the defendant is convicted;

13. Society's interest in having the case tried in a public forum;
14. The defendant's willingness to cooperate in the investigation and prosecution of others;
15. The likelihood of prosecution in another jurisdiction;
16. The availability of civil avenues of relief for the victim, or restitution through criminal proceedings;
17. The willingness of the defendant to waive his or her right to appeal;
18. The willingness of the defendant to waive his or her right to pursue potential civil causes of action arising from his or her arrest, against the victim, witnesses, law enforcement agencies or personnel, or the Prosecutor or his or her staff or agents;
19. Issues relating to possible witnesses, including, but not limited to:
  - a. The availability and willingness of witnesses to testify;
  - b. Any physical or mental impairment of witnesses;
  - c. The certainty of their identification of the defendant;
  - d. The credibility of the witness;
  - e. The witness's relationship with the defendant;
  - f. Any possible improper motive of the witness;
  - g. The age of the witness;
  - h. Any undue hardship to the witness caused by testifying.
20. Issues relating to possible victims, including, but not limited to:
  - a. The same issues considered regarding witnesses above;
  - b. The existence and extent of physical injury and emotional trauma suffered by the victim;
  - c. Economic loss suffered by the victim;
  - d. Any undue hardship to the victim caused by testifying.

#### **F. Innocent Defendants**

City Prosecutors should be vigilant and watch for cases where the accused may be innocent of the offense charged. A City Prosecutor must satisfy himself or herself that there is a sound factual basis for all crimes to which the defendant will plead guilty under any proposed plea agreement and should not knowingly make any false or misleading statements of law or fact to the defense during plea negotiations.

### **III. Sentencing Recommendations**

#### **A. City Prosecutor Involvement**

To the extent that City Prosecutors become involved in the sentencing process, they should seek to assure that a fair and fully informed judgment is made, and that unfair sentences and unfair sentence disparities are avoided.

City Prosecutors may take advantage of the opportunity to address the sentencing body, whether it is the jury or the court, and may offer a sentencing recommendation where

appropriate. In addition, where applicable, City Prosecutors should take steps to ensure that a victim is not denied his or her rights to address the sentencing body.

City Prosecutors should disclose to the court or probation officer any information in its files relevant to the sentencing process.

#### **B. Mitigating Evidence**

Prior to sentencing, City Prosecutors should disclose to the defense any known evidence that would mitigate the sentence to be imposed. This obligation to disclose does not carry with it any additional obligations to investigate for mitigating evidence beyond what is otherwise required by law.

#### **C. Pre-Sentence Reports**

City Prosecutors should take steps to ensure that sentencing is based upon complete and accurate information drawn from any prepared pre-sentence report and any other information the Prosecutor possesses.

Upon noticing any material information within a pre-sentence report which conflicts with information known to the Prosecutor, it is the duty of the Prosecutor to notify the appropriate parties of such conflicting information.

#### **D. Post-Sentencing**

If a City Prosecutor becomes aware of material and credible evidence creating a reasonable likelihood that a defendant prosecuted by the City is innocent of a crime for which the defendant has been convicted, the Prosecutor should request that the appropriate law enforcement agency conduct an investigation to determine whether the defendant was convicted of an offense that the defendant did not commit.

When a City Prosecutor reasonably believes that a convicted person is actually innocent, the Prosecutor should take appropriate steps to seek to remedy the conviction.

### **IV. Discovery Practices**

#### **A. Prosecutorial Responsibility to Provide Discovery**

City Prosecutors will comply with the discovery obligations outlined in Rule 16 of the Utah Rules of Criminal Procedure. Notwithstanding the timelines dictated in Utah Rule of Criminal Procedure 16, City Prosecutors should provide all discoverable materials in the Prosecutor's possession or control as soon as reasonably possible.

City Prosecutors should, at all times, 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.

If at any point in the pretrial or trial proceedings a City 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.

The Murray City Attorney's Office will maintain procedures that ensure discovery is provided to defense counsel in an expeditious and efficient manner.

**B. Abusive or Frivolous Discovery Requests**

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, a City Prosecutor need not cooperate with such demands and should seek court guidance on what must be provided.

**C. Exculpatory and Mitigating Evidence**

City Prosecutors shall make timely disclosure of exculpatory and mitigating evidence pursuant to *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and its progeny.

**D. Open File Practice**

Providing broad and early discovery promotes the truth-seeking mission of a prosecutor and furthers the speedy trial and due process rights of both the accused and victims.

City Prosecutors should adopt and maintain an open file practice with regard to criminal cases, meaning that the Prosecutor will not withhold from the accused copies of or access to all relevant, unprivileged information known to the Prosecutor. A City Prosecutor may redact information prior to providing discovery as necessary for the protection of victims and witnesses (See Section F, Redacting Information, below).

**E. Obtaining Evidence from Law Enforcement**

City Prosecutors and Staff will work with law enforcement agencies to make them aware that the Prosecutor, not the law enforcement officer or agency, is the arbiter of what information is disclosed to the defense. City Prosecutors should inform the law enforcement officers and agencies they work with of the need to timely provide to the Prosecutor all information in its possession pertaining to a defendant's case.

City Prosecutors and Staff should seek discovery information from law enforcement agencies and other government officials and agencies known to the Prosecutor to be involved in the investigation and/or prosecution of a criminal case against a defendant.

City Prosecutors should seek to identify all information in the possession of law enforcement that tends to negate the guilt of the accused, mitigate the offense charged, impeach the prosecution's witnesses or evidence, or reduce the likely punishment of the accused if convicted.

#### **F. Redacting Information**

Prior to providing discovery, City Prosecutors may redact from materials provided as discovery all information reasonably necessary to protect the safety and privacy of a victim or witness.

When portions of materials are discoverable and other portions are not, a Prosecutor should make good faith efforts to redact the non-discoverable portions in a way that does not cause confusion or prejudice to the accused.

If counsel for the accused requests information previously redacted, the Prosecutor should provide the information when it is relevant to the accused's criminal case and the Prosecutor can implement reasonable measures for the protection of the victim, witness, or any personal identifying information. If redacted or restricted material is ordered by a court to be produced or disclosed, a Prosecutor should seek protective orders as necessary to control the dissemination of that material.

#### **G. Reciprocal Discovery**

In order to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and protect the rights of crime victims, City Prosecutors should request the court order, and the defense timely provide, discovery to the City.

### **V. Prosecution of Juveniles**

Pursuant to Utah Code Annotated 78A-7-106, Justice Courts have original jurisdiction over class B and C misdemeanors, violations of ordinances, and infractions for all individuals who are 18 years of age or older, and original jurisdiction over a number of violations committed by individuals who are 16 and 17 years old. City Prosecutors will manage those cases consistent with the provisions set forth in these Policies. Any other cases involving a juvenile, including those in which the juvenile or district courts have exclusive jurisdiction, which are erroneously sent to the City Attorney's office for prosecution shall be referred to the appropriate prosecuting entity.

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

The City Attorney's Office does not participate in the collection of fines and fees.

### **VII. Criminal and Civil Asset Forfeiture Procedures**

The City Attorney's Office does not participate in criminal or civil asset forfeiture.

## **VIII. Services Available to Victims of Crime**

The City Attorney's Office does not have an "in-house" victim services program. However, when appropriate, City Prosecutors will make regular referrals to the Murray City Police Department's Crime Victim Advocate Program or other available community resources as needed.

## **IX. Diversion Programs**

### **A. Prosecutorial Discretion**

The decision to divert cases from the criminal justice system should be the responsibility of City Prosecutors. A Prosecutor should, within the exercise of his or her discretion, determine whether diversion of an offender to a treatment alternative best serves the interests of justice.

### **B. Factors to Consider in Determining Diversion Options**

Within the exercise of his or her discretion, City Prosecutors may determine whether diversion of an offender to a treatment alternative is in the best interest of justice and beneficial both to the community and to the individual. Factors which may be considered in this determination include:

1. The nature, severity, or class of the offense;
2. Any special characteristics or difficulties of the offender;
3. Whether the defendant is a first-time offender;
4. The likelihood that the defendant will cooperate with and benefit from the diversion program;
5. Whether an available program is appropriate to the needs of the offender;
6. The impact of diversion and the crime on the community;
7. Recommendations of the relevant law enforcement agency;
8. The likelihood that the defendant will reoffend;
9. The extent to which diversion will enable the defendant to maintain employment or remain in school;
10. The opinion of the victim;
11. Provisions for restitution;
12. The impact of the crime on the victim; and
13. Diversion decisions with respect to similarly situated defendants.

## **X. Restorative Justice Programs**

The City Attorney's Office does not participate in any restorative justice program.