

City of Orem Legal Department Prosecution Policies 2021



Background

These guidelines are not binding on the City of Orem Prosecution, Prosecutors retain reasonable discretion to deviate. However, these guidelines are meant to provide a common practice for prosecutors in this office.

Screening and Filing Criminal Charges:

The decision to initiate a criminal prosecution should be made by the prosecutor's office. Where state law allows criminal charges to be initiated by law enforcement or by other persons or means, prosecutors should, at the earliest practical time, review and decide whether charges should be pursued.

Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest. Factors that may be considered in this decision include:

1. Doubt about the accused's guilt;
2. Insufficiency of admissible evidence to support a conviction;
3. The negative impact of a prosecution on a victim;
4. The availability of adequate civil remedies;
5. The availability of suitable diversion and rehabilitative programs;
6. Provisions for restitution;
7. 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 charging decisions made for similarly-situated defendants;
10. The attitude and mental states of the accused;
11. Undue hardship that would be caused to the accused by the prosecution;
12. A history of non-enforcement of the applicable law;
13. Failure of law enforcement to perform necessary duties or investigations;
14. The expressed desire of an accused to release potential civil claims against victims, witnesses, law enforcement agencies and their personnel, or the prosecutor and his personnel, where such desire is expressed after

having the opportunity to obtain advice of counsel and is knowing and voluntary;

15. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
16. Whether the accused has already suffered substantial loss in connection with the alleged crime;
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.

Factors Not to Consider

1. The prosecutor's individual or the prosecutor's office's rate of conviction;
2. Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;
3. Political advantages or disadvantages that a prosecution might bring to the prosecutor;
4. Characteristics of the accused that have recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime.

A prosecutor should file charges that he/she believes adequately encompass the accused's criminal activity and which he/she reasonably believes can be substantiated by admissible evidence at trial.

The prosecutor should not file charges where the sole purpose is to obtain from the accused a release of potential civil claims.

The prosecutor should only file those charges that are consistent with the interests of justice. Factors that may be relevant to this decision include:

1. The nature of the offense, including whether the crime involves violence or bodily injury;
2. The probability of conviction;
3. The characteristics of the accused that are relevant to his or her blameworthiness or responsibility, including the accused's criminal history;
4. Potential deterrent value of a prosecution to the offender and to society at large;
5. The value to society of incapacitating the accused in the event of a conviction;
6. The willingness of the offender to cooperate with law enforcement;
7. The defendant's relative level of culpability in the criminal activity;
8. The status of the victim, including the victim's age or special vulnerability;
9. Whether the accused held a position of trust at the time of the offense;

10. Excessive costs of prosecution in relation to the seriousness of the offense;
11. Recommendation of the involved law enforcement personnel;
12. The impact of the crime on the community;
13. Any other aggravating or mitigating circumstances.

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.

Plea Bargains:

The prosecutor is under no obligation to enter into a plea agreement that has effect of disposing of criminal charges in lieu of trial. However, where it appears that it is in the public interest, the prosecution may engage in negotiations for the purpose of reaching an appropriate plea agreement. When the agreement is reached, it should be reduced to writing, if practicable.

Prior to negotiating a plea agreement, the prosecution may 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/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/her right to appeal;
18. The willingness of the defendant to waive (release) his/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/her staff or agents;

19. With respect to witnesses, the prosecution may consider the following:

- i. The availability and willingness of witnesses to testify;
- ii. Any physical or mental impairment of witnesses;
- iii. The certainty of their identification of the defendant;
- iv. The credibility of the witness;
- v. The witness's relationship with the defendant;
- vi. Any possible improper motive of the witness;
- vii. The age of the witness;
- viii. Any undue hardship to the witness caused by testifying.

20. With respect to victims, the prosecution may consider those factors identified above and the following:

- i. The existence and extent of physical injury and emotional trauma suffered by the victim;
- ii. Economic loss suffered by the victim;
- iii. Any undue hardship to the victim caused by testifying.

Offenses NOT Eligible for Pleas in Abeyance

DUI	
DUI-Metabolite	
Impaired Driver	
No Insurance	

Probation Supervision Length

Whenever possible, the length of probation supervision should follow the most recent Supervision Length Guidelines published by the Utah Sentencing Commission.

Sentencing Recommendations:

To the extent that the prosecutor becomes involved in the sentencing process, he/she should seek to assure that a fair and fully informed judgment is made and that unfair sentences and unfair sentence disparities are avoided.

The prosecutor may take advantage of the opportunity to address the court, and may offer a sentencing recommendation where appropriate. The prosecution should also take steps to see that the victim is not denied his/her rights to address the sentencing body.

The prosecutor should disclose to the defense prior to sentencing 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.

The prosecutor should take steps to ensure that sentencing is based upon complete and accurate information drawn from the pre-sentence report and any other information the prosecution possesses.

Discovery Practices:

A prosecutor should, at all times, carry out his/her 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, expediate trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel.

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 or inspection, the prosecutor should promptly notify defense counsel and provide the required information.

When portions of certain 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 the accused.

A prosecutor should take steps to ensure that the defense complies with any obligation to provide discovery to the prosecution.

Prosecution of Juveniles:

The City of Orem does not prosecute juvenile criminal offenses. However, the City of Orem does prosecute individuals who are 16 or 17 years old for various traffic offenses. See Utah Code 78A-7-106(2).

Collection of Fines and Fees:

The budget for prosecution is independent of and unrelated to revenues resulting from law enforcement and criminal justice activities, such as fines, forfeitures and program fees.

The City of Orem uses the current Uniform Fine Schedule, as published on www.utcourts.gov, as starting point for determining the appropriate monetary fine. Further, the Utah State Legislature established various mandatory minimum

finer for various misdemeanors and infractions. Prosecutors are to follow all applicable mandatory minimums established by statute.

Prosecutors defer the collection of criminal fines to the appropriate court. It should be noted that failure to pay a fee required by a Plea in Abeyance constitutes a violation of the agreement, and is grounds for the revocation and loss of the Plea in Abeyance. See Utah Code 77-2a-4.

Criminal and Civil Asset Forfeiture Practices:

The City of Orem, on a case by case basis, use criminal asset forfeiture to seek forfeiture of property used in the commission of an offense.

Services Available to Victims of Crime:

The City of Orem provides various services to victims of crime through the City of Orem's Public Safety Victim Advocates Office. More information is available at: <https://orem.org/victim-advocates/>

Diversion Programs:

The City of Orem does not participate in any diversion programs.

Restorative Justice Programs:

The City of Orem does not participate in any certified court restorative justice programs.

FORM 5 – MISDEMEANOR MATRIX CRIMINAL HISTORY SCORING

These are guidelines only. They do not create any right or expectation on behalf of the offender. Matrix time frames refer to jail days served in the county jail. Recommended times should not be considered mandatory. This matrix does not incorporate statutory sentencing requirements for DUI offenses. Class B Person Crime Includes domestic violence offenses involving spouses and/or intimate partners. Class B DV Other Includes domestic violence offenses involving other cohabitants, property offenses, and other non-person crimes.

PRIOR FELONY CONVICTIONS (SEPARATE ADULT CASE NUMBERS)	2 ONE 4 TWO 6 THREE 8 FOUR+	PRIOR PERSON OR FIREARM CONVICTIONS (ADULT OR JUVENILE)	2 MISD. PERSON OFFENSE (AD.B) 2 FEL. FIREARM OFFENSE (76-10-5) 4 FELONY PERSON OFFENSE (AD.B) 6 HOMICIDE OFFENSE (76-5-2)
PRIOR CLASS A MISDEMEANOR CONVICTIONS (SEPARATE ADULT CASE NUMBERS)	1 ONE OR TWO 2 THREE - FIVE 3 SIX	PRIOR JUVENILE ADJUDICATIONS WITHIN PAST 10 YEARS (OFFENSES THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY ADULT) (3 CLASS A ADJUD. = 1 FELONY)	1 ONE 2 TWO - FOUR 3 FIVE+
SUPERVISION HISTORY (ADULT ONLY – FEDERAL, AP&P, PRIVATE, COUNTY, PROBLEM SOLVING COURT REMOVAL*)	2 PRIOR REVOCATION 3 CURRENT OFFENSE ON SUPERVISION	MOST RECENT POST-CONVICTION CRIME FREE GAP (COUNT FROM LATEST DATE OF SENTENCING/ CASE RESOLUTION FOR PROBATION OR DATE OF RELEASE FROM PRISON)(GAP ENDS AT NEW OFFENSE DATE)(EXCLUDE INFR, CLASS C, CLASS B TRAFFIC AND MINOR REGULATORY OFFENSES PER §77-40-102(10))	-1 3+ YEARS -2 5+ YEARS -3 7+ YEARS -4 10+ YEARS

TOTAL SCORE: _____

OFFENDER'S NAME:	SCORER'S NAME:	DATE SCORED:	CRIMINAL HISTORY ROW
ACTIVE CONVICTIONS (MOST SERIOUS FIRST):	CRIME CATEGORY:	TIME:	V 16+ IV 12 – 15 III 8 – 11 II 4 – 7 I 0 – 3
		TOTAL:	

CRIME CATEGORY

CRIMINAL HISTORY	Class A Person	Class B Person	Class A Other	Class B DV Other	Class A POCS	Class B	Class C and Below
	A	B	C	D	E	F	G
	V	105 (0-210)	90 (0-180)	75 (0-150)	60 (0-120)	45 (0-90)	30 (0-60)
IV	90 (0-180)	75 (0-150)	60 (0-120)	45 (0-90)	37 (0-75)	22 (0-45)	15 (0-30)
III	75 (0-150)	60 (0-120)	45 (0-90)	37 (0-75)	22 (0-45)	15 (0-30)	0 (0-15)
II	60 (0-120)	45 (0-90)	30 (0-60)	22 (0-45)	15 (0-30)	0 (0-15)	0 (0-7)
I	45 (0-90)	30 (0-60)	15 (0-30)	15 (0-30)	0 (0-15)	0 (0-15)	0 (0-7)

* A problem-solving court is a specialized court designated by the Utah Administrative Office of the Court. An Order to Show Cause with revocation and actual removal from the Problem-Solving Court is required in order to count as prior revocation of supervised probation or current offense on supervision.