

PROSECUTION STANDARDS

The following is intended to provide prosecutors in the Juab County Attorney's Office with guidelines in their exercise of prosecutorial discretion. These guidelines are not intended to deprive individual prosecutors of their discretion; rather, they are intended to establish the acceptable outside parameters within which individual discretion can be exercised.

The general standard for prosecution is that a prosecutor should not institute, cause to be instituted, or permit to continue pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction at trial. In other words, prosecutors in the Juab County Attorney's Office ("Office") should only file and continue the prosecution of criminal charges for which there exist admissible facts and evidence to minimally establish each element of the charge(s).

In certain situations, there may be good cause to decline to file or discontinue prosecution of charges, even when such are supported by sufficient admissible evidence. There are also situations where, for good cause, prosecutors should file fewer or lesser charges than the evidence might support. Factors that may contribute to such circumstances are:

- A. The extent of the harm caused by the offense was minimal.
- B. The authorized punishment in relation to the particular offense or offender is highly disproportionate.
- C. The evidence strongly suggests improper motives of the complainant—but only where there is minimal evidence in addition to the complainant's statement(s) corroborating the offense.
- D. Reluctance of the victim to testify. However, all reasonable efforts should be made to persuade victims of violent crimes to testify and in the event victim refuses, the prosecutor should assess the viability of the prosecution without the victim's testimony or consider legal means to procure the victim's testimony despite the reluctance or refusal.
- E. Significant cooperation of the accused in the apprehension or conviction of others.
- F. Availability and likelihood of prosecution for the same or related offense by another jurisdiction.

There are also circumstances or conditions that a prosecutor may *not* consider when instituting, continuing, or discontinuing the pendency of charges. These reasons include, but are not limited to:

- A. The Office's or prosecutor's conviction rate.
- B. The acts or behavior of the suspect's or defendant's attorney.
- C. Any personal or political advantages or disadvantages that might be involved in bringing or foregoing prosecution in a case.
- D. Pressure from a supervising attorney to make a decision inconsistent with the individual prosecutor's reasonable case evaluation and belief regarding his or her ethical obligation in the matter.

- E. The race, color, gender, age (except in juvenile court), religion, sexual identity, sexual preference, religion, or national origin of any person involved in the matter. Disability may be considered only with regard to a defendant's ability to form the requisite *mens rea* to commit a crime. Immigration status may only be considered with regard to the general case evaluation (e.g., the availability of witnesses).

Regarding the number of charges to file, the prosecutor should file charges that adequately encompass the offense(s) committed and rationally address the nature and scope of the criminal activity.

The express intent of this Office is to uphold our constitutional and ethical responsibilities as we strive to hold accountable those who violate the law and to attain justice for victims and our community. When screening and prosecuting cases that intent should be kept in mind.

1.0 CASE SCREENING

District and Justice Court Cases.

Screening Defined: A case is considered screened by a prosecutor when:

- A. An Information is filed with the court and all pertinent and/or available information is saved into the current case management system;
- B. The case is declined and notice is given to the case officer either in writing or verbally; or
- C. A request for additional information is sent to the appropriate person.

Timing: Prosecutors should screen cases by the earlier of the following:

- A. Before an arrestee's Initial Appearance before the Court.
- B. Within 10 business days of receipt of sufficient reports and evidence from law enforcement regarding an arrestee.
- C. For defendants not in custody, complicated cases, and cases wherein the prosecutor needs to interview victims or witnesses: ordinarily within 30 business days of receipt.
- D. For defendants in custody: prosecutors should screen, to the best of their abilities, from the Probable Cause Statement in the case. If it is determined that an Information will be filed, such screening should be filed, pursuant to Utah Rules of Criminal Procedure 9(c)(4)(A), by 3:00 p.m. on the fourth calendar day after the defendant was booked or before the expiration of any granted extension period pursuant to Utah R. Crim. P. 9(c)(4)(B). If the time periods expire on a weekend or legal holiday, the Information must be filed by 3:00 p.m. of the next business day.

For in-custody suspects, if a prosecutor determines to decline or request further information that will not be returned prior to the 4-day period noted above, the prosecutor should promptly inform the court and the Juab County Jail of this Office's intent not to file, in order to facilitate the release of the suspect.

When a case is successfully filed with a court, the assigned prosecutor's legal assistant should change the case status in the current case management system from "Pending" to "Open."

Declinations: Open communication between the prosecutor and the case officer are a high priority of the County Attorney's Office and when a prosecutor declines to file a case, such decision and the reasoning supporting the decision should be communicated to the officer either in writing or verbally. If declinations are made due to a perceived error on the part of the officer, such communication should include the error and recommendations for improvement. Prosecutors should make notes in the current case management system of the reasons for declining a case and document the method of communication that was made to the case officers, victims and/or witnesses. Prosecutors, or his or her legal assistant, should change the status of the case in the current case management system from "Pending" to "Declined."

Requests for further information: When a prosecutor requests further information from a person, she or he should change the status of the case in the current case management system from "Pending" to "Request Further Information." A prosecutor and his or her assistant should regularly review the cases that are in this status. If a case has been in "Request Further Information" status for more than 60 days, it should generally be declined until additional information is received. If a prosecutor declines to file charges based upon not receiving the requested information, the prosecutor shall communicate to the case officer that charges are being declined, but that screening can be re-opened upon receipt of the requested information. Prosecutors should make notes in the current case management system of the requested further information in a case and note the method of communication that was made to the case officers, victims and/or witnesses.

Requests for further information or investigation are to be used with purpose and common sense. The purpose is not to make a perfect case—only a prosecutable one. Accordingly, prosecutors should not request or require unnecessary additional investigation. The prosecutor should file and prosecute charges when he or she has sufficient admissible evidence to prove each element of the charges she or he intends to file. The prosecutor should request additional information when significantly greater charges could be filed, or the case would be significantly strengthened with some reasonable additional investigation.

Juvenile Court Cases.

Screening Defined: A case is considered screened by a prosecutor when:

- A. The prosecutor has reviewed the police report and recommended the police agency to refer certain allegations to the juvenile court; or
- B. The prosecutor receives a request from the juvenile court to petition previously referred allegations; or
- C. Declining allegations:
 - a. In cases that are reviewed prior to juvenile court referral, the prosecutor communicates the declination and the reason for the declination to the case officer and agency;
 - b. In cases that are reviewed after the juvenile court referral, the prosecutor communicates declining to petition the matter to the case officer and marks each declined allegation "PCA" (Petition Denied by Prosecutor) in CARE.

2.0 FORFEITURE OF SEIZED PROPERTY

Utah Code provides for the criminal and civil forfeitures of property seized by law enforcement that is determined to have been used to facilitate the commission of a crime or is proceeds of any criminal activity. Because criminal forfeiture requires the highest burden of proof (beyond a reasonable doubt), prosecutors will typically seek forfeiture of property under the criminal procedure. All statutory procedures will be followed, whether in a criminal or civil action.

Criminal forfeiture of seized property shall be sought by prosecutors in cases where the law enforcement officer has followed the statutory procedures for seizure and notice. Prosecutors shall exercise great care to ensure the property rights, where expressed and limited in statute, of both innocent and guilty property holders are protected.

Generally, prosecutors should seek to forfeit all guns used in the commission of an offense according to the statutory procedure.

3.0 DISCOVERY OBLIGATIONS

This Office recognizes its duty to comply with Utah Rule of Criminal Procedure 16 and to provide all *Brady* and *Giglio* material. The disclosure of material exculpatory and impeachment evidence is part of the constitutional guarantee to a fair trial. *See, Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972). The law requires the disclosure of exculpatory and impeachment evidence when such evidence is material to guilt or punishment. Because these are constitutional obligations, prosecutors must disclose *Brady* and *Giglio* evidence regardless of whether the defendant makes a request for exculpatory or impeachment evidence.

The constitution requires disclosure of “material” exculpatory and impeachment evidence. Evidence is material if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. *See Kyles v. Whitley*, 514 U.S. 419 (1995). Recognizing that it is sometimes difficult to assess the materiality of the evidence before trial, prosecutors will generally take a broad view of materiality and err on the side of disclosure.

Potential Impeachment Disclosures of Law Enforcement Officers

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. Because this Office is deemed to have constructive knowledge of potential impeachment material held by the law enforcement agencies with whom we work, we have an affirmative obligation to ascertain such information from those agencies. To that end, the County Attorney will maintain a *Brady/Giglio* list that should be reviewed for potential discovery disclosure when a police officer or government employee will be called as a witness at trial.

It is important to note that the mere fact that a person has been added to the *Brady/Giglio* list is not a comment by this Office regarding the person's future viability as a witness, on his or her reputation, or on the person's ability to serve in his or her current capacity.

Brady/Giglio List

An officer or government employee will be placed on the *Brady/Giglio* List when any of the following has occurred: actions of dishonesty, misconduct, or actions involving moral turpitude (i.e. actions that involve either fraud or base, vile, and depraved conduct that shocks the conscience). When the following has occurred the officer or employee will be placed on the List:

- A. A police agency, court, quasi-judicial body, or civil service commission has found the officer or employee culpable of dishonesty, misconduct, or moral turpitude and such is communicated to this Office. This Office will encourage agencies to communicate such information to us in the furtherance of our prosecutorial duties.
 - a. If this Office receives or is aware of a reported, non-anonymous allegation of dishonesty, misconduct, or moral turpitude, but the allegation was not investigated or no finding was made, the County Attorney, after consultation with the officer's or the employee's agency, may investigate (if necessary) and make a finding whether the officer or employee was culpable of the allegation. A finding of culpability will place the officer on the *Brady/Giglio* List.
- B. An officer or employee has been administratively sanctioned for, or there is evidence of, racial, religious, or personal bias against a defendant individually or as a member of a group.
- C. An officer or employee has a prior adult conviction for a criminal offense or has a pending charge or criminal offense (excluding minor traffic offenses).

Not all findings of misconduct (as opposed to dishonesty or moral turpitude), even those resulting in the officer's or employee's discipline, are considered misconduct for purposes of the *Brady/Giglio* List. Misconduct for purposes of the *Brady/Giglio* List is a finding that the officer or employee intentionally conducted an unlawful search or seizure, intentionally obtained a confession in direct violation of the constitution, intentionally failed to follow legal requirements or agency policies for the collection, storage, or analysis of evidence, or engaged in similar behavior. *A ruling that evidence will be suppressed at trial or a finding of mistake or error is not sufficient to place an officer or employee on the *Brady/Giglio* List.*

Misconduct occurs when a police agency, court, quasi-judicial body (including, but not limited to, Utah Peace Officers Standards and Training) or civil service commission finds that the officer or employee intentionally or knowingly violated the constitutional rights of a person, or the officer's conduct was a gross deviation from agency policies or law (i.e., no reasonable officer would have acted similarly under the circumstances).

Allegations that cannot be substantiated, are not credible, or have resulted in the exoneration of an officer or employee are not considered to be *Brady* or *Giglio* information. Similarly, sustained findings of dishonesty or misconduct are not considered to be *Brady* or *Giglio* information if a reviewing body (court, civil service commission, etc.) has overturned such a

finding. This Office has no obligation to disclose preliminary, challenged, or speculative information. See *United States v. Agurs*, 427 U.S. 97, 109, n. 16 (1976). Pending criminal or administrative *investigations* are also preliminary in nature and will not require placement on the *Brady/Giglio* List until findings are made.

Duty to Disclose

The assigned prosecutor shall have the responsibility of notifying the defendant of *Brady/Giglio* information from the List. At least 30 days before any trial, the assigned attorney shall review the *Brady/Giglio* List to determine whether impeachment information exists for any officer or employee witness. The attorney will note in the current case management system when the check was made, a description of the information disclosed, and the manner by which notification was made. Due to the personal nature of *Brady/Giglio* information, such disclosures shall not be made in open court on the record or filed with the Court in a public document. Rather, it shall be made in writing to the defense or the *pro se* defendant, with a request for acknowledging receipt of the information. The acknowledgement by the defense shall be saved in the electronic case file for the case. Any information learned from the List shall be conveyed to the defense only on the particular case being tried before the court.

In cases where it is unclear whether *Giglio* requires this Office to disclose an officer's or government employee's conduct, the County Attorney will request the trial court review the matter *in camera* and rule on the Office's duty to disclose. The County Attorney will notify the officer or employee of the time, date, and location of the *in camera* hearing and will cooperate with counsel for the officer or employee.

All employees of the Juab County Attorney's office, if they become aware of potential impeachment information, shall promptly disclose such information to the County Attorney for possible inclusion on the *Brady/Giglio* List. Anytime an officer or employee is added or removed from the list, the County Attorney will inform the head or lead supervisor of the officer's or employee's agency.

Non-Disclosure of the *Brady/Giglio* List

Except for the lawfully required disclosure to a defendant's attorney as described above, the *Brady/Giglio* List and its contents shall not be disclosed to any person or entity—law enforcement or others—without the express consent of the County Attorney. A disclosure in violation of this policy would subject the employee to discipline up to and including termination. The *Brady/Giglio* List and its contents are classified by this Office to be protected under Utah Code § 63G-2-305(18).

Witness Inducements

Prosecutors have a constitutional obligation to disclose to the defense impeachment evidence of all witnesses, not just officers and government employees. This includes any benefits or inducements that have been or will be provided to witness who inform or testify, whether made by law enforcement or this Office. The benefits/inducements that must be disclosed include, but are not limited to:

- A. Dropped or reduced charges against the witness.
- B. Immunity.
- C. Sentencing agreements or expectations of an action/inaction by our Office at sentencing.
- D. Assistance in a state or local criminal proceeding.
- E. Considerations regarding forfeiture of assets.
- F. Assistance in deportation or other immigration status considerations.
- G. S- or U-Visas.
- H. Monetary benefits.
- I. Non-prosecution agreements.
- J. Agreements to inform other law enforcement or prosecution entities regarding the extent of a witness' assistance or making substantive recommendations on the witness' behalf.
- K. Relocation assistance.
- L. Consideration or benefits of culpable or at-risk third parties.

Witness Credibility

The Constitution, as interpreted by *Brady*, also requires prosecutor's disclose certain information that can call into question a witness's credibility. To that end, prosecutors must disclose the content of:

- A. Victim and witness recantations.
- B. Changes made to the victim or witness original statements, whether written or verbal.
- C. Information that comes to the prosecutor's attention that calls into question any aspect of the witness's or victim's original statements, whether written or verbal.

In short, prosecutors must disclose any information that calls into question the reliability of any evidence to be used in the case.

Pre-Trial Discovery Review with Case Officer

In order to ensure we have provided all evidence required by these policies, Rule 16, *Brady* and *Giglio*, the lead prosecutor and/or his or her legal assistant on any case that is set for trial shall meet with the case officer to review the documents that this Office possesses. The prosecutor and legal assistant will verify with the case officer that we have received all evidence known to the law enforcement agency and assisting agencies. The prosecutor and his or her assistant shall ensure, at least two weeks before trial, that all evidence that should be disclosed to the defense, both in this Office's files as well as in any assisting law enforcement agency's files, has been disclosed to the defense, whether exculpatory or inculpatory.

Open File Policy and the Discovery Process

This Office will provide to the defense copies or written notice of all relevant unprivileged information received by this Office in any particular case in which a defense attorney has filed an appearance with the Court, or in which a defendant formally waives counsel and appears on his or her own behalf. This Office asserts all legal privileges allowed

under statute and rule to the extent allowed by law. These privileges include, but are not limited to: work product privilege, government informer privilege, lawyer-client privilege, victim communications privilege, victim contact information. No employee may waive these privileges on behalf of this Office without the express consent of the County Attorney or Chief Deputy.

Legal assistants shall make all disclosures, other than media (e.g. pictures, videos), electronically using the current case management system, which time and date stamps the date the disclosures were made. The date and method of media and other disclosures made outside of the current case management system shall be recorded in the case management system. Disclosures to self-represented defendants can be made by sending hard copies to the defendant, provided such is noted in the current case management system. Every effort will be made to document each disclosure made to the defense in the current case management system.

Legal assistants will, prior to sending discovery, redact (1) all social security numbers, other than the defendant's and (2) the phone numbers and addresses of the victims of crimes (including those of victim's family members). Additionally, unless otherwise ordered by the court, this Office will not send images of pornography or explicit pictures of victims as discovery. Instead, the assigned prosecutor and his or her legal assistant will notify the defense of the existence of such material and arrange for the defense to view the material at our office or at the offices of the relevant law enforcement or other agency who possesses this evidence.

4.0 PLEA BARGAINING

General Guidelines.

Every plea negotiation should take into account the following factors:

- A. The strength of admissible evidence in the case;
- B. The desires of the victim(s);
- C. The desires of the case officer or case agency;
- D. The severity of the crime;
- E. The extent a particular defendant participated in the crime;
- F. The defendant's criminal history;
- G. The likelihood of defendant rehabilitation;
- H. The defendant's attitude;
- I. Judicial economy;
- J. The timeliness of the defendant's offer to plead guilty;
- K. The necessity of a trial to uphold confidence in the criminal justice system, the law enforcement community, or the County Attorney's Office.

Specific Limitations

Ultimately, the responsibility for the disposition of virtually all felony criminal cases in Juab County rests with the County Attorney. This responsibility is delegated to individual prosecutors and their exercise of discretion and judgment. However, some cases, by their very nature, are more severe or consequential than normal, thus requiring the approval of Office administration

prior to any offer of plea bargain. Accordingly, the following charges will not be compromised, dismissed, or declined without the prior approval of the County Attorney or Chief Deputy County Attorney:

- A. Homicide of any degree;
- B. Any felony sexual offense involving rape of a child, object rape of a child or sodomy of a child when the defendant is pleading to a charge that does not include mandatory prison; or,
- C. Any agreement contrary to the desires of the victim(s), or any agreement when the victim has not been contacted.

The following agreements are also prohibited with the approval of the County Attorney or Chief Deputy County Attorney:

- A. Any agreement that does not require the defendant to make full monetary restitution to victim(s), to the extent monetary restitution is known. A defendant must agree to pay the full known amount of restitution as part of every plea bargain.
- B. In cases where a criminal forfeiture has been filed, any agreement to compromise charges unless the defendant has agreed to forfeit the property, unless it becomes evident the forfeiture is contrary to the purpose specified in Utah Code Title 24, Chapter 4.
- C. *Sery* pleas. A voluntary guilty or no contest plea is a waiver of the right to appeal all non-jurisdictional issues, including alleged pre-plea constitutional violations, unless the right is preserved by a pre-plea agreement with the prosecutor. Prosecutors in this Office will not make *Sery* plea agreements without the approval of the County Attorney or Chief Deputy County Attorney. See *State v. Sery*, 758 P.2d 935 (Utah 1988).

Pleas in Abeyance. It is the normal practice of this Office to not offer pleas in abeyance in District Court cases, other than for problem-solving courts. Exceptions are left to the individual prosecutor's discretion noting the following guidelines:

1. A plea in abeyance agreement generally should not be used when felonies are reduced to misdemeanors. In other words, if a plea in abeyance agreement is entered into, the felonies should be pleaded to as part of the agreement.
2. Plea in abeyance agreements in cases that involve charges originally filed as first- or second-degree felonies must be approved by the County Attorney or Chief Deputy, even if the charges are reduced to third degree felonies as part of the plea agreement.
3. Plea in abeyance agreements are discouraged in class B or C misdemeanor case involving physical abuse and are prohibited in class A misdemeanor or felony cases involving physical abuse. Pleas in abeyance are likewise prohibited in all cases involving sexual abuse.
4. Statutory laws prohibit the use of pleas in abeyance for certain crimes (e.g. DUI and domestic violence crimes). Prosecutors should be familiar with these legal prohibitions and not enter into any such agreements.

5.0 SENTENCING RECOMMENDATIONS

It is often difficult in felony cases to assess an appropriate recommendation for sentencing without the benefit of a pre-sentence investigation. Information such as complete criminal histories (in-state and out-of-state) and prior probation performance can be crucial to a prosecutor making an appropriate sentencing recommendation. To that end, sentencing recommendations in felony cases ordinarily should only be entered into after a pre-sentence report has been provided by Adult Probation & Parole, with the following exceptions, after considering the seriousness of the crimes, the defendant's known criminal history, and the placement of defendant on the Sentencing Commission's Adult Sentencing Guidelines Matrices:

- A. A prosecutor may agree to a one- or two-step reduction of the degree of crime pursuant to Utah Code § 76-3-402 either at the time of sentencing or upon successful completion of probation. Two-step reductions in cases involving person crimes must be approved by the County Attorney or Chief Deputy.
- B. An agreement to a specific length of jail.
- C. An agreement to no further jail time, if appropriate.
- D. An agreement to not request prison, if appropriate.
- E. In misdemeanor cases, an agreement to court probation, if appropriate.
- F. An agreement to private probation, if appropriate.

6.0 COLLECTION OF FINES AND FEES

This Office does not engage in or participate in the collection of fines and fees in any criminal or juvenile case. No employee shall accept a payment of fines and fees but shall direct those attempting to pay to the appropriate court or supervising agency.

No fines and fees will be charged for any program offered by this Office.

Prosecutors will oppose a successful termination of probation where the Defendant has not carried through with payment of fines and fees as a court-ordered condition of probation. However, this office will not oppose any request by Adult Probation and Parole or other supervising agency for a reduction of fines based upon performance on probation.

It is within the individual prosecutor's discretion to not request fines and fees at sentencing, but such should ordinarily be requested. Situations where fines and fees may not be requested include, but are not limited to: large amounts of restitution owing to a victim (to allow for all money collected to be paid to the victim), as part of a plea agreement where the Defendant shows he or she does not have the ability to pay fines or fees on top of supervision fines and fees, etc.

7.0 DIVERSIONS

It is the normal practice of this Office to not offer diversions in District Court cases and to offer them in few circumstances in justice court. Exceptions are left to the individual prosecutor's discretion noting the following guidelines:

1. Diversion agreements in cases that involve charges originally filed as first- or second-degree felonies are prohibited and any diversions for third-degree felonies

or misdemeanors must be approved by the County Attorney or Chief Deputy Attorney.

2. Diversion agreements are prohibited in cases involving sexual or physical abuse, domestic violence crimes, or DUI.

8.0 RESTORATIVE JUSTICE PROGRAMS

This Office participates in the Juab County Drug Court Program as part of a restorative justice program. Prosecutors may offer Drug Court to defendants charged with felony-level and class A drug offenses or felony-level and class A offenses where drugs were a contributing factor to the crimes charged. Participating defendants must be Juab County residents unless approved by the Juab County Drug Court team. All offers of drug court to defendants must be approved by the County Attorney or Chief Deputy Attorney. Eligible defendants may be sent to Drug Court as a sentencing alternative to the traditional justice system. If the defendant is screened to enter drug court for a class A offense, guilty plea may be held in abeyance until successful completion of the program if the prosecutor agrees it is in the interest of justice. If the defendant is screened to enter drug court for a felony, the guilty plea will not be in abeyance, but the defendant needs to be sentenced to supervised probation with completion of the program a condition of probation.

Upon successful completion and graduation from the drug court program, if the defendant entered drug court based upon a guilty plea, the prosecutor will motion to close the case with a successful termination; or, if the defendant entered drug court on a guilty plea held in abeyance, the prosecutor will motion for the guilty plea to be withdrawn and the criminal charges dismissed.

9.0 Juvenile Criminal Prosecutions

It is the position of this Office that juveniles should generally be prosecuted in juvenile court. The juvenile court system is best situated to assist juvenile offenders with the primary goals of rehabilitation and treatment. It also provides the best opportunity for juveniles to maintain privacy of adjudications and to expunge juvenile records upon rehabilitation.

However, in cases of Aggravated Murder (76-5-202) or Murder (76-5-203), if the juvenile is 16 or 17 years old, a prosecutor shall file the matter directly in the district court, pursuant to 78A-6-703.2.

With the approval of the County Attorney, a prosecutor may file a criminal information in juvenile court and seek for transfer via preliminary hearing to the district court for those offenses and for those juveniles listed in Utah Code 78A-6-703.3. When seeking the approval of the County Attorney, the prosecutor must show why she or he believes that it is contrary to the best interests of the minor and the public for the case to remain in juvenile court.

In addition, it is the position of this Office to prosecute in the justice court 16- or 17-year-olds for the class B and C violations listed in Utah Code 78A-7-106, regarding driver license violations, Division of Wildlife Resources violations, motor vehicle violations, traffic code violations, motor vehicle and boating insurance violations, Off-Highway Vehicle violations, and boating and water safety violations. The justice court has no jurisdiction over those under the age of 16. As such, the above violations should be referred to juvenile court for those under age 16.

10.0 Victim Services

- a. Cases in our office that have victims as the result of the crimes charged require the notification and assistance of the Victim Advocate. Such notification can come to the Victim's Advocate in a number of ways:
 - i. Law Enforcement Referrals:
 1. The Victim Advocate's involvement in a case can begin when requested by a law enforcement officer before the case is referred to the Office. To that end, the Victim Advocate's phone number should be provided to law enforcement agencies. The Victim Advocate should be generally available to law enforcement, even during non-business hours. Exceptions are made for scheduled vacations and sick leave and other personal matters. In such cases, a backup victim advocate should be made available, if possible.
 2. The Victim Advocate should, when available and when possible, respond to crime investigations when requested by law enforcement, dispatch or a medical provider requesting assistance. When requested, the Victim Advocate should respond to a local crime scene or hospital/medical facility to meet with the Victim and provide and connect the victim with services.
 3. If requested by the victim and allowed by law enforcement, the Victim Advocate should accompany the victim to law enforcement interviews.
 - ii. Prosecutor Referrals
 1. When it comes to the attention of a prosecutor that a case involves a victim and the Victim Advocate has not been notified, the prosecutor should notify the Victim Advocate and request his or her assistance with the Victim.
 2. In cases involving violent crimes, the Victim Advocate should meet with the victim as soon as possible after being notified by law enforcement or the prosecutor that a victim is involved. Meeting with the victim is best when done in person. If this is not possible, a phone call or video call is appropriate.
 - iii. Medical Professionals Referrals
 1. Victims can go to a medical facility and request treatment before reporting the matter to police. At such times, they may or may not wish to involve police. Medical professionals may or may not have a duty to report the matter to police, but with a reluctant victim, they may request the assistance of the Victim Advocate. To that end, the Victim Advocate's phone number should be available to local medical professionals. The Victim Advocate's availability to medical professionals should be the same and noted in Law Enforcement Referrals above.
 2. When requested and available, the Victim Advocate should respond to local medical facilities. While there, in addition to crisis and emergency services, the Victim Advocate should help the victim decide whether to report the crime to law enforcement.
 - iv. Victim Referrals

1. The existence of the County Attorney's Office Victim Services program is well known in the community. One of the Victim Advocate's duties is to inform the community of the Victim Services Program and provide community partners with information in relation to the program that can be communicated to victims.
 2. At times, victims of crime may contact the Victim Advocate before contacting law enforcement or medical professionals. When contacted in this manner, the Victim Advocate should advise the victim of the available options in reporting to police and available services.
 3. The Victim Advocate can assist victims in filling out the paperwork for stalking injunctions, protective orders, and other no contact orders. When doing so, the Victim Advocate should ensure the victim is aware that the Victim Advocate is not providing legal advice but assisting in the filling out of forms. The Victim Advocate should never fill out a form on behalf of a victim, but rather assist the victim with filling out the form.
- b. Regardless of how a case is referred to the Victim Advocate, she or he has the following responsibilities, if requested by the victim:
- i. Assist the victim in the process and paperwork for filing a claim with the Office for Victims of Crime.
 - ii. Help the victim develop a safety plan.
 - iii. Make referrals to counseling and mental health services.
 - iv. Notify victims of hearings in the case as it proceeds. If the Victim Advocate becomes aware that a victim intends to attend a hearing, the Victim Advocate should attend the hearing with the victim, sit with the victim, and ensure the victim's mental and physical safety from perpetrators or others.
 - v. Ensure the victim has transportation to the hearings the victim wishes to attend.
 - vi. Provide crisis counseling before the hearing.
 - vii. Report to victims the outcome of any hearing the victims are not able to attend.
 - viii. Act as the liaison between the prosecutor and the victim, setting up meetings and phone calls and other matters to ensure familiarity.
 - ix. Assist the prosecutors and victims in preparing victims to testify at trial.
 - x. Be the point of contact for victims with the Juab County Attorney's Office.
 - xi. Familiarize the victim with the court process and answer questions as needed.
 - xii. Assist victims and prosecutors with procuring documentation for restitution requests. The prosecutor has the primary responsibility for following the procedures set forth in Utah Code Title 77, Chapter 38a Crime Victims Restitution Act, with the assistance of the Victim Advocate.
- c. Any hours worked after non-business hours should count toward the Victim Advocate's weekly hours. Overtime hours are only approved when the Victim Advocate has already worked the required 40 hours per week. Approved overtime may be paid at time and a half or compensatory time at the Victim Advocate's discretion.
- d. When interacting with the victim, the Victim Advocate should assess a victim's needs, provide crisis intervention, support, and any emergency needs, including food, shelter, gas, etc. Expenditure of funds should be approved by the County Attorney when possible.
- e. A Victim Advocate should complete paperwork and open a file for the victim in the Office's current file system.

- f. The Victim Advocate and the Victim Services Program is largely funded by grants. As part of the Victim Advocate's duties, she or he writes and manages all grants in a manner that will ensure continue funding of the program.
- g. Whenever possible, prosecutors should not conduct an interview without an officer, victim advocate, paralegal or other office employee present to avoid the risk of becoming a hearing witness. Trial preparation meetings with witnesses generally need not be memorialized. However, prosecutors should be particularly attuned to new or inconsistent information disclosed by the witness. New information that is or may be exculpatory or impeachment evidence shall be memorialized and disclosed to defense counsel pursuant to Policy X "Discovery Obligations." If the witness's new information represents a material variance from the witness's prior statements, a prosecutor should consider this as exculpatory or impeachment evidence and disclose this information.
- h. A Victim Advocate should attend trainings on at least an annual basis to maintain the skills necessary to work with victims in a manner that is trauma informed. The County Attorney should approve all trainings requested. The County Attorney's Office's budget will provide for all expenditures related to the training.
- i. Victim Communications and Utah Rules of Evidence 512
 - i. The Juab Attorney's Office will comply with URE 512 in every respect. To that end, victims of crimes have a privilege during their lifetime to refuse to disclose and prevent the Victim Advocate from disclosing, any confidential communication as that term is defined in Utah Code § 77-38-403.
 - ii. A Victim Advocate has the authority to claim the privilege on behalf of the victim during the victim's lifetime.
 - iii. The following exceptions to the privilege are set forth in Rule 512(d). The Victim Advocate, a criminal justice system victim advocate under the Rule, shall disclose confidential communications:
 - 1. When the victim or a non-accused guardian provides written, informed, and voluntary consent. The written disclosure must contain the specific confidential communication that can be disclosed, the limits of the disclosure, and the name of the person to whom the information may be disclosed.
 - 2. When the confidential communication is required to be disclosed under Utah Code Title 62A, Chapter 4a or Utah Code § 62A-3-305 as the communication relates to Child and Family Services.
 - 3. When the confidential communication is evidence of a victim being in clear and immediate danger to the victim's self or others.
 - 4. When the confidential communication is evidence that the victim has committed a crime, plans to commit a crime, or intends to conceal a crime.
 - 5. To the prosecutors of the Juab County Attorney's Office in order to determine whether such communication is exculpatory or goes to the credibility of the victim or other witness.
 - a. If the prosecutor determines the evidence is exculpatory or goes to the credibility of the victim or other witness, the prosecutor shall inform the Court of existence of the communication. Pursuant to Utah Code § 77-38-405(1)(b) the Court should then inform the victim and the defense attorney of the opportunity to be heard at an in camera review as to the

potential disclosure of the communication, and at that review, the prosecutor shall present the confidential information to the victim, the defense attorney, and the court. After the in camera hearing, the prosecutor and/or Victim Advocate shall disclose the information to the defense attorney if the Court determines that:

- i. The probative value of the communication and the interest of justice served by the communication substantially outweigh the adverse effect of the admission of the confidential communication on the victim or the relationship of the victim with the Victim Advocate; or
 - ii. The communication is exculpatory or impeachment evidence.
 - b. Prior to disclosing the information to the prosecutor, the Victim Advocate shall notify the victim or the non-accused parent or guardian of a minor victim, that the communication will be disclosed to a prosecutor and the possibility of the communication being disclosed to a defense attorney.
 - c. The Victim Advocate shall also disclose to the victim the name, location and contact information of at least one non-government organization that advocates on behalf of victim needs. At a minimum the Victim Advocate should make the victim aware of the Crime Victims Legal Clinic of Utah. The Victim Advocate can help the victim communicate with the clinic.
 - d. It should be made clear that only information or communication made solely to the Victim Advocate falls under the Rule 512 privilege. Any communication by the victim made directly to the prosecutor is not privileged and is subject to the prosecutor's obligations to disclose exculpatory and impeachment evidence under the United States and Utah Constitutions, Utah Code, the Rules of Professional Responsibility, and these policies.
 - iv. The Victim Advocate may disclose a confidential communication under the Rule's exception to a non-accused parent or guardian of a minor victim, to a law enforcement officer, health care provider, mental health therapist, domestic violence shelter employee, employees of the Office for Victims of Crime, a member of the Children's Justice Center's multidisciplinary team, for the sole purpose of providing advocacy services.
 - v. Any record that contains confidential communications between a victim and the victim advocate is not disclosable under the Government Records and Management Act, Utah Code title 63G, Chapter 2. See Utah Code § 77-38-405(2).
- j. Victims should have input, but not control, over any plea bargain offered by the prosecutor. The Victim Advocate, at the request of a prosecutor, should communicate with the victim any plea offer the prosecutor intends to offer and relay the victim's input to the prosecutor prior to the prosecutor finalizing any offer. Prosecutors should

place on the record in any court proceedings the victim's input and whether the victim agrees or disagrees with the plea bargain.

- k. At times, victims will desire their own representation by a qualified lawyer. A victim's right to his or her own attorney will not be infringed by employees of this office. When a prosecutor or the Victim Advocate become aware that a victim has hired his or her own representation, the employees of this office shall not communicate with the victim about the case without the express permission of the victim's attorney. If that permission is received, the employee receiving such permission shall note in the Office's current case management system the date, time, and extent of the permission and by whom it was given. When a victim has his or her own attorney, the Victim Advocate and prosecutor shall carry out the same services as set forth above, but only through the victim's attorney.

The prosecutor and the Victim Advocates should ensure the victim rights set forth in Utah Code § 77-37-3 through 77-37-4, as well as Title 77, Chapter 38 of the Utah Code are afforded to every victim. The Victim Advocate should, if requested, explain the process for filing a complaint to the Fourth District Victims' Rights Committee, as set forth in Utah Code 77-37-5.