

**PARK CITY ATTORNEY'S OFFICE  
63M-7-216 TRANSPARENCY POLICIES**

WHEREAS, in the 2020 General Session the Utah State Legislature enacted HB 288 relating to Prosecutor Data Collection Amendments;

WHEREAS, [Utah Code § 63M-7-216\(7\)](#) requires that all Prosecutorial agencies publish specific office policies before July 1, 2022. If the agency does not maintain a policy on a topic in this subsection, the agency shall affirmatively disclose that fact. Policies must be published online on the following topics:

- a. Screening and filing criminal charges;
- b. Plea bargains;
- c. Sentencing recommendations;
- d. Discovery practices;
- e. Prosecution of juveniles, including whether to prosecute a juvenile as an adult;
- f. Collection of fines and fees;
- g. Criminal and civil asset forfeiture practices;
- h. Services available to victims of crime, both internal to the Prosecutorial office and by referral to outside agencies;
- i. Diversion programs; and
- j. Restorative justice programs.

NOW, THEREFORE, and always subject to the existence or absence of aggravating circumstances, co-occurring crimes, victim and societal impacts, protection of the public, criminal history and the overriding interests of justice we hereby publish the following policies in compliance with the law:

**A. Screening and Filing Criminal Charges**

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.

The Park City Attorney’s Office files criminal cases and charges that can be proven beyond a reasonable doubt with admissible evidence and for which there is a reasonable likelihood of success at trial. We do not charge counts of criminal conduct to procure a plea to other counts, or overcharge cases in order to get a plea in others.

**B. Plea Bargains**

No criminally accused person or defense lawyer should expect to receive any plea bargain offer; nor is any defendant ever entitled to one. We believe that cases in which guilt, facts, or evidence are disputed should be settled by a jury. This principle is in keeping with the important rights of citizens enshrined in the United States Constitution, the Bill of Rights and the Utah Constitution.

Prosecutors in the Park City Attorney’s Office are autonomous, experienced professionals with control over the disposition of their own cases. Case dispositions may be staffed with the City

Attorney from time to time and at the discretion of the individual Prosecutor.

However, it is possible and perhaps likely that facts and evidence not known at the time of screening may come to light. Evidentiary or witness complications may develop. Park City Prosecutors reserve the right to amend the Information, offer a compromised resolution, or otherwise resolve any case in the interests of justice, truth and fairness.

### **C. Sentencing Recommendations**

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.

### **D. Discovery Practices**

It is the policy of this office to promptly disclose to the defense all information material to the case, particularly that which may tend to exculpate the accused or which may be used to impeach the credibility of government witnesses.

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 only a brief outline, not an exhaustive review of the law of disclosure.

#### **1. Scope of Discovery**

- a. All material information must be provided to the defense by the prosecution. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972).
- 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, 437 (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, 107 (1976).
- e. Suppression by the government, whether intentional or not, of material evidence favorable to the defendant violates the constitutional guarantee of due process.

2. *Brady* Material. *Brady* material refers to evidence or information that could be used by a defendant to make the defendant's conviction less likely or a lower sentence more likely. Some general categories of *Brady* material are:

- 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.

3. *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:

- a. Bias;
- b. Specific instances of misconduct (*See* ¶ 7.C. below);
- c. False written statement, report, or other document;
- d. Misconduct that reflects on truthfulness;
- e. Misconduct that indicates a racial, religious or other personal bias;
- f. Misconduct that indicates promises, offers or inducements, or the offer of immunity;
- g. Misconduct involving handling of evidence or property;
- h. Misconduct that involves the use of force;
- i. Misconduct that involves harassment;
- j. Misconduct that involves the inappropriate or unauthorized use of government data;
- k. Misconduct that reflects on credibility;
- l. Criminal conviction;
- m. Prior inconsistent statements;
- n. Untruthful character; and
- o. Issues in perception and recollection.

4. 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.

5. Disclosure is not the same as admissibility.

- a. There is no obligation to communicate preliminary, challenged, or speculative information. *United States v. Agurs*, 427 U.S. 97, 109, n16 (1976) (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. *United States v. Morales*, 746 F.3d 310, 315

(2014); *Wood v. Bartholomew*, 516 U.S. 1, 6-8 (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.

6. 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.

7. Park City Attorney's Office Policy.

- a. The Park City Attorney's Office shall at all times comply with the Utah Rules of Professional Conduct, including Rule 3.8. Special Responsibilities of a Prosecutor. The Prosecutor in a criminal case shall:

(d) Make timely disclosure to the defense of all evidence or information known to the Prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the Prosecutor, except when the Prosecutor is relieved of this responsibility by a protective order of the tribunal;

Comment

[1] A Prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the Prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. See Rule 3.3(d), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the Prosecutor and knowing disregard of those obligations or systematic abuse of Prosecutorial discretion could constitute a violation of Rule 8.4.

...

[3] The exception in paragraph (d) recognizes that a Prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

- b. "Because we are dealing with an inevitably imprecise standard, and because the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent Prosecutor will resolve doubtful questions in favor of disclosure." *United States v. Agurs*, 427 U.S. 97, 108 (1976).
- c. For any cases where disclosure of impeachment material for specific incidents of misconduct by an individual peace officer is required, the Prosecutor shall first ask

defense counsel for a stipulation to a protective order for the information. If this is refused, the Prosecutor should seek a protective order with the court. If a protective order is denied, the impeachment material shall be disclosed.

**E. Prosecution of Juveniles**

Prosecution of juveniles by the Park City Attorney's Office is limited those offenses for which justice courts have original jurisdiction pursuant to Utah Code § 78A-7-106.

**F. Collection of Fines and Fees**

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

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

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

**H. Services Available to Victims of Crime**

The Park City Police Victim Advocacy Program provides and facilitates vital services to crime victims.

- a. Victim Advocacy Program. Victim Advocates notify victims of crime in criminal cases, attend hearings, provide court information and updates during the proceedings and assist with victim impact statements. Victim Advocates set up meetings for victims with prosecutors to help prepare them for court. They also will engage with a victim of crime for safety planning.
- b. Crime Scene Response. Victim Advocates respond to crime scenes 24/7 upon law enforcement request.
- c. Protective Order and Stalking Injunction Information. Victim Advocates provide information about orders of protection and will help a victim file a Petition.
- d. Crime Victim Reparations. Victim Advocates render assistance with applications and follow-up.
- e. Other. Victim Advocates provide referrals for counseling, legal assistance, reparations or restitution and other resources as needed.
- f. Court Ordered Restitution. Victim Advocates helps crime victims request court-ordered restitution for crime-related financial losses such as property damage, medical bills and loss of income.

**I. Diversion Programs**

The Park City Attorney's Office does not participate in any formal diversion programs. Diversions may be used on a case by case basis as a plea bargaining tool using the criteria set

forth in the plea bargain policy.

**J. Restorative Justice Programs**

The Park City Attorney's Office is supportive of restorative justice programs. However, Park City is a small jurisdiction and does not have the caseload for formal programs like Mental Health Courts or Veterans Courts. However, as individuals come into the criminal justice system, Park City runs informal programs to accomplish justice and render support and assistance where none other is available.

\* \* \*

ISSUED AND PUBLISHED this 30th day of June, 2022.

BY:

Margaret D. Plane, City Attorney

Tricia S. Lake, Assistant City Attorney/Prosecutor