

# Emery County Attorney Criminal Prosecution Policies

In accordance with Section 63M-7-216 of Utah Code Annotated, the following policies and standards will guide the use of prosecutorial discretion within the Emery County Attorney's Office and provide a framework for interactions with courts, victims, witnesses, defendants, defense attorneys, law enforcement agencies, and other stakeholders in the criminal justice system.

1. **Screening and Filing Charges.** The screening process begins when a case is referred to this office by a law enforcement agency. Referral of a case may be by formal submission and request for warrant/summons or by the filing of a probable cause statement after a warrantless arrest. The screening process culminates with one of the following:
  - a. The filing of criminal charges;
  - b. Return of the case to the law enforcement agency for additional investigation;
  - c. Entry into a pre-filing diversion agreement; or
  - d. Declination of prosecution.

Charges should only be filed and maintained if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support a conviction at the standard of proof beyond a reasonable doubt, and that the charges are in the interest of justice.

2. **Plea Bargains.** Judicial and budgetary limitations dictate that most cases will be resolved by plea bargain. It is simply not possible to take most cases to trial given the limited resources of the court system, this office, and law enforcement. Plea bargains may take the form of charge reductions, partial dismissal, pleas held in abeyance, diversion agreements, sentencing agreements, or a combination of these. The use of plea bargains shall be in accordance with all applicable statutes and rules and shall promote just and productive outcomes. Factors that may be considered in offering or not offering plea bargains include, without limitation:
  - a. Severity and/or notoriety of the crime;
  - b. Expressed desires of victims;
  - c. Safety of victims, witnesses, and the community;
  - d. Strength of admissible inculpatory and exculpatory evidence;
  - e. Rehabilitation opportunities for defendant;
  - f. Defendant's cooperation;
  - g. Defendant's criminal history; and
  - h. Extent of defendant's participation in the charged crimes.

3. **Sentencing Recommendations.** This office will seek to ensure fair and informed sentences. Prosecutors will make sentencing recommendations based on consideration of a variety of factors, including, but not limited to:

- a. Safety of victims, witnesses, and the community;
  - b. Defendant's criminal history;
  - c. Defendant's prior probation/parole history;
  - d. Victim input and the need for restitution; and
  - e. Any aggravating or mitigating facts or circumstances.
4. **Discovery Practices.** This office will comply with Rule 16 of the Utah Rules of Criminal Procedure and all other applicable statutes and rules by providing evidence in its possession or in the possession of law enforcement to defendants/defense counsel in a timely fashion. This office recognizes its special responsibility to provide exculpatory evidence, including evidence that may be used to impeach state witnesses, as an affirmative discovery obligation.
5. **Prosecution of Juveniles.** This office will work closely with the juvenile probation office to determine whether delinquent acts committed by juveniles should be resolved by nonjudicial adjustment or through formal adjudication. These determinations will take into account the standards for screening set forth in Paragraph 1 above. In determining whether to prosecute a juvenile as an adult for a "qualifying offense" as defined by Section 78A-6-703.1 of Utah Code Annotated, this office will consider factors that may include, without limitation, the following:
- a. The best interests of the juvenile offender;
  - b. The safety of victims, witnesses, and the community;
  - c. The seriousness of the offense;
  - d. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
  - e. The history and background of the juvenile offender; and
  - f. The likelihood of rehabilitation and the availability of rehabilitation and treatment resources.
6. **Collection of Fines and Fees.** This office does not collect fines or fees. We may recommend a fine or fee as a condition of probation in some cases. The imposition and collection of fines and fees, however, is the prerogative of the courts. This office will file and prosecute orders to show cause when necessary to assist with the enforcement of court ordered fines and fees.
7. **Asset Forfeiture.** This office will only seek the forfeiture of property in criminal cases where the prosecutor is able to prove that the property was used to commit a crime or is the proceeds from the commission of a crime and will utilize the procedures set forth in Section 24-4-105 of Utah Code Annotated (Criminal Forfeiture Procedure).
8. **Services for Victims of Crimes.** This office recognizes its responsibility to victims of crimes under Article 1, Section 28 of the Utah Constitution and Chapters 37, 38, and 38a of Title 77 of Utah Code Annotated. Our office employs a full-time Victim's Advocate which serves as a liaison between crime victims and the Utah Office for Victims of Crimes and assist crime victims with applications for reparations and counseling. The victim's advocate can also provide many other resources for victims.

9. **Diversion and Restorative Justice Programs.** This office is a collaborative partner in the Emery County Drug Court Program, which was created in an effort to reduce substance abuse and related crime by offenders. This office works in partnership with the court, defense counsel, corrections, and substance abuse treatment services to provide services to qualifying defendants who struggle with addiction. The drug court program allows defendants to receive treatment while being supervised by the court and treatment team, with the goal of reducing or eliminating jail and/or prison sentences, and having their charges dismissed or reduced upon successful completion of the program.