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9. LEGAL POLICY

9.10.10 PROSECUTION POLICIES

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<u>9.10.10.130</u>	<u>Restorative Justice Programs</u>

9.10.10.010. Background.

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

(January 2022)

9.10.10.020. Screening and Filing Criminal Charges.

A. 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.

B. 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 or her 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; and

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 been recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime.
- C. 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.
- D. The prosecutor should not file charges where the sole purpose is to obtain from the accused a release of potential civil claims.
- E. 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.

F. Following a careful consideration of all the above factors, if a prosecutor declines prosecution in a particular case, the prosecutor is encouraged to state the reasons for the decision in a declination letter. 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.

(January 2022)

9.10.10.030. Plea Bargains.

A. The prosecutor is 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, 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.

B. 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:
 - 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. With respect to victims, the prosecution may consider those factors identified above and the following:
 - a. The existence and extent of physical injury and emotional trauma suffered by the victim;
 - b. Economic loss suffered by the victim;
 - c. Any undue hardship to the victim caused by testifying.

(January 2022)

9.10.10.040. Offenses NOT Eligible for Pleas in Abeyance.

- A. DUI
- B. DUI-Metabolite

- C. Impaired Driver
- D. No Insurance

(January 2022)

9.10.10.050. Probation Supervision Length.

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

(January 2022)

9.10.10.060. Sentencing Recommendations.

A. 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.

B. 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.

C. 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.

(January 2022)

9.10.10.070. Discovery Practices.

A. 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, expedite 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.

B. 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.

C. 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.

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

(January 2022)

9.10.10.080. Prosecution of Juveniles.

Spanish Fork City does not prosecute juvenile criminal offenses. However, Spanish Fork City does prosecute individuals who are 16 or 17 years old for various traffic offenses. See Utah Code 78A-5-102(10).

(January 2022)

9.10.10.090. Collection of Fines and Fees.

A. 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.

B. Spanish Fork City uses the current Uniform Fine and Bail Schedule, as published on www.utcourts.gov, as a starting point for determining the appropriate monetary fine. Further, the Utah State Legislature established various mandatory minimum fines for various misdemeanors and infractions. Prosecutors shall follow all applicable mandatory minimums established by statute.

C. 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.

(January 2022)

9.10.10.100. Criminal and Civil Asset Forfeiture Practices.

Spanish Fork City, on a case-by-case basis, may use criminal asset forfeiture to seek forfeiture of property used in the commission of an offense.

(January 2022)

9.10.10.110. Services Available to Victims of Crime.

Spanish Fork City provides various services to victims of crime through the Spanish Fork Public Safety Victim Advocate's Office.

(January 2022)

9.10.10.120. Diversion Programs.

Spanish Fork City does not participate in any diversion programs.

(January 2022)

9.10.10.130. Restorative Justice Programs.

Spanish Fork City does not participate in any certified court restorative justice programs.

(January 2022)

9.10.020 RIGHT OF ACCESS PROCEDURES.

9.10.20.010 Personnel and Volunteer Requirements.

9.10.20.020 Definitions.

9.10.20.030 Procedures.

9.10.20.040 Declinations.

9.10.020 Personnel and Volunteer Requirements.

A. It is the policy of Spanish Fork City (City) to obtain criminal history background information from employees, and volunteers as follows:

1. All prospective employees regardless of position.
2. All employees and volunteers in the various departments who will be associating with minors.
3. Volunteers for Fiesta Days are exempt.

09.10.20.020 Definitions

All such persons, prior to being employed with the City or participating in volunteer programs identified herein, shall sign appropriate documentation, called Right of Access Waiver, allowing the City to obtain Utah Computerized Criminal History (UCCH) information from the Utah Bureau of Criminal Identification (BCI). All such histories will be deemed confidential and are classified private under the Government Records Access and Management Act (GRAMA).

09.10.20.030 Procedures

A. Spanish Fork City will follow these procedures in obtaining and handling criminal history background information:

1. Prior to obtaining a Right of Access Waiver, each prospective employee or volunteer who will have regular interaction with youth must first complete the Child Abuse and Neglect Recognition and Reporting Training through the City and pass the registry check required by the State of Utah (UCA § 80-8-201).
2. The applicant shall request their UCCH from BCI through the City.
3. The applicant must appear in person and complete and sign an application and waiver of liability in the presence of designated City employee(s).
4. The applicant will not be assessed a cost for the UCCH.
5. The applicant must present valid photo identification. Acceptable forms of identification include a driver license, state identification card, military identification card, passport, alien registration card, or any state or federally issued identification card.

B. A designated City employee will check the signature on the identification card with the signature on the Right of Access Waiver and will compare the photo on the identification card with the person who is present. Designated City employees should consult <https://bci.utah.gov/forms/acceptable-forms-of-identification/> for more details regarding acceptable forms of ID.

1. The designated City employee will then initial where indicated on the waiver that they have verified the ID and signature of the potential employee or volunteer.

2. Departments who authorize employees to handle Right of Access Waivers will maintain a current list of designated employees including each designated employee's name, phone number, email address, and a jpeg of the employee's signed initials. This list and any changes made to it will be provided to the Spanish Fork Legal Assistant assigned to be the BCI Terminal Agency Coordinator.
3. The City Legal Department employee(s) authorized to obtain UCCH information will obtain the information from the BCI online connection, following the guidelines set forth by BCI.
4. A criminal history record may be printed for the purpose of the City Attorney's review of the record. The record- shall be shredded when the review is complete.
5. Criminal histories may not be printed and given to the applicant nor to any City employee other than authorized City Legal Department employees.
6. The Right of Access Waiver will be retained in the Legal Department for the three year audit cycle.
7. The City may require existing employees/volunteers to reobtain criminal histories every three years, or more often if the city has reasonable suspicion to suspect an employee/volunteer has committed a criminal act.
8. Employees and volunteers with regular association with minors will be required to reobtain criminal histories every year.
9. City employees authorized to access UCCH information shall follow all rules and requirements of BCI, in addition to those imposed herein. Questions, concerns, or problems will be addressed with the City Attorney and BCI. Misuse or abuse of rules and requirements shall cause such employee to lose their rights to access the BCI online connection.
10. Right of Access, as allowed by this policy, shall be made through the city attorney's office. This policy is implemented to assist the city attorney's office in administering rights of access.

09.10.20.40 Declinations

A. The City may decline to hire or retain as a volunteer any applicant based on the information revealed in the criminal history. The City may review each application on a case-by-case basis, placing various

weights on various offenses, depending on the position applied for within the City as follows:

1. Convictions, pending cases, and pleas held in abeyance of offenses involving substance abuse, alcohol, or acts of physical violence within five years may preclude an applicant from being a volunteer or being hired by the City.
2. Convictions, pending cases, and pleas held in abeyance of sexual offenses will preclude an applicant from being a volunteer or being hired by the City.
3. Convictions, pending cases, and pleas held in abeyance of offenses involving moral turpitude, DUIs, or violations of Utah's Distinctions on the Basis of Sex law, Utah Code Ann. § 63G-31-101, *et seq.*, may also disqualify an applicant from being a volunteer or being hired by the City.
4. An applicant providing false information on the application may also be disqualified from employment/volunteering with the City.

The City Attorney shall share violations of this policy by current employees and volunteers with HR for consideration of employee discipline.

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