



1 **SCREENING AND CHARGING – This language is almost verbatim from the proposed**  
2 **best practices document provided by SWAP. I found them to be very detailed and well**  
3 **thought out. I welcome all in put! I added language that deals with the rare**  
4 **circumstances when the prosecutor becomes aware that the suspect is possibly mentally**  
5 **incompetent to participate in the process. An example of this would be a suspect who**  
6 **resides in a board or care facility with significant mental impairment or someone who is**  
7 **suffering from progressive dementia, etc.**

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9 **Screening and Charging**

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11 **Prosecutorial Responsibility to Charge:**

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13 a. Pursuant to Article VIII Section 16 of the Utah Constitution, Utah Code Title 67 Chapter 5,  
14 Utah Code Title 17 Chapter 18a, and Utah Code Title 10, Chapter 3, Section 928, it is the  
15 ultimate responsibility of the prosecutor to determine when and which criminal charges should  
16 be prosecuted and against whom.

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18 b. Excepting cases authorized to proceed by citation pursuant to Utah Code 77-7-18 to -21, the  
19 decision to initiate a criminal prosecution should be made by a prosecutor’s office.

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21 c. The initial charging decision affects fundamental rights of the accused and may affect the  
22 accused’s standing in the community, whether or not a conviction ultimately results. Therefore,  
23 the chief prosecutor should provide appropriate training and guidance to prosecutors regarding  
24 the exercise of their discretion in the charging decision and should provide adequate time and  
25 resources for prosecutors to fully evaluate cases prior to making charging decisions.

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28 **3-2.1 Filing and Maintaining Criminal Charges:**



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30 a. A prosecutor should not file or maintain charges if the prosecutor reasonably believes the  
31 accused is innocent.

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33 b. A prosecutor should file and maintain criminal charges only if the prosecutor reasonably  
34 believes that the charges are supported by probable cause, that admissible evidence will be  
35 sufficient to support conviction beyond a reasonable doubt, and that the decision to charge or  
36 maintain charges is in the interests of justice.

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38 c. A prosecutor should only file and maintain charges in number and degree than are reasonably  
39 necessary to fairly reflect the gravity of the offense or deter similar conduct.

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41 d. In the event that a prosecutor learns of previously unknown information that could affect a  
42 screening decision previously made, the prosecutor should reevaluate that earlier decision in  
43 light of the new information.

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45 **3-2.2 Factors to Consider When Screening and Charging a Case: In addition to the**  
46 **strength of the case and admissibility of evidence, in considering whether prosecution is in**  
47 **the interest of justice, prosecutors may consider the following factors when applicable:**

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49 a. The impact of a prosecution on a victim, witness or third party;

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51 b. Whether the public's or victim's interests in the matter might be appropriately vindicated by  
52 available civil, regulatory, administrative, or private remedies.

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54 c. The availability of suitable treatment, diversion and rehabilitative programs, the accused's  
55 willingness to enter such programs, and the accused's ability to qualify for entrance to and  
56 funding for such programs;



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d. The accused's efforts toward voluntary restitution and/or treatment and rehabilitation prior to prosecution;

e. The availability of a noncriminal disposition, deferred prosecution or other diversionary disposition and the accused's willingness to participate in such a program;

f. Characteristics of the accused that are relevant, including:

i. The mental status of the accused, including whether the accused committed the offense while substantially mentally ill *or if the accused is mentally incompetent to participate meaningfully in their defense*;

ii. The accused's relative level of culpability in the criminal activity;

iii. Whether the accused held a position of trust at the time of the offense;

iv. The accused's criminal history;

v. Whether the alleged crime represents a substantial departure from the accused's history of living a law abiding life;

vi. Whether the accused has already suffered substantial loss in connection with the alleged crime or whether prosecution would cause unwarranted hardship on the accused;

vii. The extreme youth or advanced age of the accused

g. The likelihood of prosecution by another criminal justice authority;



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- 86 h. Whether non-prosecution would assist in achieving other legitimate goals, such as the
- 87 investigation or prosecution of more serious offenses;
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- 89 i. The willingness of the accused to cooperate with law enforcement in the apprehension or
- 90 conviction of others;
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- 92 j. The charging decisions made for similarly-situated accused persons;
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- 94 k. A history of non-enforcement of the applicable law;
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- 96 l. A reasonable belief of the prosecutor that the applicable law is unconstitutional;
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- 98 m. Any improper conduct by law enforcement in relation to the accused or the investigation, or
- 99 failure of law enforcement to perform necessary duties or investigations in relation to the
- 100 prosecution;
- 101
- 102 n. The evidence strongly suggests improper motives of the complainant and there is minimal
- 103 evidence in addition to the complainant's statements corroborating the offense;
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- 105 o. Whether the authorized or likely punishment or collateral consequences are disproportionate
- 106 in relation to the particular offense or the offender;
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- 108 p. The extent of harm caused by the offense;
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- 110 q. Whether the size of the loss or the extent of the harm caused by the alleged crime is too small
- 111 to warrant a criminal sanction;
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113 r. The impact of the crime on the community, including the potential deterrent value of a  
114 prosecution to the accused and to society at large;

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116 s. Excessive costs of prosecution in relation to the seriousness of the offense(s), including the  
117 availability of resources to the prosecutor to undertake a particular prosecution or the prosecution  
118 of a certain category of offenses;

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120 t. The possible influence of any cultural, ethnic, socioeconomic or other improper biases against  
121 the accused, witnesses or victims.

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123 **3-2.3 Factors Not to Consider When Screening and Charging a Case: In screening and**  
124 **charging decisions a prosecutor should not consider the following when exercising his or**  
125 **her discretion:**

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127 a. The prosecutor's individual or the prosecutor's office rate of conviction;

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129 b. Personal advantages or disadvantages that a prosecution might bring to the prosecutor or  
130 others in the prosecutor's office;

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132 c. Hostility or personal animus towards an accused;

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134 d. Political advantages or disadvantages that a prosecution might bring to the prosecutor;

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136 e. Characteristics of the accused that have been recognized as the basis for invidious bias or  
137 discrimination, insofar as those factors are not pertinent to the elements or motive of the crime;

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139 f. When the primary purpose of filing charges is to obtain from the accused a release of potential  
140 civil claims or the forfeiture of seized property;



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142 g. The acts or behavior of the accused's attorney.

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144 **Continuing Duty to Evaluate – Adapted from the National District Attorneys Association**

145 **National Prosecution Standards**

146 **Third Edition**

147 **with Revised Commentary**

148

149 In the event that the prosecutor learns of previously unknown information that could  
150 affect a screening decision previously made, the prosecutor should reevaluate that earlier  
151 decision in light of the new information. New information likewise may result in the prosecutor  
152 making changes with respect to charging decisions or potential plea offers.

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154 **Plea Bargains-** Language adapted from the National District Attorneys Association -National  
155 Prosecution Standards Third Edition with Revised Commentary. This is rather detailed. Do we  
156 as a committee recommend this degree of detail or should we seek a more simplified list of  
157 principles?

158

159 **Part V. Propriety of Plea Negotiation and Plea Agreements**

160 **1. General**

161 **2. Availability for Plea Negotiation**

162 **3. Factors for Determining Availability and Acceptance of Guilty Plea**

163 **4. Fulfillment of Plea Agreements**

164 **5. Record of Plea Agreement**

165 **1. General**

166 **5-1.1 Propriety**

167 The prosecutor is under no obligation to enter into a plea agreement that has the effect of  
168 disposing of criminal charges in lieu of trial. However, where it appears that it is in the public



169 interest, the prosecution may engage in negotiations for the purpose of reaching an appropriate  
170 plea agreement. When agreement is reached, it should be reduced to writing, if practicable.

### 171 **5-1.2 Types of Plea Negotiations**

172 The prosecution, in reaching a plea agreement, may agree to a disposition of the case that  
173 includes, but is not limited to, one or more of the following commitments from the prosecution in  
174 exchange for a plea of guilty:

- 175 a. To make certain recommendations concerning the sentence which may be  
176 imposed by the court if the defendant enters a plea of guilty or nolo contendere;
- 177 b. To agree not to oppose sentencing requests made by the defense; or
- 178 c. To dismiss, seek dismissal, or not oppose dismissal of an offense or offenses  
179 charged if the defendant enters a plea of guilty or nolo contendere to another  
180 offense or other offenses supported by the defendant's conduct;
- 181 d. To dismiss, seek dismissal, or not oppose dismissal of the offense charged, or  
182 not to file potential charges, if the accused agrees not to pursue potential civil  
183 causes of action against the victim, witnesses, law enforcement agencies or  
184 personnel, or the prosecutor or his staff or agents;
- 185 e. To agree to forego an ongoing investigation into other criminal activity of the  
186 defendant if the defendant enters a plea of guilty or nolo contendere to a presently charged  
187 offense or offenses; and/or
- 188 f. To agree that the defendant and prosecution will jointly recommend a particular sentence to the  
189 court and that the prosecution will support the defendant's motion to withdraw his plea of guilty  
190 if the court exceeds this agreed upon sentencing recommendation.
- 191 g. To agree that a plea offer that is conditioned upon approval in advance by the trial Court in  
192 conformity with Rule 11 of the Utah Rules of Criminal Procedure.
- 193 h. To agree to a plea offer to amended charges which minimize potential collateral consequences  
194 such as deportation, or inclusion in certain crime specific databases.

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### 196 **5-1.3 Conditional Offer**



197 Prior to reaching a plea agreement and subject to the standards herein and the law of the  
198 jurisdiction, the prosecutor may set conditions on a plea agreement offer, such as:

- 199 a. The defendant's acceptance of the offer within a specified time period that  
200 would obviate the need for extensive trial preparation;  
201 b. The defendant's waiver of certain pre-trial rights, such as the right to discovery;  
202 c. The defendant's waiver of certain pre-trial motions such as a motion to  
203 suppress or dismiss; or  
204 d. The defendant's waiver of certain trial or post-trial rights, such as the right to  
205 pursue an appeal.

#### 206 **5-1.4 Uniform Plea Opportunities**

207 Similarly situated defendants should be afforded substantially equal plea agreement  
208 opportunities. In considering whether to offer a plea agreement to a defendant, the prosecutor  
209 should not take into account the defendant's race, religion, sex, sexual orientation, national  
210 origin, or political association or belief, unless legally relevant to the criminal conduct charged.

### 211 **2. Availability for Plea Negotiation**

#### 212 **5-2.1 Willingness to Negotiate**

213 The prosecutor should make known a policy of willingness to consult with the defense  
214 concerning disposition of charges by plea and should set aside times and places for plea  
215 negotiations, in addition to pre-trial hearings.

#### 216 **5-2.2 Presence of Defense Counsel**

217 The prosecutor should not negotiate a plea agreement directly with a defendant who is  
218 represented by counsel in the matter, unless defense counsel is either present or has given his or  
219 her express written permission for the prosecutor to negotiate directly with the defendant.

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### 221 **3. Factors for Determining Availability and Acceptance of Guilty Plea**

#### 222 **5-3.1 Factors to Consider**

223 Prior to negotiating a plea agreement, the prosecution should consider the following factors:

- 224 a. The nature of the offense(s);





- 225 b. The degree of the offense(s) charged;
- 226 c. Any possible mitigating circumstances;
- 227 d. The age, background, and criminal history of the defendant;
- 228 e. The expressed remorse or contrition of the defendant, and his or her willingness to accept
- 229 responsibility for the crime;
- 230 f. Sufficiency of admissible evidence to support a verdict;
- 231 g. Undue hardship caused to the defendant;
- 232 h. Possible deterrent value of trial;
- 233 i. Aid to other prosecution goals through non-prosecution;
- 234 j. A history of non-enforcement of the statute violated;
- 235 k. The potential effect of legal rulings to be made in the case;
- 236 l. The probable sentence if the defendant is convicted;
- 237 m. Society's interest in having the case tried in a public forum;
- 238 n. The defendant's willingness to cooperate in the investigation and prosecution
- 239 of others;
- 240 o. The likelihood of prosecution in another jurisdiction;
- 241 p. The availability of civil avenues of relief for the victim, or restitution through
- 242 criminal proceedings;
- 243 q. The willingness of the defendant to waive his or her right to appeal;
- 244 r. The willingness of the defendant to waive (release) his or her right to pursue
- 245 potential civil causes of action arising from his or her arrest, against the victim,
- 246 witnesses, law enforcement agencies or personnel, or the prosecutor or his or her staff or agents;
- 247 s. With respect to witnesses, the prosecution should consider the following:
- 248 1. The availability and willingness of witnesses to testify;
- 249 2. Any physical or mental impairment of witnesses;
- 250 3. The certainty of their identification of the defendant;
- 251 4. The credibility of the witness;
- 252 5. The witness's relationship with the defendant;



- 253 6. Any possible improper motive of the witness;  
254 7. The age of the witness;  
255 8. Any undue hardship to the witness caused by testifying.

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257 **5-3.1 With respect to victims, the prosecution should consider those factors identified above**  
258 **and the following:**

- 259 1. The existence and extent of physical injury and emotional trauma suffered  
260 by the victim;  
261 2. Economic loss suffered by the victim;  
262 3. Any undue hardship to the victim caused by testifying.

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267 **5-3.2 Innocent Defendants**

268 The prosecutor should always be vigilant for the case where the accused may be innocent of the  
269 offense charged. The prosecutor must satisfy himself or herself that there is a sound factual basis  
270 for all crimes to which the defendant will plead guilty under any proposed plea agreement.

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272 **5-3.3 Candor**

273 The prosecutor should not knowingly make any false or misleading statements of law or fact to  
274 the defense during plea negotiations.

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276 **5.4. Fulfillment of Plea Agreements**

277 **5-4.1 Limits of Authority**

278 The prosecutor should not make any guarantee concerning the sentence that will be imposed by  
279 the court or concerning a suspension of sentence. The prosecutor may advise the defense of the  
280 position the prosecutor will take concerning disposition of the case, including a sentence that the



281 prosecutor is prepared to recommend to the court based upon present knowledge of the facts of  
282 the case and the offender, including his or her criminal history.

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#### 284 **5-4.2 Implication of Authority**

285 The prosecutor should not make any promise or commitment assuring a defendant that the court  
286 will impose a specific sentence or disposition in the case. The prosecutor should avoid implying  
287 a greater power to influence the disposition of a case than the prosecutor actually possesses.

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#### 289 **5-4.3 Inability to Fulfill Agreement**

290 The prosecutor should not fail to comply with a plea agreement that has been accepted and acted  
291 upon by the defendant to his or her detriment, unless the defendant fails to comply with any of  
292 his or her obligations under the same agreement or unless the prosecutor is authorized to do so  
293 by law. If the prosecutor is unable to fulfill an understanding previously agreed upon in plea  
294 negotiations, the prosecutor should give prompt notice to the defendant and cooperate in securing  
295 leave of court for the defendant to withdraw any plea and take such other steps as would be  
296 appropriate to restore the defendant and the prosecution to the position they were in before the  
297 understanding was  
298 reached or plea made.

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#### 300 **5-4.4 Rights of Others to Address the Court**

301 The prosecutor should not commit, as part of any plea agreement, to limit or curtail the legal  
302 right of any victim or other person authorized by law to address the court at the time of plea or  
303 sentencing. The prosecutor should honor the legal rights of victims and other persons authorized  
304 by law to address the court.

#### 305 **5-4.5 Notification of Media**

306 Prior to the entry of a plea of guilty by the defendant in open court, the prosecutor should not  
307 make any extrajudicial comments to the media about either the possibility or existence of a plea  
308 agreement with the defendant, or of the nature or contents of any such agreement.



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## 310 **5. Record of Plea Agreement**

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### 312 **5-5.1 Record of Agreement**

313 Whenever the disposition of a charged criminal case is the result of a plea agreement, the  
314 prosecutor should make the existence and terms of the agreement part of the record. The  
315 prosecutor should also maintain the reasons for the disposition in the case file.

### 316 **5-5.2 Reasons for Nolle Prosequi**

317 Whenever felony criminal charges are dismissed by way of a nolle prosequi or its  
318 equivalent, the prosecutor should make a record of the reasons for his or her action.

319 In the prosecutor's quest for justice, it may become necessary and desirable to dispose of  
320 criminal cases without going to trial. There are few prosecutors who have the resources that  
321 would be required to try every case. Given that reality, most prosecutors actively engage in  
322 negotiations to reach appropriate dispositions in most cases. Like other agreements between  
323 parties, most plea negotiations require some action by both the prosecutor and the defendant.  
324 Also, like most other agreements, plea negotiations should be conducted in an honest and  
325 forthright manner in which the prosecution is guided by representing the best interest of society  
326 while being mindful of duties of candor and to avoid overreaching in dealing with the defendant.  
327 The prosecutor should be careful not to agree to an action that he or she cannot perform.  
328 Likewise, the defendant should be aware that his or her failure to perform his or her part of the  
329 agreement might well result in the prosecutor's withdrawal from the agreement or other  
330 consequences such as the imposition of penalties, including incarceration if the defendant does  
331 not comply with the agreement.

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### 333 **Collection of Monetary Fines, and Restitution- No adaptive language found**

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335 The imposition of fines, penalties and fees is within the discretion of the trial court at sentencing.  
336 A prosecutor may agree as part of plea negotiations to recommend a specific fine amount or may



337 agree not to a seek a fine as part of their sentencing recommendation. The prosecutor may  
338 consider, among other relevant sentencing factors, whether the defendant has the ability to pay a  
339 fine or whether the payment of a fine should be secondary to the payment of restitution to the  
340 victims. A fine also may be recommended as part of or in lieu of other sentencing  
341 recommendations.

342 **Restitution-** A prosecutor should seek a court order for restitution as part of making the victims  
343 of crimes whole whether the crime involves a monetary loss or other forms of loss such as  
344 property or injury. The amount of restitution ordered as part of sentencing must be proven by the  
345 prosecutor or agreed upon as part of a plea agreement. Once a restitution amount has been  
346 ordered, the prosecutor should seek to enforce the court order and make appropriate efforts to see  
347 that victims receive the proceeds collected as part of restitution. If a defendant is unable or  
348 unwilling to pay restitution as ordered by the court, the prosecutor may seek an Order to Show  
349 Cause to enforce the restitution order. The prosecutor may also seek to have the courts order  
350 extended to allow for more time for the defendant to comply with the restitution order. If due to  
351 circumstances the defendant is unable to pay restitution, the prosecutor may seek to require the  
352 debt to be sent to the State Office of Debt Collection. A prosecutor may also assist a victim in  
353 having a restitution order converted to a civil judgment for collection by civil processes. The  
354 prosecutor may seek the imposition of interest as part of a restitution order or waive the payment  
355 of interest as the interests of justice require.