



Midvale City Attorney's Office Prosecution Policies Manual

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1. General Standards.

A. Office Policies and Their Promulgation.

The Midvale City Attorney's Office has based its Prosecution Policies Manual on the [American Bar Association's Criminal Justice Standards for the Prosecution Function \(Fourth Ed., 2017\)](#), the [National District Attorneys Association National Prosecution Standards \(Third Ed.\)](#), and the [Utah Statewide Association of Prosecutors and Public Attorneys' Utah Prosecutors Best Practices \(Jan. 10, 2020\)](#).

The Midvale City Attorney's Office will review its Prosecution Policies Manual on an annual basis and publicly provide an updated version of the Prosecution Policies Manual on Midvale City's website (www.midvalecity.org). The Prosecution Policies Manual is available electronically to the public at any time by request.

B. Functions and Duties of a Prosecutor.

A Midvale City prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The Midvale City Attorney's Office seeks to exercise sound discretion and independent judgment in the performance of the prosecution function.

The primary duty of a Midvale City prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor seeks to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

A Midvale City prosecutor should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. The prosecutor should avoid an appearance of impropriety in performing the prosecution function. The prosecutor should seek out advice and ethical guidance from the City Attorney when the proper course of prosecutorial conduct seems unclear. The prosecutor should make use of ethical guidance offered by existing organizations. A Midvale City prosecutor who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

A Midvale City prosecutor should be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or

conviction that may be applicable in individual cases or classes of cases. The Midvale City Attorney's Office is available to assist community efforts addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

A Midvale City prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system. The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action. The prosecutor should provide service to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. The Midvale City Attorney's Office supports such activities, and the Office's budget includes funding and paid release time for such activities.

C. The Client of a Prosecutor.

A Midvale City prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim. When investigating or prosecuting a criminal matter, the prosecutor does not represent law enforcement personnel who have worked on the matter and such law enforcement personnel are not the prosecutor's clients. The public's interests and views should be determined by the Midvale City Attorney and designated assistants.

D. Prosecutor's Heightened Duty of Candor.

In light of the prosecutor's public responsibilities, broad authority and discretion, a Midvale City prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations. However, the prosecutor should be circumspect in publicly commenting on specific cases or aspects of the business of the office.

A Midvale City prosecutor should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true, to a court, lawyer, witness, or third party, except for lawfully authorized investigative purposes. In addition, while seeking to accommodate legitimate confidentiality, safety or security concerns, a prosecutor should correct a prosecutor's representation of material fact or law that the prosecutor reasonably believes is, or later learns was, false, and should disclose a material fact or facts when necessary to avoid assisting a fraudulent or criminal act or to avoid misleading a judge or factfinder.

A Midvale City prosecutor should disclose to a court legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecution's position and not disclosed by others.

E. Preserving the Record.

At every stage of representation, a Midvale City prosecutor should take steps necessary to make a clear and complete record for potential review. Such steps may include: filing motions including motions for reconsideration, and exhibits; making objections and placing explanations on the record; requesting evidentiary hearings; requesting or objecting to jury instructions; and making offers of proof and proffers of excluded evidence.

F. Improper Bias Prohibited.

A Midvale City prosecutor may not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. A prosecutor may not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor's authority.

The Midvale City Attorney's Office is proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of its work. The Midvale City Attorney's Office regularly assesses the potential for biased or unfairly disparate impacts of its policies on communities within Midvale and seeks to eliminate those impacts that cannot be properly justified.

G. Conflicts of Interest.

A Midvale City prosecutor should know and abide by the ethical rules regarding conflicts of interest that apply in the State of Utah and be sensitive to facts that may raise conflict issues. When a conflict requiring recusal exists and is non-waivable, or informed consent has not been obtained, the prosecutor should recuse from further participation in the matter. The Midvale City Attorney's Office will not go forward until a non-conflicted prosecutor, or an adequate waiver, is in place.

A Midvale City prosecutor may not represent a defendant in criminal proceedings in Utah.

A Midvale City prosecutor may not prosecute a Midvale City official, officer, employee, or agent if the individual contests their case. The Midvale City

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Attorney's Office will request that the prosecution be taken over by another prosecution agency. A Midvale City prosecutor is not required to have another prosecution agency take over prosecution of the case if the Midvale City official, officer, employee, or agent is able to resolve the case without the involvement of the prosecutor under the Midvale City Justice Court's standard programs.

A Midvale City prosecutor may not participate in a matter in which the prosecutor previously participated, personally and substantially, as a non-prosecutor, unless Midvale City and, when necessary, a former client gives informed consent confirmed in writing.

A Midvale City prosecutor may not be involved in the prosecution of a former client. The prosecutor must disclose the conflict to appropriate supervisory personnel. A prosecutor who has formerly represented a client should not use information obtained from that representation to the disadvantage of the former client. This does not prevent another prosecutor within the Midvale City Attorney's Office from prosecuting the former client so long as the conflicted prosecutor is completely excluded from all prosecution decisions.

A Midvale City prosecutor may not negotiate for private employment with an accused or the target of an investigation, in a matter in which the prosecutor is participating personally and substantially, or with an attorney or agent for such accused or target.

A Midvale City prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.

A Midvale City prosecutor should disclose to appropriate supervisory personnel any facts or interests that could reasonably be viewed as raising a potential conflict of interest. If it is determined that the prosecutor should nevertheless continue to act in the matter, the prosecutor and supervisors should consider whether any disclosure to a court or defense counsel should be made and make such disclosure if appropriate. Close cases should be resolved in favor of disclosure to the court and the defense.

A Midvale City prosecutor whose current relationship to another lawyer is parent, child, sibling, spouse or sexual partner may not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. A prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer may not participate in the prosecution of a person who is represented by the other lawyer, unless the relationship is disclosed to the prosecutor's supervisor and supervisory approval is given, or unless there is no other prosecutor who can be authorized to act in the

prosecutor's stead. In the latter rare case, full disclosure should be made to the defense and to the court.

A Midvale City prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses in cases being handled by the prosecutor's office. If requested to make such a recommendation, the prosecutor should consider instead referring the person to the public defender, or to a panel of available criminal defense attorneys such as a bar association lawyer-referral service, or to the court. In the rare case where a specific recommendation is made by the prosecutor, the recommendation should be to an independent and competent attorney, and the prosecutor may not make a referral that embodies, creates or is likely to create a conflict of interest. A prosecutor may not comment negatively upon the reputation or abilities of a defense counsel to an accused person or witness who is seeking counsel in a case being handled by the prosecutor's office.

A Midvale City prosecutor should promptly report to a supervisor all but the most obviously frivolous misconduct allegations made, publicly or privately, against the prosecutor. If a supervisor or judge initially determines that an allegation is serious enough to warrant official investigation, reasonable measures, including possible recusal, should be instituted to ensure that the prosecution function is fairly and effectively carried out. A mere allegation of misconduct is not a sufficient basis for prosecutorial recusal and should not deter a prosecutor from attending to the prosecutor's duties.

H. Diligence, Promptness, and Punctuality.

A Midvale City prosecutor should act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the defendant, victims, and witnesses. The Midvale City Attorney's Office seeks to be organized and supported with adequate staff and facilities to enable it to process and resolve criminal charges with fairness and efficiency. In the event that it is not, the City Attorney will make the Midvale City Manager and the Midvale City Council aware of the shortfalls.

When providing reasons for seeking delay, a Midvale City prosecutor should not knowingly misrepresent facts or otherwise mislead. The prosecutor should use procedures that will cause delay only when there is a legitimate basis for such use and not to secure an unfair tactical advantage.

A Midvale City prosecutor should not unreasonably oppose requests for continuances from defense counsel.

A Midvale City prosecutor should know and comply with timing requirements applicable to a criminal investigation and prosecution, so as to not prejudice a criminal matter.

A Midvale City prosecutor should be punctual in attendance in court, in the submission of motions, briefs, and other papers, and in dealings with opposing counsel, witnesses and others. The prosecutor should emphasize to assistants and prosecution witnesses the importance of punctuality in court attendance.

I. Relationship with Media.

For purposes of this Section, a “public statement” is any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication or media, including social media. An extrajudicial statement is any oral, written, or visual presentation not made either in a courtroom during criminal proceedings or in court filings or correspondence with the court or counsel regarding criminal proceedings.

A Midvale City prosecutor's public statements about the judiciary, jurors, other lawyers, or the criminal justice system should be respectful even if expressing disagreement.

A Midvale City prosecutor should not make, cause to be made, or authorize or condone the making of, a public statement that the prosecutor knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of the accused, but the prosecutor may make statements that inform the public of the nature and extent of the prosecutor's or law enforcement actions and serve a legitimate law enforcement purpose. The prosecutor may make a public statement explaining why criminal charges have been declined or dismissed but must take care not to imply guilt or otherwise prejudice the interests of victims, witnesses or subjects of an investigation. A prosecutor's public statements should otherwise be consistent with the ABA Standards on Fair Trial and Public Discourse.

A Midvale City prosecutor should not place statements or evidence into the court record to circumvent this Section.

A Midvale City prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor from making an extrajudicial statement or providing non-public information that the prosecutor would be prohibited from making or providing under this Standard or other applicable rules or law.

A Midvale City prosecutor may respond to public statements from any source in order to protect the prosecution's legitimate official interests, unless there is a substantial likelihood of materially prejudicing a criminal proceeding, in which

case the prosecutor should approach defense counsel or a court for relief. A statement made pursuant to this paragraph is limited to such information as is necessary to mitigate the recent adverse publicity.

A Midvale City prosecutor has duties of confidentiality and loyalty and should not secretly or anonymously provide non-public information to the media, on or off the record, without appropriate authorization.

A Midvale City prosecutor should not allow prosecutorial judgment to be influenced by a personal interest in potential media contacts or attention.

During the pendency of a criminal matter, a Midvale City prosecutor should not re-enact, or assist law enforcement in re-enacting, law enforcement events for the media. Absent a legitimate law enforcement purpose, the prosecutor should not display the accused for the media, nor should the prosecutor invite media presence during investigative actions without careful consideration of the interests of all involved, including suspects, defendants, and the public. However, a prosecutor may reasonably accommodate media requests for access to public information and events.

While not prohibited, the Midvale City Attorney's Office requests that its prosecutors refrain from commenting as a media source if they are uninvolved in the matter. A prosecutor acting as such a media commentator should make reasonable efforts to be well-informed about the facts of the matter and the governing law and should educate the public about the criminal justice system without risking prejudicing a specific criminal proceeding. The prosecutor should not offer commentary regarding the specific merits of an ongoing criminal prosecution or investigation, except in a rare case to address a manifest injustice and the prosecutor is reasonably well-informed about the relevant facts and law.

J. Duty to Report and Respond to Prosecutorial Misconduct.

The Midvale City Attorney's Office requires internal reporting of reasonably suspected misconduct to supervisory staff within the office and authorizes supervisory staff to quickly address the allegations. Investigations of allegations of professional misconduct within the Midvale City Attorney's Office are handled in an independent and conflict-free manner.

When a Midvale City prosecutor reasonably believes that another person associated with the Midvale City Attorney's Office intends or is about to engage in misconduct, the prosecutor should attempt to dissuade the person. If such attempt fails or is not possible, and the prosecutor reasonably believes that misconduct is ongoing, will occur, or has occurred, the prosecutor should promptly refer the matter to higher authority in the prosecutor's office including, if warranted by the seriousness of the matter, to the City Attorney or City Manager.

If, despite the prosecutor's efforts in accordance with the paragraphs above, the City Attorney or City Manager permits, fails to address, or insists upon an action or omission that is clearly a violation of law, the prosecutor should take further remedial action, including revealing information necessary to address, remedy, or prevent the violation to appropriate judicial, regulatory, or other government officials not in the Midvale City Attorney's Office.

K. Training.

The City Attorney ensures that the prosecutors and staff in Midvale City Attorney's Office are adequately trained to fulfill their responsibilities. The City Attorney requires that prosecutors attend a reasonable number of hours of such training and education.

The City Attorney allocates adequate funds in the Midvale City Attorney's Office's budget to allow for internal training programs and attendance at external training events.

In addition to knowledge of substantive legal doctrine and courtroom procedures, a Midvale City prosecutor's training should include the elimination of improper bias, prosecutorial ethics, the use and testing of forensic evidence, Brady/Giglio compliance, eyewitness identification, conviction and sentencing alternatives, and victim rights.

L. Other Ethical Considerations.

The Midvale City Attorney's Office follows [Utah's Rules of Professional Conduct](#), as amended. This includes [Rule 3.8 Special Responsibilities of a Prosecutor](#) which requires prosecutors to:

- Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- Make reasonable efforts to ensure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- 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; and

- Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

2. Screening and Filing Charges.

A. Prosecutorial Responsibility to Charge.

Pursuant to Utah Constitution art. VIII, § 16 and Utah Code Ann. § 10-3-928, it is the ultimate responsibility of the prosecutors in the Midvale City Attorney's Office to determine when and which criminal charges should be prosecuted and against whom. The only exception is for cases authorized to proceed by citation pursuant to Utah Code Ann. §§ 77-7-18 to 21.

The Midvale City Attorney's Office recognizes that the initial charging decision affects fundamental rights of the accused and may affect the accused's standing in the community, whether or not a conviction ultimately results. Therefore, the City Attorney provides appropriate training and guidance to prosecutors regarding the exercise of their discretion in the charging decision and provides adequate time and resources for prosecutors to fully evaluate cases prior to making charging decisions. The City Attorney prioritizes being available to prosecutors to counsel about charging decisions.

B. Filing and Maintaining Criminal Charges.

A Midvale City prosecutor should not file or maintain charges if the prosecutor reasonably believes the accused is innocent. If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, or sufficiency of the evidence in any criminal case assigned to the prosecutor, the prosecutor must disclose those doubts to the City Attorney. The Midvale City Attorney's Office will then determine whether it is appropriate to proceed with the case.

A Midvale City prosecutor should file and maintain criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge or maintain charges is in the interests of justice. A prosecutor should only file and maintain charges in number and degree than are reasonably necessary to fairly reflect the gravity of the offense or deter similar conduct.

In determining whether formal criminal charges should be filed, a Midvale City prosecutor considers whether further investigation should be undertaken. After charges are filed the prosecutor oversees law enforcement investigative activity related to the case. 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.

C. Factors Considered When Filing and Maintaining a Case.

In addition to the strength of the case and admissibility of evidence, in considering whether prosecution is in the interest of justice, Midvale City prosecutors may consider the following factors when exercising discretion to initiate, decline, or dismiss a criminal charge:

- The impact of prosecution or non-prosecution on the public welfare and public trust;
- The impact of prosecution on a victim, witness, or third party;
- Whether the public's or victim's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.
- Whether the authorized or likely punishments or collateral consequences are disproportionate in relation to the particular offense or the offender;
- The availability of suitable treatment, diversion and rehabilitative programs, the accused's willingness to enter such programs, and the accused's ability to qualify for entrance to and funding for such programs;
- The accused's efforts toward voluntary restitution and/or treatment and rehabilitation prior to prosecution;
- The availability of a noncriminal disposition, deferred prosecution or other diversionary disposition and the accused's willingness to participate in such a program;
- Characteristics of the accused that are relevant, including:
 - The mental status of the accused, including whether the accused committed the offense while substantially mentally ill;

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- The accused's relative level of culpability in the criminal activity;
- Whether the accused held a position of trust at the time of the offense;
- The accused's criminal history;
- Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
- Whether the accused has already suffered substantial loss in connection with the alleged crime or whether prosecution would cause unwarranted hardship on the accused;
- The extreme youth or advanced age of the accused;
- The likelihood of prosecution by another criminal justice authority;
- Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
- The willingness of the accused to cooperate with law enforcement in the apprehension or conviction of others;
- The charging decisions made for similarly-situated accused persons;
- A history of non-enforcement of the applicable law;
- A reasonable belief of the prosecutor that the applicable law is unconstitutional;
- Any improper conduct by law enforcement in relation to the accused or the investigation, or failure of law enforcement to perform necessary duties or investigations in relation to the prosecution;
- The evidence strongly suggests improper motives of the complainant or victim and there is minimal evidence in addition to the complainant's or victim's statements corroborating the offense;

- Whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;
- The extent of harm caused by the offense;
- 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;
- The impact of the crime on the community, including the potential deterrent value of a prosecution to the accused and to society at large;
- Excessive costs of prosecution in relation to the seriousness of the offense(s), including the availability of resources to the prosecutor to undertake a particular prosecution or the prosecution of a certain category of offenses;
- The possible influence of any cultural, ethnic, socioeconomic or other improper biases against the accused, witnesses or victims;
- Changes in law or policy; and
- The fair and efficient distribution of limited prosecutorial resources.

D. Factors Not Considered When Filing and Maintaining a Case.

Midvale City prosecutors may not consider the following factors when exercising discretion to initiate, decline, or dismiss a criminal charge:

- The prosecutor's individual or the prosecutor's office rate of conviction;
- Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;
- Hostility or personal animus towards an accused;
- Political advantages or disadvantages that a prosecution might bring to the prosecutor;
- Characteristics of the accused that have been recognized as the basis for invidious bias or discrimination, insofar as those factors are not pertinent to the elements or motive of the crime;

- When the primary purpose of filing charges is to obtain from the accused a release of potential civil claims or the forfeiture of seized property;
- The impact of any potential asset forfeiture; or
- The acts or behavior of the accused's attorney.

E. Dismissing Cases.

I. At the Request of a Victim.

As empowered by Utah Constitution art. VIII, § 16 and Utah Code Ann. § 10-3-928, the Midvale City Attorney's Office has been given the authority to prosecute crimes within its jurisdiction. This authority lies with the Midvale City Attorney's Office alone. A victim does not have the authority to initiate or decline a criminal charge against a defendant.

A Midvale City prosecutor will listen to a request by a victim to dismiss a criminal charge. However, such a request does not require a prosecutor to fulfill the victim's wishes. After receiving such a request, a prosecutor should review the factors to file and maintain a case under Subsection 2(C).

II. Traffic Infractions.

In addition to the factors in Subsection 2(C), a Midvale City prosecutor should consider the weight of educating the public, gaining compliance, and the interests of justice in dismissing traffic infractions. For example, a prosecutor may consider dismissing a first offense of a Midvale-specific parking ordinance without prejudice after educating the offender and informing the offender of the ability of the prosecutor to refile for a subsequent offense within the statute of limitations.

3. Prosecution of Juveniles.

The Midvale City Attorney's Office only prosecutes juveniles subject to Midvale City Justice Court's jurisdiction under Utah Code Ann. § 78A-7-106(2), as amended. This is limited to the prosecution of 16- and 17-year-olds who, in Midvale's territorial jurisdiction, committed class B and C misdemeanor and infraction violations of:

- Title 23, Wildlife Resources Code of Utah;
- Title 41, Chapter 1a, Motor Vehicle Act;

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- Title 41, Chapter 6a, Traffic Code (expect for violations under Part 5, Driving Under the Influence and Reckless Driving);
- Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;
- Title 41, Chapter 22, Off-Highway Vehicles;
- Title 53, Chapter 3, Part 2, Driver Licensing Act (limited to class C misdemeanor and infractions violations only);
- Title 73, Chapter 18, State Boating Act (expect § 73-18-12);
- Title 73, Chapter 18a, Boating – Litter and Pollution Control;
- Title 73, Chapter 18b, Water Safety; and
- Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.

All other crimes committed by juveniles are generally handled by the Salt Lake County District Attorney's Office. The Midvale City Attorney's Office does not have any input on prosecution decisions for these cases.

4. Discovery Practices.

A. Prosecutorial Responsibility to Provide Discovery.

A Midvale City prosecutor complies with the obligations outlined in Utah Rule of Criminal Procedure Rule 16, as amended. This includes disclosing to the defense upon request the following material or information of which the prosecutor has knowledge:

- relevant written or recorded statements of the defendant or codefendants;
- the criminal record of the defendant;
- physical evidence seized from the defendant or codefendant;
- evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and

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- any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare a defense.

The prosecutor makes all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

A Midvale City prosecutor should, at all times, carry out 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.

In the event defense counsel makes discovery demands that are abusive, frivolous or made solely for the purpose of delay, unless otherwise required by law or rule, a Midvale City prosecutor does not need to cooperate with such demands and should seek court guidance on what must be provided.

A Midvale City prosecutor must make timely disclosure of exculpatory and mitigating evidence pursuant to *Brady v. Maryland*, 373 U.S. 83, 87 (1963) and its progeny.

If at any point in the pretrial or trial proceedings a Midvale City prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure and was not provided, the prosecutor must promptly notify defense counsel and provide the required information.

The City Attorney has created and maintains a system that ensures discovery is provided to defense counsel in an expeditious and efficient manner. As permitted by the allocation of Midvale resources, the City Attorney works to harness reasonably available technology to obtain discovery materials from law enforcement and provide discovery to defense counsel.

Notwithstanding the timelines dictated in Utah Rule of Criminal Procedure 16, a Midvale City prosecutor seeks to provide all discoverable materials in the prosecutor's possession or control as soon as reasonably possible.

B. Open File Policy.

Providing broad and early discovery promotes the truth-seeking mission of the prosecutor and furthers the speedy trial and due process rights of both the accused and victims. The Midvale City Attorney's Office has adopted and maintains an open file policy with regard to criminal cases, meaning that a Midvale City prosecutor will provide to the accused copies of or access to all relevant, unprivileged information known to the prosecutor. The Midvale City Attorney's

Office may redact information prior to providing discovery as necessary for the protection of victims and witnesses.

C. Obtaining Evidence from Law Enforcement.

The Midvale City Attorney's Office educates and informs law enforcement agencies in the Office's jurisdiction that a Midvale City prosecutor, not a law enforcement officer or agency, is the arbiter of what information is disclosed to the defense. The Midvale City Attorney's Office informs and trains the law enforcement officers and agencies in its jurisdiction to timely provide to the prosecutor all information in its possession pertaining to a defendant's case.

A Midvale City prosecutor seeks discovery information from all members of the prosecution team which includes federal, state and local law enforcement officers and agencies and other government officials and agencies known to the prosecutor to be involved in the investigation or prosecution of a criminal case against a defendant--including those not in the prosecutor's jurisdiction.

A Midvale City prosecutor seeks to identify all information in the possession or control of the prosecution team that tends to negate the guilt of the accused, mitigate the offense charged, impeach the prosecution's witnesses or evidence, or reduce the likely punishment of the accused if convicted.

A Midvale City prosecutor errs on the side of inclusiveness when identifying the members of the prosecution team for discovery purposes and should seek discovery information from that team.

D. Redacting Information.

Prior to providing discovery, the Midvale City Attorney's Office should redact from materials provided as discovery all information reasonably necessary to protect the safety and privacy of a victim or witness.

When portions of materials are discoverable and other portions are not, the Midvale City Attorney's Office makes a good faith effort to redact the non-discoverable portions in a way that does not cause confusion or prejudice to the accused.

If a defendant's counsel requests information previously redacted by the Midvale City Attorney's Office, a Midvale City prosecutor should provide the information when it is relevant to the accused's criminal case and the prosecutor can implement reasonable measures for the protection of the victim, witness, or any personal identifying information. If redacted or restricted material is ordered by a court to be produced or disclosed, a prosecutor should seek protective orders as necessary to control the dissemination of that material.

E. Reciprocal Discovery.

In order to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and protect the rights of crime victims, a Midvale City prosecutor should request the court order and the defense timely provide discovery to the prosecution.

F. Deception as to Identity.

Except as permitted by law or court order, a Midvale City prosecutor may not deceive a defendant or a witness as to his or her identity or affiliation.

5. Plea Bargains.

A. In General.

A Midvale City prosecutor is open, at every stage of a criminal matter, to discussions with defense counsel concerning disposition of charges by guilty plea or other negotiated disposition. A prosecutor is under no obligation to enter into a plea bargain that has the effect of disposing of criminal charges in lieu of trial. A prosecutor may resolve a case with an appropriate plea agreement where it appears that it is in the public interest.

A Midvale City prosecutor may not engage in disposition discussions directly with a represented defendant, except with defense counsel's consent. Where a defendant has properly waived counsel, the prosecutor may engage in disposition discussions with the defendant.

A Midvale City prosecutor should not enter into a plea agreement before having information sufficient to assess the defendant's actual culpability. The prosecutor should consider collateral consequences of a conviction before entering into a plea agreement.

A Midvale City prosecutor may not set unreasonably short deadlines or demand conditions for a disposition that are so coercive that the voluntariness of a plea or the effectiveness of defense counsel is put into question. A prosecutor may, however, set a reasonable deadline before trial or hearing for acceptance of a disposition offer.

A Midvale City prosecutor should not knowingly make false statements of fact or law in the course of disposition discussions.

Before entering into a plea agreement, a Midvale City prosecutor should disclose to the defense a factual basis sufficient to support the charges in the proposed agreement, and information currently known to the prosecutor that tends to negate guilt, mitigates the offense or is likely to reduce punishment.

A Midvale City prosecutor may not agree to a guilty plea if the prosecutor reasonably believes that sufficient admissible evidence to support conviction beyond reasonable doubt would be lacking if the matter went to trial.

B. Types of Plea Negotiations.

A Midvale City prosecutor, in reaching a plea agreement, may agree to a disposition of the case that includes, but is not limited to, one or more of the following commitments in exchange for a plea of guilty:

- To make certain recommendations concerning the sentence which may be imposed by the court if the defendant enters a plea of guilty or no contest;
- To agree not to oppose sentencing requests made by the defense;
- To dismiss, seek dismissal, or not oppose dismissal of an offense or offenses charged if the defendant enters a plea of guilty or no contest to another offense or other offenses supported by the defendant's conduct;
- To dismiss, seek dismissal, or not oppose dismissal of the offense charged, or not to file potential charges, if the accused agrees not to pursue potential civil causes of action against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his staff or agents;
- To agree to forego an ongoing investigation into other criminal activity of the defendant if the defendant enters a plea of guilty or no contest to a presently charged offense or offenses; or
- To agree that the defendant and prosecution will jointly recommend a particular sentence to the court and that the prosecution will support the defendant's motion to withdraw his plea of guilty if the court exceeds this agreed upon sentencing recommendation.

C. Factors Considered in Plea Bargains.

When exercising discretion in negotiating a plea bargain, a Midvale City prosecutor should consider and weigh the following factors:

- The strength of the case and the likelihood of a conviction;
- The impact of prosecution or non-prosecution on the public welfare and public trust;

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- The extent of harm caused by the offense;
- The impact of prosecution on a victim, witness, or third party;
- Whether the public's or victim's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.
- Whether the authorized or likely punishments or collateral consequences are disproportionate in relation to the particular offense or the offender;
- The availability of suitable treatment, diversion and rehabilitative programs, the accused's willingness to enter such programs, and the accused's ability to qualify for entrance to and funding for such programs;
- The accused's efforts toward voluntary restitution and/or treatment and rehabilitation prior to prosecution;
- The availability of a noncriminal disposition, deferred prosecution or other diversionary disposition and the accused's willingness to participate in such a program;
- Characteristics of the accused that are relevant, including:
 - The mental status of the accused, including whether the accused committed the offense while substantially mentally ill;
 - The accused's relative level of culpability in the criminal activity;
 - Whether the accused held a position of trust at the time of the offense;
 - The accused's criminal history;
 - Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
 - Whether the accused has already suffered substantial loss in connection with the alleged crime or whether prosecution would cause unwarranted hardship on the accused;

- The extreme youth or advanced age of the accused;
- The willingness of the accused to cooperate with law enforcement in the apprehension or conviction of others;
- The plea bargains made for similarly-situated accused persons;
- Any improper conduct by law enforcement in relation to the accused or the investigation, or failure of law enforcement to perform necessary duties or investigations in relation to the prosecution;
- Whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;
- The impact of the crime on the community, including the potential deterrent value of a prosecution to the accused and to society at large;
- Excessive costs of prosecution in relation to the seriousness of the offense(s), including the availability of resources to the prosecutor to undertake a particular prosecution or the prosecution of a certain category of offenses;
- The ability of the defendant to come into compliance with applicable laws within a reasonable amount of time;
- The possible influence of any cultural, ethnic, socioeconomic or other improper biases against the accused, witnesses or victims; and
- The fair and efficient distribution of limited prosecutorial resources.

D. Factors Not Considered in Plea Bargains.

Midvale City prosecutors may not consider the following factors when exercising discretion in negotiating plea bargains:

- The prosecutor's individual or the prosecutor's office rate of conviction;
- Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;

- Hostility or personal animus towards an accused;
- Political advantages or disadvantages that a prosecution might bring to the prosecutor;
- Characteristics of the accused that have been recognized as the basis for invidious bias or discrimination, insofar as those factors are not pertinent to the elements or motive of the crime; or
- The acts or behavior of the accused's attorney.

E. Uniform Plea Opportunities.

The Midvale City Attorney's Office seeks to provide similarly situated defendants substantially equal plea agreement opportunities.

F. Conditions in Plea Bargains.

Prior to reaching a plea agreement, a Midvale City prosecutor may set conditions on a plea bargain offer including, but not limited to, the defendant's acceptance of the offer within a specified time period that would obviate the need for extensive trial preparation. A Midvale City prosecutor may not demand terms in a negotiated plea agreement that are unlawful or in violation of public policy.

A Midvale City prosecutor should properly promise the defense that the prosecutor will or will not take a particular position concerning sentence and conditions. The prosecutor should not, however, imply a greater power to influence the disposition of a case than is actually possessed.

At any court hearing to finalize a negotiated disposition, a Midvale City prosecutor should ensure that all relevant details of the plea agreement have been placed on the record. The presumption is that the hearing and record will be public, but in some cases the hearing or record (or a portion) may be sealed for good cause.

Once a plea agreement is final and accepted by the court, a Midvale City prosecutor should comply with, and make good faith efforts to have carried out, the government's obligations. The prosecutor should construe agreement conditions, and evaluate the defendant's performance including any cooperation, in a good-faith and reasonable manner.

If a Midvale City prosecutor believes that a defendant has breached an agreement that has been accepted by the court, the prosecutor may file an Order to Show Cause. If the defense presents a good-faith disagreement and the parties cannot quickly resolve it, the prosecutor should not act before judicial resolution.

If a Midvale City prosecutor reasonably believes that a court is acting inconsistently with any term of a negotiated disposition, the prosecutor should raise the matter with the court.

G. Waiver of Rights as Condition of Plea Bargain.

A Midvale City prosecutor should not condition a plea bargain on a waiver of the right to appeal the terms of a sentence which exceeds an agreed-upon or reasonably anticipated sentence. Any waiver of appeal of sentence should be comparably binding on the defendant and the prosecution.

A Midvale City prosecutor should not suggest or require, as a condition of a plea agreement, any waiver of post-conviction claims addressing ineffective assistance of counsel, prosecutorial misconduct, or destruction of evidence, unless such claims are based on past instances of such conduct that are specifically identified in the agreement or in the transcript of proceedings that address the agreement. If a proposed plea agreement contains such a waiver regarding ineffective assistance of counsel, the prosecutor should ensure that the defendant has been provided the opportunity to consult with independent counsel regarding the waiver before agreeing to the disposition.

A Midvale City prosecutor may propose or require other sorts of waivers on an individualized basis if the defendant's agreement is knowing and voluntary. No waivers of any kind should be accepted without an exception for manifest injustice based on newly-discovered evidence, or actual innocence.

Although certain claims may have been waived, a Midvale City prosecutor may not condition a plea agreement on a complete waiver of the right to file a habeas corpus or other comparable post-conviction petition.

A Midvale City prosecutor may not request or rely on waivers to hide an injustice or material flaw in the case which is undisclosed to the defense.

H. Limitations on Plea Bargains.

I. Legal Fictions.

When negotiating plea bargains, a Midvale City prosecutor generally does not entertain creating a legal fiction in order to resolve a case. Any negotiated plea bargain should be reasonably related to the facts of the case. For example, a prosecutor may amend a speeding ticket from 11 mph over the posted speed limit to 5 mph over the posted speed limit to resolve a case. However, a prosecutor should not amend a speeding ticket from 11 mph over the posted speed limit to an equipment or parking violation to resolve a case.

II. Commercial Driver Licenses.

49 CFR § 384.226 prohibits prosecutors from “mask[ing], defer[ing] imposition of judgement, or allow[ing] an individual to enter into a diversion program that would prevent a CLP or CDL holder’s conviction, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.” Interpreting this law, the National District Attorneys Association and the National Traffic Law Center have instructed prosecutors that they may not reduce, dismiss, or modify traffic violations for CDL holders for the sole reason of avoiding potential impacts on a driver’s license ([*Commercial Drivers’ Licenses: A Prosecutor’s Guide to the Basics of Commercial Motor Vehicles Licensing and Violations*](#)).

A Midvale City prosecutor follows the federal prohibition against masking violations for CDL holders and will not negotiate a plea agree that modifies, reduces, or dismisses a traffic violation for the sole reason of avoiding the potential impacts on a driver’s license. A Midvale City prosecutor retains the ability to consider factual or practical weaknesses of a case when negotiating a plea bargain in a case involving a CDL holder.

6. Plea in Abeyances.

A. In General.

A plea in abeyance is defined under Utah Code Ann. § 77-2a-1(1) as “an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering the judgement of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in the plea in abeyance agreement.” In accordance with Utah Code Ann. § 77-2a-3(2), “[a] plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement: (a) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or (b) allow withdrawal of defendant’s plea and order dismissal of the case.”

Because of the significant benefit of a plea in abeyance, the Midvale City Attorney’s Office generally only considers a plea in abeyance under limited circumstances. For traffic infractions, other than non-moving infractions, a Midvale City prosecutor will generally only consider a plea in abeyance if the defendant has not had a plea in abeyance or a moving violation conviction within the previous year from the offense date. For misdemeanors, a Midvale City prosecutor will generally only consider a plea in abeyance if it is the defendant’s

first offense of that nature or a substantial amount of time—generally 10 years or more—have passed from the defendant's last conviction.

B. Moving Violations.

If a defendant qualifies for a plea in abeyance for a moving violation, a Midvale City prosecutor generally recommends the following plea in abeyance conditions to be completed within 60 days:

- The recommended bail schedule fine for the violation;
- The state-recommended plea in abeyance fee;
- Completion of traffic school; and
- No new moving violations.

A Midvale City prosecutor rarely deviates from these recommendations because of the significant volume of moving violations that are prosecuted and the desire to avoid any perception of discrimination or favoritism by the Midvale City Attorney's Office.

C. Disproportionate Impact.

If a defendant's criminal conviction may have a significantly disproportionate impact on the defendant or the victim, a Midvale City prosecutor may consider negotiating a plea in abeyance with the defendant even if the defendant does not otherwise meet the general conditions of qualifying for a plea in abeyance. Generally, if such a plea in abeyance is considered, a Midvale City prosecutor will require greater conditions. This may include, but is not limited to, a zero-tolerance compliance requirement, an extended probationary period, additional counseling, or strict compliance with a mental health or medical provider.

D. Violation of a Plea in Abeyance Agreement.

If a defendant violates the terms of the plea in abeyance agreement, a Midvale City prosecutor will consider the severity and the timing of the violation before recommending whether to have the court enter a defendant's plea. If the defendant's conviction is entered, a Midvale City prosecutor will generally request the court to sentence the defendant to complete the balance of outstanding plea in abeyance agreement. If a violation is severe, a Midvale City prosecutor may provide harsher sentencing recommendations in accordance with Section 9.

7. Diversion Programs.

The Midvale City Attorney's Office does not operate any official diversion programs.

Generally, a Midvale City prosecutor only considers a diversion if the defendant is affected by a mental health condition that may affect his or her culpability. The Midvale City Attorney's Office recognizes that an individual with a mental health condition may be disqualified from benefits and programs if he or she is convicted of a misdemeanor offense. If an individual with a mental health condition can be safely treated without risking the safety of the public, a Midvale City prosecutor may negotiate a formal diversion agreement with the defendant or his or her counsel in accordance with Utah Code Ann. § 77-2-5. Upon completion of a diversion agreement, the case will be dismissed in accordance with Utah Code Ann. § 77-2-6.

In very limited instances where a court record may have a disproportionate impact on an individual with a mental health condition, a Midvale City prosecutor may enter an informal diversion agreement in which no formal diversion agreement is submitted to the court. The prosecutor must record the terms of the agreement within the case notes. A caretaker, medical provider, or mental health provider is generally required to provide regular updates to the prosecutor on the defendant's progress.

If a criminal charge is likely to have an extreme disproportionate impact on a defendant, a Midvale City Prosecutor may consider negotiating a diversion to resolve the issue. Any diversion of this nature must be approved first by the Midvale City Attorney. A diversion may require, but is not limited to, a zero-tolerance compliance requirement, an extended probationary period, additional counseling, or strict compliance with a mental health or medical provider.

8. Grants of Immunity.

Under Utah Code Ann. § 10-3-928, the Midvale City Attorney is authorized to grant immunity to transactional immunity for violations of Midvale ordinances and state law for infractions and misdemeanors occurring within the boundaries of Midvale.

Prior to offering immunity to a criminal violation, the Midvale City Attorney will carefully consider the public interest. Factors that are considered before deciding whether to grant or request immunity from prosecution for a witness include, but are not limited to:

- The likelihood that a grant of immunity will produce truthful information from the witness;
- The value of the witness's testimony or information to the investigation or prosecution;
- The impact on the witness's perceived credibility if he or she testifies before a trial jury pursuant to a grant of immunity;

- The likelihood of prompt and full compliance with a compulsion order, and the effectiveness of available sanctions if there is no such compliance;
- The witness's relative culpability in connection with the offenses being investigated or prosecuted, and his or her criminal history;
- The possibility of successfully prosecuting the witness prior to compelling his or her testimony; and
- The likelihood of future physical harm to the witness if he or she testifies under a compulsion order.

A grant of immunity should be in writing and should describe the scope and character of the immunity granted.

Any prosecution of a witness who has previously been immunized must be approved by the City Attorney or his or her designee. The Midvale City Attorney's Office will take reasonable steps to ensure that any decision to pursue a subsequent prosecution of an immunized witness is not perceived as a breach of a prosecutorial commitment.

Except as otherwise required by law, the Midvale City Attorney is not obligated to grant or seek immunity to compel information on behalf of a defendant. The City Attorney may immunize or seek to immunize a defense witness if the City Attorney believes that it is necessary for a just prosecution.

9. Sentencing Recommendations.

A. Fair Sentencing.

To the extent that a Midvale City prosecutor is involved in the sentencing process, he or she should seek to assure that a fair and fully informed judgment is made, and that unfair sentences and unfair sentence disparities are avoided. The severity of sentences imposed should not be used as a measure of a prosecutor's effectiveness.

B. Sentencing Input.

A Midvale City prosecutor may take advantage of the opportunity to address the sentencing body, whether it is the jury or 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 or her rights to address the sentencing body.

C. Mitigating Evidence.

A Midvale City 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 additional obligations to investigate for mitigating evidence beyond what is otherwise required by law.

D. Uniform Sentencing.

In the interests of uniformity, the Midvale City Attorney’s Office has developed consistent policies for evaluating and making sentencing recommendations and does not leave complete discretion for sentencing policy to individual prosecutors.

A Midvale City prosecutor always follows sentencing guidelines established by statute. If a statute does not require specific sentencing guidelines, the following are the general sentencing recommendations for criminal violations:

Criminal Offense Level	Sentencing Recommendation(s)
Infraction	<ul style="list-style-type: none"> Recommended bail schedule fine or its equivalent in community service.
Class C Misdemeanor	<ul style="list-style-type: none"> Recommended bail schedule fine or its equivalent in community service; Evaluation and recommended treatment for crimes involving domestic violence, alcohol, drugs, or mental health; 6 months good behavior probation; and Restitution, if applicable.
Class B Misdemeanor	<ul style="list-style-type: none"> Recommended bail schedule fine or its equivalent in community service; Evaluation and recommended treatment for crimes involving domestic violence, alcohol, drugs, or mental health; 12 months good behavior probation; and Restitution, if applicable.

A Midvale City prosecutor may deviate from these general guidelines based on the severity of an offense, the defendant’s criminal history, a defendant’s participation in in-patient or intense out-patient treatment, and the impact on a victim.

A Midvale City prosecutor may recommend providing a credit against a recommended fine for evaluation and treatment, restitution, or actions that bring a defendant’s behavior in legal compliance. A prosecutor may also recommend suspending a portion of a fine or jail sentence as added incentive to prevent further illegal behavior, and the defendant has exhibited a high propensity to violate the terms of his or her probation.

10. Duty of Prosecutor After Conviction.

If a Midvale City prosecutor becomes aware of material and credible evidence creating a reasonable likelihood that a defendant prosecuted by the Midvale City Attorney's Office is innocent of a crime for which the defendant has been convicted, the prosecutor should undertake further investigation or request an appropriate law enforcement agency conduct an investigation to determine whether the defendant was convicted of an offense that the defendant did not commit.

When a Midvale City prosecutor reasonably believes that a convicted person is actually innocent, the prosecutor should take appropriate steps to seek to remedy the conviction.

11. Collection of Fines and Fees.

The Midvale City Attorney's Office does not collect data about the collection of fines or fees. Its prosecutors have no quotas and their performance is not evaluated based on the total amount of fines or fees they collect.

Generally, a Midvale City prosecutor will recommend as part of a plea in abeyance or as sentencing recommendation that the defendant pay the standard bail fine for a criminal violation. A prosecutor will not object to a defendant's request to a judge to convert some or all of the fine into community service. A prosecutor may recommend providing a credit against the fine or fee if a defendant takes an action to bring his or her behavior in compliance with the law.

If a defendant fails to pay a fine or fee, a Midvale City prosecutor may file an Order to Show cause. Upon a court's finding that a defendant has failed to pay a fine or fee as ordered, the prosecutor will generally submit to the judge's discretion to collect the fine or fee. It has been the experience of the Midvale City prosecutors that a judge will generally work with a defendant to create a reasonable payment plan to pay off the fine or fee. If a defendant continues to fail to pay his or her fine or fee, the judge generally orders the fine or fee to be sent to Utah State Debt Collection and closes the case.

12. Criminal and Civil Asset Forfeiture.

The Midvale City Attorney's Office does not have any policies about criminal and civil asset forfeiture. Under Utah Code Ann. § 24-4-102(1), the forfeiture of property requires that the "property has been used to facilitate the commission of a federal or state criminal offense[.]" Because the Midvale City Attorney's Office only prosecutes infractions and class C and B misdemeanors, these offenses do not generally involve substantial property to facilitate the commission of these offenses. Criminal and civil asset forfeiture is more common for crimes prosecuted by the Salt Lake County District Attorney's Office, the Utah Attorney General's Office, and the District of Utah United States Attorney's Office.

In the event that the Midvale City Attorney's Office is involved in a case involving criminal or civil asset forfeiture, the Midvale City Attorney's Office will comply with Utah's Forfeiture and Disposition of Property Act, Title 24 of the Utah Code Ann., as amended, and the *National Prosecution Standards*, Third Edition, written by the National District Attorneys Association.

13. Services Available to Victims of Crimes.

The Midvale City Attorney's Office complies with and champions Chapter 37 *Victims' Rights*, Chapter 38 *Rights of Crime Victims Act*, and Chapter 38a *Crime Victims Restitution Act* of Title 77 of Utah Code Ann. Upon a request of a victim or witness, a Midvale City prosecutor will in good faith:

- Inform a victim or witness as to the level of protection from intimidation and harm available to them;
- Inform a victim or witness about the victim's or witness's role in the criminal justice process;
- Clearly explain the relevant legal proceedings;
- Provide a secure waiting area that does not require close proximity to defendants or family or friends of defendants;
- Inform a victim of the procedure to seek restitution or reparations as provided by state law;
- Assist a victim or witness in having personal property returned expeditiously when it is no longer needed for court law enforcement or prosecution purposes;
- Intercede on behalf of a victim or witness with his or her employer if a conflict cannot be avoided between the victim's or witness's employment and his or her participation in the criminal justice process;
- Encourage speedy dispositions of the entire criminal justice process; and
- Timely notify a victim or witness of judicial proceedings or the cancellation of any proceedings.

In addition, upon a request of a victim, a Midvale City prosecutor will in good faith:

- Request a pretrial protective order in instances of domestic violence;
- Request a no-contact order in instances of violence, harassment, trespassing, or property destruction;

- Notify the court of a victim's desire to be present at criminal hearings;
- Notify the court of a victim's desire to be heard at sentencing;
- File a restitution request within the restitution window provided by the court; and
- Certify a victim's helpfulness on the Form I-918 Supplement B certification in accordance with Utah Code Ann. § 77-38-503.

Many of the law enforcement agencies that operate within Midvale's jurisdiction employ or have volunteer Victim Advocates. The Victim Advocates may perform some of the above functions on behalf of the Midvale City Attorney's Office. The Victim Advocates are a wealth of information and can assist victims in seeking safe shelter, applying for protective orders or restitution, and receiving other support.

14. Restorative Justice Programs.

Currently, the Midvale City Attorney's Office does not participate in any official restorative justice programs. However, a Midvale City prosecutor may seek community service in lieu of a fine, as required by statute, or, in unique cases, in addition to payment of a fine or restitution. A Midvale City prosecutor, upon request of a victim or the Utah Office for Victims of Crime, will file a request for restitution in a case.

15. 402 Reductions.

Utah Code Ann. § 76-4-402 allows a court to enter a judgment of conviction for a lower degree offense under certain circumstances. When the Midvale City Attorney's Office receives a request for a 402 reduction, it will seek to notify any victims and consider whether it will object or stipulate to the reduction.

When considering whether to object or stipulate to a reduction, a Midvale City prosecutor may consider the following factors:

- The severity of the offense;
- The impact of the offense on a victim;
- The amount of time that has passed since the offense;
- Whether the offense may be used to enhance further offenses;
- The defendant's criminal history since the offense;
- The defendant's efforts to complete restitution for the offense;

- The defendant's efforts to better his or her life;
- The impact of the defendant's convictions on employment, education, housing, or similar opportunities; and
- The public interest of retaining a conviction at the original level of severity.

When considering whether to object or stipulate to a reduction, a Midvale City prosecutor may not consider the following factors:

- Hostility or personal animus towards an accused;
- Characteristics of the accused that have been recognized as the basis for invidious bias or discrimination, insofar as those factors are not pertinent to the elements or motive of the crime; or
- The acts or behavior of the accused's attorney.

16. Expungements.

The Utah Expungement Act, Title 77, Chapter 40 of the Utah Code Ann., permits an individual to petition for the expungement of records of an individual's arrest, investigation, detention, and conviction under circumstances. Utah Code Ann. § 77-40-107 requires that the Midvale City Attorney's Office provide notice of an expungement request to the victim by first class mail. A prosecutor may object to an expungement within 35 days after receiving a petition for expungement.

The Midvale City Attorney's Office has developed consistent policies for evaluating and making expungement requests and does not leave complete discretion for expungement policy to individual prosecutors. An objection will generally be filed if:

- The case disposition could still be used to enhance later crimes;
- Less than five years have passed since the case was closed or dismissed as part of a plea in abeyance;
- There is a repeated pattern of offenses; or
- In instances of a driving under the influence, impaired driving, or domestic violence convictions, a lifetime tracking of convictions is helpful in appropriately prosecuting later violations.

When considering whether to object or stipulate to an expungement, a Midvale City prosecutor may consider the following factors:

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- The severity of the offense;
- The impact of the offense on a victim;
- The amount of time that has passed since the offense;
- Whether the offense may be used to enhance further offenses;
- The defendant's criminal history since the offense;
- The defendant's efforts to complete restitution for the offense;
- The defendant's efforts to better his or her life;
- The impact of the defendant's convictions on employment, education, housing, or similar opportunities; and
- The public interest in retaining a record of the defendant's case.

When considering whether to object or stipulate to an expungement, a Midvale City prosecutor may not consider the following factors:

- Hostility or personal animus towards an accused;
- Characteristics of the accused that have been recognized as the basis for invidious bias or discrimination, insofar as those factors are not pertinent to the elements or motive of the crime; or
- The acts or behavior of the accused's attorney.