LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: V. Ashby ₵
₵ 01-29-13 1:29 PM ₵

COUNTY ATTORNEY CHAPTER RECODIFICATION

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Derek E. Brown

LONG TITLE

General Description:

This bill enacts Powers and Duties of County and District Attorney.

Highlighted Provisions:

This bill:

- repeals Title 17, Chapter 18, County Attorney, and replaces it with Title 17, Chapter 18a, Powers and Duties of County and District Attorney, including:
  - enacting general provisions;
  - enacting provisions related to the duties of a county and district attorney;
  - enacting provisions regulating qualifications and term of office;
  - enacting provisions related to the duties of a public prosecutor;
  - enacting provisions related to the duties of civil counsel;
  - enacting provisions related to general duties and prohibited acts;
  - enacting provisions related to a prosecution district; and
  - enacting provisions related to ethical responsibilities; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

S.B. 145

AMENDS:

4-2-11, as last amended by Laws of Utah 1993, Chapter 38

17-16-1, as last amended by Laws of Utah 1999, Chapter 206

17-16-2.5, as enacted by Laws of Utah 1993, Chapter 38

19-5-115, as last amended by Laws of Utah 2012, Chapter 360

19-6-113, as last amended by Laws of Utah 2008, Chapter 3

20A-1-509.2, as enacted by Laws of Utah 1997, Chapter 139

35A-1-501, as last amended by Laws of Utah 1999, Chapter 132

39-1-50, as last amended by Laws of Utah 1993, Chapter 38

62A-3-309, as last amended by Laws of Utah 2008, Chapter 91

62A-4a-405, as last amended by Laws of Utah 2008, Chapter 299

65A-3-3, as last amended by Laws of Utah 2012, Chapter 361

67-5-1, as last amended by Laws of Utah 2011, Chapter 342

77-22a-1, as last amended by Laws of Utah 1993, Chapter 38

77-22b-1, as enacted by Laws of Utah 1997, Chapter 296

77-23a-10, as last amended by Laws of Utah 2010, Chapter 324

78A-6-602, as last amended by Laws of Utah 2010, Chapter 38

78A-6-1002, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

17-18a-101, Utah Code Annotated 1953

17-18a-102, Utah Code Annotated 1953

17-18a-201, Utah Code Annotated 1953

17-18a-202, Utah Code Annotated 1953

17-18a-203, Utah Code Annotated 1953

17-18a-204, Utah Code Annotated 1953

17-18a-301, Utah Code Annotated 1953

17-18a-302, Utah Code Annotated 1953

17-18a-401, Utah Code Annotated 1953

17-18a-402, Utah Code Annotated 1953

17-18a-403, Utah Code Annotated 1953

17-18a-404, Utah Code Annotated 1953

17-18a-405, Utah Code Annotated 1953
17-18a-501, Utah Code Annotated 1953
17-18a-502, Utah Code Annotated 1953
17-18a-503, Utah Code Annotated 1953
17-18a-504, Utah Code Annotated 1953
17-18a-505, Utah Code Annotated 1953
17-18a-601, Utah Code Annotated 1953
17-18a-602, Utah Code Annotated 1953
17-18a-603, Utah Code Annotated 1953
17-18a-604, Utah Code Annotated 1953
17-18a-605, Utah Code Annotated 1953
17-18a-701, Utah Code Annotated 1953
17-18a-702, Utah Code Annotated 1953
17-18a-703, Utah Code Annotated 1953
17-18a-801, Utah Code Annotated 1953
17-18a-802, Utah Code Annotated 1953
17-18a-803, Utah Code Annotated 1953

REPEALS:

17-18-1, as last amended by Laws of Utah 2002, Chapter 130
17-18-1.5, as last amended by Laws of Utah 2002, Chapter 130
17-18-1.6, as last amended by Laws of Utah 2011, Chapter 154
17-18-1.7, as last amended by Laws of Utah 2002, Chapter 130
17-18-1.9, as last amended by Laws of Utah 2011, Chapter 297
17-18-2, as last amended by Laws of Utah 2002, Chapter 185
17-18-4, as enacted by Laws of Utah 1957, Chapter 34
17-18-5, as last amended by Laws of Utah 1997, Chapter 139

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **4-2-11** is amended to read:

4-2-11. Attorney general legal advisor for department -- County or district attorney may bring action upon request of department for violations of title.

(1) The attorney general is the legal advisor for the department and shall defend the department and its representatives in all actions and proceedings brought against it.

(2) The county attorney or the district attorney as provided under Sections [~~17-18-1, 17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203 of the county in which a cause of action arises or a public offense occurs may bring civil or criminal action, upon request of the department, to enforce the laws, standards, orders, and rules of the department or to prosecute violations of this title. If the county attorney or district attorney fails to act, the department may request the attorney general to bring an action on behalf of the department.

Section 2. Section **17-16-1** is amended to read:

17-16-1. Eligibility and residency requirements for county, district, precinct, or prosecution district office.

(1) A person filing a declaration of candidacy for a county, district, precinct, or prosecution district office shall:

(a) be a United States citizen;

(b) except as provided in [~~Subsection 17-18-5(1)(d)(ii)~~] Section 20A-1-509.2 with respect to the office of county attorney or district attorney, as of the date of the election, have been a resident for at least one year of the county, district, precinct, or prosecution district in which the person seeks office [~~for at least one year~~]; and

(c) be a registered voter in the county, district, precinct, or prosecution district in which the person seeks office.

(2) (a) A county, district, precinct, or prosecution district officer shall maintain residency within the county, district, precinct, or prosecution district in which [~~he~~] the officer was elected during [~~his~~] the officer's term of office.

(b) If a county, district, precinct, or prosecution district officer establishes [~~his~~] the officer's principal place of residence as provided in Section 20A-2-105 outside the county, district, precinct, or prosecution district in which [~~he~~] the officer was elected, the office is automatically vacant.

Section 3. Section **17-16-2.5** is amended to read:

17-16-2.5. Creation of Office of District Attorney.

For each prosecution district created [~~pursuant to Section 17-18-1.9~~] in accordance with Chapter 18a, Part 7, Prosecution District, there is created the Office of District Attorney.

Section 4. Section **17-18a-101** is enacted to read:

CHAPTER 18a. POWERS AND DUTIES OF COUNTY AND DISTRICT ATTORNEY

Part 1. General Provisions

17-18a-101. Title.

This chapter is known as "Powers and Duties of County and District Attorney."

Section 5. Section **17-18a-102** is enacted to read:

17-18a-102. Definitions.

(1) "Attorney" means a county attorney described in Section 17-18a-301 or a district attorney described in Section 17-18a-301.

(2) "Prosecution district" means a district created under Part 7, Prosecution District.

Section 6. Section **17-18a-201** is enacted to read:

Part 2. Duties

17-18a-201. County and district attorney duties.

The duties, functions, and responsibilities of a county attorney or district attorney, acting as a public prosecutor or as civil counsel, are as provided in this chapter.

Section 7. Section **17-18a-202** is enacted to read:

17-18a-202. County attorney powers and functions.

(1) Except within a county that is located in a prosecution district, the county attorney:

(a) is a public prosecutor for the county; and

(b) shall perform each public prosecutor and civil counsel duty in accordance with this chapter or as otherwise required by law.

(2) In a county that is located within a prosecution district, the county attorney:

(a) is the civil counsel for the county; and

(b) shall perform each civil counsel duty in the county or prosecution district in accordance with this chapter or as otherwise required by law.

Section 8. Section **17-18a-203** is enacted to read:

17-18a-203. District attorney powers and functions.

In a county that is located within a prosecution district, the district attorney:

(1) is a public prosecutor for the county; and

(2) shall perform each public prosecutor duty in accordance with this chapter or as otherwise required by law.

Section 9. Section **17-18a-204** is enacted to read:

17-18a-204. Consolidated office.

Within a prosecution district, the duties and responsibilities of the district attorney and county attorney may be consolidated into one office as provided in Section 17-16-3.

Section 10. Section **17-18a-301** is enacted to read:

Part 3. Qualifications and Term

17-18a-301. County officers.

(1) The county attorney is an elected officer as described in Section 17-53-101.

(2) (a) If the boundaries of a prosecution district are located entirely within one county, the district attorney of the prosecution district is an elected officer of that county.

(b) If the boundaries of a prosecution district include more than one county, the interlocal agreement that creates that prosecution district in accordance with Section 17-18a-602 may designate the district attorney as an elected officer in one or more of the counties in which the prosecution district is located.

(3) The district attorney:

(a) is a full-time employee of the prosecution district; and

(b) may not engage in the private practice of law.

(4) A county attorney may:

(a) serve as a part-time employee; and

(b) engage in the private practice of law, subject to Section 17-18a-605 and the Rules of Professional Conduct.

Section 11. Section **17-18a-302** is enacted to read:

17-18a-302. Qualifications.

(1) A person filing a declaration of candidacy for the office of county or district attorney shall be:

(a) a United States citizen;

(b) an attorney licensed to practice law in the state;

(c) an active member of the Utah State Bar in good standing;

(d) except as provided in Subsection (2), a registered voter in the county or prosecution district in which the attorney is elected to office; and

(e) except as provided in Subsection (2), as of the date of election, a resident for at

least one year of the county or prosecution district in which the person seeks office.

(2) A person appointed to the office of county or district attorney in accordance with Section 20A-1-509.2 shall be:

(a) a United States citizen;

(b) an attorney licensed to practice law in the state; and

(c) an active member of the Utah State Bar in good standing.

Section 12. Section **17-18a-401** is enacted to read:

Part 4. Public Prosecutor Duties

17-18a-401. Public prosecutor powers and duties.

An attorney who serves as a public prosecutor shall:

(1) except for a prosecution undertaken by a city attorney under Section 10-3-928, conduct, on behalf of the state, all prosecutions for a public offense committed within a county or prosecution district;

(2) conduct, on behalf of the county, all prosecutions for a public offense in violation of a county criminal ordinance; and

(3) perform all other duties and responsibilities as required by law.

Section 13. Section **17-18a-402** is enacted to read:

17-18a-402. Pretrial responsibilities.

(1) (a) A public prosecutor shall:

(i) institute proceedings before the proper court:

(A) for the arrest of a person charged with a public offense; or

(B) if the prosecutor has probable cause to believe that a public offense has been committed and a grand jury has been convened by a court;

(ii) draw all indictments and information for offenses against:

(A) the laws of the state occurring within the county; and

(B) the criminal ordinances of the county;

(iii) cause all persons under indictment or informed against to be speedily arraigned for crimes charged; and

(iv) issue subpoenas for all witnesses for the state or for the county in the prosecution of a criminal ordinance.

(b) A public prosecutor described in Subsection (1)(a)(i)(B) shall:

(i) assist and attend the deliberations of the grand jury; and

(ii) prepare all necessary indictments and arrange for the subpoena of witnesses to appear before the grand jury.

(2) The public prosecutor may:

(a) examine as to the sufficiency of an appearance bond that may be tendered to the court; and

(b) upon a court order:

(i) institute proceedings for the recovery upon forfeiture of a bond running to the state or county; and

(ii) enforce the collection of a bond described in Subsection (2)(b)(i).

(3) The public prosecutor is authorized to grant transactional immunity to a witness for violation of a state statute or county criminal ordinance.

Section 14. Section **17-18a-403** is enacted to read:

17-18a-403. Appeal.

(1) A public prosecutor shall assist and cooperate, as required by the attorney general, in a case that may be appealed to the Court of Appeals or Utah Supreme Court regarding a criminal violation of state statute.

(2) A public prosecutor shall appear and prosecute all appeals, in the appropriate court, for a crime charged as a misdemeanor in district court or as a violation of a county criminal ordinance.

Section 15. Section **17-18a-404** is enacted to read:

17-18a-404. Juvenile proceedings.

For a proceeding involving a charge of juvenile delinquency, a public prosecutor shall appear and prosecute for the state in the juvenile court of the county.

Section 16. Section **17-18a-405** is enacted to read:

17-18a-405. Civil responsibilities of public prosecutors.

A public prosecutor may act as legal counsel to the state, county, government agency, or government entity regarding the following matters of civil law:

(1) bail bond forfeiture actions;

(2) actions for the forfeiture of property or contraband, as provided in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act;

(3) civil actions incidental to or appropriate to supplement a public prosecutor's duties, including an injunction, a habeas corpus, a declaratory action, or an extraordinary writ action, in which the interests of the state may be affected; and

(4) any other civil duties related to criminal prosecution that are otherwise provided by statute.

Section 17. Section **17-18a-501** is enacted to read:

Part 5. Counsel for Civil Actions

17-18a-501. Duties as civil counsel.

The attorney shall:

(1) appear in, prosecute, and defend each civil action in which the county is a party;

(2) prosecute, either directly or through a private contract for debt collection, each action for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

(3) prosecute each appeal regarding a civil counsel's duties or functions in which the county is a party;

(4) act as the civil legal advisor to the county; and

(5) attend the meetings and hearings of the county legislative body as necessary.

Section 18. Section **17-18a-502** is enacted to read:

17-18a-502. Civil violation of county ordinance.

The civil counsel shall enforce and prosecute, in the appropriate court, civil violations of a county ordinance.

Section 19. Section **17-18a-503** is enacted to read:

17-18a-503. Legal opinions.

The civil counsel shall prepare a legal opinion in writing to a county officer on matters relating to the duties of the respective officer's office.

Section 20. Section **17-18a-504** is enacted to read:

17-18a-504. Review and approve as to form.

The civil counsel shall review and approve as to form and legality each county contract, ordinance, regulation, real estate document, conveyance, and legal document.

Section 21. Section **17-18a-505** is enacted to read:

17-18a-505. Escheats to the state.

The civil counsel shall:

(1) assist in determining what estate or property located within the county escheates or reverts to the state; and

(2) provide assistance to the county assessor and the state auditor in discovering and recovering an escheat.

Section 22. Section **17-18a-601** is enacted to read:

Part 6. General Duties and Prohibitions

17-18a-601. Assistance to the attorney general.

(1) (a) The attorney shall appear and assist the attorney general in criminal and civil legal matters involving the state if:

(i) except as provided in Subsection (1)(b), the attorney general requests assistance; or

(ii) the attorney is required by law to provide assistance.

(b) The attorney is not required to provide, if requested, the attorney general assistance if the attorney's assistance would:

(i) interfere with the attorney's duties and responsibilities to the county; or

(ii) create a conflict of interest.

(c) The attorney shall cooperate with the attorney general in an investigation, including an investigation described in Section 67-5-18.

(2) The attorney general shall assist the attorney with a criminal prosecution if a court:

(a) finds that the attorney is unable to satisfactorily and adequately perform the duties of prosecuting a criminal case; and

(b) recommends that the attorney seek additional legal assistance.

Section 23. Section **17-18a-602** is enacted to read:

17-18a-602. Deputy attorneys.

(1) The attorney may employ a deputy attorney to perform the duties of public prosecutor or civil counsel.

(2) (a) Subject to the approval of the county attorney, the district attorney may cross deputize a county deputy attorney as a deputy district attorney.

(b) Subject to the approval of the district attorney, the county attorney may cross deputize a deputy district attorney as a deputy county attorney.

(3) The county attorney may specially deputize, for a limited time or limited purpose, an attorney licensed to practice law in the state and in good standing with the Utah State Bar as

a deputy to assist in any public prosecutor or civil counsel duties specified in the special deputization.

Section 24. Section **17-18a-603** is enacted to read:

17-18a-603. Legislative functions.

The attorney:

(1) may review a state statute;

(2) shall review each county ordinance;

(3) shall call to the attention of the state Legislature or the county legislative body any defect in the operation of the law; and

(4) shall suggest and assist in presenting an amendment to correct the defect.

Section 25. Section **17-18a-604** is enacted to read:

17-18a-604. Other duties.

The attorney shall perform each duty and responsibility of public prosecutor and civil counsel as provided by statute or ordinance.

Section 26. Section **17-18a-605** is enacted to read:

17-18a-605. Prohibited acts.

(1) Within the state, the attorney may not consult with or otherwise represent a person charged with a crime, misdemeanor, or breach of a criminal statute or ordinance.

(2) A public prosecutor may not prosecute or dismiss in the name of the state a case in which the public prosecutor has previously acted as legal counsel for the accused.

(3) A public prosecutor may not:

(a) compromise a prosecution; or

(b) enter a plea of nolle prosequi after the filing of an indictment or information without the consent of the court.

Section 27. Section **17-18a-701** is enacted to read:

Part 7. Prosecution District

17-18a-701. Creation of a prosecution district.

A county legislative body may, by ordinance, create a countywide prosecution district.

Section 28. Section **17-18a-702** is enacted to read:

17-18a-702. Multicounty prosecution district.

(1) (a) Subject to Subsection (2), two or more counties, whether or not contiguous, may

enter into an agreement in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, to create and maintain a prosecution district.

(b) A prosecution district described in Subsection (1)(a) shall include all of the area within the boundaries of each county party to the agreement.

(2) A county may not enter into an agreement to create a multicounty prosecution district unless each county entering into the agreement is located within a single judicial district, as described in Section 78A-1-102, with the other party counties.

Section 29. Section **17-18a-703** is enacted to read:

17-18a-703. Dissolution of prosecution district.

(1) A county legislative body of a prosecution district described in Section 17-18a-701, or the legislative bodies of multiple counties within a multicounty prosecution district described in Section 17-18a-702, may not dissolve the prosecution district or multicounty prosecution district, respectively, during the term of office of an elected or appointed district attorney.

(2) Each county legislative body shall ensure that an ordinance dissolving a prosecution district within a single county or an interlocal agreement dissolving a prosecution district within multiple counties:

(a) is enacted before February 1 of the year in which the regular general election, as defined in Section 20A-1-102, is held to elect an attorney; and

(b) takes effect on the first Monday in January after the year in which the attorney is elected.

Section 30. Section **17-18a-801** is enacted to read:

Part 8. Ethical Responsibilities

17-18a-801. Public prosecutor's ethical duties.

An attorney exercising public prosecutor duties under this chapter:

(1) is a lawyer representing an organization as a client under the Rules of Professional Conduct, Rule 1.13;

(2) represents the state as an organizational client;

(3) is considered the representative of the state; and

(4) is empowered to make commitments for and decisions on behalf of the state.

Section 31. Section **17-18a-802** is enacted to read:

17-18a-802. Representation by civil counsel -- County is client.

(1) (a) An attorney acting as civil counsel under this chapter represents an organization as a client in accordance with Rules of Professional Conduct, Rule 1.13.

(b) The county is the client organization described in Subsection (1)(a).

(2) The attorney:

(a) does not represent a county commission, county agency, county board, county council, county officer, or county employee;

(b) counsels with the county regarding civil matters; and

(c) receives direction from the county through the county elected officers in accordance with the officers' duties and powers in accordance with law.

Section 32. Section **17-18a-803** is enacted to read:

17-18a-803. License suspended -- Vacancy.

If the attorney is suspended or disbarred from the practice of law in the state, the attorney's office is vacant immediately upon suspension or disbarment.

Section 33. Section **19-5-115** is amended to read:

19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and rules of political subdivisions.

(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed $10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding $25,000 per day who, with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed $50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding $10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it; or

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.

(5) (a) As used in this section:

(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than $250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

(ii) knows at that time that [~~he~~] the person is placing another person in imminent danger of death or serious bodily injury.

(c) If a person is an organization, it shall, upon conviction of violating Subsection (5)(b), be subject to a fine of not more than $1,000,000.

(d) (i) A defendant who is an individual is considered to have acted knowingly if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset [~~which~~] that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The director may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and the director and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under [~~Sections 17-18-1, 17-18-1.5, and 17-18-1.7~~] Section 17-18a-202 or 17-18a-203 in the county in which a cause of

action arises, shall bring any action, civil or criminal, requested by the director, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the director issued under this chapter.

(c) The director may initiate any action under this section and be represented by the attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the director may initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 34. Section **19-6-113** is amended to read:

19-6-113. Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

(2) Any person who violates any order, plan, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than $13,000 per day for each day of violation.

(3) On or after July 1, 1990, no person shall knowingly:

(a) transport or cause to be transported any hazardous waste identified or listed under this part to a facility that does not have a hazardous waste operation plan or permit under this part or RCRA;

(b) treat, store, or dispose of any hazardous waste identified or listed under this part:

(i) without having obtained a hazardous waste operation plan or permit as required by

this part or RCRA;

(ii) in knowing violation of any material condition or requirement of a hazardous waste operation plan or permit; or

(iii) in knowing violation of any material condition or requirement of any rules or regulations under this part or RCRA;

(c) omit material information or make any false material statement or representation in any application, label, manifest, record, report, permit, operation plan, or other document filed, maintained, or used for purposes of compliance with this part or RCRA or any rules or regulations made under this part or RCRA; and

(d) transport or cause to be transported without a manifest[~~,~~] any hazardous waste identified or listed under this part and required by rules or regulations made under this part or RCRA to be accompanied by a manifest.

(4) (a) (i) Any person who knowingly violates any provision of Subsection (3)(a) or (b) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony under Subsection (3)(a) or (b) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed five years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(a) or (b), the maximum punishment is double both the fine and the term of imprisonment authorized in Subsection (4)(a)(ii).

(b) (i) Any person who knowingly violates any of the provisions of Subsection (3)(c) or (d) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony for a violation of Subsection (3)(c) or (d) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed two years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(c) or (d), the maximum punishment is double both the fine and the imprisonment authorized in Subsection (4)(b)(ii).

(c) (i) Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this part in violation of Subsection (3)(a), (b), (c), or (d), who knows at that time that [~~he~~] the person thereby places another person in imminent

danger of death or serious bodily injury, is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony described in Subsection (4)(c)(i) is subject to a fine of not more than $250,000, or imprisonment for a term not to exceed 15 years, or both.

(iii) A corporation, association, partnership, or governmental instrumentality, upon conviction of violating Subsection (4)(c)(i), is subject to a fine of not more than $1,000,000.

(5) (a) Except as provided in Subsections (5)(b) and (c) and Section 19-6-722, all penalties assessed and collected under authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for qualifying extraordinary expenses incurred in qualifying environmental enforcement activities.

(c) Notwithstanding the provisions of Section 78A-5-110, the department may reimburse itself and local governments from money collected from criminal fines for qualifying extraordinary expenses incurred in prosecutions for violations of this part.

(d) The department shall regulate reimbursements by making rules that define:

(i) qualifying environmental enforcement activities; and

(ii) qualifying extraordinary expenses.

(6) Prosecution for criminal violations of this part may be commenced by the attorney general, the county attorney, or the district attorney as appropriate under Section [~~17-18-1 or 17-18-1.7~~] 17-18a-202 or 17-18a-203 in any county where venue is proper.

Section 35. Section **20A-1-509.2** is amended to read:

20A-1-509.2. Procedure for filling vacancy in county or district with fewer than 15 attorneys.

(1) When a vacancy occurs in the office of county or district attorney, including a vacancy created by the failure of a person to file as a candidate for the office of county or district attorney in an election, in a county or district having fewer than 15 attorneys who are licensed, active members in good standing with the Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.

(2) The county clerk shall send a letter to each attorney residing in the county or district who is a licensed, active member in good standing with the Utah State Bar and a registered

voter that:

(a) informs the attorney of the vacancy;

(b) invites the attorney to apply for the vacancy; and

(c) informs the attorney that if the attorney has not responded within 10 calendar days from the date that the letter was mailed, [~~his~~] the attorney's candidacy to fill the vacancy will not be considered.

(3) (a) (i) If, after 10 calendar days from the date the letter was mailed, more than three attorneys who are licensed, active members in good standing with the Utah State Bar and registered voters in the county or district have applied for the vacancy, the county clerk shall, except as provided in Subsection (3)(a)(ii), submit the applications to the county central committee of the same political party of the prior officeholder.

(ii) In multicounty prosecution districts, the clerk shall submit the applications to the county central committee of each county within the prosecution district.

(b) The central committee shall nominate three of the applicants and forward [~~their~~] the applicants' names to the county legislative body within 20 days after the date the county clerk submitted the applicants' names.

(c) The county legislative body shall appoint one of the nominees to fill the vacant position.

(d) If the central committee of the political party fails to submit at least three names to the county legislative body within 20 days after the date the county clerk submitted the applicants' names, the county legislative body shall appoint one of the applicants to fill the vacant position.

(e) If the county legislative body fails to appoint a person to fill the vacancy within 120 days after the vacancy occurs, the county clerk shall mail to the governor:

(i) a letter informing [~~him~~] the governor that the county legislative body has failed to appoint a person to fill the vacancy; and

(ii) (A) the list of nominees, if any, submitted by the central committee of the political party; or

(B) if the party central committee has not submitted a list of at least three nominees within the required time, the names of the persons who submitted applications for the vacant position to the county clerk.

(f) The governor shall appoint, within 30 days after receipt of the letter, a person from the list to fill the vacancy [~~from the list within 30 days after receipt of the letter~~].

(4) (a) If, after 10 calendar days from the date the letter was mailed, three or fewer attorneys who are licensed, active members in good standing with the Utah State Bar and registered voters in the county or district have applied for the vacancy, the county legislative body may:

(i) appoint one of them to be county or district attorney; or

(ii) solicit additional applicants and appoint a county or district attorney as provided in Subsection (4)(b).

(b) (i) If three or fewer attorneys who are licensed members in good standing of the Utah State Bar and registered voters in the county or district submit applications, the county legislative body may publicly solicit and accept additional applications for the position from licensed, active members in good standing of the Utah State Bar who are not residents of the county or prosecution district.

(ii) The county legislative body shall consider the applications submitted by the attorneys who are residents of and registered voters in the county or prosecution district and the applications submitted by the attorneys who are not residents of the county or prosecution district and shall appoint one of the applicants to be county attorney or district attorney.

(c) If the legislative body fails to appoint a person to fill the vacancy within 120 days after the vacancy occurs, the county clerk shall:

(i) notify the governor that the legislative body has failed to fill the vacancy within the required time period; and

(ii) provide the governor with a list of all the applicants.

(d) The governor shall appoint a person to fill the vacancy within 30 days after [~~he~~] the governor receives the notification.

(5) The person appointed to fill the vacancy shall serve for the unexpired term of the person who created the vacancy.

Section 36. Section **35A-1-501** is amended to read:

35A-1-501. Legal representation of department.

At the request of the department, it is the duty of the county attorney or district attorney, as appropriate under Sections [~~17-18-1, 17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203,

and the attorney general to represent the department in any legal action taken under this part, Chapter 3, Employment Support Act, or under Title 76, Chapter 8, Part 12, Public Assistance Fraud.

Section 37. Section **39-1-50** is amended to read:

39-1-50. Military court -- Concurrent prosecutorial jurisdiction with county or district attorney.

(1) The county attorney or district attorney, as appropriate under Sections [~~17-18-1 and 17-18-1.7~~] 17-18a-202 and 17-18a-203, of the county where an offense under the Utah Code of Military Justice is committed has concurrent jurisdiction with the Utah Military Court to prosecute the accused person at the expense of the county.

(2) Charges regarding the offense may not be filed in a military court until the appropriate county attorney or district attorney has reviewed and declined to prosecute the offense.

Section 38. Section **62A-3-309** is amended to read:

62A-3-309. Enforcement by division -- Duty of county or district attorney.

(1) It is the duty of the county or district attorney, as appropriate under Sections [~~17-18-1, 17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203, to:

(a) assist and represent the division;

(b) initiate legal proceedings to protect vulnerable adults; and

(c) take appropriate action to prosecute the alleged offenders.

(2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:

(a) the division may request the attorney general to act; and

(b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

Section 39. Section **62A-4a-405** is amended to read:

62A-4a-405. Death of child -- Reporting requirements.

(1) Any person who has reason to believe that a child has died as a result of abuse or neglect shall report that fact to:

(a) the local law enforcement agency, who shall report to the county attorney or district attorney as provided under Section [~~17-18-1 or 17-18-1.7~~] 17-18a-202 or 17-18a-203; and

(b) the appropriate medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act.

(2) After receiving a report described in Subsection (1), the medical examiner shall investigate and report the medical examiner's findings to:

(a) the police;

(b) the appropriate county attorney or district attorney;

(c) the attorney general's office;

(d) the division; and

(e) if the institution making the report is a hospital, to that hospital.

Section 40. Section **65A-3-3** is amended to read:

65A-3-3. Enforcement of laws -- County attorney or district attorney to prosecute.

(1) It is the duty of the division, county sheriffs, their deputies, peace officers, and other law enforcement officers within [~~their~~] the law enforcement jurisdiction to enforce the provisions of this chapter and to investigate and gather evidence that may indicate a violation under this chapter.

(2) The county attorney or district attorney, as appropriate under Sections [~~17-18-1, 17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203, shall:

(a) prosecute any criminal violations of this chapter; and

(b) initiate a civil action to recover suppression costs incurred by the county or state for suppression of fire on private land.

Section 41. Section **67-5-1** is amended to read:

67-5-1. General duties.

The attorney general shall:

(1) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

(2) except as provided in Sections 10-3-928 and [~~17-18-1~~] 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state[~~,~~] or any officer, board, or commission of the state in an official capacity is a party[~~;~~], and take charge, as attorney, of all civil legal matters in which the state is interested;

(3) after judgment on any cause referred to in Subsection (2), direct the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;

(5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued [~~whether~~] if satisfied, and if not satisfied, documentation of the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, [~~of~~] the reason [~~of~~] for the delay or prevention; and

(c) deliver this information to the attorney general's successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give the attorney general's opinion in writing and without fee to the Legislature or either house[~~,~~] and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of his duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and

pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in [~~his~~] the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States[~~,~~] to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4, Constitutional Defense Council;

(17) pursue any appropriate legal action to implement the state’s public lands policy established in Subsection 63C-4-105(1);

(18) investigate and prosecute violations of all applicable state laws relating to fraud in connection with the state Medicaid program and any other medical assistance program administered by the state, including violations of Title 26, Chapter 20, Utah False Claims Act;

(19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients

at:

(a) health care facilities that receive payments under the state Medicaid program; and

(b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C. Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility; and

(20) (a) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(i) cost the state more than $500,000; or

(ii) require the state to take legally binding action that would cost more than $500,000 to implement; and

(b) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report.

Section 42. Section **77-22a-1** is amended to read:

77-22a-1. Administrative subpoenas -- Controlled substances investigations -- Procedures -- Witness fees.

(1) (a) The administrative subpoena process of this chapter may be used only to obtain third party information under circumstances where it is clear that the subpoenaed information is not subject to a claim of protection under the Fourth, Fifth, or Sixth Amendment, United States Constitution, or a similar claim under Article I, Sec. 12 and Sec. 14, Utah Constitution.

(b) A party subpoenaed under this chapter shall be advised by the subpoena that [~~he~~] the party has a right to challenge the subpoena by motion to quash filed in the appropriate district court named in the subpoena before compliance is required.

(2) (a) In any investigation relating to [~~his~~] an attorney's functions under this chapter regarding controlled substances, the attorney general or a deputy or assistant attorney general the county attorney or a deputy county attorney, or the district attorney or deputy district attorney may subpoena witnesses, compel the attendance and testimony of witnesses, or require the production of any records including books, papers, documents, and other tangible things that constitute or contain evidence found by the attorney general or a deputy or assistant attorney general or the county attorney or district attorney, as provided under Sections [~~17-18-1 and 17-18-1.7 or his deputy~~] 17-18a-202 and 17-18a-203, or the county attorney's or district attorney's deputy under Section 17-18a-602, to be relevant or material to the investigation.

(b) The attendance of witnesses or the production of records may be required from any

place within the state.

(3) Witnesses subpoenaed under this section shall be paid the same fees and mileage costs as witnesses in the state district courts.

(4) If the attorney general [~~or~~], a deputy or assistant attorney general, or the county attorney or district attorney, or [~~his~~] a deputy [~~determine~~] attorney determines that disclosure of the existence of an administrative subpoena or of the information sought or of the existence of the investigation under which it is issued would pose a threat of harm to a person or otherwise impede the investigation, the subpoena shall contain language on its face directing that the witness not disclose to any person the existence or service of the subpoena, the information being sought, or the existence of an investigation.

Section 43. Section **77-22b-1** is amended to read:

77-22b-1. Immunity granted to witness.

(1) (a) A witness who refuses, or is likely to refuse, on the basis of [~~his~~] the witness's privilege against self-incrimination to testify or provide evidence or information in a criminal investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of an investigation or inquiry being conducted by a government agency or commission, or by either house of the Legislature, a joint committee of the two houses, or a committee or subcommittee of either house, may be compelled to testify or provide evidence or information by any of the following, after being granted use immunity with regards to the compelled testimony or production of evidence or information:

(i) the attorney general or any assistant attorney general authorized by the attorney general;

(ii) a district attorney or any deputy district attorney authorized by a district attorney;

(iii) in a county not within a prosecution district, a county attorney or any deputy county attorney authorized by a county attorney;

(iv) a special counsel for the grand jury;

(v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec. 16; or

(vi) legislative general counsel in the case of testimony pursuant to subpoena before the Legislature or any committee of the Legislature having subpoena powers.

(b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to

testify or provide evidence or information under a grant of use immunity, the prosecutor shall notify the witness by written notice. The notice shall include the information contained in Subsection (2) and advise the witness that [~~he~~] the witness may not refuse to testify or provide evidence or information on the basis of [~~his~~] the witness's privilege against self-incrimination. The notice need not be in writing when the grant of use immunity occurs on the record in the course of a preliminary hearing, grand jury proceeding, or trial.

(2) Testimony, evidence, or information compelled under Subsection (1) may not be used against the witness in any criminal or quasi-criminal case, nor any information directly or indirectly derived from this testimony, evidence, or information, unless the testimony, evidence, or information is volunteered by the witness or is otherwise not responsive to a question. Immunity does not extend to prosecution or punishment for perjury or to giving a false statement in connection with any testimony.

(3) If a witness is granted immunity under Subsection (1)[~~,~~] and is later prosecuted for an offense that was part of the transaction or events about which the witness was compelled to testify or produce evidence or information under a grant of immunity, the burden is on the prosecution to show by a preponderance of the evidence that no use or derivative use was made of the compelled testimony, evidence, or information in the subsequent case against the witness, and to show that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information. The remedy for not establishing that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information is suppression of that evidence only.

(4) Nothing in this section prohibits or limits prosecutorial authority granted in Section 77-22-4.5.

(5) A county attorney within a prosecution district shall have the authority to grant immunity only as provided in [~~Section 17-18-1.5~~] Subsection 17-18a-402(3).

(6) For purposes of this section, "quasi-criminal" means only those proceedings that are determined by a court to be so far criminal in their nature that a defendant has a constitutional right [~~to not incriminate himself~~] against self-incrimination.

Section 44. Section **77-23a-10** is amended to read:

77-23a-10. Application for order -- Authority of order -- Emergency action -- Application -- Entry -- Conditions -- Extensions -- Recordings -- Admissibility or

suppression -- Appeal by state.

(1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing, upon oath or affirmation to a judge of competent jurisdiction, and shall state the applicant's authority to make the application. Each application shall include:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant to justify [~~his~~] the applicant's belief that an order should be issued, including:

(i) details regarding the particular offense that has been, is being, or is about to be committed;

(ii) except as provided in Subsection (12), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communication sought to be intercepted; and

(iv) the identity of the person, if known, committing the offense and whose communication is to be intercepted;

(c) a full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained, and if the investigation is of a nature that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and the individual making the application, made to any judge for authorization to intercept, or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each application;

(f) when the application is for the extension of an order, a statement setting forth the results so far obtained from the interception, or a reasonable explanation of the failure to obtain

results; and

(g) additional testimony or documentary evidence in support of the application as the judge may require.

(2) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications within the territorial jurisdiction of the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense under Section 77-23a-8;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or too dangerous; and

(d) except as provided in Subsection (12), there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by that person.

(3) Each order authorizing or approving the interception of any wire, electronic, or oral [~~communication~~] communications shall specify:

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) except as provided in Subsection (12), the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted[~~,~~] and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications[~~,~~] and of the persons authorizing the application; and

(e) the period of time during which the interception is authorized, including a statement as to whether the interception shall automatically terminate when the described [~~communication~~] communications has been first obtained.

(4) An order authorizing the interception of a wire, electronic, or oral [~~communication~~] communications shall, upon request of the applicant, direct that a provider of wire or electronic

communications service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communications service, landlord, custodian, or other person furnishing the facilities or technical assistance shall be compensated by the applicant for reasonable expenses involved in providing the facilities or systems.

(5) (a) An order entered under this chapter may not authorize or approve the interception of any wire, electronic, or oral [~~communication~~] communications for any period longer than is necessary to achieve the objective of the authorization, but in any event for no longer than 30 days. The 30-day period begins on the day the investigative or law enforcement officer first begins to conduct an interception under the order, or 10 days after the order is entered, whichever is earlier.

(b) Extensions of an order may be granted, but only upon application for an extension made under Subsection (1)[~~,~~] and if the court makes the findings required by Subsection (2). The period of extension may be no longer than the authorizing judge considers necessary to achieve the purposes for which it was granted, but in no event for longer than 30 days.

(c) Every order and extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event within 30 days.

(d) If the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, the minimizing of the interception may be accomplished as soon as practicable after the interception.

(e) An interception under this chapter may be conducted in whole or in part by government personnel or by an individual under contract with the government and acting under supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) When an order authorizing interception is entered under this chapter, the order may require reports to be made to the judge who issued the order, showing what progress has been

made toward achievement of the authorized objective and the need for continued interception. These reports shall be made at intervals the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer who is specially designated by either the attorney general[~~,~~] or a county attorney or district attorney, as provided under Sections [~~17-18-1 and 17-18-1.7~~] 17-18a-202 and 17-18a-203 may intercept wire, electronic, or oral [~~communication~~] communications if an application for an order approving the interception is made in accordance with this section and within 48 hours after the interception has occurred or begins to occur, when the investigative or law enforcement officer reasonably determines that:

(a) an emergency situation exists that involves:

(i) immediate danger of death or serious physical injury to any person;

(ii) conspiratorial activities threatening the national security interest; or

(iii) conspiratorial activities characteristic of organized crime, that require a wire, electronic, or oral [~~communication~~] communications to be intercepted before an order authorizing interception can, with diligence, be obtained; and

(b) there are grounds upon which an order could be entered under this chapter to authorize the interception.

(8) (a) In the absence of an order under Subsection (7), the interception immediately terminates when the communication sought is obtained or when the application for the order is denied, whichever is earlier.

(b) If the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic, or oral [~~communication~~] communications intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in Subsection (9)(d) on the person named in the application.

(9) (a) The contents of any wire, electronic, or oral [~~communication~~] communications intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral [~~communication~~] communications under this Subsection (9)(a) shall be done so as to protect the recording from editing or other alterations. Immediately upon the expiration of the period of an order[~~;~~] or extension, the recordings shall be made available to the judge issuing the order

and sealed under his directions. Custody of the recordings shall be where the judge orders. The recordings may not be destroyed, except upon an order of the issuing or denying judge. In any event, it shall be kept for 10 years. Duplicate recordings may be made for use or disclosure under Subsections 77-23a-9(1) and (2) for investigations. The presence of the seal provided by this Subsection (9)(a), or a satisfactory explanation for the absence of one, is a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral [~~communication~~] communications or evidence derived from it under Subsection 77-23a-9(3).

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and may not be destroyed, except on order of the issuing or denying judge. But in any event they shall be kept for 10 years.

(c) Any violation of any provision of this Subsection (9) may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time, but not later than 90 days after the filing of an application for an order of approval under Subsection 77-23a-10(7) that is denied or the termination of the period of an order or extensions, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and other parties to the intercepted communications as the judge determines in his discretion is in the interest of justice, an inventory, which shall include notice [~~of~~]:

(i) of the entry of the order or application;

(ii) of the date of the entry and the period of authorization, approved or disapproved interception, or the denial of the application; and

(iii) that during the period, wire, electronic, or oral communications were or were not intercepted.

(e) The judge, upon filing of a motion, may in [~~his~~] the judge's discretion, make available to the person or [~~his~~] the person's counsel for inspection the portions of the intercepted communications, applications, and orders the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this Subsection (9)(e) may be postponed.

(10) The contents of any intercepted wire, electronic, or oral [~~communication~~]

communications, or evidence derived from any of [~~them~~] these, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if [~~he~~] the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(11) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, the state, or a political subdivision may move to suppress the contents of any intercepted wire, electronic, or oral [~~communication~~] communications, or evidence derived from any of them, on the grounds that:

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

(b) The motion shall be made before the trial, hearing, or proceeding, unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral [~~communication~~] communications, or evidence derived from any of [~~them~~] these, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved person, may in [~~his~~] the judge's discretion make available to the aggrieved person or [~~his~~] the aggrieved person's counsel for inspection portions of the intercepted communication or evidence derived from [~~them~~] the intercepted communication as the judge determines to be in the interests of justice.

(c) In addition to any other right to appeal, the state or its political subdivision may appeal from an order granting a motion to suppress made under Subsection (11)(a), or the denial of an application for an order of approval, if the attorney bringing the appeal certifies to the judge or other official granting the motion or denying the application that the appeal is not

taken for the purposes of delay. The appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

(12) The requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) relating to the specification of the facilities from which, or the place where, the [~~communication is~~] wire, electronic, or oral communications are to be intercepted do not apply if:

(a) in the case of an applicant regarding the interception of [~~an~~] oral [~~communication~~] communications:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application contains a full and complete statement of why the specification is not practical, and identifies the person committing the offense and whose communications are to be intercepted; or

(iii) the judge finds that the specification is not practical; and

(b) in the case of an application regarding wire or electronic [~~communication~~] communications:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that the purpose has been adequately shown.

(13) (a) An interception of a communication under an order regarding which the requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) do not apply by reason of Subsection (12)[~~,~~] does not begin until the facilities from which, or the place where, the [~~communication is~~] communications are to be intercepted is ascertained by the person implementing the interception order.

(b) A provider of wire or electronic communications service that has received an order under Subsection (12)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable

fashion. The court, upon notice to the government, shall decide the motion expeditiously.

Section 45. Section **78A-6-602** is amended to read:

78A-6-602. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal referral -- Citation -- Failure to appear.

(1) A proceeding in a minor's case is commenced by petition, except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703.

(2) (a) A peace officer or any public official of the state, any county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. There shall be no requirement to file a formal referral with the juvenile court on an offense that would be a class B misdemeanor or less if committed by an adult.

(b) When the court is informed by a peace officer or other person that a minor is or appears to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to determine whether the interests of the public or of the minor require that further action be taken.

(c) (i) Based on the preliminary inquiry, the court may authorize the filing of or request that the county attorney or district attorney as provided under Sections [~~17-18-1 and 17-18-1.7~~] 17-18a-202 or 17-18a-203 file a petition.

(ii) In its discretion, the court may, through its probation department, enter into a written consent agreement with the minor and, if the minor is a child, the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and establish prima facie jurisdiction.

(iii) Efforts to effect a nonjudicial adjustment may not extend for a period of more than 90 days without leave of a judge of the court, who may extend the period for an additional 90 days.

(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

(i) payment of a financial penalty of not more than $250 to the juvenile court;

(ii) payment of victim restitution;

(iii) satisfactory completion of compensatory service;

(iv) referral to an appropriate provider for counseling or treatment;

(v) attendance at substance abuse programs or counseling programs;

(vi) compliance with specified restrictions on activities and associations; and

(vii) other reasonable actions that are in the interest of the child or minor and the community.

(e) Proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.

(f) A violation of Section 76-10-105 that is subject to the jurisdiction of the juvenile court shall include a minimum fine or penalty of $60 and participation in a court-approved tobacco education program, which may include a participation fee.

(3) Except as provided in Sections 78A-6-701 and 78A-6-702, in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

(4) (a) In cases of violations of wildlife laws, boating laws, class B and class C misdemeanors, other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the juvenile court, a petition is not required and the issuance of a citation as provided in Section 78A-6-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required unless requested by the court.

(b) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.

Section 46. Section **78A-6-1002** is amended to read:

78A-6-1002. Practice and procedure -- Jury trial.

(1) The county attorney or district attorney, as provided [~~under Sections 17-18-1 and 17-18-1.7~~] in Title 17, Chapter 18a, Powers and Duties of County and District Attorney, shall prosecute any case brought under this part.

(2) Proceedings under this part shall be governed by the statutes and rules governing criminal proceedings in the district court, except the court may, and on stipulation of the parties, shall, transfer the case to the district court.

Section 47. **Repealer.**

This bill repeals:

Section **17-18-1, Powers -- Duties of county attorney -- Prohibitions.**

Section **17-18-1.5, Powers -- Duties of county attorney within a prosecution district -- Prohibitions.**

Section **17-18-1.6, Election of district attorney.**

Section **17-18-1.7, Powers -- Duties of district attorney -- Prohibitions.**

Section **17-18-1.9, Creation of prosecution district by ordinance or interlocal agreement.**

Section **17-18-2, Legal adviser to commissioners.**

Section **17-18-4, Licensing requirement.**

Section **17-18-5, Requirements of office.**

Legislative Review Note
as of 1-15-13 8:53 AM

Office of Legislative Research and General Counsel