

PROSECUTION REVIEW AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill grants the attorney general authority to prosecute any first degree felony under certain conditions.

Highlighted Provisions:

This bill:

▶ adds a provision that authorizes the attorney general to prosecute any first degree felony that a district or county attorney declines or fails to prosecute.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-5-1, as last amended by Laws of Utah 2018, Chapters 200, 473, and 474

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

Section 1. 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



28 Section 67-5-17;

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

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

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

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

41 (a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to
42 judgment, a memorandum of the judgment and of any process issued if satisfied, and if not
43 satisfied, documentation of the return of the sheriff;

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

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

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

52 (a) require a district or county attorney of the state to, upon request, report on the status
53 of public business entrusted to the district or county attorney's charge; or

54 (b) review or prosecute any first degree felony if a district or county attorney:

55 (i) declines to prosecute the felony; or

56 (ii) fails to take prosecutorial action;

57 (7) give the attorney general's opinion in writing and without fee, when required, upon
58 any question of law relating to the office of the requester:

- 59 (a) in accordance with Section 67-5-1.1, to the Legislature or either house;
- 60 (b) to any state officer, board, or commission; and
- 61 (c) to any county attorney or district attorney;
- 62 (8) when required by the public service or directed by the governor, assist any county,
- 63 district, or city attorney in the discharge of county, district, or city attorney's duties;
- 64 (9) purchase in the name of the state, under the direction of the state Board of
- 65 Examiners, any property offered for sale under execution issued upon judgments in favor of or
- 66 for the use of the state, and enter satisfaction in whole or in part of the judgments as the
- 67 consideration of the purchases;
- 68 (10) when the property of a judgment debtor in any judgment mentioned in Subsection
- 69 (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance
- 70 taking precedence of the judgment in favor of the state, redeem the property, under the
- 71 direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and
- 72 pay all money necessary for the redemption, upon the order of the state Board of Examiners,
- 73 out of any money appropriated for these purposes;
- 74 (11) when in the attorney general's opinion it is necessary for the collection or
- 75 enforcement of any judgment, institute and prosecute on behalf of the state any action or
- 76 proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment
- 77 debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of
- 78 Examiners, out of any money not otherwise appropriated;
- 79 (12) discharge the duties of a member of all official boards of which the attorney
- 80 general is or may be made a member by the Utah Constitution or by the laws of the state, and
- 81 other duties prescribed by law;
- 82 (13) institute and prosecute proper proceedings in any court of the state or of the
- 83 United States to restrain and enjoin corporations organized under the laws of this or any other
- 84 state or territory from acting illegally or in excess of their corporate powers or contrary to
- 85 public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations,
- 86 and wind up their affairs;
- 87 (14) institute investigations for the recovery of all real or personal property that may
- 88 have escheated or should escheat to the state, and for that purpose, subpoena any persons
- 89 before any of the district courts to answer inquiries and render accounts concerning any

90 property, examine all books and papers of any corporations, and when any real or personal
91 property is discovered that should escheat to the state, institute suit in the district court of the
92 county where the property is situated for its recovery, and escheat that property to the state;

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

95 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a,
96 Constitutional and Federalism Defense Act;

97 (17) pursue any appropriate legal action to implement the state's public lands policy
98 established in Section 63C-4a-103;

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

102 (19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients
103 at:

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

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

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

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

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

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

114 (21) (a) submit a written report to the committees described in Subsection (21)(b) that
115 summarizes the status and progress of any lawsuits that challenge the constitutionality of state
116 law that were pending at the time the attorney general submitted the attorney general's last
117 report under this Subsection (21), including any:

118 (i) settlements reached;

119 (ii) consent decrees entered; or

120 (iii) judgments issued; and

- 121 (b) at least 30 days before the Legislature's May and November interim meetings,
122 submit the report described in Subsection (21)(a) to:
- 123 (i) the Legislative Management Committee;
 - 124 (ii) the Judiciary Interim Committee; and
 - 125 (iii) the Law Enforcement and Criminal Justice Interim Committee;
- 126 (22) if the attorney general operates the Office of the Attorney General or any portion
127 of the Office of the Attorney General as an internal service fund agency in accordance with
128 Section 67-5-4, submit to the rate committee established in Section 67-5-34:
- 129 (a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and
 - 130 (b) any other information or analysis requested by the rate committee;
- 131 (23) before the end of each calendar year, create an annual performance report for the
132 Office of the Attorney General and post the report on the attorney general's website;
- 133 (24) ensure that any training required under this chapter complies with Title 63G,
134 Chapter 22, State Training and Certification Requirements; and
- 135 (25) notify the legislative general counsel in writing within three business days after
136 the day on which the attorney general is officially notified of a claim, regardless of whether the
137 claim is filed in state or federal court, that challenges:
- 138 (a) the constitutionality of a state statute;
 - 139 (b) the validity of legislation; or
 - 140 (c) any action of the Legislature.