

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."

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

**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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

17-18a-404 Juvenile proceedings.

For a proceeding involving an offense committed by a minor as defined in Section 80-1-102, a public prosecutor shall:

- (1) review cases in accordance with Title 80, Chapter 6, Juvenile Justice; and
- (2) appear and prosecute for the state in the juvenile court of the county.

Amended by Chapter 262, 2021 General Session

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 77, Chapter 11b, Forfeiture of Seized Property;
- (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.

Amended by Chapter 448, 2023 General Session

**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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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

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

Amended by Chapter 260, 2022 General Session

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.

Enacted by Chapter 237, 2013 General Session

17-18a-506 Correctional facility telephone service contracts -- Approval by civil counsel -- Required rates.

(1) As used in this section:

- (a) "Civil counsel" means the attorney, as that term is defined in Section 17-18a-102, who is exercising the attorney's civil duties for the county.
- (b) "Correctional facility" means the same as that term is defined in Section 77-16b-102.
- (c) "Correctional facility telephone service" means a public telecommunications service provided to a correctional facility for inmate use.
- (d) "Inmate" means an individual who is committed to the custody of or housed in a correctional facility.
- (e) "Inmate telephone rate" means any amount a correctional facility or a service provider charges an inmate for use of a correctional facility telephone service, including each per-minute rate or surcharge for:
 - (i) a collect call, a prepaid phone card, or any other method by which a correctional facility allows an inmate to access a correctional facility telephone service; or
 - (ii) a local or a long-distance phone call.
- (f) "Service provider" means a public entity or a private entity that provides a correctional facility telephone service.

- (2)
 - (a) A correctional facility shall consider the importance of inmate access to telephones in preserving family connections and reducing recidivism when proposing an inmate telephone rate in a new or renewed contract for correctional facility telephone service.

- (b) A correctional facility or other state entity may not enter into or renew a contract for a correctional facility telephone service, unless the contract is approved by the civil counsel.
 - (c) To obtain approval of a contract described in Subsection (2)(b), a correctional facility or other state entity shall submit to the civil counsel:
 - (i) the proposed contract;
 - (ii) documentation that the correctional facility or other state entity has confirmed that:
 - (A) the provisions of the contract, other than the rates described in Subsection (3)(a), are consistent with correctional facility telephone service contracts throughout the state; and
 - (B) the contract provides for adequate services that meet the needs of the correctional facility; and
 - (iii) any additional information the civil counsel requires to analyze the contract.
- (3)
- (a) The civil counsel shall review a contract and any additional information described in Subsection (2)(b) to determine whether:
 - (i) each inmate telephone rate for interstate calls provided in the contract exceeds the corresponding inmate telephone service monetary cap per-use rate established and published by the Federal Communications Commission; and
 - (ii) each inmate telephone rate for intrastate calls provided in the contract exceeds the greater of:
 - (A) 25% higher than the corresponding inmate telephone service monetary cap per-use rate established and published by the Federal Communications Commission; or
 - (B) the corresponding inmate telephone system rate established and published by the Utah Department of Corrections.
 - (b)
 - (i) After receiving and reviewing the proposed contract and additional information, the civil counsel shall approve the contract if the proposed contract meets the requirements described in Subsection (3)(a).
 - (ii) The civil counsel shall inform the correctional facility or other state entity of the civil counsel's determination.

Enacted by Chapter 142, 2021 General Session

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.

- (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.

Amended by Chapter 24, 2018 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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 after the filing of an indictment or information and without the consent of the court:
 - (a) compromise a prosecution; or
 - (b) enter a plea of nolle prosequi.

Enacted by Chapter 237, 2013 General Session

Part 7 Prosecution District

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

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

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session

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.
- (3) Notwithstanding Subsection (2)(a), the attorney may represent an employee named as a party in litigation:
- (a) with the approval of the county executive; and
 - (b) if permitted by law and the Rules of Professional Conduct.

Enacted by Chapter 237, 2013 General Session

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.

Enacted by Chapter 237, 2013 General Session