

1 **PROSECUTORIAL AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Greg J. Curtis**

5 AN ACT RELATING TO STATE AND LOCAL GOVERNMENTS AND CRIMINAL
6 PROCEDURE; CLARIFYING THE AUTHORITY OF PUBLIC PROSECUTORS TO
7 INVESTIGATE AND ASSIST IN INVESTIGATIONS OF OFFENSES; AND MAKING
8 TECHNICAL CLARIFICATIONS AND CORRECTIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **10-3-928**, as last amended by Chapter 296, Laws of Utah 1997

12 **17-18-1**, as last amended by Chapter 302, Laws of Utah 1995

13 **17-18-1.5**, as last amended by Chapter 296, Laws of Utah 1997

14 **17-18-1.7**, as last amended by Chapter 302, Laws of Utah 1995

15 **67-5-1**, as last amended by Chapter 198, Laws of Utah 1996

16 **77-23a-8**, as last amended by Chapter 10, Laws of Utah 1997

17 **77-23a-14**, as last amended by Chapter 38, Laws of Utah 1993

18 ENACTS:

19 **77-1-8**, Utah Code Annotated 1953

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

21 Section 1. Section **10-3-928** is amended to read:

22 **10-3-928. Attorney duties -- Deputy public prosecutor.**

23 (1) In cities with a city attorney, the city attorney may prosecute violations of city
24 ordinances, and under state law, infractions and misdemeanors occurring within the boundaries
25 of the municipality and has the same powers in respect to violations as are exercised by a county
26 attorney or district attorney, except that a city attorney's authority to grant immunity [~~shall be~~] is
27 limited to granting transactional immunity for violations of city ordinances, and under state law,

28 infractions, and misdemeanors occurring within the boundaries of the municipality.

29 (2) The city attorney may investigate, and assist law enforcement agencies in investigations
30 of, civil or criminal offenses occurring within the city attorney's prosecution jurisdiction.

31 (3) The city attorney shall represent the interests of the state or the municipality in the
32 appeal of any matter prosecuted in any trial court by the city attorney.

33 Section 2. Section **17-18-1** is amended to read:

34 **17-18-1. Powers -- Duties of county attorney -- Prohibitions.**

35 (1) In each county which is not within a prosecution district, the county attorney is a public
36 prosecutor and shall:

37 (a) conduct on behalf of the state all prosecutions for public offenses committed within
38 the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and
39 appeals from them;

40 (b) institute proceedings before the proper magistrate for the arrest of persons charged with
41 or reasonably suspected of any public offense when in possession of information that the offense
42 has been committed, and for that purpose shall attend court in person or by deputy in cases of
43 arrests when required; and

44 (c) when it does not conflict with other official duties, attend to all legal business required
45 in the county by the attorney general without charge when the interests of the state are involved.
46 All the duties and powers of public prosecutor shall be assumed and discharged by the county
47 attorney.

48 (2) The county attorney:

49 (a) shall appear and prosecute for the state in the district court of the county in all criminal
50 prosecutions;

51 (b) may appear and prosecute in all civil cases in which the state may be interested; [and]

52 (c) has the authority to investigate, and assist law enforcement agencies in investigations
53 of, civil or criminal offenses occurring within the county attorney's prosecution jurisdiction; and

54 [~~e~~] (d) shall render assistance as required by the attorney general in all cases that may be
55 appealed to the Supreme Court and shall prosecute the appeal from any crime charged by the
56 county attorney as a misdemeanor in the district court.

57 (3) The county attorney shall:

58 (a) attend the deliberations of the grand jury;

59 (b) draw all indictments and informations for offenses against the laws of this state within
60 the county;

61 (c) cause all persons indicted or informed against to be speedily arraigned;

62 (d) cause all witnesses for the state to be subpoenaed to appear before the court or grand
63 jury;

64 (e) examine carefully [~~into~~] the sufficiency of all appearance bonds that may be tendered
65 to the district court of the county;

66 (f) upon the order of the court, institute proceedings in the name of the state for recovery
67 upon the forfeiture of any appearance or other bonds running to the state and enforce the collection
68 of them; and

69 (g) perform other duties as required by law.

70 (4) The county attorney shall:

71 (a) receive from the clerk of the district court a record of past-due fines, penalties, costs,
72 and forfeitures and take action to collect the past-due amounts;

73 (b) at the close of every term of the district court prepare a statement of all fines, penalties,
74 and forfeitures accruing to the state that have been collected or received by any officer required
75 to collect or receive them, stating each case and the amount, and shall transmit the list to the state
76 auditor; and

77 (c) proceed against any officer and sureties under this subsection for any neglect of duty.

78 (5) The county attorney shall:

79 (a) ascertain by all practicable means what estate or property within the county has
80 escheated or reverted to the state;

81 (b) require the assessor of taxes of the county to furnish annually a list of all real or
82 personal property that may have so escheated or reverted; and

83 (c) file a copy of the list in the office of the state auditor and of the attorney general.

84 (6) The county attorney shall:

85 (a) each year on the first business day of August file a report with the attorney general
86 covering the preceding fiscal year, stating the number of criminal prosecutions in the district, the
87 character of the offenses charged, the number of convictions, the amount of fines and penalties
88 imposed, and the amount collected; and

89 (b) call attention to any defect in the operation of the laws and suggest amendments to

90 correct the defect.

91 (7) The county attorney shall:

92 (a) appear and prosecute for the state in the juvenile court of the county in any proceeding
93 involving delinquency;

94 (b) represent the state in any proceeding pending before the juvenile court if any rights to
95 the custody of any juvenile are asserted by any third person; and

96 (c) prosecute before the court any person charged with abuse, neglect, or contributing to
97 the delinquency or dependency of a juvenile.

98 (8) The county attorney shall:

99 (a) defend all actions brought against the county;

100 (b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing
101 to the county;

102 (c) give, when required and without fee, an opinion in writing to county, district, and
103 precinct officers on matters relating to the duties of their respective offices;

104 (d) [~~deliver~~] provide receipts for money or property received in an official capacity to the
105 person from whom it was received and file duplicates with the county treasurer; and

106 (e) on the first Monday of each month file with the auditor an account verified by oath of
107 all money received in an official capacity during the preceding month, and at the same time pay
108 it over to the county treasurer.

109 (9) A county attorney may not:

110 (a) in any manner consult, advise, counsel, or defend within this state any person charged
111 with any crime, misdemeanor, or breach of any penal statute or ordinance;

112 (b) be qualified to prosecute or dismiss in the name of the state any case in which the
113 county attorney has previously acted as counsel for the accused on the pending charge; or

114 (c) in any case compromise any cause or enter a nolle prosequi after the filing of an
115 indictment or information without the consent of the court.

116 (10) If at any time after investigation by the district judge involved, the judge finds and
117 recommends that the county attorney in any county is unable to satisfactorily and adequately
118 perform the duties in prosecuting a criminal case without additional legal assistance, the attorney
119 general shall provide the additional assistance.

120 Section 3. Section **17-18-1.5** is amended to read:

121 **17-18-1.5. Powers -- Duties of county attorney within a prosecution district --**
122 **Prohibitions.**

123 (1) In each county which is within a state prosecution district, the county attorney is a
124 public prosecutor only for the purpose of prosecuting violations of county ordinances or as
125 otherwise provided by law and shall:

126 (a) conduct on behalf of the county all prosecutions for violations of county ordinances
127 committed within the county;

128 (b) have authority to grant transactional immunity for violations of county ordinances
129 committed within the county;

130 (c) institute proceedings before the proper magistrate for the arrest of persons charged with
131 or reasonably suspected of violations of county ordinances when in possession of information that
132 the violation has been committed, and for that purpose shall attend court in person or by deputy
133 in cases of arrests when required; and

134 (d) when it does not conflict with other official duties, attend to all legal business required
135 in the county by the attorney general without charge when the interests of the state are involved.

136 (2) The county attorney:

137 (a) may appear and prosecute in all civil cases in which the state may be interested; [~~and~~]

138 **(b) has the authority to investigate, and assist law enforcement agencies in investigations**
139 **of, civil or criminal offenses occurring within the county attorney's prosecution jurisdiction; and**

140 ~~[(b)]~~ (c) shall render assistance as required by the attorney general in all civil cases that
141 may be appealed to the Supreme Court and prosecute the appeal from any violation of a county
142 ordinance.

143 (3) The county attorney shall:

144 (a) draw all informations for violations of a county ordinance;

145 (b) cause all persons informed against to be speedily arraigned;

146 (c) cause all witnesses for the county to be subpoenaed to appear before the court;

147 (d) upon the order of the court, institute proceedings in the name of the county for recovery
148 upon the forfeiture of any appearance or other bonds running to the county and enforce the
149 collection of them; and

150 (e) perform other duties as required by law.

151 (4) The county attorney shall:

152 (a) receive from the clerk of the district court a record of past-due fines, penalties, costs,
153 and forfeitures and take action to collect the past due amounts;

154 (b) at the close of every term of the district court prepare a statement of all fines, penalties,
155 and forfeitures accruing to the state that have been collected or received by any officer required
156 to collect or receive them, stating each case and the amount, and shall transmit the list to the state
157 auditor; and

158 (c) proceed against any officer and sureties under this subsection for any neglect of duty.

159 (5) The county attorney shall:

160 (a) ascertain by all practicable means what estate or property within the county has
161 escheated or reverted to the state;

162 (b) require the assessor of taxes of the county to furnish annually a list of all real or
163 personal property that may have so escheated or reverted; and

164 (c) file a copy of the list in the office of the state auditor and of the attorney general.

165 (6) The county attorney shall:

166 (a) defend all actions brought against the county;

167 (b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing
168 to the county;

169 (c) give, when required and without fee, an opinion in writing to county, district, precinct,
170 and prosecution district officers on matters relating to the duties of their respective offices;

171 (d) [~~deliver~~] provide receipts for money or property received in an official capacity to the
172 person from whom it was received and file duplicates with the county treasurer; and

173 (e) on the first Monday of each month file with the auditor an account verified by oath of
174 all money received in an official capacity during the preceding month, and at the same time pay
175 it over to the county treasurer.

176 (7) A county attorney may not:

177 (a) in any manner consult, advise, counsel, or defend within this state any person charged
178 with any crime, misdemeanor, or breach of any penal statute or ordinance;

179 (b) be qualified to prosecute or dismiss in the name of the county any case in which the
180 county attorney has previously acted as counsel for the accused on the pending charge; or

181 (c) in any case compromise any cause or enter a nolle prosequi after the filing of an
182 information without the consent of the court.

183 (8) The county attorney or his deputy may be sworn as a deputy district attorney for the
184 purpose of public convenience for a period of time and subject to limitations specified by the
185 district attorney.

186 Section 4. Section **17-18-1.7** is amended to read:

187 **17-18-1.7. Powers -- Duties of district attorney -- Prohibitions.**

188 (1) The district attorney is a public prosecutor and shall:

189 (a) prosecute in the name of the state all violations of criminal statutes of the state;

190 (b) be a full-time county officer;

191 (c) conduct on behalf of the state all prosecutions for public offenses committed within
192 the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and
193 appeals from them; and

194 (d) institute proceedings before the proper magistrate for the arrest of persons charged with
195 or reasonably suspected of any violation of state law when in possession of information that the
196 offense has been committed, and for that purpose shall attend court in person or by deputy in cases
197 of arrests when required.

198 (2) The district attorney ~~shall~~:

199 (a) shall appear and prosecute for the state in the district court all criminal actions for
200 violation of state law;

201 (b) has the authority to investigate, and assist law enforcement agencies in investigations
202 of, civil or criminal offenses occurring within the district attorney's prosecution jurisdiction; and

203 ~~[(b)]~~ (c) shall render assistance as required by the attorney general in all criminal matters
204 or matters enumerated in Subsections (5) and (8) that may be appealed to the Court of Appeals or
205 the Supreme Court and shall prosecute the appeal from any crime charged by the district attorney
206 as a misdemeanor in the district court.

207 (3) The district attorney shall:

208 (a) attend the deliberations of the grand jury;

209 (b) draw all indictments and informations for offenses against the laws of this state within
210 the county;

211 (c) cause all persons indicted or informed against to be speedily arraigned;

212 (d) cause all witnesses for the state to be subpoenaed to appear before the court or grand
213 jury;

214 (e) examine carefully into the sufficiency of all appearance bonds that may be tendered to
215 the district court of the county; and

216 (f) perform other duties as required by law.

217 (4) The district attorney shall:

218 (a) each year on the first business day of August file a report with the attorney general
219 covering the preceding fiscal year, stating the number of criminal prosecutions in his office, the
220 character of the offenses charged, the number of convictions, the amount of fines and penalties
221 imposed, and the amount collected; and

222 (b) call attention to any defect in the operation of the laws and suggest amendments to
223 correct the defect.

224 (5) The district attorney shall:

225 (a) appear and prosecute for the state in the juvenile court of the prosecution district in any
226 proceeding involving delinquency;

227 (b) represent the state in any proceeding pending before the juvenile court if any rights to
228 the custody of any juvenile are asserted by any third person; and

229 (c) prosecute before the court any person charged with abuse, neglect, or contributing to
230 the delinquency or dependency of a juvenile.

231 (6) A district attorney may not:

232 (a) engage in private practice of law;

233 (b) engage in any occupation that may conflict with his duties as a district attorney;

234 (c) in any manner consult, advise, counsel, or defend within this state any person charged
235 with any crime, misdemeanor, or breach of any penal statute or ordinance;

236 (d) be qualified to prosecute or dismiss in the name of the state any case in which the
237 district attorney has previously acted as counsel for the accused on the pending charge; or

238 (e) in any case compromise any cause or enter a nolle prosequi after the filing of an
239 indictment or information without the consent of the court.

240 (7) If at any time after investigation by the district judge involved, the judge finds and
241 recommends that the district attorney in any prosecution district is unable to satisfactorily and
242 adequately perform the duties in prosecuting a criminal case without additional legal assistance,
243 the attorney general shall provide the additional assistance.

244 (8) The district attorney may act as counsel to any state or local government agency or

245 entity regarding only the following matters of civil law:

246 (a) bail bond forfeiture actions;

247 (b) actions for the forfeiture of property or contraband because of misuse of the property
248 or possession of the contraband in violation of criminal statutes of the state;

249 (c) civil actions incidental to or appropriate to supplement the district attorney's duties as
250 state prosecuting attorney including injunction, habeas corpus, declaratory actions, and
251 extraordinary writ actions, in which the interests of the state in any criminal prosecution or
252 investigation may be affected; and

253 (d) any civil duties otherwise provided by statute.

254 (9) The district attorney or his deputy may be sworn as a deputy county attorney for the
255 purpose of public convenience for a period of time and subject to limitations specified by the
256 county attorney.

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

258 **67-5-1. General duties.**

259 The attorney general shall:

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

264 (2) when jointly agreed by the governor and the attorney general:

265 (a) initiate legal proceedings in a court of competent jurisdiction on behalf of the state, or
266 any officer, board, commission, agency, or instrumentality of the state for the purpose of opposing
267 or challenging federal laws, regulations, or court orders and their impact on or applicability to the
268 state; and

269 (b) as the budget permits, retain outside legal counsel with appropriate expertise to
270 represent the state in the legal proceedings;

271 (3) after judgment on any cause referred to in Subsection (1), direct the issuance of process
272 as necessary to execute the judgment;

273 (4) account for, and pay over to the proper officer, all moneys which come into his
274 possession, that belong to the state;

275 (5) keep a file of all cases in which he is required to appear, including any documents and

276 papers showing the court in which the cases have been instituted and tried, and whether they are
277 civil or criminal, and:

278 (a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to
279 judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not
280 satisfied, the return of the sheriff;

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

284 (c) deliver this information to his successor in office;

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

288 (7) give his opinion in writing and without fee to the Legislature or either house, and to
289 any state officer, board, or commission, and to any county attorney or district attorney, when
290 required, upon any question of law relating to their respective offices;

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

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

297 (10) when the property of a judgment debtor in any judgment mentioned in Subsection (9)
298 has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking
299 precedence of the judgment in favor of the state, redeem the property, under the direction of the
300 state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money
301 necessary for the redemption, upon the order of the state Board of Examiners, out of any money
302 appropriated for these purposes;

303 (11) when in his opinion it is necessary for the collection or enforcement of any judgment,
304 institute and prosecute on behalf of the state any action or proceeding necessary to set aside and
305 annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to
306 the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise

307 appropriated;

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

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

315 (14) institute investigations for the recovery of all real or personal property that may have
316 escheated or should escheat to the state, and for that purpose he may cite any persons before any
317 of the district courts to answer inquiries and render accounts concerning any property, may
318 examine all books and papers of any corporations, and when any real or personal property is
319 discovered that should escheat to the state, the attorney general shall institute suit in the district
320 court of the county where the property is situated for its recovery, and escheat that property to the
321 state;

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

324 (16) assist the Constitutional Defense Council as provided in Section 63C-4-102[-]; and

325 (17) have the authority to investigate, and assist law enforcement agencies and prosecutors
326 in the investigation of, civil or criminal offenses.

327 Section 6. Section **77-1-8** is enacted to read:

328 **77-1-8. Prosecutor authorized to conduct investigations -- Communications allowed**
329 **with represented persons during investigations.**

330 A prosecutor authorized to investigate criminal or civil offenses may, in the course of the
331 investigation:

332 (1) communicate or assist in a communication with a person represented by legal counsel,
333 if:

334 (a) the represented person is not presently charged with an offense that is a subject of the
335 communication; and

336 (b) a law enforcement officer may lawfully make the communication; and

337 (2) advise a law enforcement agency concerning the agency's investigation, including

338 providing legal advice regarding communications with represented persons, at any time.

339 Section 7. Section **77-23a-8** is amended to read:

340 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

341 (1) (a) The attorney general of the state, any assistant attorney general specially designated
342 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy
343 district attorney specially designated by the county attorney or by the district attorney, may
344 authorize an application to a judge of competent jurisdiction for an order for an interception of
345 wire, electronic, or oral communications by any law enforcement agency of the state, the federal
346 government or of any political subdivision of the state that is responsible for investigating the type
347 of offense for which the application is made.

348 (b) An attorney authorized to act under this chapter may advise and assist law enforcement
349 investigators in the application and execution of the court's order in any manner allowed by law,
350 regardless of whether the persons subject to investigation are represented by legal counsel.

351 (2) The judge may grant the order in conformity with the required procedures when the
352 interception sought may provide or has provided evidence of the commission of:

353 (a) aggravated murder, Section 76-5-202; murder, Section 76-5-203; manslaughter, Section
354 76-5-205;

355 (b) aggravated kidnaping, Section 76-5-302; child kidnaping, Section 76-5-301.1;
356 kidnaping, Section 76-5-301;

357 (c) threat against life or property offense punishable by a maximum term of imprisonment
358 of more than one year, Section 76-5-107;

359 (d) aggravated arson, Section 76-6-103; arson, Section 76-6-102;

360 (e) aggravated burglary, Section 76-6-203; burglary, Section 76-6-202;

361 (f) aggravated robbery, Section 76-6-302; robbery, Section 76-6-301;

362 (g) theft, Section 76-6-404; theft by deception, Section 76-6-405; theft by extortion,
363 Section 76-6-406; when the theft, theft by deception or theft by extortion, is punishable by a
364 maximum term of imprisonment of more than one year;

365 (h) receiving stolen property offense punishable by a maximum term of imprisonment of
366 more than one year, Section 76-6-408;

367 (i) bribery of a labor official, Section 76-6-509;

368 (j) financial card transaction offenses punishable by a maximum term of imprisonment of

369 more than one year, Section 76-6-506.1, 76-6-506.2, 76-6-506.3, 76-6-506.4, 76-6-506.5, or
370 76-6-506.6;

371 (k) criminal simulation offenses punishable by a maximum term of imprisonment of more
372 than one year, Section 76-6-518;

373 (l) criminal usury, Section 76-6-520;

374 (m) false or fraudulent insurance claim offenses punishable by a maximum term of
375 imprisonment of more than one year, Section 76-6-521;

376 (n) violations of the Computer Crimes Act punishable by a maximum term of
377 imprisonment of more than one year, Section 76-6-703;

378 (o) bribery to influence official or political actions, Section 76-8-103;

379 (p) misusing public moneys, Section 76-8-402;

380 (q) tampering with a witness, retaliation against a witness or informant, or bribery,
381 communicating a threat, Section 76-8-508;

382 (r) tampering with a juror, retaliation against a juror, Section 76-8-508.5;

383 (s) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

384 (t) tampering with evidence, Section 76-8-510;

385 (u) destruction of property to interfere with preparation for defense or war, Section
386 76-8-802;

387 (v) attempts to commit crimes of sabotage, Section 76-8-804;

388 (w) conspiracy to commit crimes of sabotage, Section 76-8-805;

389 (x) advocating criminal syndicalism or sabotage, Section 76-8-902;

390 (y) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

391 (z) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;

392 (aa) riot punishable by a maximum term of imprisonment of more than one year, Section
393 76-9-101;

394 (bb) dog fighting, training dogs for fighting, dog fighting exhibitions punishable by a
395 maximum term of imprisonment of more than one year, Section 76-9-301.1;

396 (cc) explosive, chemical, or incendiary device, delivery to a common carrier, mailing, or
397 placement on premises, Section 76-10-307;

398 (dd) explosive, chemical, or incendiary device, construction, or possession, Section
399 76-10-308;

- 400 (ee) exploiting prostitution, Section 76-10-1305;
- 401 (ff) aggravated exploitation of prostitution, Section 76-10-1306;
- 402 (gg) bus hijacking, assault with intent to commit hijacking, dangerous weapon or firearm,
- 403 Section 76-10-1504;
- 404 (hh) bombing or placing bomb or explosive in, upon, or near terminal or bus, threats,
- 405 firearms, and missiles, Section 76-10-1505;
- 406 (ii) violations of ~~[the]~~ Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act and
- 407 the offenses listed under the definition of unlawful activity in the act, including the offenses not
- 408 punishable by a maximum term of imprisonment of more than one year when those offenses are
- 409 investigated as predicates for the offenses prohibited by the act, Subsection 76-10-1602(4);
- 410 (jj) money laundering, Sections 76-10-1903 and 76-10-1904;
- 411 (kk) reporting by financial institutions when the offense is punishable by a maximum term
- 412 of imprisonment of more than one year, Section 76-10-1906;
- 413 (ll) communications fraud, Section 76-10-1801;
- 414 (mm) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
- 415 Controlled Substances Act; Title 58, Chapter 37c, Utah Controlled Substances Precursor Act; or
- 416 Title 58, Chapter 37d, Clandestine Drug Lab Act[;], and punishable by a term of imprisonment of
- 417 more than one year;
- 418 (nn) any act prohibited by the criminal provisions of ~~[the]~~ Title 61, Chapter 1, Utah
- 419 Uniform Securities Act, and punishable by a term of imprisonment of more than one year[~~,-Title~~
- 420 ~~61, Chapter 1~~]; or
- 421 (oo) attempt, Section 76-4-101; conspiracy, Section 76-4-201; solicitation, Section
- 422 76-4-203; to commit any of the offenses enumerated above so long as the attempt, conspiracy or
- 423 solicitation offense is punishable by a term of imprisonment of more than one year.

424 Section 8. Section **77-23a-14** is amended to read:

425 **77-23a-14. Court order for installation -- Application.**

- 426 (1) The attorney general, a deputy attorney general, a county attorney or district attorney,
- 427 a deputy county attorney or deputy district attorney, or a prosecuting attorney for a political
- 428 subdivision of the state, or a law enforcement officer, may make application for an order or
- 429 extension of an order under Section 77-23a-15 authorizing or approving the installation and use
- 430 of a pen register or trap and trace device, in writing and under oath or equivalent affirmation, to

431 a court of competent jurisdiction.

432 (2) An application under Subsection (1) shall include:

433 (a) the identity of the attorney for the government or the law enforcement or investigative
434 officer making the application and the identity of the law enforcement agency conducting the
435 investigation; and

436 (b) a certification by the applicant that the information likely to be obtained is relevant to
437 an ongoing criminal investigation being conducted by that agency.

438 (3) An attorney authorized to make an application under this section may advise and assist
439 law enforcement investigators in the investigation and execution of the court's order in any manner
440 permitted by law, regardless of whether the persons subject to the investigation are represented by
441 legal counsel.

Legislative Review Note
as of 12-28-98 9:11 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel