

**OBSCENITY AND PORNOGRAPHY
COMPLAINTS OMBUDSMAN DUTIES**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies the Utah Municipal Code, the Counties Code, and the State Officers and Employees Code to amend the duties of the Obscenity and Pornography Complaints Ombudsman to include drafting model ordinances; assisting political subdivisions in drafting rules, regulations, and policies; and making recommendations for the enforcement of those rules, regulations, and policies. This act also requires the Obscenity and Pornography Complaints Ombudsman and the Office of the Attorney General to coordinate with the county, district, or city attorney within whose jurisdiction an investigation by the Obscenity and Pornography Complaints Ombudsman will take place. The act makes technical amendments.

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

AMENDS:

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

17-18-1, as last amended by Chapter 9, Laws of Utah 2001

17-18-1.5, as last amended by Chapter 9, Laws of Utah 2001

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

67-5-1, as last amended by Chapters 212 and 316, Laws of Utah 2000

67-5-18, as last amended by Chapter 315, Laws of Utah 2001

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

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

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

(1) In cities with a city attorney, the city attorney:

(a) may prosecute violations of city ordinances~~[, and]~~;



28 (b) may prosecute, under state law, infractions and misdemeanors occurring within the
 29 boundaries of the municipality [~~and~~];

30 (c) has the same powers in respect to violations as are exercised by a county attorney or
 31 district attorney, except that a city attorney's authority to grant immunity shall be limited to:

32 (i) granting transactional immunity for violations of city ordinances[;]; and

33 (ii) granting transactional immunity under state law[;] for infractions[;] and misdemeanors
 34 occurring within the boundaries of the municipality[~~—The city attorney~~];

35 (d) shall represent the interests of the state or the municipality in the appeal of any matter
 36 prosecuted in any trial court by the city attorney[;]; and

37 (e) ~~§ [shall] MAY § cooperate with~~ ~~h [the Obscenity and Pornography Complaints Ombudsman and] h~~
 37a ~~the~~
 38 Office of the Attorney General during investigations ~~h [like]~~ , INCLUDING ~~h~~ those described in
 38a Subsection
 39 67-5-18(3)(f).

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

41 **17-18-1. Powers -- Duties of county attorney -- Prohibitions.**

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

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

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

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

53 (b) All the duties and powers of public prosecutor shall be assumed and discharged by the
 54 county attorney.

55 (2) The county attorney:

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

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

- 59 (c) shall render assistance and cooperation as required by the attorney general in:
- 60 (i) all cases that may be appealed to the Supreme Court and shall prosecute the appeal from
- 61 any crime charged by the county attorney as a misdemeanor in the district court; and
- 62 (ii) investigations involving ~~h [the Obscenity and Pornography Complaints Ombudsman~~
- 62a ~~and] h~~
- 63 the Office of the Attorney General h [like] , INCLUDING h those described in Subsection 67-5-18(3)(f).
- 64 (3) The county attorney shall:
- 65 (a) attend the deliberations of the grand jury;
- 66 (b) draw all indictments and informations for offenses against the laws of this state within
- 67 the county;
- 68 (c) cause all persons indicted or informed against to be speedily arraigned;
- 69 (d) cause all witnesses for the state to be subpoenaed to appear before the court or grand
- 70 jury;
- 71 (e) examine carefully into the sufficiency of all appearance bonds that may be tendered to
- 72 the district court of the county;
- 73 (f) upon the order of the court, institute proceedings in the name of the state for recovery
- 74 upon the forfeiture of any appearance or other bonds running to the state and enforce the collection
- 75 of them; and
- 76 (g) perform other duties as required by law.
- 77 (4) The county attorney shall:
- 78 (a) ascertain by all practicable means what estate or property within the county has
- 79 escheated or reverted to the state;
- 80 (b) require the assessor of taxes of the county to furnish annually a list of all real or
- 81 personal property that may have so escheated or reverted; and
- 82 (c) file a copy of the list in the office of the state auditor and of the attorney general.
- 83 (5) The county attorney shall:
- 84 (a) each year on the first business day of August file a report with the attorney general
- 85 covering the preceding fiscal year, stating the number of criminal prosecutions in the district, the
- 86 character of the offenses charged, the number of convictions, the amount of fines and penalties
- 87 imposed, and the amount collected; and
- 88 (b) call attention to any defect in the operation of the laws and suggest amendments to
- 89 correct the defect.

- 90 (6) The county attorney shall:
- 91 (a) appear and prosecute for the state in the juvenile court of the county in any proceeding
- 92 involving delinquency;
- 93 (b) represent the state in any proceeding pending before the juvenile court if any rights to
- 94 the custody of any juvenile are asserted by any third person; and
- 95 (c) prosecute before the court any person charged with abuse, neglect, or contributing to
- 96 the delinquency or dependency of a juvenile.
- 97 (7) The county attorney shall:
- 98 (a) defend all actions brought against the county;
- 99 (b) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing
- 100 to the county;
- 101 (c) give, when required and without fee, an opinion in writing to county, district, and
- 102 precinct officers on matters relating to the duties of their respective offices;
- 103 (d) deliver receipts for money or property received in an official capacity and file
- 104 duplicates with the county treasurer; and
- 105 (e) on the first Monday of each month file with the auditor an account verified by oath of
- 106 all money received in an official capacity during the preceding month, and at the same time pay
- 107 it over to the county treasurer.
- 108 (8) A county attorney may not:
- 109 (a) in any manner consult, advise, counsel, or defend within this state any person charged
- 110 with any crime, misdemeanor, or breach of any penal statute or ordinance;
- 111 (b) be qualified to prosecute or dismiss in the name of the state any case in which the
- 112 county attorney has previously acted as counsel for the accused on the pending charge; or
- 113 (c) in any case compromise any cause or enter a nolle prosequi after the filing of an
- 114 indictment or information without the consent of the court.
- 115 (9) If at any time after investigation by the district judge involved, the judge finds and
- 116 recommends that the county attorney in any county is unable to satisfactorily and adequately
- 117 perform the duties in prosecuting a criminal case without additional legal assistance, the attorney
- 118 general shall provide the additional assistance.
- 119 Section 3. Section **17-18-1.5** is amended to read:
- 120 **17-18-1.5. Powers -- Duties of county attorney within a prosecution district --**

121 **Prohibitions.**

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

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

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

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

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

136 (e) cooperate with ~~h [the Obscenity and Pornography Complaints Ombudsman and] h~~ the
 136a Office
 137 of the Attorney General during investigations h [like] , INCLUDING h those described in
 137a Subsection 67-5-18(3)(f).

138 (2) The county attorney:

139 (a) may appear and prosecute in all civil cases in which the state may be interested; and

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

142 (3) The county attorney shall:

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

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

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

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

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

150 (4) The county attorney shall:

151 (a) ascertain by all practicable means what estate or property within the county has

152 escheated or reverted to the state;

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

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

156 (5) The county attorney shall:

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

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

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

162 (d) deliver receipts for money or property received in an official capacity and file
163 duplicates with the county treasurer; and

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

167 (6) A county attorney may not:

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

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

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

174 (7) The county attorney or his deputy may be sworn as a deputy district attorney for the
175 purpose of public convenience for a period of time and subject to limitations specified by the
176 district attorney.

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

178 **17-18-1.7. Powers -- Duties of district attorney -- Prohibitions.**

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

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

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

182 (c) conduct on behalf of the state all prosecutions for public offenses committed within

183 the county, except for prosecutions undertaken by the city attorney under Section 10-3-928 and
 184 appeals from them; and

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

189 (2) The district attorney shall:

190 (a) appear and prosecute for the state in the district court all criminal actions for violation
 191 of state law;

192 (b) render assistance and cooperation as required by the attorney general in:

193 (i) all criminal matters or matters enumerated in Subsections (5) and (8) that may be
 194 appealed to the Court of Appeals or the Supreme Court and shall prosecute the appeal from any
 195 crime charged by the district attorney as a misdemeanor in the district court; and

196 (ii) investigations involving ~~h~~ [the Obscenity and Pornography Complaints Ombudsman

196a and] ~~h~~

197 the Office of the Attorney General ~~h~~ [like] . **INCLUDING** ~~h~~ those described in

197a Subsection 67-5-18(3)(f).

198 (3) The district attorney shall:

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

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

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

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

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

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

208 (4) The district attorney shall:

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

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

214 correct the defect.

215 (5) The district attorney shall:

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

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

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

222 (6) A district attorney may not:

223 (a) engage in private practice of law;

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

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

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

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

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

235 (8) The district attorney may act as counsel to any state or local government agency or
236 entity regarding only the following matters of civil law:

237 (a) bail bond forfeiture actions;

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

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

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

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

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

249 **67-5-1. General duties.**

250 The attorney general shall:

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

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

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

259 (4) account for, and pay over to the proper officer, all moneys that come into the attorney
260 general's possession that belong to the state;

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

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

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

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

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

274 (7) give the attorney general's opinion in writing and without fee to the Legislature or
275 either house, and to any state officer, board, or commission, and to any county attorney or district

276 attorney, when required, upon any question of law relating to their respective offices;

277 (8) when required by the public service ~~h~~ [~~Subsection 67-5-18(3)(f)~~] ~~h~~ or directed by the
278 governor, assist any ~~district or~~ county, district, or city attorney in the discharge of his duties;

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

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

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

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

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

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

307 situated for its recovery, and escheat that property to the state;

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

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

312 (17) investigate and prosecute criminal violations of Title 26, Chapter 20, False Claims
313 Act, in accordance with Section 26-20-13; and

314 (18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at
315 health care facilities that receive payments under the state Medicaid program.

316 Section 6. Section **67-5-18** is amended to read:

317 **67-5-18. Obscenity and Pornography Complaints Ombudsman -- Powers.**

318 (1) As used in this section, "pornography" means material or a performance that meets the
319 requirements of Subsection 76-10-1203(1).

320 (2) (a) There is created an Obscenity and Pornography Complaints Ombudsman in the
321 Office of the Attorney General.

322 (b) The attorney general shall hire an attorney licensed to practice law in Utah who has
323 knowledge of obscenity and pornography law and, if possible, who has a background or expertise
324 in investigating and prosecuting obscenity and pornography law violations to fill the position.

325 (c) The person hired to fill the position is an exempt employee.

326 (d) The attorney general may hire clerks, interns, or other personnel to assist the
327 pornography complaints ombudsman.

328 (3) The Obscenity and Pornography Complaints Ombudsman shall:

329 (a) develop and maintain expertise in and understanding of laws designed to control or
330 eliminate obscenity and pornography and the legal standards governing the regulation or
331 elimination of obscenity and pornography;

332 (b) advise citizens and local governments about remedies to address instances of obscenity
333 and pornography in their communities;

334 (c) advise local governments about ways to strengthen local laws and ordinances
335 addressing obscenity and pornography;

336 (d) advise local governments about strategies to restrict, suppress, or eliminate obscenity
337 and pornography in their communities;

338 (e) at the request of the attorney general or a local government, assist a local government
 339 in investigating and prosecuting state and local laws and ordinances addressing obscenity or
 340 pornography;

341 (f) before beginning an investigation:

342 (i) contact the county, district, or city attorney within whose jurisdiction an investigation
 343 by the Obscenity and Pornography Complaints Ombudsman will take place and inform that county,
 344 district, or city attorney of the investigation; and

345 (ii) coordinate efforts and share records, in accordance with Section 63-2-206, with the
 346 county, district, or city's attorney referred to in Subsection (3)(f)(i) throughout the investigation;

347 ~~(f)~~ (g) advise citizens about their options to address specific complaints about obscenity
 348 or pornography in their communities;

349 ~~(g)~~ (h) when requested by a citizen or local government official, arbitrate between
 350 citizens and businesses to resolve complaints about obscenity or pornography;

351 ~~(h)~~ (i) provide information to private citizens, civic groups, government entities, and
 352 other interested parties about the dangers of obscenity and pornography, the current laws to restrict,
 353 suppress, or eliminate pornography, and their rights and responsibilities under those laws;

354 (j) draft model ordinances that contain:

355 (i) various degrees of regulation of sexually-oriented businesses; and

356 (ii) options for local communities that can be used to regulate pornography and obscenity;

357 (k) assist political subdivisions in:

358 (i) drafting ~~h~~ MODEL ~~h~~ rules, regulations, and policies; and

359 (ii) ~~h~~ [making] PROVIDING ~~h~~ recommendations for enforcing those rules, regulations, and
 359a policies;

360 ~~(i)~~ (l) in conjunction with Utah's county and municipal prosecuting attorneys:

361 (i) review Utah's and Idaho's moral nuisance law;

362 (ii) draft a comprehensive moral nuisance law for Utah and a model ordinance for
 363 municipalities and counties to provide an effective mechanism to abate and discourage obscenity
 364 and pornography; and

365 (iii) present the draft to the Legislature's Judiciary Interim Committee before October 25,
 366 2001; and

367 ~~(j)~~ (m) establish a program to combat Internet pornography and to assist parents in
 368 protecting their children from Internet pornography.

Legislative Review Note
as of 1-9-02 2:58 PM

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

Office of Legislative Research and General Counsel