

**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 cooperate with the Obscenity and Pornography Complaints Ombudsman and the  
38 Office of the Attorney General during investigations like those described in 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 the Obscenity and Pornography Complaints Ombudsman and  
63 the Office of the Attorney General like 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 the Obscenity and Pornography Complaints Ombudsman and the Office  
137 of the Attorney General during investigations like those described in 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 the Obscenity and Pornography Complaints Ombudsman and  
197 the Office of the Attorney General like those described in 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, Subsection 67-5-18(3)(f), 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 rules, regulations, and policies; and

359 (ii) making recommendations for enforcing those rules, regulations, and 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.

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**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**