

1 **COUNTY ATTORNEY CHAPTER RECODIFICATION**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Derek E. Brown

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts Powers and Duties of County and District Attorney.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ repeals Title 17, Chapter 18, County Attorney, and replaces it with Title 17, Chapter
13 18a, Powers and Duties of County and District Attorney, including:

- 14 • enacting general provisions;
- 15 • enacting provisions related to the duties of a county and district attorney;
- 16 • enacting provisions regulating qualifications and term of office;
- 17 • enacting provisions related to the duties of a public prosecutor;
- 18 • enacting provisions related to the duties of civil counsel;
- 19 • enacting provisions related to general duties and prohibited acts;
- 20 • enacting provisions related to a prosecution district; and
- 21 • enacting provisions related to ethical responsibilities; and

22 ▶ makes technical and conforming amendments.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **4-2-11**, as last amended by Laws of Utah 1993, Chapter 38

- 30 **17-16-1**, as last amended by Laws of Utah 1999, Chapter 206
- 31 **17-16-2.5**, as enacted by Laws of Utah 1993, Chapter 38
- 32 **19-5-115**, as last amended by Laws of Utah 2012, Chapter 360
- 33 **19-6-113**, as last amended by Laws of Utah 2008, Chapter 3
- 34 **20A-1-509.2**, as enacted by Laws of Utah 1997, Chapter 139
- 35 **35A-1-501**, as last amended by Laws of Utah 1999, Chapter 132
- 36 **39-1-50**, as last amended by Laws of Utah 1993, Chapter 38
- 37 **62A-3-309**, as last amended by Laws of Utah 2008, Chapter 91
- 38 **62A-4a-405**, as last amended by Laws of Utah 2008, Chapter 299
- 39 **65A-3-3**, as last amended by Laws of Utah 2012, Chapter 361
- 40 **67-5-1**, as last amended by Laws of Utah 2011, Chapter 342
- 41 **77-22a-1**, as last amended by Laws of Utah 1993, Chapter 38
- 42 **77-22b-1**, as enacted by Laws of Utah 1997, Chapter 296
- 43 **77-23a-10**, as last amended by Laws of Utah 2010, Chapter 324
- 44 **78A-6-602**, as last amended by Laws of Utah 2010, Chapter 38
- 45 **78A-6-1002**, as renumbered and amended by Laws of Utah 2008, Chapter 3

46 ENACTS:

- 47 **17-18a-101**, Utah Code Annotated 1953
- 48 **17-18a-102**, Utah Code Annotated 1953
- 49 **17-18a-201**, Utah Code Annotated 1953
- 50 **17-18a-202**, Utah Code Annotated 1953
- 51 **17-18a-203**, Utah Code Annotated 1953
- 52 **17-18a-204**, Utah Code Annotated 1953
- 53 **17-18a-301**, Utah Code Annotated 1953
- 54 **17-18a-302**, Utah Code Annotated 1953
- 55 **17-18a-401**, Utah Code Annotated 1953
- 56 **17-18a-402**, Utah Code Annotated 1953
- 57 **17-18a-403**, Utah Code Annotated 1953

- 58 **17-18a-404**, Utah Code Annotated 1953
- 59 **17-18a-405**, Utah Code Annotated 1953
- 60 **17-18a-501**, Utah Code Annotated 1953
- 61 **17-18a-502**, Utah Code Annotated 1953
- 62 **17-18a-503**, Utah Code Annotated 1953
- 63 **17-18a-504**, Utah Code Annotated 1953
- 64 **17-18a-505**, Utah Code Annotated 1953
- 65 **17-18a-601**, Utah Code Annotated 1953
- 66 **17-18a-602**, Utah Code Annotated 1953
- 67 **17-18a-603**, Utah Code Annotated 1953
- 68 **17-18a-604**, Utah Code Annotated 1953
- 69 **17-18a-605**, Utah Code Annotated 1953
- 70 **17-18a-701**, Utah Code Annotated 1953
- 71 **17-18a-702**, Utah Code Annotated 1953
- 72 **17-18a-703**, Utah Code Annotated 1953
- 73 **17-18a-801**, Utah Code Annotated 1953
- 74 **17-18a-802**, Utah Code Annotated 1953
- 75 **17-18a-803**, Utah Code Annotated 1953

76 REPEALS:

- 77 **17-18-1**, as last amended by Laws of Utah 2002, Chapter 130
- 78 **17-18-1.5**, as last amended by Laws of Utah 2002, Chapter 130
- 79 **17-18-1.6**, as last amended by Laws of Utah 2011, Chapter 154
- 80 **17-18-1.7**, as last amended by Laws of Utah 2002, Chapter 130
- 81 **17-18-1.9**, as last amended by Laws of Utah 2011, Chapter 297
- 82 **17-18-2**, as last amended by Laws of Utah 2002, Chapter 185
- 83 **17-18-4**, as enacted by Laws of Utah 1957, Chapter 34
- 84 **17-18-5**, as last amended by Laws of Utah 1997, Chapter 139

85

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

87 Section 1. Section **4-2-11** is amended to read:

88 **4-2-11. Attorney general legal advisor for department -- County or district**
89 **attorney may bring action upon request of department for violations of title.**

90 (1) The attorney general is the legal advisor for the department and shall defend the
91 department and its representatives in all actions and proceedings brought against it.

92 (2) The county attorney or the district attorney as provided under Sections [~~17-18-1;~~
93 ~~17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203 of the county in which a cause of action
94 arises or a public offense occurs may bring civil or criminal action, upon request of the
95 department, to enforce the laws, standards, orders, and rules of the department or to prosecute
96 violations of this title. If the county attorney or district attorney fails to act, the department may
97 request the attorney general to bring an action on behalf of the department.

98 Section 2. Section **17-16-1** is amended to read:

99 **17-16-1. Eligibility and residency requirements for county, district, precinct, or**
100 **prosecution district office.**

101 (1) A person filing a declaration of candidacy for a county, district, precinct, or
102 prosecution district office shall:

103 (a) be a United States citizen;

104 (b) except as provided in [~~Subsection 17-18-5(1)(d)(ii)~~] Section 20A-1-509.2 with
105 respect to the office of county attorney or district attorney, as of the date of the election, have
106 been a resident for at least one year of the county, district, precinct, or prosecution district in
107 which the person seeks office [~~for at least one year~~]; and

108 (c) be a registered voter in the county, district, precinct, or prosecution district in which
109 the person seeks office.

110 (2) (a) A county, district, precinct, or prosecution district officer shall maintain
111 residency within the county, district, precinct, or prosecution district in which [~~he~~] the officer
112 was elected during [~~his~~] the officer's term of office.

113 (b) If a county, district, precinct, or prosecution district officer establishes [~~his~~] the

114 officer's principal place of residence as provided in Section 20A-2-105 outside the county,
115 district, precinct, or prosecution district in which [~~he~~] the officer was elected, the office is
116 automatically vacant.

117 Section 3. Section **17-16-2.5** is amended to read:

118 **17-16-2.5. Creation of Office of District Attorney.**

119 For each prosecution district created [~~pursuant to Section 17-18-1.9~~] in accordance with
120 Chapter 18a, Part 7, Prosecution District, there is created the Office of District Attorney.

121 Section 4. Section **17-18a-101** is enacted to read:

122 **CHAPTER 18a. POWERS AND DUTIES OF COUNTY AND DISTRICT ATTORNEY**

123 **Part 1. General Provisions**

124 **17-18a-101. Title.**

125 This chapter is known as "Powers and Duties of County and District Attorney."

126 Section 5. Section **17-18a-102** is enacted to read:

127 **17-18a-102. Definitions.**

128 (1) "Attorney" means a county attorney described in Section 17-18a-301 or a district
129 attorney described in Section 17-18a-301.

130 (2) "Prosecution district" means a district created under Part 7, Prosecution District.

131 Section 6. Section **17-18a-201** is enacted to read:

132 **Part 2. Duties**

133 **17-18a-201. County and district attorney duties.**

134 The duties, functions, and responsibilities of a county attorney or district attorney,
135 acting as a public prosecutor or as civil counsel, are as provided in this chapter.

136 Section 7. Section **17-18a-202** is enacted to read:

137 **17-18a-202. County attorney powers and functions.**

138 (1) Except within a county that is located in a prosecution district, the county attorney:

139 (a) is a public prosecutor for the county; and

140 (b) shall perform each public prosecutor and civil counsel duty in accordance with this
141 chapter or as otherwise required by law.

142 (2) In a county that is located within a prosecution district, the county attorney:

143 (a) is the civil counsel for the county; and

144 (b) shall perform each civil counsel duty in the county or prosecution district in
145 accordance with this chapter or as otherwise required by law.

146 Section 8. Section **17-18a-203** is enacted to read:

147 **17-18a-203. District attorney powers and functions.**

148 In a county that is located within a prosecution district, the district attorney:

149 (1) is a public prosecutor for the county; and

150 (2) shall perform each public prosecutor duty in accordance with this chapter or as
151 otherwise required by law.

152 Section 9. Section **17-18a-204** is enacted to read:

153 **17-18a-204. Consolidated office.**

154 Within a prosecution district, the duties and responsibilities of the district attorney and
155 county attorney may be consolidated into one office as provided in Section 17-16-3.

156 Section 10. Section **17-18a-301** is enacted to read:

157 **Part 3. Qualifications and Term**

158 **17-18a-301. County officers.**

159 (1) The county attorney is an elected officer as described in Section 17-53-101.

160 (2) (a) If the boundaries of a prosecution district are located entirely within one county,
161 the district attorney of the prosecution district is an elected officer of that county.

162 (b) If the boundaries of a prosecution district include more than one county, the
163 interlocal agreement that creates that prosecution district in accordance with Section
164 17-18a-602 may designate the district attorney as an elected officer in one or more of the
165 counties in which the prosecution district is located.

166 (3) The district attorney:

167 (a) is a full-time employee of the prosecution district; and

168 (b) may not engage in the private practice of law.

169 (4) A county attorney may:

- 170 (a) serve as a part-time employee; and
- 171 (b) engage in the private practice of law, subject to Section 17-18a-605 and the Rules
- 172 of Professional Conduct.

173 Section 11. Section **17-18a-302** is enacted to read:

174 **17-18a-302. Qualifications.**

175 (1) A person filing a declaration of candidacy for the office of county or district

176 attorney shall be:

- 177 (a) a United States citizen;
- 178 (b) an attorney licensed to practice law in the state;
- 179 (c) an active member of the Utah State Bar in good standing;
- 180 (d) except as provided in Subsection (2), a registered voter in the county or prosecution
- 181 district in which the attorney is elected to office; and
- 182 (e) except as provided in Subsection (2), as of the date of election, a resident for at
- 183 least one year of the county or prosecution district in which the person seeks office.

184 (2) A person appointed to the office of county or district attorney in accordance with

185 Section 20A-1-509.2 shall be:

- 186 (a) a United States citizen;
- 187 (b) an attorney licensed to practice law in the state; and
- 188 (c) an active member of the Utah State Bar in good standing.

189 Section 12. Section **17-18a-401** is enacted to read:

190 **Part 4. Public Prosecutor Duties**

191 **17-18a-401. Public prosecutor powers and duties.**

192 An attorney who serves as a public prosecutor shall:

- 193 (1) except for a prosecution undertaken by a city attorney under Section 10-3-928,
- 194 conduct, on behalf of the state, all prosecutions for a public offense committed within a county
- 195 or prosecution district;
- 196 (2) conduct, on behalf of the county, all prosecutions for a public offense in violation
- 197 of a county criminal ordinance; and

198 (3) perform all other duties and responsibilities as required by law.

199 Section 13. Section **17-18a-402** is enacted to read:

200 **17-18a-402. Pretrial responsibilities.**

201 (1) (a) A public prosecutor shall:

202 (i) institute proceedings before the proper court:

203 (A) for the arrest of a person charged with a public offense; or

204 (B) if the prosecutor has probable cause to believe that a public offense has been
205 committed and a grand jury has been convened by a court;

206 (ii) draw all indictments and information for offenses against:

207 (A) the laws of the state occurring within the county; and

208 (B) the criminal ordinances of the county;

209 (iii) cause all persons under indictment or informed against to be speedily arraigned for
210 crimes charged; and

211 (iv) issue subpoenas for all witnesses for the state or for the county in the prosecution
212 of a criminal ordinance.

213 (b) A public prosecutor described in Subsection (1)(a)(i)(B) shall:

214 (i) assist and attend the deliberations of the grand jury; and

215 (ii) prepare all necessary indictments and arrange for the subpoena of witnesses to
216 appear before the grand jury.

217 (2) The public prosecutor may:

218 (a) examine as to the sufficiency of an appearance bond that may be tendered to the
219 court; and

220 (b) upon a court order:

221 (i) institute proceedings for the recovery upon forfeiture of a bond running to the state
222 or county; and

223 (ii) enforce the collection of a bond described in Subsection (2)(b)(i).

224 (3) The public prosecutor is authorized to grant transactional immunity to a witness for
225 violation of a state statute or county criminal ordinance.

226 Section 14. Section **17-18a-403** is enacted to read:

227 **17-18a-403. Appeal.**

228 (1) A public prosecutor shall assist and cooperate, as required by the attorney general,
229 in a case that may be appealed to the Court of Appeals or Utah Supreme Court regarding a
230 criminal violation of state statute.

231 (2) A public prosecutor shall appear and prosecute all appeals, in the appropriate court,
232 for a crime charged as a misdemeanor in district court or as a violation of a county criminal
233 ordinance.

234 Section 15. Section **17-18a-404** is enacted to read:

235 **17-18a-404. Juvenile proceedings.**

236 For a proceeding involving a charge of juvenile delinquency, a public prosecutor shall
237 appear and prosecute for the state in the juvenile court of the county.

238 Section 16. Section **17-18a-405** is enacted to read:

239 **17-18a-405. Civil responsibilities of public prosecutors.**

240 A public prosecutor may act as legal counsel to the state, county, government agency,
241 or government entity regarding the following matters of civil law:

242 (1) bail bond forfeiture actions;

243 (2) actions for the forfeiture of property or contraband, as provided in Title 24, Chapter
244 1, Utah Uniform Forfeiture Procedures Act;

245 (3) civil actions incidental to or appropriate to supplement a public prosecutor's duties,
246 including an injunction, a habeas corpus, a declaratory action, or an extraordinary writ action,
247 in which the interests of the state may be affected; and

248 (4) any other civil duties related to criminal prosecution that are otherwise provided by
249 statute.

250 Section 17. Section **17-18a-501** is enacted to read:

251 **Part 5. Counsel for Civil Actions**

252 **17-18a-501. Duties as civil counsel.**

253 The attorney shall:

254 (1) appear in, prosecute, and defend each civil action in which the county is a party;

255 (2) prosecute, either directly or through a private contract for debt collection, each
256 action for the recovery of debts, fines, penalties, and forfeitures accruing to the county;

257 (3) prosecute each appeal regarding a civil counsel's duties or functions in which the
258 county is a party;

259 (4) act as the civil legal advisor to the county; and

260 (5) attend the meetings and hearings of the county legislative body as necessary.

261 Section 18. Section **17-18a-502** is enacted to read:

262 **17-18a-502. Civil violation of county ordinance.**

263 The civil counsel shall enforce and prosecute, in the appropriate court, civil violations
264 of a county ordinance.

265 Section 19. Section **17-18a-503** is enacted to read:

266 **17-18a-503. Legal opinions.**

267 The civil counsel shall prepare a legal opinion in writing to a county officer on matters
268 relating to the duties of the respective officer's office.

269 Section 20. Section **17-18a-504** is enacted to read:

270 **17-18a-504. Review and approve as to form.**

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

273 Section 21. Section **17-18a-505** is enacted to read:

274 **17-18a-505. Escheats to the state.**

275 The civil counsel shall:

276 (1) assist in determining what estate or property located within the county escheates or
277 reverts to the state; and

278 (2) provide assistance to the county assessor and the state auditor in discovering and
279 recovering an escheat.

280 Section 22. Section **17-18a-601** is enacted to read:

281 **Part 6. General Duties and Prohibitions**

282 **17-18a-601. Assistance to the attorney general.**

283 (1) (a) The attorney shall appear and assist the attorney general in criminal and civil
284 legal matters involving the state if:

- 285 (i) except as provided in Subsection (1)(b), the attorney general requests assistance; or
- 286 (ii) the attorney is required by law to provide assistance.

287 (b) The attorney is not required to provide, if requested, the attorney general assistance
288 if the attorney's assistance would:

- 289 (i) interfere with the attorney's duties and responsibilities to the county; or
- 290 (ii) create a conflict of interest.

291 (c) The attorney shall cooperate with the attorney general in an investigation, including
292 an investigation described in Section 67-5-18.

293 (2) The attorney general shall assist the attorney with a criminal prosecution if a court:

294 (a) finds that the attorney is unable to satisfactorily and adequately perform the duties
295 of prosecuting a criminal case; and

296 (b) recommends that the attorney seek additional legal assistance.

297 Section 23. Section **17-18a-602** is enacted to read:

298 **17-18a-602. Deputy attorneys.**

299 (1) The attorney may employ a deputy attorney to perform the duties of public
300 prosecutor or civil counsel.

301 (2) (a) Subject to the approval of the county attorney, the district attorney may cross
302 deputize a county deputy attorney as a deputy district attorney.

303 (b) Subject to the approval of the district attorney, the county attorney may cross
304 deputize a deputy district attorney as a deputy county attorney.

305 (3) The county attorney may specially deputize, for a limited time or limited purpose,
306 an attorney licensed to practice law in the state and in good standing with the Utah State Bar as
307 a deputy to assist in any public prosecutor or civil counsel duties specified in the special
308 deputization.

309 Section 24. Section **17-18a-603** is enacted to read:

310 **17-18a-603. Legislative functions.**

311 The attorney:

312 (1) may review a state statute;

313 (2) shall review each county ordinance;

314 (3) shall call to the attention of the state Legislature or the county legislative body any
315 defect in the operation of the law; and

316 (4) shall suggest and assist in presenting an amendment to correct the defect.

317 Section 25. Section **17-18a-604** is enacted to read:

318 **17-18a-604. Other duties.**

319 The attorney shall perform each duty and responsibility of public prosecutor and civil
320 counsel as provided by statute or ordinance.

321 Section 26. Section **17-18a-605** is enacted to read:

322 **17-18a-605. Prohibited acts.**

323 (1) Within the state, the attorney may not consult with or otherwise represent a person
324 charged with a crime, misdemeanor, or breach of a criminal statute or ordinance.

325 (2) A public prosecutor may not prosecute or dismiss in the name of the state a case in
326 which the public prosecutor has previously acted as legal counsel for the accused.

327 (3) A public prosecutor may not after the filing of an indictment or information and
328 without the consent of the court:

329 (a) compromise a prosecution; or

330 (b) enter a plea of nolle prosequi.

331 Section 27. Section **17-18a-701** is enacted to read:

332 **Part 7. Prosecution District**

333 **17-18a-701. Creation of a prosecution district.**

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

335 Section 28. Section **17-18a-702** is enacted to read:

336 **17-18a-702. Multicounty prosecution district.**

337 (1) (a) Subject to Subsection (2), two or more counties, whether or not contiguous, may

338 enter into an agreement in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, to
339 create and maintain a prosecution district.

340 (b) A prosecution district described in Subsection (1)(a) shall include all of the area
341 within the boundaries of each county party to the agreement.

342 (2) A county may not enter into an agreement to create a multicounty prosecution
343 district unless each county entering into the agreement is located within a single judicial
344 district, as described in Section 78A-1-102, with the other party counties.

345 Section 29. Section **17-18a-703** is enacted to read:

346 **17-18a-703. Dissolution of prosecution district.**

347 (1) A county legislative body of a prosecution district described in Section 17-18a-701,
348 or the legislative bodies of multiple counties within a multicounty prosecution district
349 described in Section 17-18a-702, may not dissolve the prosecution district or multicounty
350 prosecution district, respectively, during the term of office of an elected or appointed district
351 attorney.

352 (2) Each county legislative body shall ensure that an ordinance dissolving a
353 prosecution district within a single county or an interlocal agreement dissolving a prosecution
354 district within multiple counties:

355 (a) is enacted before February 1 of the year in which the regular general election, as
356 defined in Section 20A-1-102, is held to elect an attorney; and

357 (b) takes effect on the first Monday in January after the year in which the attorney is
358 elected.

359 Section 30. Section **17-18a-801** is enacted to read:

360 **Part 8. Ethical Responsibilities**

361 **17-18a-801. Public prosecutor's ethical duties.**

362 An attorney exercising public prosecutor duties under this chapter:

363 (1) is a lawyer representing an organization as a client under the Rules of Professional
364 Conduct, Rule 1.13;

365 (2) represents the state as an organizational client;

366 (3) is considered the representative of the state; and
367 (4) is empowered to make commitments for and decisions on behalf of the state.

368 Section 31. Section **17-18a-802** is enacted to read:

369 **17-18a-802. Representation by civil counsel -- County is client.**

370 (1) (a) An attorney acting as civil counsel under this chapter represents an organization
371 as a client in accordance with Rules of Professional Conduct, Rule 1.13.

372 (b) The county is the client organization described in Subsection (1)(a).

373 (2) The attorney:

374 (a) does not represent a county commission, county agency, county board, county
375 council, county officer, or county employee;

376 (b) counsels with the county regarding civil matters; and

377 (c) receives direction from the county through the county elected officers in accordance
378 with the officers' duties and powers in accordance with law.

379 (3) Notwithstanding Subsection (2)(a), the attorney may represent an employee named
380 as a party in litigation:

381 (a) with the approval of the county executive; and

382 (b) if permitted by law and the Rules of Professional Conduct.

383 Section 32. Section **17-18a-803** is enacted to read:

384 **17-18a-803. License suspended -- Vacancy.**

385 If the attorney is suspended or disbarred from the practice of law in the state, the
386 attorney's office is vacant immediately upon suspension or disbarment.

387 Section 33. Section **19-5-115** is amended to read:

388 **19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and**
389 **rules of political subdivisions.**

390 (1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in
391 Section 76-2-103.

392 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,
393 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not

394 to exceed \$10,000 per day of violation.

395 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment
396 under Section 76-3-204 and a fine not exceeding \$25,000 per day who, with criminal
397 negligence:

398 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
399 condition or limitation included in a permit issued under Subsection 19-5-107(3);

400 (ii) violates Section 19-5-113;

401 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
402 treatment works; or

403 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

404 (b) A person is guilty of a third degree felony and is subject to imprisonment under
405 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

406 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
407 condition or limitation included in a permit issued under Subsection 19-5-107(3);

408 (ii) violates Section 19-5-113;

409 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
410 treatment works; or

411 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

412 (4) A person is guilty of a third degree felony and subject to imprisonment under
413 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if
414 that person knowingly:

415 (a) makes a false material statement, representation, or certification in any application,
416 record, report, plan, or other document filed or required to be maintained under this chapter, or
417 by any permit, rule, or order issued under it; or

418 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or
419 method required to be maintained under this chapter.

420 (5) (a) As used in this section:

421 (i) "Organization" means a legal entity, other than a government, established or

422 organized for any purpose, and includes a corporation, company, association, firm, partnership,
423 joint stock company, foundation, institution, trust, society, union, or any other association of
424 persons.

425 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of
426 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
427 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

428 (b) A person is guilty of a second degree felony and, upon conviction, is subject to
429 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

430 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

431 (ii) knows at that time that ~~he~~ the person is placing another person in imminent
432 danger of death or serious bodily injury.

433 (c) If a person is an organization, it shall, upon conviction of violating Subsection
434 (5)(b), be subject to a fine of not more than \$1,000,000.

435 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

436 (A) the defendant's conduct placed another person in imminent danger of death or
437 serious bodily injury; and

438 (B) the defendant was aware of or believed that there was an imminent danger of death
439 or serious bodily injury to another person.

440 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
441 the defendant.

442 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
443 knowledge, including evidence that the defendant took affirmative steps to be shielded from
444 receiving relevant information.

445 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the
446 conduct charged was consented to by the person endangered and that the danger and conduct
447 charged were reasonably foreseeable hazards of:

448 (A) an occupation, a business, or a profession; or

449 (B) medical treatment or medical or scientific experimentation conducted by

450 professionally approved methods and the other person was aware of the risks involved prior to
451 giving consent.

452 (ii) The defendant has the burden of proof to establish any affirmative defense under
453 this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

454 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset
455 [~~which~~] that leads to simultaneous violations of more than one pollutant parameter shall be
456 treated as a single violation.

457 (7) (a) The director may begin a civil action for appropriate relief, including a
458 permanent or temporary injunction, for any violation or threatened violation for which it is
459 authorized to issue a compliance order under Section 19-5-111.

460 (b) Actions shall be brought in the district court where the violation or threatened
461 violation occurs.

462 (8) (a) The attorney general is the legal advisor for the board and the director and shall
463 defend them in all actions or proceedings brought against them.

464 (b) The county attorney or district attorney as appropriate under [~~Sections 17-18-1,~~
465 ~~17-18-1.5, and 17-18-1.7~~] Section 17-18a-202 or 17-18a-203 in the county in which a cause of
466 action arises, shall bring any action, civil or criminal, requested by the director, to abate a
467 condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws
468 or the standards, orders, and rules of the board or the director issued under this chapter.

469 (c) The director may initiate any action under this section and be represented by the
470 attorney general.

471 (9) If any person fails to comply with a cease and desist order that is not subject to a
472 stay pending administrative or judicial review, the director may initiate an action for and be
473 entitled to injunctive relief to prevent any further or continued violation of the order.

474 (10) Any political subdivision of the state may enact and enforce ordinances or rules
475 for the implementation of this chapter that are not inconsistent with this chapter.

476 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected
477 under the authority of this section shall be deposited in the General Fund.

478 (b) The department may reimburse itself and local governments from money collected
479 from civil penalties for extraordinary expenses incurred in environmental enforcement
480 activities.

481 (c) The department shall regulate reimbursements by making rules that:

482 (i) define qualifying environmental enforcement activities; and

483 (ii) define qualifying extraordinary expenses.

484 Section 34. Section **19-6-113** is amended to read:

485 **19-6-113. Violations -- Penalties -- Reimbursement for expenses.**

486 (1) As used in this section, "RCRA" means the Resource Conservation and Recovery
487 Act, 42 U.S.C. Section 6901, et seq.

488 (2) Any person who violates any order, plan, rule, or other requirement issued or
489 adopted under this part is subject in a civil proceeding to a penalty of not more than \$13,000
490 per day for each day of violation.

491 (3) On or after July 1, 1990, no person shall knowingly:

492 (a) transport or cause to be transported any hazardous waste identified or listed under
493 this part to a facility that does not have a hazardous waste operation plan or permit under this
494 part or RCRA;

495 (b) treat, store, or dispose of any hazardous waste identified or listed under this part:

496 (i) without having obtained a hazardous waste operation plan or permit as required by
497 this part or RCRA;

498 (ii) in knowing violation of any material condition or requirement of a hazardous waste
499 operation plan or permit; or

500 (iii) in knowing violation of any material condition or requirement of any rules or
501 regulations under this part or RCRA;

502 (c) omit material information or make any false material statement or representation in
503 any application, label, manifest, record, report, permit, operation plan, or other document filed,
504 maintained, or used for purposes of compliance with this part or RCRA or any rules or
505 regulations made under this part or RCRA; and

506 (d) transport or cause to be transported without a manifest[;] any hazardous waste
507 identified or listed under this part and required by rules or regulations made under this part or
508 RCRA to be accompanied by a manifest.

509 (4) (a) (i) Any person who knowingly violates any provision of Subsection (3)(a) or (b)
510 is guilty of a felony.

511 (ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of
512 a felony under Subsection (3)(a) or (b) is subject to a fine of not more than \$50,000 for each
513 day of violation, or imprisonment for a term not to exceed five years, or both.

514 (iii) If a person is convicted of a second or subsequent violation under Subsection
515 (3)(a) or (b), the maximum punishment is double both the fine and the term of imprisonment
516 authorized in Subsection (4)(a)(ii).

517 (b) (i) Any person who knowingly violates any of the provisions of Subsection (3)(c) or
518 (d) is guilty of a felony.

519 (ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of
520 a felony for a violation of Subsection (3)(c) or (d) is subject to a fine of not more than \$50,000
521 for each day of violation, or imprisonment for a term not to exceed two years, or both.

522 (iii) If a person is convicted of a second or subsequent violation under Subsection
523 (3)(c) or (d), the maximum punishment is double both the fine and the imprisonment
524 authorized in Subsection (4)(b)(ii).

525 (c) (i) Any person who knowingly transports, treats, stores, or disposes of any
526 hazardous waste identified or listed under this part in violation of Subsection (3)(a), (b), (c), or
527 (d), who knows at that time that [~~he~~] the person thereby places another person in imminent
528 danger of death or serious bodily injury, is guilty of a felony.

529 (ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of
530 a felony described in Subsection (4)(c)(i) is subject to a fine of not more than \$250,000, or
531 imprisonment for a term not to exceed 15 years, or both.

532 (iii) A corporation, association, partnership, or governmental instrumentality, upon
533 conviction of violating Subsection (4)(c)(i), is subject to a fine of not more than \$1,000,000.

534 (5) (a) Except as provided in Subsections (5)(b) and (c) and Section 19-6-722, all
535 penalties assessed and collected under authority of this section shall be deposited in the
536 General Fund.

537 (b) The department may reimburse itself and local governments from money collected
538 from civil penalties for qualifying extraordinary expenses incurred in qualifying environmental
539 enforcement activities.

540 (c) Notwithstanding the provisions of Section 78A-5-110, the department may
541 reimburse itself and local governments from money collected from criminal fines for qualifying
542 extraordinary expenses incurred in prosecutions for violations of this part.

543 (d) The department shall regulate reimbursements by making rules that define:

544 (i) qualifying environmental enforcement activities; and

545 (ii) qualifying extraordinary expenses.

546 (6) Prosecution for criminal violations of this part may be commenced by the attorney
547 general, the county attorney, or the district attorney as appropriate under Section [~~17-18-1~~ or
548 ~~17-18-1.7~~] 17-18a-202 or 17-18a-203 in any county where venue is proper.

549 Section 35. Section **20A-1-509.2** is amended to read:

550 **20A-1-509.2. Procedure for filling vacancy in county or district with fewer than**
551 **15 attorneys.**

552 (1) When a vacancy occurs in the office of county or district attorney, including a
553 vacancy created by the failure of a person to file as a candidate for the office of county or
554 district attorney in an election, in a county or district having fewer than 15 attorneys who are
555 licensed, active members in good standing with the Utah State Bar and registered voters, the
556 vacancy shall be filled as provided in this section.

557 (2) The county clerk shall send a letter to each attorney residing in the county or district
558 who is a licensed, active member in good standing with the Utah State Bar and a registered
559 voter that:

560 (a) informs the attorney of the vacancy;

561 (b) invites the attorney to apply for the vacancy; and

562 (c) informs the attorney that if the attorney has not responded within 10 calendar days
563 from the date that the letter was mailed, ~~his~~ the attorney's candidacy to fill the vacancy will
564 not be considered.

565 (3) (a) (i) If, after 10 calendar days from the date the letter was mailed, more than three
566 attorneys who are licensed, active members in good standing with the Utah State Bar and
567 registered voters in the county or district have applied for the vacancy, the county clerk shall,
568 except as provided in Subsection (3)(a)(ii), submit the applications to the county central
569 committee of the same political party of the prior officeholder.

570 (ii) In multicounty prosecution districts, the clerk shall submit the applications to the
571 county central committee of each county within the prosecution district.

572 (b) The central committee shall nominate three of the applicants and forward ~~their~~ the
573 applicants' names to the county legislative body within 20 days after the date the county clerk
574 submitted the applicants' names.

575 (c) The county legislative body shall appoint one of the nominees to fill the vacant
576 position.

577 (d) If the central committee of the political party fails to submit at least three names to
578 the county legislative body within 20 days after the date the county clerk submitted the
579 applicants' names, the county legislative body shall appoint one of the applicants to fill the
580 vacant position.

581 (e) If the county legislative body fails to appoint a person to fill the vacancy within 120
582 days after the vacancy occurs, the county clerk shall mail to the governor:

583 (i) a letter informing ~~him~~ the governor that the county legislative body has failed to
584 appoint a person to fill the vacancy; and

585 (ii) (A) the list of nominees, if any, submitted by the central committee of the political
586 party; or

587 (B) if the party central committee has not submitted a list of at least three nominees
588 within the required time, the names of the persons who submitted applications for the vacant
589 position to the county clerk.

590 (f) The governor shall appoint, within 30 days after receipt of the letter, a person from
591 the list to fill the vacancy [~~from the list within 30 days after receipt of the letter~~].

592 (4) (a) If, after 10 calendar days from the date the letter was mailed, three or fewer
593 attorneys who are licensed, active members in good standing with the Utah State Bar and
594 registered voters in the county or district have applied for the vacancy, the county legislative
595 body may:

596 (i) appoint one of them to be county or district attorney; or

597 (ii) solicit additional applicants and appoint a county or district attorney as provided in
598 Subsection (4)(b).

599 (b) (i) If three or fewer attorneys who are licensed members in good standing of the
600 Utah State Bar and registered voters in the county or district submit applications, the county
601 legislative body may publicly solicit and accept additional applications for the position from
602 licensed, active members in good standing of the Utah State Bar who are not residents of the
603 county or prosecution district.

604 (ii) The county legislative body shall consider the applications submitted by the
605 attorneys who are residents of and registered voters in the county or prosecution district and the
606 applications submitted by the attorneys who are not residents of the county or prosecution
607 district and shall appoint one of the applicants to be county attorney or district attorney.

608 (c) If the legislative body fails to appoint a person to fill the vacancy within 120 days
609 after the vacancy occurs, the county clerk shall:

610 (i) notify the governor that the legislative body has failed to fill the vacancy within the
611 required time period; and

612 (ii) provide the governor with a list of all the applicants.

613 (d) The governor shall appoint a person to fill the vacancy within 30 days after ~~he~~ the
614 governor receives the notification.

615 (5) The person appointed to fill the vacancy shall serve for the unexpired term of the
616 person who created the vacancy.

617 Section 36. Section **35A-1-501** is amended to read:

618 **35A-1-501. Legal representation of department.**

619 At the request of the department, it is the duty of the county attorney or district attorney,
620 as appropriate under Sections [~~17-18-1, 17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203,
621 and the attorney general to represent the department in any legal action taken under this part,
622 Chapter 3, Employment Support Act, or under Title 76, Chapter 8, Part 12, Public Assistance
623 Fraud.

624 Section 37. Section **39-1-50** is amended to read:

625 **39-1-50. Military court -- Concurrent prosecutorial jurisdiction with county or**
626 **district attorney.**

627 (1) The county attorney or district attorney, as appropriate under Sections [~~17-18-1 and~~
628 ~~17-18-1.7~~] 17-18a-202 and 17-18a-203, of the county where an offense under the Utah Code of
629 Military Justice is committed has concurrent jurisdiction with the Utah Military Court to
630 prosecute the accused person at the expense of the county.

631 (2) Charges regarding the offense may not be filed in a military court until the
632 appropriate county attorney or district attorney has reviewed and declined to prosecute the
633 offense.

634 Section 38. Section **62A-3-309** is amended to read:

635 **62A-3-309. Enforcement by division -- Duty of county or district attorney.**

636 (1) It is the duty of the county or district attorney, as appropriate under Sections
637 [~~17-18-1, 17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203, to:

- 638 (a) assist and represent the division;
- 639 (b) initiate legal proceedings to protect vulnerable adults; and
- 640 (c) take appropriate action to prosecute the alleged offenders.

641 (2) If the county or district attorney fails to act upon the request of the division to
642 provide legal assistance within five business days after the day on which the request is made:

- 643 (a) the division may request the attorney general to act; and
- 644 (b) the attorney general may, in the attorney general's discretion, assume the
645 responsibilities and carry the action forward in place of the county or district attorney.

646 Section 39. Section **62A-4a-405** is amended to read:

647 **62A-4a-405. Death of child -- Reporting requirements.**

648 (1) Any person who has reason to believe that a child has died as a result of abuse or
649 neglect shall report that fact to:

650 (a) the local law enforcement agency, who shall report to the county attorney or district
651 attorney as provided under Section [~~17-18-1 or 17-18-1.7~~] 17-18a-202 or 17-18a-203; and

652 (b) the appropriate medical examiner in accordance with Title 26, Chapter 4, Utah
653 Medical Examiner Act.

654 (2) After receiving a report described in Subsection (1), the medical examiner shall
655 investigate and report the medical examiner's findings to:

656 (a) the police;

657 (b) the appropriate county attorney or district attorney;

658 (c) the attorney general's office;

659 (d) the division; and

660 (e) if the institution making the report is a hospital, to that hospital.

661 Section 40. Section **65A-3-3** is amended to read:

662 **65A-3-3. Enforcement of laws -- County attorney or district attorney to**
663 **prosecute.**

664 (1) It is the duty of the division, county sheriffs, their deputies, peace officers, and
665 other law enforcement officers within [~~their~~] the law enforcement jurisdiction to enforce the
666 provisions of this chapter and to investigate and gather evidence that may indicate a violation
667 under this chapter.

668 (2) The county attorney or district attorney, as appropriate under Sections [~~17-18-1,~~
669 ~~17-18-1.5, and 17-18-1.7~~] 17-18a-202 and 17-18a-203, shall:

670 (a) prosecute any criminal violations of this chapter; and

671 (b) initiate a civil action to recover suppression costs incurred by the county or state for
672 suppression of fire on private land.

673 Section 41. Section **67-5-1** is amended to read:

674 **67-5-1. General duties.**

675 The attorney general shall:

676 (1) perform all duties in a manner consistent with the attorney-client relationship under
677 Section 67-5-17;678 (2) except as provided in Sections 10-3-928 and [~~17-18-1~~] 17-18a-403, attend the
679 Supreme Court and the Court of Appeals of this state, and all courts of the United States, and
680 prosecute or defend all causes to which the state[;] or any officer, board, or commission of the
681 state in an official capacity is a party[;], and take charge, as attorney, of all civil legal matters in
682 which the state is interested;683 (3) after judgment on any cause referred to in Subsection (2), direct the issuance of
684 process as necessary to execute the judgment;685 (4) account for, and pay over to the proper officer, all money that comes into the
686 attorney general's possession that belongs to the state;687 (5) keep a file of all cases in which the attorney general is required to appear, including
688 any documents and papers showing the court in which the cases have been instituted and tried,
689 and whether they are civil or criminal, and:690 (a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to
691 judgment, a memorandum of the judgment and of any process issued [~~whether~~] if satisfied, and
692 if not satisfied, documentation of the return of the sheriff;693 (b) if criminal, the nature of the crime, the mode of prosecution, the stage of
694 proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the
695 execution, if the sentence has been executed, and, if not executed, [~~of~~] the reason [~~of~~] for the
696 delay or prevention; and

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

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

701 (7) give the attorney general's opinion in writing and without fee to the Legislature or

702 either house[;] and to any state officer, board, or commission, and to any county attorney or
703 district attorney, when required, upon any question of law relating to their respective offices;

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

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

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

716 (11) when in [~~his~~] the attorney general's opinion it is necessary for the collection or
717 enforcement of any judgment, institute and prosecute on behalf of the state any action or
718 proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment
719 debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of
720 Examiners, out of any money not otherwise appropriated;

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

724 (13) institute and prosecute proper proceedings in any court of the state or of the
725 United States[;] to restrain and enjoin corporations organized under the laws of this or any
726 other state or territory from acting illegally or in excess of their corporate powers or contrary to
727 public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations,
728 and wind up their affairs;

729 (14) institute investigations for the recovery of all real or personal property that may

730 have escheated or should escheat to the state, and for that purpose, subpoena any persons
731 before any of the district courts to answer inquiries and render accounts concerning any
732 property, examine all books and papers of any corporations, and when any real or personal
733 property is discovered that should escheat to the state, institute suit in the district court of the
734 county where the property is situated for its recovery, and escheat that property to the state;

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

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

739 (17) pursue any appropriate legal action to implement the state's public lands policy
740 established in Subsection 63C-4-105(1);

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

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

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

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

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

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

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

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

756 Section 42. Section **77-22a-1** is amended to read:

757 **77-22a-1. Administrative subpoenas -- Controlled substances investigations --**

758 **Procedures -- Witness fees.**

759 (1) (a) The administrative subpoena process of this chapter may be used only to obtain
760 third party information under circumstances where it is clear that the subpoenaed information is
761 not subject to a claim of protection under the Fourth, Fifth, or Sixth Amendment, United States
762 Constitution, or a similar claim under Article I, Sec. 12 and Sec. 14, Utah Constitution.

763 (b) A party subpoenaed under this chapter shall be advised by the subpoena that ~~he~~
764 the party has a right to challenge the subpoena by motion to quash filed in the appropriate
765 district court named in the subpoena before compliance is required.

766 (2) (a) In any investigation relating to ~~his~~ an attorney's functions under this chapter
767 regarding controlled substances, the attorney general or a deputy or assistant attorney general
768 the county attorney or a deputy county attorney, or the district attorney or deputy district
769 attorney may subpoena witnesses, compel the attendance and testimony of witnesses, or require
770 the production of any records including books, papers, documents, and other tangible things
771 that constitute or contain evidence found by the attorney general or a deputy or assistant
772 attorney general or the county attorney or district attorney, as provided under Sections ~~[17-18-1~~
773 ~~and 17-18-1.7 or his deputy]~~ 17-18a-202 and 17-18a-203, or the county attorney's or district
774 attorney's deputy under Section 17-18a-602, to be relevant or material to the investigation.

775 (b) The attendance of witnesses or the production of records may be required from any
776 place within the state.

777 (3) Witnesses subpoenaed under this section shall be paid the same fees and mileage
778 costs as witnesses in the state district courts.

779 (4) If the attorney general ~~or~~, a deputy or assistant attorney general, or the county
780 attorney or district attorney, or ~~his~~ a deputy ~~[determine]~~ attorney determines that disclosure of
781 the existence of an administrative subpoena or of the information sought or of the existence of
782 the investigation under which it is issued would pose a threat of harm to a person or otherwise
783 impede the investigation, the subpoena shall contain language on its face directing that the
784 witness not disclose to any person the existence or service of the subpoena, the information
785 being sought, or the existence of an investigation.

786 Section 43. Section **77-22b-1** is amended to read:

787 **77-22b-1. Immunity granted to witness.**

788 (1) (a) A witness who refuses, or is likely to refuse, on the basis of [~~his~~] the witness's
789 privilege against self-incrimination to testify or provide evidence or information in a criminal
790 investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of
791 an investigation or inquiry being conducted by a government agency or commission, or by
792 either house of the Legislature, a joint committee of the two houses, or a committee or
793 subcommittee of either house, may be compelled to testify or provide evidence or information
794 by any of the following, after being granted use immunity with regards to the compelled
795 testimony or production of evidence or information:

796 (i) the attorney general or any assistant attorney general authorized by the attorney
797 general;

798 (ii) a district attorney or any deputy district attorney authorized by a district attorney;

799 (iii) in a county not within a prosecution district, a county attorney or any deputy
800 county attorney authorized by a county attorney;

801 (iv) a special counsel for the grand jury;

802 (v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec.
803 16; or

804 (vi) legislative general counsel in the case of testimony pursuant to subpoena before the
805 Legislature or any committee of the Legislature having subpoena powers.

806 (b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to
807 testify or provide evidence or information under a grant of use immunity, the prosecutor shall
808 notify the witness by written notice. The notice shall include the information contained in
809 Subsection (2) and advise the witness that [~~he~~] the witness may not refuse to testify or provide
810 evidence or information on the basis of [~~his~~] the witness's privilege against self-incrimination.
811 The notice need not be in writing when the grant of use immunity occurs on the record in the
812 course of a preliminary hearing, grand jury proceeding, or trial.

813 (2) Testimony, evidence, or information compelled under Subsection (1) may not be

814 used against the witness in any criminal or quasi-criminal case, nor any information directly or
815 indirectly derived from this testimony, evidence, or information, unless the testimony,
816 evidence, or information is volunteered by the witness or is otherwise not responsive to a
817 question. Immunity does not extend to prosecution or punishment for perjury or to giving a
818 false statement in connection with any testimony.

819 (3) If a witness is granted immunity under Subsection (1)[;] and is later prosecuted for
820 an offense that was part of the transaction or events about which the witness was compelled to
821 testify or produce evidence or information under a grant of immunity, the burden is on the
822 prosecution to show by a preponderance of the evidence that no use or derivative use was made
823 of the compelled testimony, evidence, or information in the subsequent case against the
824 witness, and to show that any proffered evidence was derived from sources totally independent
825 of the compelled testimony, evidence, or information. The remedy for not establishing that any
826 proffered evidence was derived from sources totally independent of the compelled testimony,
827 evidence, or information is suppression of that evidence only.

828 (4) Nothing in this section prohibits or limits prosecutorial authority granted in Section
829 77-22-4.5.

830 (5) A county attorney within a prosecution district shall have the authority to grant
831 immunity only as provided in [~~Section 17-18-1.5~~] Subsection 17-18a-402(3).

832 (6) For purposes of this section, "quasi-criminal" means only those proceedings that are
833 determined by a court to be so far criminal in their nature that a defendant has a constitutional
834 right [~~to not incriminate himself~~] against self-incrimination.

835 Section 44. Section **77-23a-10** is amended to read:

836 **77-23a-10. Application for order -- Authority of order -- Emergency action --**
837 **Application -- Entry -- Conditions -- Extensions -- Recordings -- Admissibility or**
838 **suppression -- Appeal by state.**

839 (1) Each application for an order authorizing or approving the interception of a wire,
840 electronic, or oral communication shall be made in writing, upon oath or affirmation to a judge
841 of competent jurisdiction, and shall state the applicant's authority to make the application.

842 Each application shall include:

843 (a) the identity of the investigative or law enforcement officer making the application,
844 and the officer authorizing the application;

845 (b) a full and complete statement of the facts and circumstances relied upon by the
846 applicant to justify ~~his~~ the applicant's belief that an order should be issued, including:

847 (i) details regarding the particular offense that has been, is being, or is about to be
848 committed;

849 (ii) except as provided in Subsection (12), a particular description of the nature and
850 location of the facilities from which or the place where the communication is to be intercepted;

851 (iii) a particular description of the type of communication sought to be intercepted; and

852 (iv) the identity of the person, if known, committing the offense and whose
853 communication is to be intercepted;

854 (c) a full and complete statement as to whether other investigative procedures have
855 been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or
856 too dangerous;

857 (d) a statement of the period of time for which the interception is required to be
858 maintained, and if the investigation is of a nature that the authorization for interception should
859 not automatically terminate when the described type of communication has been first obtained,
860 a particular description of facts establishing probable cause to believe that additional
861 communications of the same type will occur thereafter;

862 (e) a full and complete statement of the facts concerning all previous applications
863 known to the individual authorizing and the individual making the application, made to any
864 judge for authorization to intercept, or for approval of interceptions of wire, electronic, or oral
865 communications involving any of the same persons, facilities, or places specified in the
866 application, and the action taken by the judge on each application;

867 (f) when the application is for the extension of an order, a statement setting forth the
868 results so far obtained from the interception, or a reasonable explanation of the failure to obtain
869 results; and

870 (g) additional testimony or documentary evidence in support of the application as the
871 judge may require.

872 (2) Upon application the judge may enter an ex parte order, as requested or as
873 modified, authorizing or approving interception of wire, electronic, or oral communications
874 within the territorial jurisdiction of the state if the judge determines on the basis of the facts
875 submitted by the applicant that:

876 (a) there is probable cause for belief that an individual is committing, has committed,
877 or is about to commit a particular offense under Section 77-23a-8;

878 (b) there is probable cause for belief that particular communications concerning that
879 offense will be obtained through the interception;

880 (c) normal investigative procedures have been tried and have failed or reasonably
881 appear to be either unlikely to succeed if tried or too dangerous; and

882 (d) except as provided in Subsection (12), there is probable cause for belief that the
883 facilities from which or the place where the wire, electronic, or oral communications are to be
884 intercepted are being used, or are about to be used, in connection with the commission of the
885 offense, or are leased to, listed in the name of, or commonly used by that person.

886 (3) Each order authorizing or approving the interception of any wire, electronic, or oral
887 [~~communication~~] communications shall specify:

888 (a) the identity of the person, if known, whose communications are to be intercepted;

889 (b) except as provided in Subsection (12), the nature and location of the
890 communications facilities as to which, or the place where, authority to intercept is granted;

891 (c) a particular description of the type of communication sought to be intercepted[;]
892 and a statement of the particular offense to which it relates;

893 (d) the identity of the agency authorized to intercept the communications[;] and of the
894 persons authorizing the application; and

895 (e) the period of time during which the interception is authorized, including a statement
896 as to whether the interception shall automatically terminate when the described

897 [~~communication~~] communications has been first obtained.

898 (4) An order authorizing the interception of a wire, electronic, or oral [~~communication~~]
899 communications shall, upon request of the applicant, direct that a provider of wire or electronic
900 communications service, landlord, custodian, or other person shall furnish the applicant
901 forthwith all information, facilities, and technical assistance necessary to accomplish the
902 interception unobtrusively and with a minimum of interference with the services that the
903 provider, landlord, custodian, or person is according the person whose communications are to
904 be intercepted. Any provider of wire or electronic communications service, landlord,
905 custodian, or other person furnishing the facilities or technical assistance shall be compensated
906 by the applicant for reasonable expenses involved in providing the facilities or systems.

907 (5) (a) An order entered under this chapter may not authorize or approve the
908 interception of any wire, electronic, or oral [~~communication~~] communications for any period
909 longer than is necessary to achieve the objective of the authorization, but in any event for no
910 longer than 30 days. The 30-day period begins on the day the investigative or law enforcement
911 officer first begins to conduct an interception under the order, or 10 days after the order is
912 entered, whichever is earlier.

913 (b) Extensions of an order may be granted, but only upon application for an extension
914 made under Subsection (1)[;] and if the court makes the findings required by Subsection (2).
915 The period of extension may be no longer than the authorizing judge considers necessary to
916 achieve the purposes for which it was granted, but in no event for longer than 30 days.

917 (c) Every order and extension shall contain a provision that the authorization to
918 intercept shall be executed as soon as practicable, shall be conducted so as to minimize the
919 interception of communications not otherwise subject to interception under this chapter, and
920 must terminate upon attainment of the authorized objective, or in any event within 30 days.

921 (d) If the intercepted communication is in a code or foreign language, and an expert in
922 that foreign language or code is not reasonably available during the interception period, the
923 minimizing of the interception may be accomplished as soon as practicable after the
924 interception.

925 (e) An interception under this chapter may be conducted in whole or in part by

926 government personnel or by an individual under contract with the government and acting under
927 supervision of an investigative or law enforcement officer authorized to conduct the
928 interception.

929 (6) When an order authorizing interception is entered under this chapter, the order may
930 require reports to be made to the judge who issued the order, showing what progress has been
931 made toward achievement of the authorized objective and the need for continued interception.
932 These reports shall be made at intervals the judge may require.

933 (7) Notwithstanding any other provision of this chapter, any investigative or law
934 enforcement officer who is specially designated by either the attorney general[;] or a county
935 attorney or district attorney, as provided under Sections [~~17-18-1 and 17-18-1.7~~] 17-18a-202
936 and 17-18a-203 may intercept wire, electronic, or oral [~~communication~~] communications if an
937 application for an order approving the interception is made in accordance with this section and
938 within 48 hours after the interception has occurred or begins to occur, when the investigative or
939 law enforcement officer reasonably determines that:

940 (a) an emergency situation exists that involves:

941 (i) immediate danger of death or serious physical injury to any person;

942 (ii) conspiratorial activities threatening the national security interest; or

943 (iii) conspiratorial activities characteristic of organized crime, that require a wire,

944 electronic, or oral [~~communication~~] communications to be intercepted before an order

945 authorizing interception can, with diligence, be obtained; and

946 (b) there are grounds upon which an order could be entered under this chapter to
947 authorize the interception.

948 (8) (a) In the absence of an order under Subsection (7), the interception immediately
949 terminates when the communication sought is obtained or when the application for the order is
950 denied, whichever is earlier.

951 (b) If the application for approval is denied, or in any other case where the interception
952 is terminated without an order having been issued, the contents of any wire, electronic, or oral
953 [~~communication~~] communications intercepted shall be treated as having been obtained in

954 violation of this chapter, and an inventory shall be served as provided for in Subsection (9)(d)
955 on the person named in the application.

956 (9) (a) The contents of any wire, electronic, or oral [~~communication~~] communications
957 intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or
958 wire or other comparable device. The recording of the contents of any wire, electronic, or oral
959 [~~communication~~] communications under this Subsection (9)(a) shall be done so as to protect
960 the recording from editing or other alterations. Immediately upon the expiration of the period
961 of an order[;] or extension, the recordings shall be made available to the judge issuing the order
962 and sealed under his directions. Custody of the recordings shall be where the judge orders.
963 The recordings may not be destroyed, except upon an order of the issuing or denying judge. In
964 any event, it shall be kept for 10 years. Duplicate recordings may be made for use or disclosure
965 under Subsections 77-23a-9(1) and (2) for investigations. The presence of the seal provided by
966 this Subsection (9)(a), or a satisfactory explanation for the absence of one, is a prerequisite for
967 the use or disclosure of the contents of any wire, electronic, or oral [~~communication~~]
968 communications or evidence derived from it under Subsection 77-23a-9(3).

969 (b) Applications made and orders granted under this chapter shall be sealed by the
970 judge. Custody of the applications and orders shall be where the judge directs. The
971 applications and orders shall be disclosed only upon a showing of good cause before a judge of
972 competent jurisdiction and may not be destroyed, except on order of the issuing or denying
973 judge. But in any event they shall be kept for 10 years.

974 (c) Any violation of any provision of this Subsection (9) may be punished as contempt
975 of the issuing or denying judge.

976 (d) Within a reasonable time, but not later than 90 days after the filing of an application
977 for an order of approval under Subsection 77-23a-10(7) that is denied or the termination of the
978 period of an order or extensions, the issuing or denying judge shall cause to be served on the
979 persons named in the order or the application, and other parties to the intercepted
980 communications as the judge determines in his discretion is in the interest of justice, an
981 inventory, which shall include notice [~~of~~]:

982 (i) of the entry of the order or application;

983 (ii) of the date of the entry and the period of authorization, approved or disapproved
984 interception, or the denial of the application; and

985 (iii) that during the period, wire, electronic, or oral communications were or were not
986 intercepted.

987 (e) The judge, upon filing of a motion, may in [~~his~~] the judge's discretion, make
988 available to the person or [~~his~~] the person's counsel for inspection the portions of the
989 intercepted communications, applications, and orders the judge determines to be in the interest
990 of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the
991 serving of the inventory required by this Subsection (9)(e) may be postponed.

992 (10) The contents of any intercepted wire, electronic, or oral [~~communication~~]
993 communications, or evidence derived from any of [~~them~~] these, may not be received in
994 evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state
995 court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been
996 furnished with a copy of the court order, and accompanying application, under which the
997 interception was authorized or approved. This ten-day period may be waived by the judge if
998 [~~he~~] the judge finds that it was not possible to furnish the party with the above information 10
999 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the
1000 delay in receiving the information.

1001 (11) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any
1002 court, department, officer, agency, regulatory body, or other authority of the United States, the
1003 state, or a political subdivision may move to suppress the contents of any intercepted wire,
1004 electronic, or oral [~~communication~~] communications, or evidence derived from any of them, on
1005 the grounds that:

1006 (i) the communication was unlawfully intercepted;

1007 (ii) the order of authorization or approval under which it was intercepted is insufficient
1008 on its face; or

1009 (iii) the interception was not made in conformity with the order of authorization or

1010 approval.

1011 (b) The motion shall be made before the trial, hearing, or proceeding, unless there was
1012 no opportunity to make the motion or the person was not aware of the grounds of the motion.
1013 If the motion is granted, the contents of the intercepted wire, electronic, or oral
1014 [~~communication~~] communications, or evidence derived from any of [~~them~~] these, shall be
1015 treated as having been obtained in violation of this chapter. The judge, upon the filing of the
1016 motion by the aggrieved person, may in [~~his~~] the judge's discretion make available to the
1017 aggrieved person or [~~his~~] the aggrieved person's counsel for inspection portions of the
1018 intercepted communication or evidence derived from [~~them~~] the intercepted communication as
1019 the judge determines to be in the interests of justice.

1020 (c) In addition to any other right to appeal, the state or its political subdivision may
1021 appeal from an order granting a motion to suppress made under Subsection (11)(a), or the
1022 denial of an application for an order of approval, if the attorney bringing the appeal certifies to
1023 the judge or other official granting the motion or denying the application that the appeal is not
1024 taken for the purposes of delay. The appeal shall be taken within 30 days after the date the
1025 order was entered and shall be diligently prosecuted.

1026 (12) The requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) relating to the
1027 specification of the facilities from which, or the place where, the [~~communication is~~] wire,
1028 electronic, or oral communications are to be intercepted do not apply if:

1029 (a) in the case of an applicant regarding the interception of [~~an~~] oral [~~communication~~]
1030 communications:

1031 (i) the application is by a law enforcement officer and is approved by the state attorney
1032 general, a deputy attorney general, a county attorney or district attorney, or a deputy county
1033 attorney or deputy district attorney;

1034 (ii) the application contains a full and complete statement of why the specification is
1035 not practical, and identifies the person committing the offense and whose communications are
1036 to be intercepted; or

1037 (iii) the judge finds that the specification is not practical; and

1038 (b) in the case of an application regarding wire or electronic [~~communication~~]
1039 communications:

1040 (i) the application is by a law enforcement officer and is approved by the state attorney
1041 general, a deputy attorney general, a county attorney or district attorney, or a deputy county
1042 attorney or deputy district attorney;

1043 (ii) the application identifies the person believed to be committing the offense and
1044 whose communications are to be intercepted, and the applicant makes a showing of a purpose,
1045 on the part of that person, to thwart interception by changing facilities; and

1046 (iii) the judge finds that the purpose has been adequately shown.

1047 (13) (a) An interception of a communication under an order regarding which the
1048 requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) do not apply by reason of Subsection
1049 (12)[;] does not begin until the facilities from which, or the place where, the [~~communication~~
1050 is] communications are to be intercepted is ascertained by the person implementing the
1051 interception order.

1052 (b) A provider of wire or electronic communications service that has received an order
1053 under Subsection (12)(b) may move the court to modify or quash the order on the ground that
1054 its assistance with respect to the interception cannot be performed in a timely or reasonable
1055 fashion. The court, upon notice to the government, shall decide the motion expeditiously.

1056 Section 45. Section **78A-6-602** is amended to read:

1057 **78A-6-602. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal**
1058 **referral -- Citation -- Failure to appear.**

1059 (1) A proceeding in a minor's case is commenced by petition, except as provided in
1060 Sections 78A-6-701, 78A-6-702, and 78A-6-703.

1061 (2) (a) A peace officer or any public official of the state, any county, city, or town
1062 charged with the enforcement of the laws of the state or local jurisdiction shall file a formal
1063 referral with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken
1064 to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours,
1065 excluding weekends and holidays. There shall be no requirement to file a formal referral with

1066 the juvenile court on an offense that would be a class B misdemeanor or less if committed by
1067 an adult.

1068 (b) When the court is informed by a peace officer or other person that a minor is or
1069 appears to be within the court's jurisdiction, the probation department shall make a preliminary
1070 inquiry to determine whether the interests of the public or of the minor require that further
1071 action be taken.

1072 (c) (i) Based on the preliminary inquiry, the court may authorize the filing of or request
1073 that the county attorney or district attorney as provided under Sections [~~17-18-1 and 17-18-1.7~~]
1074 17-18a-202 or 17-18a-203 file a petition.

1075 (ii) In its discretion, the court may, through its probation department, enter into a
1076 written consent agreement with the minor and, if the minor is a child, the minor's parent,
1077 guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and
1078 establish prima facie jurisdiction.

1079 (iii) Efforts to effect a nonjudicial adjustment may not extend for a period of more than
1080 90 days without leave of a judge of the court, who may extend the period for an additional 90
1081 days.

1082 (d) The nonjudicial adjustment of a case may include conditions agreed upon as part of
1083 the nonjudicial closure:

- 1084 (i) payment of a financial penalty of not more than \$250 to the juvenile court;
- 1085 (ii) payment of victim restitution;
- 1086 (iii) satisfactory completion of compensatory service;
- 1087 (iv) referral to an appropriate provider for counseling or treatment;
- 1088 (v) attendance at substance abuse programs or counseling programs;
- 1089 (vi) compliance with specified restrictions on activities and associations; and
- 1090 (vii) other reasonable actions that are in the interest of the child or minor and the
1091 community.

1092 (e) Proceedings involving offenses under Section 78A-6-606 are governed by that
1093 section regarding suspension of driving privileges.

1094 (f) A violation of Section 76-10-105 that is subject to the jurisdiction of the juvenile
1095 court shall include a minimum fine or penalty of \$60 and participation in a court-approved
1096 tobacco education program, which may include a participation fee.

1097 (3) Except as provided in Sections 78A-6-701 and 78A-6-702, in the case of a minor
1098 14 years of age or older, the county attorney, district attorney, or attorney general may
1099 commence an action by filing a criminal information and a motion requesting the juvenile court
1100 to waive its jurisdiction and certify the minor to the district court.

1101 (4) (a) In cases of violations of wildlife laws, boating laws, class B and class C
1102 misdemeanors, other infractions or misdemeanors as designated by general order of the Board
1103 of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the
1104 juvenile court, a petition is not required and the issuance of a citation as provided in Section
1105 78A-6-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not
1106 required unless requested by the court.

1107 (b) Any failure to comply with the time deadline on a formal referral may not be the
1108 basis of dismissing the formal referral.

1109 Section 46. Section **78A-6-1002** is amended to read:

1110 **78A-6-1002. Practice and procedure -- Jury trial.**

1111 (1) The county attorney or district attorney, as provided [~~under Sections 17-18-1 and~~
1112 ~~17-18-1.7~~] in Title 17, Chapter 18a, Powers and Duties of County and District Attorney, shall
1113 prosecute any case brought under this part.

1114 (2) Proceedings under this part shall be governed by the statutes and rules governing
1115 criminal proceedings in the district court, except the court may, and on stipulation of the
1116 parties, shall, transfer the case to the district court.

1117 Section 47. **Repealer.**

1118 This bill repeals:

1119 Section **17-18-1, Powers -- Duties of county attorney -- Prohibitions.**

1120 Section **17-18-1.5, Powers -- Duties of county attorney within a prosecution district**
1121 **-- Prohibitions.**

- 1122 Section **17-18-1.6, Election of district attorney.**
- 1123 Section **17-18-1.7, Powers -- Duties of district attorney -- Prohibitions.**
- 1124 Section **17-18-1.9, Creation of prosecution district by ordinance or interlocal**
- 1125 **agreement.**
- 1126 Section **17-18-2, Legal adviser to commissioners.**
- 1127 Section **17-18-4, Licensing requirement.**
- 1128 Section **17-18-5, Requirements of office.**