

ATTORNEY GENERAL PROSECUTION REVIEW

AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Chris H. Wilson

LONG TITLE

General Description:

This bill amends provisions relating to the duties of the attorney general.

Highlighted Provisions:

This bill:

- describes requirements applicable to a district attorney, county attorney, and a law enforcement agency to provide information and evidence to the attorney general when the attorney general conducts a de novo review of a case;
- permits the attorney general to seek a court order to enforce timely compliance with the preceding paragraph; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

36-12-7, as last amended by Laws of Utah 2020, Chapter 343

67-5-1, as last amended by Laws of Utah 2021, Chapter 273

67-5-1.1, as enacted by Laws of Utah 2018, Chapter 473



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

Section 1. Section **36-12-7** is amended to read:

36-12-7. Legislative Management Committee -- Duties -- Litigation.

(1) The Senate or House Management Committee shall:

(a) receive legislative resolutions directing studies on legislative matters and may assign these studies to the appropriate interim committee of its house;

(b) assign to interim committees of the same house, matters of legislative study not specifically contained in a legislative resolution but considered significant to the welfare of the state;

(c) receive requests from interim committees of its house for matters to be included on the study agenda of the requesting committee. Appropriate bases for denying a study include inadequate funding to properly complete the study or duplication of the work;

(d) establish a budget account for interim committee day as designated by Legislative Management Committee and for all other legislative committees of its house and allocate to that account sufficient funds to adequately provide for the work of the committee; and

(e) designate the time and place for periodic meetings of the interim committees.

(2) To maximize the use of legislators' available time, the Senate and House Management Committees should attempt to schedule the committee meetings of their respective houses during the same one or two-day period each month. This does not preclude an interim committee from meeting at any time it determines necessary to complete its business.

(3) The Legislative Management Committee shall:

(a) employ, after recommendation of the appropriate subcommittee of the Legislative Management Committee, without regard to political affiliation, and subject to approval of a majority vote of both houses, persons qualified for the positions of director of the Office of Legislative Research and General Counsel, legislative fiscal analyst, legislative general counsel, and legislative auditor general. Appointments to these positions shall be for terms of six years subject to renewal under the same procedure as the original appointment. A person may be removed from any of these offices before the expiration of the person's term only by a majority vote of both houses of the Legislature or by a two-thirds vote of the management

committee for such causes as inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, misfeasance, malfeasance, or nonfeasance in office. If a vacancy occurs in any of these offices after adjournment of the Legislature, the committee shall appoint an individual to fill the vacancy until such time as the person is approved or rejected by majority vote of the next session of the Legislature;

(b) develop policies for personnel management, compensation, and training of all professional legislative staff;

(c) develop a policy within the limits of legislative appropriation for the authorization and payment to legislators of compensation and travel expenses, including out-of-state travel;

(d) approve special study budget requests of the legislative directors; and

(e) assist the speaker-elect of the House of Representatives and the president-elect of the Senate, upon selection by their majority party caucus, to organize their respective houses of the Legislature and assume the direction of the operation of the Legislature in the forthcoming annual general session.

(4) (a) The Legislature delegates to the Legislative Management Committee the authority, by means of a majority vote of the committee, to direct the legislative general counsel in matters involving the Legislature's participation in litigation.

(b) The Legislature has an unconditional right to intervene in a state court action and may provide evidence or argument, written or oral, if a party to that court action challenges:

(i) the constitutionality of a state statute;

(ii) the validity of legislation; or

(iii) any action of the Legislature.

(c) In a federal court action that challenges the constitutionality of a state statute, the validity of legislation, or any action of the Legislature, the Legislature may seek to intervene, to file an amicus brief, or to present argument in accordance with federal rules of procedure.

(d) Intervention by the Legislature pursuant to Subsection (4)(b) or (c) does not limit the duty of the attorney general to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided by law.

(e) In any action in which the Legislature intervenes or participates, legislative counsel and the attorney general shall function independently from each other in the representation of their respective clients.

(f) The attorney general shall notify the legislative general counsel of a claim in accordance with Subsection ~~[67-5-1(25)]~~ 67-5-1(1)(y).

Section 2. Section **67-5-1** is amended to read:

67-5-1. General duties.

(1) The attorney general shall:

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

~~[(2)]~~ (b) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested;

~~[(3)]~~ (c) after judgment on any cause referred to in Subsection ~~[(2)]~~ (1)(b), direct the issuance of process as necessary to execute the judgment;

~~[(4)]~~ (d) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;

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

~~[(a)]~~ (i) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued if satisfied, and if not satisfied, documentation of the return of the sheriff;

~~[(b)]~~ (ii) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and

~~[(c)]~~ (iii) deliver this information to the attorney general's successor in office;

~~[(6)]~~ (f) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of the district and county attorneys' offices, including the authority ~~[to:]~~ described in Subsection (2);

~~[(a) require a district or county attorney of the state to, upon request, report on the~~

status of public business entrusted to the district or county attorney's charge; or]

~~[(b) review investigation results de novo and file criminal charges, if warranted, in any case involving a first degree felony, if:]~~

~~[(i) a law enforcement agency submits investigation results to the county or district attorney of the jurisdiction where the incident occurred and the county or district attorney:]~~

~~[(A) declines to file criminal charges; or]~~

~~[(B) fails to screen the case for criminal charges within six months of the law enforcement agency's submission of the investigation results; and]~~

~~[(ii) after consultation with the county or district attorney of the jurisdiction where the incident occurred, the attorney general reasonably believes action by the attorney general would not interfere with an ongoing investigation or prosecution by the county or district attorney of the jurisdiction where the incident occurred;]~~

~~[(7)]~~ (g) give the attorney general's opinion in writing and without fee, when required, upon any question of law relating to the office of the requester:

~~[(a)]~~ (i) in accordance with Section 67-5-1.1, to the Legislature or either house;

~~[(b)]~~ (ii) to any state officer, board, or commission; and

~~[(c)]~~ (iii) to any county attorney or district attorney;

~~[(8)]~~ (h) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of county, district, or city attorney's duties;

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

~~[(10)]~~ (j) when the property of a judgment debtor in any judgment mentioned in Subsection ~~[(9)]~~ (1)(i) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

~~[(11)]~~ (k) when in the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or

proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

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

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

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

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

~~[(16)]~~ (p) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a, Constitutional and Federalism Defense Act;

~~[(17)]~~ (q) pursue any appropriate legal action to implement the state's public lands policy established in Section [63C-4a-103](#);

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

~~[(19)]~~ (s) investigate and prosecute complaints of abuse, neglect, or exploitation of patients:

~~[(a)]~~ (i) in health care facilities that receive payments under the state Medicaid program;

~~[(b)]~~ (ii) in board and care facilities, as defined in the federal Social Security Act, 42

U.S.C. Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility;
and

~~[(c)]~~ (iii) who are receiving medical assistance under the Medicaid program as defined
in Section 26-18-2 in a noninstitutional or other setting;

~~[(20)-(a)]~~ (t) (i) report at least twice per year to the Legislative Management Committee
on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

~~[(i)]~~ (A) cost the state more than \$500,000; or

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

~~[(b)]~~ (ii) if the meeting is closed, include an estimate of the state's potential financial or
other legal exposure in that report;

~~[(21)-(a)]~~ (u) (i) submit a written report to the committees described in Subsection
~~[(21)-(b)]~~ (1)(u)(ii) that summarizes any lawsuit or decision in which a court or the Office of the
Attorney General has determined that a state statute is unconstitutional or unenforceable since
the attorney general's last report under this Subsection ~~[(21)]~~ (1)(u), including any:

~~[(i)]~~ (A) settlements reached;

~~[(ii)]~~ (B) consent decrees entered;

~~[(iii)]~~ (C) judgments issued;

~~[(iv)]~~ (D) preliminary injunctions issued;

~~[(v)]~~ (E) temporary restraining orders issued; or

~~[(vi)]~~ (F) formal or informal policies of the Office of the Attorney General to not
enforce a law; and

~~[(b)]~~ (ii) at least 30 days before the Legislature's May and November interim meetings,
submit the report described in Subsection ~~[(21)-(a)]~~ (1)(u)(i) to:

~~[(i)]~~ (A) the Legislative Management Committee;

~~[(ii)]~~ (B) the Judiciary Interim Committee; and

~~[(iii)]~~ (C) the Law Enforcement and Criminal Justice Interim Committee;

~~[(22)]~~ (v) if the attorney general operates the Office of the Attorney General or any
portion of the Office of the Attorney General as an internal service fund agency in accordance
with Section 67-5-4, submit to the rate committee established in Section 67-5-34:

~~[(a)]~~ (i) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4);

214 and

215 ~~[(b)]~~ (ii) any other information or analysis requested by the rate committee;

216 ~~[(23)]~~ (w) before the end of each calendar year, create an annual performance report for

217 the Office of the Attorney General and post the report on the attorney general's website;

218 ~~[(24)]~~ (x) ensure that any training required under this chapter complies with Title 63G,

219 Chapter 22, State Training and Certification Requirements;

220 ~~[(25)]~~ (y) notify the legislative general counsel in writing within three business days

221 after the day on which the attorney general is officially notified of a claim, regardless of

222 whether the claim is filed in state or federal court, that challenges:

223 ~~[(a)]~~ (i) the constitutionality of a state statute;

224 ~~[(b)]~~ (ii) the validity of legislation; or

225 ~~[(c)]~~ (iii) any action of the Legislature; and

226 ~~[(26)-(a)]~~ (z) (i) notwithstanding Title 63G, Chapter 6a, Utah Procurement Code,

227 provide a special advisor to the Office of the Governor and the Office of the Attorney General

228 in matters relating to Native American and tribal issues to:

229 ~~[(i)]~~ (A) establish outreach to the tribes and affected counties and communities; and

230 ~~[(ii)]~~ (B) foster better relations and a cooperative framework; and

231 ~~[(b)]~~ (ii) annually report to the Executive Offices and Criminal Justice Appropriations

232 Subcommittee regarding:

233 ~~[(i)]~~ (A) the status of the work of the special advisor described in Subsection ~~[(26)-(a)]~~

234 ~~(1)(z)(i)~~; and

235 ~~[(ii)]~~ (B) whether the need remains for the ongoing appropriation to fund the special

236 advisor described in Subsection ~~[(26)-(a)]~~ ~~(1)(z)(i)~~.

237 (2) (a) The attorney general may require a district attorney or county attorney of the

238 state to, upon request, report on the status of public business entrusted to the district or county

239 attorney's charge.

240 (b) The attorney general may review investigation results de novo and file criminal

241 charges, if warranted, in any case involving a first degree felony, if:

242 (i) a law enforcement agency submits investigation results to the county attorney or

243 district attorney of the jurisdiction where the incident occurred and the county attorney or

244 district attorney:

245 (A) declines to file criminal charges; or

246 (B) fails to screen the case for criminal charges within six months after the law
247 enforcement agency's submission of the investigation results; and

248 (ii) after consultation with the county attorney or district attorney of the jurisdiction
249 where the incident occurred, the attorney general reasonably believes action by the attorney
250 general would not interfere with an ongoing investigation or prosecution by the county attorney
251 or district attorney of the jurisdiction where the incident occurred.

252 (c) If the attorney general decides to conduct a review under Subsection (2)(b), the
253 district attorney, county attorney, and law enforcement agency shall, within 14 days after the
254 day on which the attorney general makes a request, provide the attorney general with:

255 (i) all information relating to the investigation, including all reports, witness lists,
256 witness statements, and other documents created or collected in relation to the investigation;

257 (ii) all recordings, photographs, and other physical or digital media created or collected
258 in relation to the investigation;

259 (iii) access to all evidence gathered or collected in relation to the investigation; and

260 (iv) the identification of, and access to, all officers or other persons who have
261 information relating to the investigation.

262 (d) If a district attorney, county attorney, or law enforcement agency fails to timely
263 comply with Subsection (2)(c), the attorney general may seek a court order compelling
264 compliance.

265 (e) If the attorney general seeks a court order under Subsection (2)(d), the court shall
266 grant the order unless the district attorney, county attorney, or law enforcement agency shows
267 good cause and a compelling interest for not complying with Subsection (2)(c).

268 Section 3. Section **67-5-1.1** is amended to read:

269 **67-5-1.1. Written opinion to the Legislature -- Rebuttable presumption.**

270 (1) When the Legislature or either house requests the attorney general's written legal
271 opinion in accordance with Subsection ~~[67-5-1(7)]~~ 67-5-1(1)(g):

272 (a) the attorney general shall, applying concepts from the Rules of Professional
273 Conduct contained in the Supreme Court Rules of Professional Practice, identify any potential
274 conflicts of interest in providing the attorney general's legal opinion to the Legislature;

275 (b) if the attorney general identifies a potential conflict of interest under Subsection

(1)(a), the attorney general shall, as soon as practicable after the identification:

(i) ensure that the attorney general's office provides each entity or individual involved in the potential conflict competent, privileged, and objective advice or representation by establishing:

(A) confidentiality procedures; and

(B) staffing divisions or other structural or administrative safeguards to screen attorneys participating in the preparation of the attorney general's opinion from participation on behalf of any other entity or individual involved in the potential conflict; and

(ii) provide written notice to each entity or individual involved in the potential conflict that describes the screening procedures that the attorney general establishes; and

(c) after complying with Subsections (1)(a) and (b), the attorney general shall provide the attorney general's opinion:

(i) within 30 days after the day on which the requester makes the request for the opinion; or

(ii) by a date upon which the attorney general and the requester agree.

(2) There is a presumption that:

(a) the attorney general's reasonable compliance with Subsections (1)(a) and (b) satisfies any ethical or professional obligation arising from the potential conflict of interest; and

(b) with adequate screening safeguards and procedures in place, the attorney general has an attorney-client relationship with each entity or individual involved in the potential conflict of interest.

(3) (a) The attorney general shall comply in good faith with the requirement to provide the opinion in accordance with Subsection [~~67-5-1(7)~~] 67-5-1(1)(g) and this section.

(b) The attorney general may not invoke the potential conflict of interest or attorney-client privilege as grounds to withhold or refuse to provide the legal opinion required in Subsection [~~67-5-1(7)~~] 67-5-1(1)(g) and this section.

(c) The Legislature or either house may petition the Utah Supreme Court for an extraordinary writ to obtain the legal opinion if the attorney general does not provide the opinion within the time period described in Subsection (1)(c).