

1 **ATTORNEY GENERAL AUTHORITY AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jordan D. Teuscher**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to the role of the attorney general.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ authorizes the attorney general to establish and enforce certain policies for district
13 or county attorneys;

14 ▶ amends a provision relating to the attorney general's authority to review
15 investigation results and file criminal charges when a district or county attorney has
16 declined to file criminal charges or to screen a case for criminal charges;

17 ▶ authorizes the attorney general to amend criminal charges filed by a district or
18 county attorney if the attorney general assumes responsibility for prosecuting the
19 case; and

20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **17-18a-401**, as enacted by Laws of Utah 2013, Chapter 237



28 [67-5-1](#), as last amended by Laws of Utah 2021, Chapter 273



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

31 Section 1. Section **17-18a-401** is amended to read:

32 **17-18a-401. Public prosecutor powers and duties.**

33 An attorney who serves as a public prosecutor shall:

34 (1) except for a prosecution undertaken by a city attorney under Section [10-3-928](#) or a
35 prosecution undertaken by the attorney general under Subsection [67-5-1\(6\)\(d\)](#), conduct, on
36 behalf of the state, all prosecutions for a public offense committed within a county or
37 prosecution district;

38 (2) conduct, on behalf of the county, all prosecutions for a public offense in violation
39 of a county criminal ordinance; and

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

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

42 **67-5-1. General duties.**

43 The attorney general shall:

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

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

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

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

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

58 (a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to

59 judgment, a memorandum of the judgment and of any process issued if satisfied, and if not
60 satisfied, documentation of the return of the sheriff;

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

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

66 (6) exercise supervisory powers over the district and county attorneys of the state in all
67 matters pertaining to the duties of the district and county attorneys' offices, including the
68 authority to:

69 (a) require a district or county attorney of the state to, upon request, report on the status
70 of public business entrusted to the district or county attorney's charge; [~~or~~]

71 (b) establish and enforce policies regarding:

72 (i) screening and filing criminal charges;

73 (ii) plea agreements;

74 (iii) pre-filing or post-filing diversion programs; or

75 (iv) sentencing recommendations;

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

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

80 (A) declines to file criminal charges; or

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

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

87 (d) review investigation results and criminal charges filed by a district or county
88 attorney, and amend the filed criminal charges if the attorney general assumes responsibility for
89 prosecuting the case and pursuing any ongoing investigation related to the case;

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

92 (a) in accordance with Section 67-5-1.1, to the Legislature or either house;

93 (b) to any state officer, board, or commission; and

94 (c) to any county attorney or district attorney;

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

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

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

107 (11) when in the attorney general's opinion it is necessary for the collection or
108 enforcement of any judgment, institute and prosecute on behalf of the state any action or
109 proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment
110 debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of
111 Examiners, out of any money not otherwise appropriated;

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

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

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

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

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

128 (16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a,
129 Constitutional and Federalism Defense Act;

130 (17) pursue any appropriate legal action to implement the state's public lands policy
131 established in Section 63C-4a-103;

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

135 (19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients:

136 (a) in health care facilities that receive payments under the state Medicaid program;

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

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

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

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

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

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

148 (21) (a) submit a written report to the committees described in Subsection (21)(b) that
149 summarizes any lawsuit or decision in which a court or the Office of the Attorney General has
150 determined that a state statute is unconstitutional or unenforceable since the attorney general's
151 last report under this Subsection (21), including any:

152 (i) settlements reached;
153 (ii) consent decrees entered;
154 (iii) judgments issued;
155 (iv) preliminary injunctions issued;
156 (v) temporary restraining orders issued; or
157 (vi) formal or informal policies of the Office of the Attorney General to not enforce a
158 law; and

159 (b) at least 30 days before the Legislature's May and November interim meetings,
160 submit the report described in Subsection (21)(a) to:

- 161 (i) the Legislative Management Committee;
- 162 (ii) the Judiciary Interim Committee; and
- 163 (iii) the Law Enforcement and Criminal Justice Interim Committee;

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

- 167 (a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and
- 168 (b) any other information or analysis requested by the rate committee;

169 (23) before the end of each calendar year, create an annual performance report for the
170 Office of the Attorney General and post the report on the attorney general's website;

171 (24) ensure that any training required under this chapter complies with Title 63G,
172 Chapter 22, State Training and Certification Requirements;

173 (25) notify the legislative general counsel in writing within three business days after
174 the day on which the attorney general is officially notified of a claim, regardless of whether the
175 claim is filed in state or federal court, that challenges:

- 176 (a) the constitutionality of a state statute;
- 177 (b) the validity of legislation; or
- 178 (c) any action of the Legislature; and

179 (26) (a) notwithstanding Title 63G, Chapter 6a, Utah Procurement Code, provide a
180 special advisor to the Office of the Governor and the Office of the Attorney General in matters
181 relating to Native American and tribal issues to:

- 182 (i) establish outreach to the tribes and affected counties and communities; and

- 183 (ii) foster better relations and a cooperative framework; and
184 (b) annually report to the Executive Offices and Criminal Justice Appropriations
185 Subcommittee regarding:
186 (i) the status of the work of the special advisor described in Subsection (26)(a); and
187 (ii) whether the need remains for the ongoing appropriation to fund the special advisor
188 described in Subsection (26)(a).