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Title 77: Criminal Procedure Chapter 01 Preliminary Provisions - 1995 Replacement Volume

Utah Code Annotated

TITLE 77

UTAH CODE OF CRIMINAL PROCEDURE

Repeals and Reenactments. — Title 77, Chapters 1 to 66, the Code of Criminal Procedure, was repealed by Laws 1980, ch. 15, § 1, effective July 1, 1980, and present Utah Code of Criminal Procedure, Chapters 1 to 34, was enacted in its place by § 2 of the same act.

Section 3 of Laws 1980, ch. 15 provided: "Nothing in this act shall be construed to repeal any particular section of Title 77, if that section is the subject of an amendment or new legislation enacted by this budget session of the 43rd Utah legislature and which becomes law. It is the intent of the legislature that the corresponding sections of this act shall be construed with such amended sections so as to give effect to the amendment as if it were made a part of this act."

Chapter

CHAPTER 1

PRELIMINARY PROVISIONS

77-1-1. Short title.

This act shall be known and may be cited as the "Utah Code of Criminal Procedure."

History: C. 1953, 77-1-1, enacted by L. 1980, ch. 15, § 2.

Meaning of "this act." — Laws 1980, ch. 15, § 2 enacted Chapters 1 to 34 of this title. See note under catchline "Repeals and Reenactments" at the beginning of the title. Because provisions have since been added, repealed, and amended, "this act" should probably be read as "this title."

Cross-References. — Ex post facto laws forbidden, Utah Const., Art. I, § 18.

Jurisdiction and venue of criminal actions, §§ 76-1-201, 76-1-202.

Revised statutes not retroactive, § 68-3-3.

State Commission on Criminal and Juvenile Justice, § 63-25-1 et seq.

COLLATERAL REFERENCES

Utah Law Review. — Nevada's 1967 Criminal Procedure Law from Arrest to Trial: One State's Response to a Widely Recognized Need, 1969 Utah L. Rev. 520.

C.J.S. — 22 C.J.S. Criminal Law § 25.
Key Numbers. — Criminal Law ⇐ 12.

77-1-2. Criminal procedure prescribed.

The procedure in criminal cases shall be as prescribed in this title, the Rules of Criminal Procedure, and such further rules as may be adopted by the Supreme Court of Utah.

History: C. 1953, 77-1-2, enacted by L. 1980, ch. 15, § 2.

Cross-References. — Annexation of county as affecting prosecutions and prisoners, §§ 17-2-5, 17-2-12.

Effect of creation of new county on pending prosecutions and prior offenses, §§ 17-3-7, 17-3-8.

NOTES TO DECISIONS

Common law.

As the state is bound by the Code of Criminal Procedure, it is unnecessary to inquire what was the rule at common law when the statute speaks. United States v. Cannon, 4 Utah 122, 7 P. 369, aff'd, 116 U.S. 55, 6 S. Ct. 278, 29 L. Ed. 561 (1885).

This section excludes all common-law practice. United States v. Cutler, 5 Utah 608, 19 P. 145 (1888).

The rules for testing an indictment in this state are those prescribed by Code of Criminal Procedure, and not the rules of the common law. People v. Kerm, 8 Utah 268, 30 P. 988 (1892).

77-1-3. Definitions.

For the purpose of this act:

(1) "Criminal action" means the proceedings by which a person is charged, accused, and brought to trial for a public offense.

(2) "Indictment" means an accusation in writing presented by a grand jury to the district court charging a person with a public offense.

(3) "Information" means an accusation, in writing, charging a person with a public offense which is presented, signed, and filed in the office of the clerk where the prosecution is commenced pursuant to Section 77-2-1.1.

(4) "Magistrate" means a justice or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section 78-3-31.

History: C. 1953, 77-1-3, enacted by L. 1980, ch. 15, § 2; 1981, ch. 68, § 1; 1983, ch. 212, § 1; 1985, ch. 174, § 2; 1985, ch. 212, § 16; 1990, ch. 59, § 26; 1991, ch. 268, § 16; 1992, ch. 33, § 1.

Amendment Notes. — The 1991 amendment, effective January 1, 1992, substituted "or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section 78-3-31" for "of the Supreme Court, a judge of the district courts, a judge of the juvenile courts, a judge of the circuit courts, a judge of the justice courts, or a judge of any court created by law" in Subsection (4).

The 1992 amendment, effective April 27, 1992, in Subsection (3) substituted "presented, signed, and filed" for "presented and signed by a prosecuting attorney" and "commenced pursuant to Section 77-2-1.1" for "commenced or subscribed and sworn to by a complaining witness before a magistrate if the offense is a class B misdemeanor or a lesser offense not requiring approval of the prosecuting attorney."

Meaning of "this act." — See note under same catchline following § 77-1-1.

Cross-References. — Grand juries, Chapter 10a of this title.

Prosecutions of public offenses, Rule 4, U.R.Cr.P.

NOTES TO DECISIONS

ANALYSIS

Information.
Jurisdiction.
Cited.

Information.

Once the information is authorized, its presentment and filing are not acts that the prosecuting attorney must personally perform. State ex rel. Cannon v. Leary, 646 P.2d 727 (Utah 1982).

Jurisdiction.

District judge was magistrate entitled to hold preliminary examinations in case of misdemeanor. State v. McIntyre, 92 Utah 177, 66 P.2d 879 (1937).

A justice of the peace has power to issue search warrants. Allen v. Holbrook, 103 Utah 319, 135 P.2d 242, modified on rehearing and petition denied, 103 Utah 599, 139 P.2d 233 (1943).

A judge or justice when acting in the role of magistrate was limited to the jurisdiction and powers conferred by law upon magistrates. Van Dam v. Morris, 571 P.2d 1325 (Utah 1977).

A judicial officer functioning as a magistrate is not functioning as a circuit court or other court of record. Because magistrates are not courts of record when they conduct preliminary hearings and issue bindover orders, under the current jurisdictional statutes their orders are not immediately appealable. State v. Humphrey, 823 P.2d 464 (Utah 1991).

Cited in State v. Milligan, 727 P.2d 213 (Utah 1986).

COLLATERAL REFERENCES

Am. Jur. 2d. — 41 Am. Jur. 2d Indictments and Informations § 1.

C.J.S. — 42 C.J.S. Indictments and Informations §§ 4, 8; 48A C.J.S. Judges §§ 4, 161; 80 C.J.S. Sheriffs and Constables § 1; 81A C.J.S. States § 139.

Key Numbers. — Indictment and Information ⇐ 17, 35; Judges ⇐ 1; Sheriffs and Constables ⇐ 1; States ⇐ 68, 74.

77-1-4. Conviction to precede punishment.

No person shall be punished for a public offense until convicted in a court having jurisdiction.

History: C. 1953, 77-1-4, enacted by L. 1980, ch. 15, § 2.

Cross-References. — No person to be deprived of life or liberty without due process of law, Utah Const., Art. I, § 7.

77-1-5. Prosecuting party.

A criminal action for any violation of a state statute shall be prosecuted in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved.

History: C. 1953, 77-1-5, enacted by L. 1980, ch. 15, § 2.

Cross-References. — Prosecutions to be conducted in name of "the State of Utah," Utah Const., Art. VIII, § 16.

COLLATERAL REFERENCES

C.J.S. — 22 C.J.S. Criminal Law § 21.

77-1-6. Rights of defendant.

(1) In criminal prosecutions the defendant is entitled:

(a) To appear in person and defend in person or by counsel;

(b) To receive a copy of the accusation filed against him;

(c) To testify in his own behalf;

(d) To be confronted by the witnesses against him;

(e) To have compulsory process to insure the attendance of witnesses in his behalf;

(f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;

(g) To the right of appeal in all cases; and

(h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.

(2) In addition:

(a) No person shall be put twice in jeopardy for the same offense;

(b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;

(c) No person shall be compelled to give evidence against himself;

(d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and

(e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

History: C. 1953, 77-1-5, enacted by L. 1980, ch. 15, § 2.

Cross-References. — Attorneys, rights in disbarment proceedings, § 78-51-16.

Constitutional rights of accused, Utah Const., Art. I, § 12.

Counsel for indigents, § 77-32-1 et seq.

Discharge of defendant turned state's witness, § 77-17-2.

Dismissal without trial, Rule 25, U.R.Cr.P.

Due process of law, Utah Const., Art. I, § 7.

Errors and defects not affecting substantial rights disregarded, Rule 30, U.R.Cr.P.

Husband or wife not competent witness against or for each other without consent, exceptions, § 78-24-8.

Jury trial and waiver thereof, Utah Const., Art. I, § 10; Rule 17, U.R.Cr.P.

Lineup procedures, § 77-8-1 et seq.

Multiple prosecutions and double jeopardy, § 76-1-401 et seq.

Ordinance violation cases, jeopardy in, § 10-7-65.

Subpoena for witnesses for impecunious defendant in criminal case, § 21-5-14.

NOTES TO DECISIONS

ANALYSIS

Appearance at trial in prison clothing.
—Waiver of right.
Confrontation of witness.
—Depositions.
—Right to interpreter.
—Stipulation of testimony.
—Testimony at former trial.
—Testimony at preliminary hearing.
Copy of accusation.
—Bill of particulars.
Double jeopardy.
—Retrial proper.
—Separate offenses.

Appearance at trial in prison clothing.

Defendant has a constitutional right not to appear in identifiable prison clothing at trial; this does not require state to provide defendant with an expensive wardrobe, but state should provide clean, respectable clothes, not identifiable as prison clothes, for defendant at trial. Chess v. Smith, 617 P.2d 341 (Utah 1980).

—Waiver of right.

Trial judge should on his own initiative inquire of a defendant whether he wishes to waive his right not to appear in prison clothes so that the record affirmatively shows an intelligent and conscious waiver by the defendant if he chooses to stand trial in prison clothes. Chess v. Smith, 617 P.2d 341 (Utah 1980).

Confrontation of witness.

Defendant could not be denied right to be confronted by witness against him because of witness's youth, incapacity, or unwillingness to meet him face to face. State v. Mannion, 19 Utah 505, 57 P. 542, 45 L.R.A. 638, 75 Am. St. R. 753 (1899).

In a murder case, it was not grounds for reversal that trial court outlined damaging anticipated testimony of witness who did not appear against defendant as scheduled, where there was good faith on the part of the prosecutor, and where there was sufficient independent evidence to support the conviction. State v. Fisher, 680 P.2d 35 (Utah 1984).

—Depositions.

Former statute providing that deposition of witness on preliminary examination might be read at trial if witness was dead, or insane, or could not, with due diligence, be found within state did not conflict with right, guaranteed to defendant by Utah Const., Art. I, § 12, to be confronted with witnesses against him. State v. King, 24 Utah 482, 68 P. 418, 91 Am. St. R. 808 (1902).

—Right to interpreter.

Accused is not confronted by a witness whose language he cannot understand. In such a case an interpreter should be appointed. State v. Vasquez, 101 Utah 444, 121 P.2d 903, 140 A.L.R. 755 (1942), reviewed in State v. Masato Karumai, 101 Utah 592, 126 P.2d 1047 (1942), in which it was held that court of its own motion might appoint an interpreter for defendant at the state's expense.

Even though trial court erred in not furnishing an interpreter, the case would not be reversed unless it was shown that defendant was prejudiced thereby in his defense. Furthermore, failure to make timely objection waived the right to be confronted by the adverse witnesses. State v. Masato Karumai, 101 Utah 592, 126 P.2d 1047 (1942).

—Stipulation of testimony.

Stipulating testimony of witnesses did not violate this guarantee. State v. Mortensen, 26 Utah 312, 73 P. 562 (1903).

—Testimony at former trial.

Where accessory to crime had been convicted in previous trial, but refused to testify at trial of principal, it was reversible error to read to the jury the accessory's testimony from the official transcript of the previous trial, since that denied defendant his fundamental right to confront the witnesses against him. State v. Kendrick, 538 P.2d 313 (Utah 1975).

—Testimony at preliminary hearing.

Admission into evidence of transcript of testimony of witness who testified for state on preliminary hearing, and was cross-examined by counsel for defendant at hearing, did not violate constitutional right of defendant to be confronted by witness, who was absent from state. State v. Vance, 38 Utah 1, 110 P. 434 (1910).

The right of confrontation was not violated by allowing testimony of witnesses, taken at preliminary hearing, who were shown to be absent from the state, to be read into evidence by the state. State v. Inlow, 44 Utah 485, 141 P. 530, 1917A Ann. Cas. 741 (1914).

Where witness testified on preliminary examination, and all the proceedings were had in presence of defendant, and he was given full opportunity to cross-examine witness, stenographic transcript of testimony of witness could be read on trial for first degree murder where

proper foundation had been laid by showing that witness could not, after exercise of due diligence, be found in state. State v. Hillstrom, 46 Utah 341, 150 P. 935 (1915).

It was not error to permit transcript of testimony of witness, which was taken at preliminary hearing, to be read in evidence at the trial when such witness was not "within the state"; nor was it necessary, to constitute due diligence, to do more than show that witness was not, in fact, within the state. State v. De Pretto, 48 Utah 249, 155 P. 336 (1916).

It was not error for counsel for the state to read in evidence testimony of a witness who testified at the preliminary hearing but was not present at the trial. State v. Burke, 102 Utah 249, 129 P.2d 560 (1942).

Copy of accusation.

This guaranty entitled the defendant to insist, at the outset, that the indictment apprise him of the crime charged with such reasonable certainty that he could make his defense and protect himself after judgment against another prosecution for the same offense. State v. Topham, 41 Utah 39, 42, 123 P.2d 888 (1912).

An indictment for conspiracy to violate anti-vice laws of this state need not allege offense that was object of conspiracy in same detail as where defendant was charged with commission of that offense. State v. Erwin, 101 Utah 365, 120 P.2d 285 (1941).

An information which accused the defendant "of the crime of murder in the first degree" did not infringe this section, or its counterpart in Utah Const., Art. I, § 12. State v. Avery, 102 Utah 33, 125 P.2d 803 (1942).

—Bill of particulars.

If accused was in doubt as to the nature and cause of the accusation against him, the alleged fact or facts which the state proposed to prove could be secured by demanding a bill of particulars. State v. Robbins, 102 Utah 119, 127 P.2d 1042 (1942).

Double jeopardy.

Where jury was impaneled and sworn to try case, and after evidence was all in, court refused to submit case to jury, defendant was thereby placed in jeopardy, and could not be tried for crime charged in information, or for any offense included therein. State v. Hows, 31 Utah 168, 87 P. 163 (1906).

Defendant was in jeopardy when jury was impaneled and sworn and issues presented on valid indictment or information in court of competent jurisdiction. State v. Thompson, 58 Utah 291, 199 P. 161, 38 A.L.R. 697 (1921).

Pendency of another action for same offense may not be set up by accused either as plea in abatement or as plea in bar, although state ought not insist on holding defendant under bail in one of its courts and at same time deprive him of his liberty in another, unless there is substantial reason therefor. Nickolopolous v. Emery, 59 Utah 588, 206 P. 284 (1922).

The accused was not "twice put in jeopardy for the same offense" by permitting state, in prosecution for possessing intoxicating liquor in violation of law, to give evidence of offenses of which defendant had been acquitted, separate from and not included in offense charged. State v. Lyte, 75 Utah 283, 284 P. 1006 (1930).

—Retrial proper.

Defendant who moved for and obtained new trial after conviction of second degree murder on indictment under which he might have been convicted of first degree murder could lawfully be tried again for first degree murder. State v. Kessler, 15 Utah 142, 49 P. 293, 62 Am. St. R. 911 (1897).

Trial, conviction, and sentence, illegal and void because trial was had before unlawful jury, did not have effect of putting defendant once in jeopardy, and, on his release from custody on habeas corpus, he could be rearrested on same charge and on same indictment, and no plea of once in jeopardy could be bar to lawful trial notwithstanding illegal conviction stood unreversed. State v. Bates, 22 Utah 65, 61 P. 905, 83 Am. St. R. 768 (1900).

Where jury was properly discharged for failure to agree upon verdict, plea of once in jeopardy could not thereafter be interposed against subsequent prosecution for same offense in any degree. Nickolopolous v. Emery, 59 Utah 588, 206 P. 284 (1922).

Where trial judge did not abuse discretion in discharging jury, upon their inability to reach verdict after 28 hours of deliberation, plea of former jeopardy in subsequent prosecution was without any basis or support. State v. Gardner, 62 Utah 62, 217 P. 976 (1923).

Where one was convicted upon complaint, information, or indictment, which was so defective in substance that it failed to state public offense in contemplation of law, he had not been in jeopardy, and hence plea of former conviction or acquittal was no defense. State v. Empey, 63 Utah 609, 239 P. 25, 44 A.L.R. 558 (1925).

Order of examining magistrate finding defendant "guilty as charged," and committing him to custody to answer charge, did not constitute former jeopardy. State v. Dean, 69 Utah 268, 254 P. 142 (1927).

Defendant, whose sentence for robbery upon a plea of guilty was vacated because proper protection of his constitutional rights was not afforded and who was recommitted for identical offense after jury trial, failed to establish basis upon which former jeopardy could be found. State v. Jaramillo, 25 Utah 2d 328, 481 P.2d 394 (1971).

—Separate offenses.

Acquittal of a person for one offense was no bar to prosecution for another, unless it appeared that some essential element of the second offense was necessarily adjudicated and determined in the offense of which he was acquitted. State v. Cheeseman, 63 Utah 138, 223 P. 762 (1924).

Acquittal under former § 57-7-102 for failure to report automobile accident was not bar to manslaughter prosecution. State v. Cheeseman, 63 Utah 138, 223 P. 762 (1924).

Conviction of motorist for reckless driving did not bar subsequent prosecution for involuntary manslaughter. State v. Empey, 65 Utah 609, 239 P. 25, 44 A.L.R. 558 (1925).

Defendant who had been charged with issuing a fictitious check was not put twice in jeopardy for the same offense where, subsequent to the dismissal of the first charge, he was convicted of forgery on the basis of the same transaction from which the prior charge had arisen; double jeopardy protected only against subsequent prosecution for the same offense. State v. Harris, 30 Utah 2d 354, 517 P.2d 1313 (1974).

—Waiver.

Defense of former jeopardy was waived unless made at time of entering plea or at such other time as court might permit. State v. Bohn, 67 Utah 362, 248 P. 119 (1926).

Fee before final judgment.

A conviction and sentencing for driving under the influence of alcohol was a "final judgment," thus rendering the rule against fees in Subsection (2)(b) inapplicable. State v. Johnson, 700 P.2d 1125 (Utah 1985).

Jury trial.

Former statute that permitted court to enjoin practice of medicine contrary to law was valid as against contention that it deprived defendant of jury trial in proceeding for violation of penal statute. Board of Medical Exmrs. v. Blair, 57 Utah 516, 196 P. 221 (1921).

Fine authorized by § 47-1-8 was not punishment imposed after commission of crime but was a payment exacted for doing an act prohibited by law, and hence contention that statute was unconstitutional in injunction proceeding against liquor nuisance, on ground that it permitted imposition of punishment in equity proceeding, was without merit. State ex rel. Pincock v. Franklin, 63 Utah 442, 226 P. 674 (1924).

—Impartial jury.

Where one of jurors during trial, almost daily, rode back and forth from his home to courthouse with prosecuting witness who had taken active part in prosecution, defendant had not been given trial by impartial jury. State v. Anderson, 65 Utah 415, 237 P. 941 (1925).

Fact that juror was in restroom when picture of victim in his coffin was shown had no prejudicial effect since several photographs of victim were introduced during trial to refute claim of accidental injury. Gee v. Smith, 541 P.2d 6 (Utah 1975).

Preliminary hearing.

Defendant was denied the protections of a preliminary hearing on the offense for which he was convicted, where although he had been bound over to the district court to answer for a particular charge, the trial testimony involved a criminal episode for which he had not been bound over. State v. Ortega, 751 P.2d 1138 (Utah 1988).

Presence at trial.

Defendant, charged with felony, could not waive his right to be personally present at trial. State v. Mannion, 19 Utah 505, 57 P. 542, 45 L.R.A. 638, 75 Am. St. R. 753 (1899).

Where defendant was in custody and therefore not a free agent, duty was on court to see that he was personally present at every stage of the trial. State v. Aikers, 87 Utah 507, 51 P.2d 1052 (1935).

Where two defendants were being prosecuted for robbery, and during morning jury was impaneled with only one defendant present, and in afternoon other defendant presented himself and did not object to jury and did not wish to challenge any member thereof, absent defendant was not denied constitutional right to be present during trial since trial as to such absent defendant did not start until afternoon when he was present and accepted jury. State v. Aikers, 87 Utah 507, 51 P.2d 1052 (1935).

A defendant charged with a crime is entitled to be present at all stages of trial. State v. Houtz, 714 P.2d 677 (Utah 1986).

—Waiver.

The right to appear and defend in person is a constitutional one, but may be waived under certain circumstances if the defendant voluntarily absents himself from the trial. State v. Houtz, 714 P.2d 677 (Utah 1986).

It is the responsibility of an out-of-custody defendant to remain in contact with his or her attorney and with the court. If the defendant fails to do so, he cannot benefit from his misconduct by manipulating a rule designed for his protection. State v. Wagstaff, 772 P.2d 987 (Utah Ct. App. 1989).

Public trial.

Order of trial court excluding all spectators, including friends and relatives of defendant, exclusive of witnesses, was denial of right to "public trial" in violation of Utah Const., Art. I, § 12. State v. Jordan, 57 Utah 612, 196 P. 565 (1921), limited by State v. Beckstead, 96 Utah

528, 88 P.2d 461 (1939).

A mere temporary order of exclusion of spectators may not be obnoxious to the objection that it deprives accused of right to public trial under Utah Const., Art. I, § 12. State v. Bonza, 72 Utah 177, 269 P. 480 (1928).

Excluding the general public from the courtroom did not deprive accused of a "public trial" as guaranteed by Utah Const., Art. I, § 12, but excluding relatives and friends of accused, and permitting sister of prosecutrix to remain, did deprive him of this constitutional right. State v. Bonza, 72 Utah 177, 269 P. 480 (1928).

Where it was clearly indicated that friends and relatives of accused were not excluded, and order was made on stipulation of counsel, defendant was not in a position to urge that the case be reversed because of order excluding persons not interested or in some way connected with the case. State v. Smith, 90 Utah 482, 62 P.2d 1110 (1936), quoting order and stating that it was not so drastic as ones condemned in State v. Jordan, 57 Utah 612, 196 P. 565 (1921), and State v. Bonza, 72 Utah 177, 269 P. 480 (1928).

Defendant in prosecution for carnally knowing female was deprived of a "public trial" when judge ordered courtroom cleared of all spectators, although judge could have cleared the courtroom except for a reasonable number of defendant's relatives or friends selected by him. State v. Beckstead, 96 Utah 528, 88 P.2d 461 (1939).

Right to appeal.

One who pled guilty could nevertheless appeal to district court. Weaver v. Kimball, 59 Utah 72, 202 P. 9 (1921).

Statutes making final and nonappealable judgments of city courts and of justices of the peace in criminal cases, unless validity or constitutionality of a statute or ordinance was involved, did not deny accused "the right to appeal" when read in connection with Utah Const., Art. VIII, § 9. State v. Lyte, 75 Utah 283, 284 P. 1006 (1930).

Right to counsel.

Accused was not denied the right to appear and defend in person, where he discharged his counsel during his trial for first degree murder, and court, to protect defendant's interests, appointed same counsel to represent him as amici curiae, it appearing that defendant's action in "firing" his counsel was senseless. State v. Hillstrom, 46 Utah 341, 150 P. 935 (1915).

Person charged with crime should have reasonable time to prepare his defense, otherwise defendant's right to fair and impartial trial might be nullified; to ensure defendant full enjoyment of his constitutional privilege, time between appointment of counsel by court and time of trial should be such as to afford reasonable opportunity for preparation of defense. State v. Fairclough, 86 Utah 326, 44 P.2d 63 (1935).

—Waiver.

Constitutional right to appear and defend in person and by counsel was sacred right of one accused of crime which might not be infringed or frittered away; right might not be denied by a court or be waived by counsel, but defendant might, by conduct or in words, waive such right since he could not take advantage of his voluntary absence if he was at liberty on bail during some part of the proceedings at which it was his duty, as well as his right, to be in attendance. State v. Aikers, 87 Utah 507, 51 P.2d 105 (1935).

Self-incrimination.

Production by bank official of insurance policies contained in defendant's safety deposit box in prosecution of defendant for murder of his wife was not attempt by state to compel defendant to be witness against himself. State v. Woods, 62 Utah 397, 220 P. 215 (1923).

Constitutional privilege against self-incrimination protects witness as well as party accused of crime in civil as well as in criminal action from being required to give testimony that tends to incriminate him. State v. Byington, 114 Utah 388, 200 P.2d 723, 5 A.L.R.2d 1393 (1948).

—Claiming and waiving privilege.

In a criminal prosecution, the general rule is that the right to refuse to answer incriminating questions is a personal privilege of the witness, which he may either exercise or waive, and, if the witness chooses to answer incriminating questions, neither defendant nor his counsel may legally object. State v. Shockley, 29 Utah 25, 80 P. 865, 110 Am. St. R. 639 (1905).

Where a witness is the defendant in a criminal proceeding, he need not personally make the objection and claim his privilege from questions asked respecting the commission of other crimes by him, on the ground that such questions are incriminating, but he may claim his immunity through his counsel. State v. Shockley, 29 Utah 25, 80 P. 865, 110 Am. St. R. 639 (1905).

False testimony of woman with whom divorced husband was living that they were married, in response to court's questions after she was immediately brought into court by sheriff pursuant to court's order and required to testify, was given in violation of her constitutional privilege against self-incrimination so as not to be admissible in subsequent perjury prosecution. State v. Byington, 114 Utah 388, 200 P.2d 723, 5 A.L.R.2d 1393 (1948).

Where divorced husband, who was without court experience, advice of counsel or knowledge of his constitutional privilege against self-

incrimination, and who was openly and notoriously living as husband and wife with woman who was not his wife and with whom child was begotten, declined to testify and testified only when required to do so by court at hearing on order to show cause why he should not be punished for contempt in failing to pay alimony and support money pursuant to divorce decree, his false answer in response to court's question whether he had remarried, that he was married to that woman, was inadmissible in subsequent perjury prosecution as violative of constitutional privilege against self-incrimination, even though question was proper and, when asked, divorced husband did not claim privilege. State v. Byington, 114 Utah 388, 200 P.2d 723, 5 A.L.R.2d 1393 (1948).

Where defendant took the stand to testify in his own defense, he thereby consented to answer questions on cross-examination to test the truthfulness of his assertions and waived his privilege against self-incrimination. State v. Younglove, 17 Utah 2d 268, 409 P.2d 125 (1965).

Defendant waived privilege not to testify on material matters when he testified in his own behalf, and would not be allowed to select matter in his own favor and refuse to be subjected to the same sort of cross-examination as any other witness. State v. Anderson, 27 Utah 2d 276, 495 P.2d 804 (1972).

—Confessions.

When the state seeks to put the confession before the jury it must establish its competency to the court by showing that the confession was given by the accused as his voluntary act; as an expression of his independent and free will, uninfluenced by fear of punishment or by hope of reward; that it was not induced or influenced by any advantages or benefits that might accrue to him or those near or dear to him, nor was it given to lighten any penalties or punishments the law might impose on him if tried and convicted without confessing; and that it was not given as a result of a desire to escape or avoid any misery, threats, acts, or conduct of any other person, having it in their power, or whom he believed had it in their power, to inflict upon him, or upon those whom it was his duty or privilege to protect. State v. Crank, 105 Utah 332, 142 P.2d 178, 170 A.L.R. 542 (1943); State v. Mares, 113 Utah 225, 192 P.2d 861 (1948).

In determining whether a confession was voluntary, the court must hear all competent evidence offered, both by the state and by the accused, as to the voluntariness of the confession, and then determine independently of the jury the competency of the evidence, that is the voluntariness of the confession, as a matter of law. To hold otherwise violates guaranty against self-incrimination. State v. Crank, 105 Utah 332, 142 P.2d 178, 170 A.L.R. 542.

Speedy trial.

Conviction on charge of burglary in third degree was reversed where defendant had been incarcerated for 218 days prior to trial, 135 of which were after his demand for speedy trial, since protracted incarceration of defendant, without cause or excuse, was undue and oppressive and constituted denial of his right to speedy trial. State v. Lozano, 23 Utah 2d 312, 462 P.2d 710 (1969).

Defendant who was charged at a time he had other cases pending against him and in one of those cases requested and received psychiatric examination and who was appointed various counsel because of necessity and at his own request was not denied right to speedy trial. State v. Carlsen, 25 Utah 2d 136, 478 P.2d 326 (1970).

Defendant charged with a felony was not denied his right to a speedy trial where the pretrial delay was due to defendant's being outside the state jurisdiction for a federal court proceeding, some delay was due to defendant's own actions, delays caused by the state were appropriate and necessary under the circumstances, defendant's defense was not substantially impaired by the delay, and there was no intentional delay of an oppressive character resulting in prejudice to the defendant. State v. Hafen, 593 P.2d 538 (Utah 1979).

—Delays by defendant.

Defendant's right to a speedy trial was not denied, where much of the delay was caused by questions over custody by different jurisdictions, and other delays were caused by motions from the defense and two substitutions of defendant's counsel. State v. Stilling, 770 P.2d 137 (Utah 1989).

Delays caused by the defendant will not be counted against the State and will weigh against the defendant in considering whether, under the circumstances, the trial was unnecessarily delayed. State v. Trafny, 799 P.2d 704 (Utah 1990).

—Federal custody.

Time a defendant spends in custody of federal authorities cannot be counted against the state for speedy trial purposes. State v. Trafny, 799 P.2d 704 (Utah 1990).

—Thirty-day requirement.

Requirement that accused be tried within thirty days of arraignment was directory rather than mandatory, and where trial was held two weeks late after three postponements due to circumstances not caused by the prosecution, defendant was not deprived of his constitutional right to a speedy trial. State v. Rasmussen, 18 Utah 2d 201, 418 P.2d 134 (1966).

Defendant was not denied right to a speedy trial where trial date was originally set within

30-day limit but had to be postponed beyond the limit due to the original date being a legal holiday and unavailability of defendant's counsel. State v. Archuletta, 577 P.2d 547 (Utah 1978).

Requirement of trial within 30 days after arraignment is not mandatory but directory; defendant who was tried four and a half months after filing of information was not deprived of speedy trial where he made no objection at the time to the delay and in fact requested two of the three continuances which were had before trial. State v. Menzies, 601 P.2d 925 (Utah 1979).

In dealing with a two-day deviation from the 30-day statutory period in Subsection (1)(h), the appellate court will not presume either prejudice or a lack of regularity in the trial court's proceedings. State v. Parry, 714 P.2d 1160 (Utah 1986).

Subsection (1)(h) is directory in nature, not mandatory. State v. Hoyt, 806 P.2d 204 (Utah Ct. App. 1991).

Defendant, who failed to present any argument that he was actually prejudiced by a delay of 124 days between arrest and trial, was not denied his constitutional right to a speedy trial. State v. Hoyt, 806 P.2d 204 (Utah Ct. App. 1991).

—Waiver.

Defendant, in criminal action, may waive right to speedy trial hereunder and under Sixth Amendment to federal Constitution. He cannot remain inactive and afterwards complain that he was not given a speedy trial and interpose that as a defense; and failure to make any request for trial after filing of information constitutes such waiver. State v. Bohn, 67 Utah 362, 248 P. 119 (1926).

Testimony of spouse.

—Comment on failure of spouse to testify.

In a rape case where defendant's defense was alibi that at the time of the commission of the crime he was at his home with his wife, it was prejudicial error for the prosecutor to remark to the jury that defendant's wife had failed to testify in his behalf, as this remark had the effect of destroying the privilege granted under former section. State v. Brown, 14 Utah 2d 324, 383 P.2d 930 (1963).

Prosecuting attorney did not commit prejudicial error under Utah Const., Art. I, § 12, by commenting at second trial, at which wife testified in support of defendant's alibi, that although wife attended first trial she asserted privilege and did not testify. State v. Brown, 16 Utah 2d 57, 395 P.2d 727 (1964).

—Competency.

A wife was an incompetent witness against her husband on his trial for polygamy, because polygamy was not a crime against her within the meaning of statute. Bassett v. United States, 137 U.S. 496, 34 L. Ed. 762, 11 S. Ct. 165, 34 L. Ed. 726 (1890).

—Right of spouse to testify in own behalf.

Where both spouses are charged with a crime, one spouse may voluntarily testify in his own behalf even though his testimony brings out some evidence against the other spouse. State v. Trevino, 574 P.2d 1157 (Utah 1978).

—Time of marriage.

It made no difference at what time the relationship of husband and wife commenced, the principle of exclusion being applied to its full extent whenever the interests of either of them were directly concerned. Accordingly, where accused married witness after his indictment and prior to trial thereon, witness was not competent without his or her consent, even though marriage was contracted for the purpose of closing mouth of witness. United States v. White, 4 Utah 499, 11 P. 570 (1886).

—Waiver.

Testimony of spouse was inadmissible only when given "without the consent of the other" spouse. Failure to object thereto was an implied consent or waiver and defendant could not complain for the first time on appeal. State v. Cox, 106 Utah 253, 147 P.2d 858 (1944).

Transcripts.

—Legibility.

The condition of transcripts, in which "(illegible)" appeared solely in connection with statements of the court and counsel, did not deprive the defendant of due process or of the right of appeal, because the transcripts were virtually complete and amply adequate for a review of the defendant's claims. State v. Jonas, 793 P.2d 902 (Utah Ct. App. 1990).

Cited in State v. Benson, 712 P.2d 256 (Utah 1985); State v. Banner, 717 P.2d 1325 (Utah 1986); State v. Miller, 747 P.2d 440 (Utah Ct. App. 1987); State v. Villarreal, 857 P.2d 949 (Utah Ct. App. 1993).

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A.L.R. — Conviction or acquittal of one offense, in court having no jurisdiction to try offense arising out of same set of facts, later charged in another court, as putting accused in jeopardy of latter offense, 4 A.L.R.3d 874.

Accused's right to assistance of counsel at or prior to arraignment, 5 A.L.R.3d 1269.

Scope and extent, and remedy or sanctions for infringement, of accused's right to communicate with his attorney, 5 A.L.R.3d 1360.

Subsequent trial, after stopping former trial to try accused for greater offense, as constituting double jeopardy, 6 A.L.R.3d 905.

Right of defendant in criminal case to inspection of statement of prosecution's witness for purposes of cross-examination or impeachment, 7 A.L.R.3d 181.

Earlier prosecution for offense during which homicide was committed as bar to prosecution for homicide, 11 A.L.R.3d 834.

Increased punishment on new trial for same offense, propriety of, 12 A.L.R.3d 978.

Conflict of interest between or among criminal codefendants precluding representation by same counsel, 34 A.L.R.3d 470.

Right of accused to have evidence or court proceedings interpreted, 36 A.L.R.3d 276.

Validity or construction of constitution or statute authorizing exclusion of public in sex offense cases, 39 A.L.R.3d 852.

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnapping, 43 A.L.R.3d 699.

Prior statements or admissions, witness' refusal to testify on ground of self-incrimination as justifying reception of evidence of, 43 A.L.R.3d 1413.

Right of accused to have press or other media representatives excluded from criminal trial, 49 A.L.R.3d 1007.

Nonjury trial, when does jeopardy attach in, 49 A.L.R.3d 1039.

Prosecution for robbery of one person as bar to subsequent prosecution for robbery committed of another person at the same time, 51 A.L.R.3d 693.

Determination of indigency of accused entitling him to appointment of counsel, 51 A.L.R.3d 1108.

Right of member, officer, agent or director of private corporation or unincorporated association to assert personal privilege against self-incrimination with respect to production of corporate books or records, 52 A.L.R.3d 636; 87 A.L.R. Fed. 177.

Contempt proceedings, right to counsel in, 52 A.L.R.3d 1002.

Accused's right to choose particular counsel appointed to assist him, 66 A.L.R.3d 996.

Blood alcohol test, admissibility in criminal case where blood was taken from unconscious driver, 72 A.L.R.3d 325.

Acquittal in criminal proceeding as precluding revocation of probation on same charge, 76 A.L.R.3d 564.

Acquittal in criminal proceeding as precluding revocation of parole on same charge, 76 A.L.R.3d 578.

Right to cross-examine witness as to his place of residence, 85 A.L.R.3d 541.

Sufficiency of courtroom facilities as affecting rights of accused, 85 A.L.R.3d 918.

Instruction allowing presumption or inference of guilt from possession of recently stolen property as violation of defendant's privilege against self-incrimination, 88 A.L.R.3d 1178.

Competency of one spouse to testify against other in prosecution for offense against child of both or either, 93 A.L.R.3d 1018.

Modern status of admissibility, in forcible rape prosecution, of complainant's prior sexual acts, 94 A.L.R.3d 257.

Double jeopardy as bar to retrial after grant of defendant's motion for mistrial, 98 A.L.R.3d 997.

Right to cross-examine prosecuting witness as to his pending or contemplated civil action against accused for damages arising out of same transaction, 98 A.L.R.3d 1060.

Effect, on competency to testify against spouse or on marital communication privilege, of separation or other marital instability short of absolute divorce, 98 A.L.R.3d 1285.

Constitutionality of "rape shield" statute restricting use of evidence of victim's sexual experiences, 1 A.L.R.4th 283.

Modern status of rules and standards in state courts as to adequacy of defense counsel's representation of criminal client, 2 A.L.R.4th 27.

Propriety of requiring criminal defendant to exhibit self, or perform physical act, or participate in demonstration, during trial and in presence of jury, 3 A.L.R.4th 374.

Adequacy of defense counsel's representation of criminal client regarding right to and incidents of jury trial, 3 A.L.R.4th 601.

Spouse's betrayal or connivance as extending marital communications privilege to testimony of third person, 3 A.L.R.4th 1104.

Communication between unmarried couple living together as privileged, 4 A.L.R.4th 422.

Propriety of court's dismissing indictment or prosecution because of failure of jury to agree

after successive trials, 4 A.L.R.4th 1274.

Conviction or acquittal in federal court as bar to prosecution in state court for state offense based on same facts — modern view, 6 A.L.R.4th 802.

Adequacy of defense counsel's representation of criminal client regarding speedy trial and related matters, 6 A.L.R.4th 1208.

Waiver, after not guilty plea, of jury trial in felony case, 9 A.L.R.4th 695.

Existence of spousal privilege where marriage was entered into for purpose of barring testimony, 13 A.L.R.4th 1305.

Retrial on greater offense following reversal of plea-based conviction of lesser offense, 14 A.L.R.4th 970.

Propriety of governmental eavesdropping on communications between accused and his attorney, 44 A.L.R.4th 841.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution, 45 A.L.R.4th 310.

Voluntariness of confession as affected by police statements that suspect's relatives will benefit by the confession, 51 A.L.R.4th 495.

Exclusion of public from state criminal trial by conducting trial or part thereof at other than regular place or time, 70 A.L.R.4th 632.

Right of indigent defendant in state criminal case to assistance of ballistics experts, 71 A.L.R.4th 638.

Crimes against spouse within exception permitting testimony by one spouse against other in criminal prosecution — modern state cases, 74 A.L.R.4th 223.

Competency of one spouse to testify against other in prosecution for offense against third party as affected by fact that offense against spouse was involved in same transaction, 74 A.L.R.4th 277.

Standing of media representatives or organizations to seek review of, or to intervene to oppose, order closing criminal proceedings to public, 74 A.L.R.4th 476.

Adverse presumption or inference based on failure to produce or examine codefendant or accomplice who is not on trial — modern criminal cases, 76 A.L.R.4th 812.

When does delay in imposing sentence violate speedy trial provision, 86 A.L.R.4th 340.

Necessity that waiver of accused's right to testify in own behalf be on the record, 90 A.L.R.4th 586.

Prejudicial effect of statement by prosecutor that verdict, recommendation of punishment, or other finding by jury is subject to review or correction by other authorities, 10 A.L.R.5th 700.

Necessity that *Miranda* warnings include express reference to right to have attorney present during interrogation, 77 A.L.R. Fed. 123.

What constitutes assertion of right to counsel following *Miranda* warnings — federal cases, 80 A.L.R. Fed. 622.

Display of physical appearance or characteristic of defendant for purpose of challenging prosecution evidence as "testimony" resulting in waiver of defendant's privilege against self-incrimination, 81 A.L.R. Fed. 892.

Key Numbers. — Costs ⇐ 285; Criminal Law ⇐ 107, 292, 293, 574, 575, 636, 641 to 641.13, 662, 1026, 1027; Jury ⇐ 20 to 23; Witnesses ⇐ 2, 52, 61, 187 to 195, 266, 293, 297, 299 to 301.

77-1-7. Dismissal without trial — Custody or discharge of defendant.

(1) (a) Further prosecution for an offense is not barred if the court dismisses an information or indictment based on the ground:

(i) there was unreasonable delay;

(ii) the court is without jurisdiction;

(iii) the offense was not properly alleged in the information or indictment; or

(iv) there was a defect in the impaneling or the proceedings relating to the grand jury.

(b) The court may make orders regarding custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise, the defendant shall be discharged and bail exonerated.

(2) An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or upon the statute of limitations is a bar to any other prosecution for the offense charged.

History: C. 1953, 77-1-7, enacted by L. 1990, ch. 7, § 2.

Compiler's Notes. — This section recodifies former Subsection 77-35-25(d), which is Rule 25(d) of the Utah Rules of Criminal Procedure. For notes from cases construing that rule, see the Court Rules volume.

CHAPTER 1a
PEACE OFFICER DESIGNATION

77-1a-1. Peace officer.

(1) (a) "Peace officer" means any employee of a law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(b) "Peace officer" specifically includes the following:

(i) any sheriff or deputy sheriff, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Section 23-20-1.5;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators for the attorney general, district attorneys, and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law; and

(viii) school district police officers as designated by the board of education for the school district;

(ix) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the Peace Officers Standards and Training Division; and

(x) members of a law enforcement agency established by a private college or university provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety.

(2) Peace officers have statewide peace officer authority, but the authority extends to other counties, cities, or towns only when they are acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit. This limitation does not apply to any peace officer employed by the state. The authority of peace officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections — State Prison.

(3) (a) A peace officer shall, prior to exercising peace officer authority, satisfactorily complete the basic course at a certified peace officer training academy or pass a certification examination as provided in Section 53-6-206, and be certified.

(b) In addition, a peace officer shall satisfactorily complete annual certified training of at least 40 hours per year as directed by the director of the Peace Officer Standards and Training Division, with the advice and consent of the Peace Officer Standards and Training Council.

History: C. 1953, 77-1a-1, enacted by L. 1985, ch. 174, § 3; 1987, ch. 69, § 9; 1992, ch. 234, § 58; 1993, ch. 38, § 86; 1993, ch. 103, § 5; 1993, ch. 234, § 388.

Amendment Notes. — The 1992 amendment, effective April 26, 1992, substituted "Motor Vehicle Enforcement Division" for "Department of Business Administration" in Subsection (1)(a)(v) and made stylistic changes.

The 1993 amendment by ch. 38, effective May 3, 1993, inserted "district attorneys" in present Subsection (1)(b)(vi).

The 1993 amendment by ch. 103, effective May 3, 1993, inserted the (a) designation in Subsection (1) and redesignated former Subsection (1)(a) as (1)(b), deleted former Subsection (1)(b), requiring a police force for a private college or university to be certified, added Subsections (1)(b)(ix) and (x), added the last sentence of Subsection (2), and made stylistic changes.

The 1993 amendment by ch. 234, effective July 1, 1993, deleted "police or" before "law enforcement agency" in Subsection (1); in present Subsection (1)(b)(ii), deleted "sworn" before "member" and added "certified as a peace officer" at the end of the subsection; substituted "law enforcement agency" for "police force" in former Subsection (1)(b), deleted by Laws 1993, ch. 103; in Subsection (3)(a), substituted "A peace officer" for "Peace officers" and "53-6-206" for "67-15-8"; in Subsection (3)(b), substituted "a peace officer" for "peace officers," "Peace Officer Standards and Training Division" for "Division of Peace Officer Standards and Training," and "Peace Officer Standards and Training Council" for "Council on Peace Officer Standards and Training."

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Cross-References. — Department of Public Safety, § 53-1-103.

Natural Resources, Title 63, Chapter 34.

Peace officer training, § 53-6-201 et seq.

NOTES TO DECISIONS

Authority.

—Undercover investigation.

Subsection (2) of this section and § 77-9-3 (territorial scope of authority) do not merely apply to the officially exercised acts of a uniformed police officer, but are meant to encompass the total spectrum of an officer's acts and authority, including an authorized undercover investigation of a drug offense. When an officer does not comply with these statutory requirements, however, the information need not be dismissed nor the evidence obtained as a result of the illegal investigation be suppressed. State v. Fixel, 744 P.2d 1366 (Utah 1987).

77-1a-1.5. Law enforcement officer.

The following officers may exercise peace officer authority only as specifically authorized by law:

(1) reserve and auxiliary officers;

(2) special function officers;

(3) federal police officers; and

(4) correctional officers.

History: C. 1953, 77-1a-1.5, enacted by L. 1993, ch. 103, § 6.

Effective Dates. — Laws 1993, ch. 103 became effective on May 3, 1993, pursuant to Utah Const., Art. VI, Sec. 25.

77-1a-2. Correctional officer.

(1) (a) "Correctional officer" means an officer or employee of the Department of Corrections or youth corrections or any political subdivision of the state who is charged with the primary duty of providing community protection.

(b) "Correctional officer" includes an individual assigned to carry out any of the following types of functions:

(i) controlling, transporting, supervising, and taking into custody of persons arrested or convicted of crimes;

(ii) supervising and preventing the escape of persons in state and local incarceration facilities; and

(iii) guarding and managing inmates and providing security and enforcement services at a correctional facility.

(2) (a) Correctional officers have peace officer authority only while engaged in the performance of their duties. The authority of correctional officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections — State Prison.

(b) Correctional officers may carry firearms only if authorized by and under conditions specified by the director of the Department of Corrections or the chief law enforcement officer of the employing agency.

(3) (a) An individual may not exercise the authority of a correctional officer until the individual has satisfactorily completed a basic training program for correctional officers and the director of the Department of Corrections or the chief administrator of the employing agency has certified the completion of training to the director of Peace Officer Standards and Training.

(b) The Department of Corrections of the state or the employing agency, shall establish and maintain a corrections officer basic course and in-service training programs as approved by the director of Peace Officer Standards and Training, with the advice and consent of the Council on Peace Officer Standards and Training. The in-service training shall consist of no fewer than 40 hours per year, and shall be conducted by the agency's own staff or other agencies.

History: C. 1953, 77-1a-2, enacted by L. 1985, ch. 174, § 3; 1993, ch. 103, § 7.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, subdivided Subsection (1), substituted the introductory language of Subsection (1)(b) for "Specific assignments include," deleted former language providing for supervision of parolees and probationers, added Subsection (1)(b)(iii), subdivided Subsection (2), substituted the last sentence of Subsection (2)(a) for former language providing peace officer status for off duty activities, substituted "An individual may not exercise the authority of a correctional officer until the individual" for "No correctional officer or parole and probation agent may exercise the authority of a peace officer until the officer" in Subsection (3)(a), inserted "in-service" in Subsection (3)(b), and made stylistic changes.

Cross-References. — Department of Corrections, Title 64, Chapter 13.

Peace officer training, § 53-6-201 et seq.

77-1a-3. Reserve and auxiliary officers.

(1) "Reserve and auxiliary officers" means sworn officers who serve at the pleasure and under the direction of the chief law enforcement officer or administrator of the state or any of the political subdivisions of the state.

(2) Reserve or auxiliary officers have peace officer authority only while engaged in the law enforcement activities authorized by the chief law enforce-

ment officer or administrator of the agency the officers serve. Reserve o auxiliary officers may carry firearms only if authorized and under condition the chief law enforcement officer or administrator specifies.

(3) (a) No reserve or auxiliary officer may exercise the authority of a peac officer unless the officer has satisfactorily completed the basic trainin program for reserve or auxiliary officers as provided in Subsection (3)(b and the chief law enforcement officer or administrator has certified th completion of training to the director of Peace Officer Standards an Training.

(b) The agency the reserve or auxiliary officer serves shall establish an maintain a basic reserve or auxiliary course and in-service trainin programs as approved by the director of Peace Officer Standards an Training with the advice and consent of the Council on Peace Office Standards and Training. The training shall consist of no fewer than 4 hours per year, and shall be conducted by the agency's own staff or othe agencies.

History: C. 1953, 77-1a-3, enacted by L. 1985, ch. 174, § 3.

Cross-References. — Peace officer training § 53-6-201 et seq.

77-1a-4. Special function officers.

(1) (a) "Special function officers" means persons performing specialize investigations, service of legal process, or security functions.

(b) "Special function officers" include state military police, constables port-of-entry agents as defined in Section 27-12-2, school district security officers, Utah State Hospital security officers designated pursuant to Section 62A-12-203, Utah State Training School security officers desig- nated pursuant to Subsection 62A-5-206(9), fire arson investigators for any political subdivision of the state, airport security officers of any airport owned or operated by the state or any of its political subdivisions, railroad special agents deputized by a county sheriff under Section 17-30-2, and all other persons designated by statute as having peace officer authority.

(c) Ordinance enforcement officers employed by municipalities or coun- ties may be special function officers.

(2) (a) Special function officers have peace officer authority only while engaged in the duties of their employment, and not for the purpose o general law enforcement. If the officer is charged with security function respecting facilities or property, the powers may be exercised only in connection with acts occurring on the property where the officer i employed or when required for the protection of the employer's interest property, or employees.

(b) Airport security officers have total peace officer authority when on duty and when acting in relation to the responsibilities of the airport at which they are employed, providing that the powers may be exercised only in connection with acts occurring on the property of the airport.

(c) Special function officers may carry firearms only if authorized and under conditions specified by the officer's employer or chief administrator. The carrying of firearms by constables is authorized only while they are engaged in the duties of their employment.

(3) (a) A special function officer may not exercise the authority of a peace officer until the officer has satisfactorily completed an approved basic

training program for special function officers as provided under Subsection (b) and the chief law enforcement officer or administrator has certified this fact to the director of the Peace Officer Standards and Training Division. City and county constables and their deputies shall certify their completion of training to the legislative governing body of the county they serve.

(b) The agency that the special function officer serves shall establish and maintain a basic special function course and in-service training programs as approved by the director of the Peace Officer Standards and Training Division with the advice and consent of the Peace Officer Standards and Training Council. The training shall consist of no fewer than 40 hours per year and shall be conducted by the agency's own staff or other agencies.

History: C. 1953, 77-1a-4, enacted by L. 1985, ch. 174, § 3; 1987, ch. 203, § 2; 1990, ch. 44, § 12; 1991, ch. 213, § 4; 1993, ch. 185, § 1; 1994, ch. 7, § 8.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, in the second sentence of Subsection (1) added the reference to Utah State Hospital security officers and added "that" in the first sentence in Subsection (3)(b).

The 1993 amendment, effective May 3, 1993, subdivided Subsection (1), substituted "'Special function officers'" for "These officers" at the beginning of Subsection (1)(b), added Subsection (1)(c), deleted "respective" before "employment" in Subsection (2)(a), and made stylistic changes.

The 1994 amendment, effective May 2, 1994, substituted "port-of-entry agents as defined in Section 27-12-2" for "port-of-entry officers" near the beginning of Subsection (1)(b).

77-1a-5. Federal peace officers — Authority.

(1) (a) "Federal peace officers" include:

(i) special agents of the Federal Bureau of Investigation;

(ii) special agents of the United States Secret Service;

(iii) special agents of the United States Customs Service, excluding customs inspectors;

(iv) special agents of the Bureau of Alcohol, Tobacco, and Firearms;

(v) special agents of the Federal Drug Enforcement Agency; and

(vi) United States marshals, deputy marshals, and special deputy United States marshals.

(b) The Council on Peace Officer Standards and Training may designate other federal peace officers, as necessary, if the officers:

(i) are persons employed full-time by the United States government as federally recognized law enforcement officers primarily responsible for the investigation and enforcement of the federal laws;

(ii) have successfully completed formal law enforcement training offered by an agency of the federal government consisting of not less than 400 hours; and

(iii) maintain in-service training in accordance with the standards of the employing federal agency.

(2) Federal peace officers have statewide peace officer authority relating to felony offenses under the laws of this state.

(3) Federal peace officers may have statewide peace officer authority relating to misdemeanor offenses only if:

(a) the state law enforcement agency with jurisdiction over the misdemeanor signs a contract with the federal agency to be given misdemeanor authority; and

(b) each federal peace officer employed by the federal agency completes a course on the state statutes approved by the Council on Peace Officer Standards and Training.

History: C. 1953, 77-1a-5, enacted by L. 1985, ch. 174, § 3; 1987, ch. 92, § 154; 1991, ch. 197, § 1.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, in Subsection (1) added the Subsection (a) designation, substituted the present language of the introductory paragraph for "Federal officers' are:", and substituted the present roman numeral subsection designations for the former letter designations; added Subsection (1)(b); substituted "relating" for "as it relates" in Subsection (2); and added Subsection (3).

77-1a-6. Basic training requirements for position — Peace officers temporarily in the state.

(1) All persons who have satisfactorily completed, before the effective date of this chapter, an approved basic training program required of their positions may act in a certified capacity without completion of an additional basic training program. Any person hired, appointed, or elected to any position designated in this chapter, except federal officer, shall satisfactorily complete the required basic training required of that position before the person is authorized to exercise peace officer powers under this chapter.

(2) Any peace officer employed by a law enforcement agency of another state and functioning in that capacity within Utah on a temporary basis is considered certified under Utah law:

(a) while functioning as a peace officer within the state at the request of a Utah law enforcement agency; or

(b) when conducting business as a representative of a law enforcement agency from another state.

History: C. 1953, 77-1a-6, enacted by L. 1985, ch. 174, § 3; 1988, ch. 135, § 4.

Compiler's Notes. — The phrase "effective date of this chapter" in the first sentence in Subsection (1) means April 29, 1985, the effective date of Laws 1985, ch. 174, § 3, which enacted §§ 77-1a-1 to 77-1a-9.

77-1a-7. Renumbered.

Renumbered. — Laws 1993, ch. 234, § 289 renumbers this section, specifying the responsibility of the division for training and providing for reliance on agency certification of completed training, as § 53-6-212, effective July 1, 1993.

77-1a-8. Retirement.

Eligibility for coverage under the Public Safety Retirement System or Public Safety Noncontributory Retirement System for persons and political subdivisions included in this chapter is governed by Title 49, Chapters 4 and 4a.

History: C. 1953, 77-1a-8, enacted by L. 1985, ch. 174, § 3; 1989, ch. 82, § 4.

77-1a-9. References in other provisions.

When the term peace officer, or any category of peace officer, is used in any other provision of law, the term includes anyone authorized to exercise authority as provided in this chapter, except federal officers.

History: C. 1953, 77-1a-9, enacted by L. 1985, ch. 174,§ 3.

CHAPTER 2

PROSECUTION, SCREENING AND DIVERSION

77-2-1. Authorization to file information.

Unless otherwise provided by law, no information may be filed charging the commission of any felony or class A misdemeanor unless authorized by a prosecuting attorney.

History: C. 1953, 77-2-1, enacted by L. 1980, ch. 15, § 2.

NOTES TO DECISIONS

ANALYSIS

Authorization by prosecuting attorney.
Steps required to initiate prosecution.

Authorization by prosecuting attorney.

Once the information is authorized by a prosecuting attorney, its presentment and filing are not acts which the prosecuting attorney must personally perform. State ex rel. Cannon v. Leary, 646 P.2d 727 (Utah 1982).

Although prosecutor's authorization and signature affixed on the reverse side of the information violated R.Civ.P. 10(d) requirement limiting impressions to one side of the paper only, violation did not deprive the trial court of jurisdiction. State ex rel. Cannon v. Leary, 646 P.2d 727 (Utah 1982).

Steps required to initiate prosecution.

The steps required to properly initiate prosecution of a felony by information are: screening of the case by the prosecutor; authorization of the prosecution, evidenced by the signature of the prosecutor affixed to the information; presentment of the information to a magistrate; subscribing and swearing to the information by the complaining witness; and filing of the information with the magistrate or clerk of the court. State ex rel. Cannon v. Leary, 646 P.2d 727 (Utah 1982).