

What SWAP Does for Prosecutors

Spring Conference
April 30, May 1, 2020

Who is SWAP?

- SWAP is a 501(c)(4) and its 17 board members include two UMAA (Utah Municipal Attorneys Association) representatives, two UMPA (Utah Municipal Prosecutors Association) representatives, six county attorneys from designated multi-county regions, a county civil deputy attorney, a county criminal deputy attorney, the Salt Lake DA, the Weber County Attorney, the Davis County Attorney, the Utah County Attorney, and the Attorney General
- The SWAP Board elects an Executive Board: President (Ryan Robinson, West Valley City), Vice-President (Trish Cassell, Summit County), Secretary/Treasurer (Steve Garside, Layton City), and a Past President (James Swink, Cache County)
 - The Executive Board administers day-to-day SWAP operations
- SWAP has a part-time Executive Director, Jeff Buhman

SWAP's Mission

- To effectively and accurately advocate the policy and procedure interests of prosecutors and public attorneys in Utah
- To provide leadership on legal and public policy issues related to the ethical and fair administration of justice and the effective administration of government
- To enhance communication and cooperation among public attorneys and the judiciary, law enforcement, state and local government, the bar, and other public and private organizations concerned with the administration of justice and the administration of government

What SWAP Actually Does

- 70% relates to working with the Legislature before, during and after the session on issues related to SWAP's mission
 - This is done with a larger team including the Salt Lake DA's Office, AG's Office, county and city attorneys, UPC, CIVLAC and SWAPLAC
- 15% relates to enhancing communication with other organizations who work in our policy areas (e.g., sheriffs, chiefs, the courts, UAC, League of Cities, ACLU, CCJJ, etc.)
- 15% relates to policy development (e.g., the Best Practices Committee, policy development with law enforcement, etc.)

What SWAP Does

The 2020 Utah Legislative Session

- Almost all of the bills highlighted during Spring Conference were advanced or revised by someone on the SWAP team
- Much of what SWAP does during a legislative session is not seen at Spring Conference because, through the SWAP team's advocacy, some bills are never written, many bills are defeated, and a few bills are so heavily modified that what results is essentially a new bill
- Following are just a few examples of work done by the SWAP team that you will (mostly) not see in the Spring Conference bill list

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- Example #1: HB288 Prosecutor Data Collection Amendments
- In 2019 this started as a bill titled “Prosecutor Review Boards” and provided significant external oversight to prosecutors
- In 2020 this bill was wholly revised and now only collects data from jails, courts and prosecutors.

What SWAP Does

The 2020 Utah Legislative Session

- Example #2: HB238 Insanity Defense Amendments
- If passed this bill would have significantly enhanced a defendant's ability to obtain the defense of not guilty by reason of insanity and would have overburdened the State Hospital's Forensic Unit
- We have *narrowly* defeated this bill twice (in 2019 and, during this 2020 session, by one vote in committee)

What SWAP Does

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- Example #3: HB466 Law Enforcement Use of Biometric Information
- This bill also started in the 2019 session and would have given a perpetrator an absolute right to not provide for facial recognition, iris recognition, fingerprint scanning or voice recognition in order to open any electronic device—even if law enforcement obtained a search warrant
- We were able to modify this bill to our satisfaction, but then it never received a committee hearing

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- Example #4: HB365 Child Abuse and Endangerment Amendments
- This bill started with language that would have required prosecutors to prove actual harm to a child (i.e., injury) rather than the current law which requires only proof the child was exposed to drugs or paraphernalia
- This bill would have also exempted marijuana as a basis for a charge
- We were able to modify the bill so it now only makes minor tweaks

What SWAP Does

The 2020 Utah Legislative Session

- Example #5: HB390 Amendments to Asset Forfeiture
- This bill was worked on extensively between the 2019 and 2020 sessions
- We were almost able to reach a compromise bill, but time ran out and the bill was not addressed by the legislature (so if you're a cup half full person, we still have the ability to do civil asset forfeiture....)
- This bill is coming back in 2021

What SWAP Does

The 2020 Utah Legislative Session

- Example #6 Criminal Discovery
- Two senators have proposed bills regarding criminal discovery
- Their intent is to ensure defendants get timely and complete discovery; they do not feel that either prosecutors or the courts are adequately handling the issue
- The initial proposals included criminal and/or civil penalties against police/prosecutors and/or suppression of evidence
- So far we have been able to stall these efforts, but the battle is not over
- The Best Practices Committee has begun to address this issue

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The 2020 Utah Legislative Session

- Example #7: HB231 Genetic Information Amendments
- This bill would have curtailed or removed law enforcement's ability to obtain any information from both private and public DNA databases and would have severely limited law enforcement's ability to collect DNA evidence
- This bill was defeated prior to a committee hearing

What SWAP Does

The 2020 Utah Legislative Session

- Example #8: SB218 Facial Recognition Provisions
- This bill would have made DPS the only agency authorized to use facial recognition technology
- This bill was defeated prior to a committee hearing

If You Think a Law Needs to be Enacted or Modified...

1. Ensure the head of your office/agency agrees
2. If possible, draft either:
 - What you think the law should say, or
 - A description of the policy change you believe is advisable
3. Contact your representative on the SWAP Board or Jeff Buhman, SWAP Executive Director, at jbuhman@swap-ut.org or (801) 616-0747