

JUDICIARY AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO THE JUDICIARY; CHANGING THE REQUIREMENTS FOR SERVICE OF PROCESS FOR COLLECTION AGENCIES; REQUIRING THE PUBLICATION OF JUDICIAL PERFORMANCE EVALUATION SURVEY SCORES IN THE VOTER INFORMATION PAMPHLET; REMOVING THE TWO-YEAR TERM OF OFFICE OF THE PRESIDING JUDGE OF A TRIAL COURT OF RECORD; RECOGNIZING THE REPORTS OF THE CITIZEN FOSTER CARE REVIEW BOARD AS A COMMUNICATION PERMITTED BY LAW; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

12-1-8, Utah Code Annotated 1953

20A-7-702, as last amended by Chapters 254 and 258, Laws of Utah 1996

21-1-5, as last amended by Chapters 10 and 215, Laws of Utah 1997

63-63a-5, as last amended by Chapter 365, Laws of Utah 1997

77-27-13, as last amended by Chapter 230, Laws of Utah 1994

77-32-202, as enacted by Chapter 307, Laws of Utah 1997

78-3-29, as last amended by Chapter 215, Laws of Utah 1997

78-3a-115, as last amended by Chapter 103 and renumbered and amended by Chapter 365, Laws of Utah 1997

78-3a-201, as enacted by Chapter 1 and last amended by Chapter 318, Laws of Utah 1996

78-3a-313, as last amended by Chapters 133 and 329, Laws of Utah 1997

78-3g-103, as repealed and reenacted by Chapter 133, Laws of Utah 1997

78-7-25, as last amended by Chapter 248, Laws of Utah 1988

SB0068

1 **78-56-108**, as renumbered and amended by Chapter 372, Laws of Utah 1997

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

3 Section 1. Section **12-1-8** is amended to read:

4 **12-1-8. Designating and limiting activities as to assignments.**

5 Any collector having complied with the provisions of this [act] chapter, may receive
6 accounts, bills or other indebtedness, take assignments [~~thereof~~] for the purpose of collections, and
7 at the direction of the assignor bring suit [~~thereon~~] as assignee, provided however, that [such] all
8 accounts shall be within the statute of limitations as provided by law[, ~~and that in case of suit all~~].
9 All legal processes [and], pleadings, and court representations shall be prepared and conducted by
10 a duly licensed attorney, and a copy of summons and complaint, in all cases, shall be served on
11 defendants[, ~~by a duly qualified process server of the court in which such suit is filed~~].

12 Section 2. Section **20A-7-702** is amended to read:

13 **20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.**

14 (1) The lieutenant governor shall ensure that all information submitted for publication in
15 the voter information pamphlet is:

16 (a) printed and bound in a single pamphlet;
17 (b) printed in clear readable type, no less than ten-point, except that the text of any
18 measure may be set forth in eight-point type; and

19 (c) printed on a quality and weight of paper that best serves the voters.

20 (2) The voter information pamphlet shall contain the following items in this order:

21 (a) a cover title page;
22 (b) an introduction to the pamphlet by the lieutenant governor;
23 (c) a table of contents;
24 (d) a list of all candidates for constitutional offices;
25 (e) a list of candidates for each legislative district;
26 (f) a 100-word statement of qualifications for each candidate for the office of governor,
27 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate
28 to the lieutenant governor's office before July 15 at 5 p.m.;

29 (g) information pertaining to all measures to be submitted to the voters, beginning a new
30 page for each measure and containing, in the following order for each measure:

31 (i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets; and

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor;

(h) a description provided by the Judicial Council of the selection and retention process for judges of courts of record, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria and minimum standards of judicial performance evaluation;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement identifying the number of public sanctions ordered by the Supreme Court upon review of the order of the Judicial Conduct Commission that the judge has received during his current term;

(E) if the judge received two or more private sanctions during the two years immediately preceding certification, a statement identifying the number of private sanctions received; and

(F) a statement identifying whether or not the judge was certified by the Judicial Council;

(vii) (A) except as provided in Subsection (1)(h)(vi)(B), for each judge, in graphic format,

the favorable response rating for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in [5%] 1% increments and identifying the minimum standards of performance for each question;

(B) notwithstanding Subsection (1)(h)(vi)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in [5%] 1% increments, the survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;

(i) an explanation of ballot marking procedures prepared by the Office of Legislative Research and General Counsel, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information;

(k) a list of all county clerks' offices and phone numbers;

(l) an index of subjects in alphabetical order; and

(m) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)

(signed) _____

Lieutenant Governor"

(3) The lieutenant governor shall:

(a) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state not more than 40 nor less than 15 days before the day fixed by law for the election;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 3. Section **21-1-5** is amended to read:

21-1-5. Civil fees of the courts of record -- Courts complex design.

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is \$120.

(b) The fee for filing a complaint or petition is:

(i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$80 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$120 if the claim for damages or amount in interpleader is \$10,000 or more; and

(iv) \$80 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(c) The fee for filing a small claims affidavit is:

(i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less; and

(ii) \$60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) \$45 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$60 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$90 if the original petition is filed under Subsection (1)(a) or when the claim for relief is \$10,000 or more; and

(iv) \$60 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

1 (i) \$35 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000
2 or less; and

3 (ii) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is greater
4 than \$2,000.

5 (f) The fee for depositing funds under Section 57-1-29 when not associated with an action
6 already before the court is determined under Subsection (1)(b) based on the amount deposited.

7 (g) The fee for filing a petition for trial de novo of an adjudication of the justice court or
8 of the small claims department is \$70.

9 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
10 petition for writ of certiorari is \$190.

11 (i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee for filing a petition
12 for expungement is \$50.

13 (ii) There is no fee for a petition filed under Subsection 77-18-10(2).

14 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
15 allocated to the Judges' Retirement Trust Fund, as provided in Title 49, Chapter 6, Judges'
16 Retirement Act.

17 (ii) Two dollars of the fees established by Subsections (1)(a) through (i) shall be allocated
18 by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account,
19 as provided in Section 63-63a-8.

20 (iii) One dollar of the fees established under Subsections (1)(a) through (e), (1)(g), and
21 (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as provided in Section
22 78-31b-9.

23 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
24 United States is \$25.

25 (l) The fee for filing probate or child custody documents from another state is \$25.

26 (m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah
27 State Tax Commission is \$30.

28 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
29 or a judgment, order, or decree of an administrative agency, commission, board, council, or
30 hearing officer of this state or of its political subdivisions other than the Utah State Tax
31 Commission, is \$40.

(n) The fee for filing a judgment by confession without action under Section 78-22-3 is \$25.

(o) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78, Chapter 31a, Utah Arbitration Act, that is not part of an action before the court is \$25.

(p) The fee for filing a petition or counter-petition to modify a decree of divorce is \$30.

(q) The fee for filing any accounting required by law is:

(i) \$10 for an estate valued at \$50,000 or less;

(ii) \$20 for an estate valued at \$75,000 or less but more than \$50,000;

(iii) \$40 for an estate valued at \$112,000 or less but more than \$75,000;

(iv) \$80 for an estate valued at \$168,000 or less but more than \$112,000; and

(v) \$150 for an estate valued at more than \$168,000.

(r) The fee for filing a demand for a civil jury is \$50.

(s) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is \$25.

(t) The fee for filing documents that require judicial approval but are not part of an action before the court is \$25.

(u) The fee for a petition to open a sealed record is \$25.

(v) The fee for a writ of replevin, attachment, execution, or garnishment is \$20 in addition to any fee for a complaint or petition.

(w) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is \$5.

(x) The fee for a certificate issued under Section 26-2-25 is \$2.

(y) The fee for a certified copy of a document is \$2 per document plus 50 cents per page.

(z) The fee for an exemplified copy of a document is \$4 per document plus 50 cents per page.

(aa) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63, Chapter 2, Government Records Access and Management Act. Fees under this subsection shall be credited to the court as a reimbursement of expenditures.

(bb) There is no fee for services or the filing of documents not listed in this section or

1 otherwise provided by law.

2 (cc) Except as provided in this section, all fees collected under this section are paid to the
3 General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts
4 the pleading for filing or performs the requested service.

5 (dd) The filing fees under this section may not be charged to the state, its agencies, or
6 political subdivisions filing or defending any action. In judgments awarded in favor of the state,
7 its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order
8 the filing fees and collection costs to be paid by the judgment debtor. The sums collected under
9 this subsection shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or
10 other penalty and costs permitted by law.

11 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall
12 transfer all revenues representing the difference between the fees in effect after May 2, 1994, and
13 the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities
14 Construction and Management Capital Projects Fund.

15 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
16 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the Capital
17 Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the
18 development of a courts complex in Salt Lake City.

19 (B) If the Legislature approves funding for construction of a courts complex in Salt Lake
20 City in the 1995 Annual General Session, the Division of Facilities Construction and Management
21 shall use the revenue deposited in the Capital Projects Fund under Subsection (2)(a)(ii) to construct
22 a courts complex in Salt Lake City.

23 (iii) The Division of Facilities Construction and Management may enter into agreements
24 and make expenditures related to this project before the receipt of revenues provided for under this
25 subsection.

26 (iv) The Division of Facilities Construction and Management shall:

27 (A) make those expenditures from unexpended and unencumbered building funds already
28 appropriated to the Capital Projects Fund; and

29 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under
30 this Subsection (2).

31 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues

1 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
2 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
3 account.

4 (c) The Division of Finance shall deposit all revenues received from the court
5 administrator into the restricted account created by this section.

6 (d) (i) From [~~March 17, 1994~~] May 1, 1995 until June 30, 1998, the administrator of the
7 courts shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41,
8 Motor Vehicles, in a court of record to the Division of Facilities Construction and Management
9 Capital Projects Fund. The division of money pursuant to Section 78-3-14.5 shall be calculated
10 on the balance of the fine or bail forfeiture paid.

11 (ii) After June 30, 1998, the administrator of the courts shall transfer [~~\$2~~] \$7 of the amount
12 of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to
13 the Division of Finance for deposit in the restricted account created by this section. The division
14 of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail
15 forfeiture paid.

16 (3) (a) There is created within the General Fund a restricted account known as the State
17 Courts Complex Account.

18 (b) The Legislature may appropriate monies from the restricted account to the
19 administrator of the courts for the following purposes only:

20 (i) to repay costs associated with the construction of the court complex that were funded
21 from sources other than revenues provided for under this subsection; and

22 (ii) to cover operations and maintenance costs on the court complex.

23 Section 4. Section **63-63a-5** is amended to read:

24 **63-63a-5. Substance Abuse Prevention Account established -- Funding -- Uses.**

25 (1) There is created a restricted account within the General Fund known as the Substance
26 Abuse Prevention Account.

27 (2) (a) The Division of Finance shall allocate to the Substance Abuse Prevention Account
28 from the collected surcharge established in Section 63-63a-1:

29 (i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the
30 Legislature; and

31 (ii) 2.5% for the State Office of Education, but not to exceed the amount appropriated by

1 the Legislature.

2 (b) The juvenile court shall use the allocation to pay for community service programs
3 required by Subsection 78-3a-118(2)[(j)](m).

4 (c) The State Office of Education shall use the allocation in public school programs for:

5 (i) substance abuse prevention and education;

6 (ii) substance abuse prevention training for teachers and administrators; and

7 (iii) district and school programs to supplement, not supplant, existing local prevention
8 efforts in cooperation with local substance abuse authorities.

9 Section 5. Section **77-27-13** is amended to read:

10 **77-27-13. Board of Pardons and Parole -- Duties of the judiciary, the Department**
11 **of Corrections, and law enforcement -- Removal of material from files.**

12 (1) The chief executive officer and employees of each penal or correctional institution
13 shall cooperate fully with the board, permit board members free access to offenders, and furnish
14 the board with pertinent information regarding an offender's physical, mental, and social history
15 and his institutional record of behavior, discipline, work, efforts of self-improvement, and attitude
16 toward society.

17 (2) The Department of Corrections shall furnish pertinent information it has and shall
18 provide a copy of the pre-sentence report and any other investigative reports to the board. In all
19 cases where a pre-sentence report has not been completed, the department shall make a
20 post-sentence report and shall provide a copy of it to the board as soon as possible. The department
21 shall provide the board, upon request, any additional investigations or information needed by the
22 board to reach a decision or conduct a hearing.

23 (3) The department shall make its facilities available to the board to carry out its functions.

24 (4) Law enforcement officials responsible for the offender's arrest, conviction, and
25 sentence shall furnish all pertinent data requested by the board.

26 (5) (a) In all cases where an indeterminate sentence is imposed, the judge imposing the
27 sentence [~~shall~~] may within 30 days from the date of the sentence, mail to the chief executive of
28 the board a statement in writing setting out the term for which, in his opinion, the offender
29 sentenced should be imprisoned, and any information he may have regarding the character of the
30 offender or any mitigating or aggravating circumstances connected with the offense for which the
31 offender has been convicted. In addition, the prosecutor shall in all cases, within 30 days from the

1 date of sentence, forward in writing to the chief executive of the board a full and complete
2 description of the crime, a written record of any plea bargain entered into, a statement of the
3 mitigating or aggravating circumstances or both, all investigative reports, a victim impact
4 statement referring to physical, mental, or economic loss suffered, and any other information the
5 prosecutor believes will be relevant to the board. These statements shall be preserved in the files
6 of the board.

7 (b) Notwithstanding Subsection (5)(a), the board may remove from its files any:

8 (i) statement that it is not going to rely on in its decisionmaking process;

9 (ii) information found to be incorrect by a court, the Board of Pardons and Parole, or
10 administrative agency; or

11 (iii) duplicative materials.

12 (6) The chief executive officer of any penal or correctional institution shall permit
13 offenders to send mail to the board without censorship.

14 Section 6. Section **77-32-202** is amended to read:

15 **77-32-202. Procedure for determination of indigency -- Standards.**

16 (1) A determination of indigency or continuing indigency of any defendant may be made
17 by the court at any stage of the proceedings.

18 (2) (a) Any defendant claiming indigency who is charged with a crime the penalty of
19 which is a class A misdemeanor or felony shall file with the court a fully complete~~[- signed, and~~
20 ~~notarized]~~ affidavit ~~[with the court]~~ verified by a notary or other person authorized by law to
21 administer an oath and file a copy of that affidavit with the prosecuting entity. The affidavit shall
22 contain the factual information required in this section and by the court.

23 (b) A defendant claiming indigency who is charged with a crime the penalty of which is
24 less than a class A misdemeanor is not required to comply with the requirements of Subsection
25 (2)(a) and Subsection (4).

26 (3) (a) "Indigency" means that a person:

27 (i) does not have sufficient income, assets, credit, or other means to provide for the
28 payment of legal counsel and all other necessary expenses of representation without depriving that
29 person or the family of that person of food, shelter, clothing, and other necessities; or

30 (ii) has an income level at or below 150% of the United States poverty level as defined by
31 the most recently revised poverty income guidelines published by the United States Department

1 of Health and Human Services; and

2 (iii) has not transferred or otherwise disposed of any assets since the commission of the
3 offense with the intent of establishing eligibility for the appointment of counsel under this chapter.

4 (b) In making a determination of indigency, the court shall consider:

5 (i) the probable expense and burden of defending the case;

6 (ii) the ownership of, or any interest in, any tangible or intangible personal property or real
7 property, or reasonable expectancy of any such interest;

8 (iii) the amounts of debts owned by the defendant or that might reasonably be incurred by
9 the defendant because of illness or other needs within the defendant's family;

10 (iv) number, ages, and relationships of any dependents; and

11 (v) other relevant factors.

12 (4) Upon making a finding of indigence, the court shall enter the findings on the record
13 and enter an order assigning defense counsel to represent the defendant in the case. The clerk of
14 the court shall send a copy of the affidavit and order to the prosecutor.

15 (5) If the county or municipality providing the defense counsel has any objections to or
16 concerns with the finding of indigency and assignment of defense counsel or the continuing of
17 indigency status and assignment of a public defender, it shall file notice with the court and a
18 hearing shall be scheduled to review the findings and give the county or municipality the
19 opportunity to present evidence and arguments as to the reasons the finding of indigency should
20 be reversed.

21 (6) (a) If the trial court finds within one year after the determination of indigency that any
22 defendant was erroneously or improperly determined to be indigent, the county or municipality
23 may proceed against that defendant for the reasonable value of the services rendered to the
24 defendant, including all costs paid by the county or municipality in providing the defense counsel.

25 (b) Subsection (6)(a) does not affect any restitution required of the defendant by the court
26 pursuant to Title 77, Chapter 32a, Defense Costs.

27 Section 7. Section **78-3-29** is amended to read:

28 **78-3-29. Presiding judge -- Associate presiding judge -- Election -- Term --**
29 **Compensation -- Powers -- Duties.**

30 (1) In judicial districts having more than one judge, the district court judges shall elect one
31 judge of the district to the office of presiding judge.

(2) In judicial districts having more than two judges, the district court judges may elect one judge of the district to the office of associate presiding judge.

~~[(3) The presiding judge and associate presiding judge shall serve for at least two years.]~~

~~[(4)]~~ (3) In districts having five or more full-time judges, court commissioners, referees, or hearing officers, the presiding judge shall receive an additional \$1,000 per annum as compensation.

~~[(5)]~~ (4) In districts having ten or more full-time judges, court commissioners, referees, or hearing officers, the associate presiding judge shall receive an additional \$1,000 per annum as compensation.

~~[(6)]~~ (5) The presiding judge has the following authority and responsibilities, consistent with the policies of the Judicial Council:

(a) implementing policies of the Judicial Council; and

(b) exercising powers and performing administrative duties as authorized by the Judicial Council.

~~[(7)]~~ (6) When the presiding judge is unavailable, the associate presiding judge shall assume the responsibilities of the presiding judge. The associate presiding judge shall perform other duties assigned by the presiding judge.

~~[(8) Upon the merger of the courts pursuant to Section 78-1-2, the incumbent presiding judge of the district court or the judge who was to become the presiding judge of such court under a prior election shall continue as presiding judge for the district for the balance of the term to which the judge was elected. Thereafter, a presiding judge shall be elected under Subsection (1).]~~

Section 8. Section **78-3a-115** is amended to read:

78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.

(1) (a) Hearings in minor's cases shall be held before the court without a jury and may be conducted in an informal manner. The court shall exclude the general public and admit only those persons who have a direct interest in the case or in the work of the court or who have been requested by the parent or legal guardian to be present.

(b) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B

1 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36,
2 Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38,
3 Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not apply to important
4 juvenile justice hearings as defined in Section 77-38-2.

5 (c) A victim, upon request to appropriate juvenile court personnel, shall have the right to
6 inspect and duplicate juvenile court legal records that have not been expunged concerning:

7 (i) the scheduling of any court hearings on the petition;

8 (ii) any findings made by the court; and

9 (iii) any sentence or decree imposed by the court.

10 (2) Notwithstanding Subsection (1), if a proceeding is conducted on a written petition
11 charging a minor 16 years of age or older with an offense which if committed by an adult would
12 be a felony [~~or a misdemeanor as provided in Section 77-38-5~~], the court shall admit any person
13 to the proceeding unless closed by the judge upon findings on the record of good cause.

14 (3) Minor's cases shall be heard separately from adult cases. The minor or his parents or
15 custodian may be heard separately when considered necessary by the court. The hearing may be
16 continued from time to time to a date specified by court order.

17 (4) When more than one minor is involved in a home situation which may be found to
18 constitute neglect or dependency, or when more than one minor is alleged to be involved in the
19 same law violation, the proceedings may be consolidated, except that separate hearings may be
20 held with respect to disposition.

21 Section 9. Section **78-3a-201** is amended to read:

22 **78-3a-201. Board of Juvenile Court Judges -- Composition -- Purpose.**

23 (1) (a) The Judicial Council shall by rule establish a Board of Juvenile Court Judges.

24 (b) The board shall establish general policies for the operation of the juvenile courts and
25 uniform rules and forms governing practice, consistent with the provisions of this chapter, the rules
26 of the Judicial Council, and rules of the Supreme Court.

27 (c) The board may receive and expend any funds that may become available from the
28 federal government or private sources to carry out any of the purposes of this chapter. [~~For this~~
29 ~~purpose, the]~~

30 (i) The board may meet any federal requirements that are conditions precedent to receiving
31 the funds.

1 (ii) The board may cooperate with the federal government in a program for training
2 personnel employed or preparing for employment by the juvenile court and may receive and
3 expend funds from federal or state sources or from private donations for these purposes.

4 (iii) Funds donated or paid to the juvenile court by private sources for the purpose of
5 community service programs shall be nonlapsing.

6 (iv) The board may:

7 (A) contract with public or nonprofit institutions of higher learning for the training of
8 personnel[~~, may~~];

9 (B) conduct short-term training courses of its own and [may] hire experts on a temporary
10 basis for this purpose[~~,~~]; and [may]

11 (C) cooperate with the Division of Child and Family Services and other state departments
12 or agencies in personnel training programs.

13 (d) The board may contract, on behalf of the juvenile court, with the United States Forest
14 Service or other agencies or departments of the federal government or with agencies or
15 departments of other states for the care and placement of minors adjudicated under this chapter.

16 (e) The powers to contract and expend funds are subject to budgetary control and
17 procedures as provided by law.

18 (2) Under the direction of the presiding officer of the council, the chair shall supervise the
19 juvenile courts to ensure uniform adherence to law and to the rules and forms adopted by the
20 Supreme Court and Judicial Council, and to promote the proper and efficient functioning of the
21 juvenile courts.

22 (3) The judges of districts having more than one judge shall elect a presiding judge. [~~The~~
23 ~~presiding judge shall serve a term of not fewer than two years.~~] In districts comprised of five or
24 more judges and court commissioners, the presiding judge shall receive an additional \$1,000 per
25 annum as compensation.

26 (4) Consistent with policies of the Judicial Council, the presiding judge shall:

27 (a) implement policies of the Judicial Council;

28 (b) exercise powers and perform administrative duties as authorized by the Judicial
29 Council;

30 (c) manage the judicial business of the district; and

31 (d) call and preside over meetings of judges of the district.

Section 10. Section **78-3a-313** is amended to read:

78-3a-313. Periodic review hearings -- Foster care citizen review boards.

(1) Pursuant to federal law, periodic review hearings shall be held no less frequently than once every six months, either by the court or, in districts and areas where they are established, by a foster care citizen review board, in accordance with the provisions of Chapter 3g. In districts or areas where foster care citizen review boards have not been established, either the court or the Division of Child and Family Services shall conduct the review. In districts where they are established, foster care citizen review boards shall be considered to be the panels described in 42 U.S.C. Sections 675(5) and (6), which are required to conduct periodic reviews unless court reviews are conducted.

(2) (a) Within 30 days after completion of a review, a foster care citizen review board shall submit a copy of its dispositional report to the court to be made a part of the court's legal file, and provide copies to all parties to an action. In districts or areas where the Division of Child and Family Services conducts a review, it shall provide copies of its report to the court and to all parties within 30 days after completion of its review.

(b) In accordance with Section 78-3g-103, dispositional reports of foster care citizen review boards shall be received and reviewed by the court in the same manner as the court receives and reviews the reports described in Section 78-3a-505. The report by a board, if determined to be an ex parte communication with a judge, shall be considered a communication authorized by law. Foster care citizen review board dispositional reports may be received as evidence, and may be considered by the court along with other evidence. The court may require any person who participated in the dispositional report to appear as a witness if the person is reasonably available.

Section 11. Section **78-3g-103** is amended to read:

78-3g-103. Foster care citizen review boards -- Membership -- Responsibilities -- Periodic reviews.

(1) Foster care citizen review boards shall be established in the First, Second, Third, and Fourth Juvenile Court Districts, to act as the panels described in 42 U.S.C. Sections 675(5) and (6), which are required to conduct periodic reviews unless court reviews are conducted. At least one review board shall be established in the Fifth Juvenile Court District and at least one review board shall be established in the Seventh Juvenile Court District.

(2) (a) The committee shall appoint seven members to each board. Five of those members

1 shall be parents.

2 (b) Five members of a board constitute a quorum, and an action of a majority of the
3 quorum constitutes the action of the board.

4 (c) A board member may not be an employee of the division or the juvenile court.

5 (d) Board members shall be representative of the ethnic, cultural, religious,
6 socio-economic, and professional diversity found in the community.

7 (e) A board may elect its own chair, vice chair, and other officers as it considers
8 appropriate.

9 (f) The division may designate a representative to provide technical advice to the board
10 regarding division policy and procedure.

11 (3) With regard to each child in its custody, the division shall provide the appropriate
12 boards with access to all records maintained by the division.

13 (4) (a) In districts or areas where foster care citizen review boards have been established,
14 periodic reviews either by the court or by a foster care citizen review board, shall be conducted
15 with regard to each child in the division's custody no less frequently than once every six months,
16 in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the
17 court has conducted a six month review hearing, a foster care citizen review board shall also
18 conduct a review within 12 months from the date of the child's removal from his home.

19 (b) Periodic reviews conducted by foster care citizen review boards shall be open to the
20 participation of the child's parents, in accordance with 42 U.S.C. Section 675(6).

21 (c) Boards may review additional abuse, neglect, or dependency cases or plans at the
22 request of the court.

23 (5) Each board shall prepare a dispositional report regarding the child's case and plan. The
24 periodic review and the dispositional report shall be consistent with the provisions of Title 62A,
25 Chapter 4a, Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
26 Proceedings, and shall include at least the following considerations:

27 (a) the extent to which the plan's objectives have been implemented or accomplished by
28 the parent, the child, and the division;

29 (b) whether revisions to the plan are needed, and if so, how the plan should be revised;

30 (c) the extent to which the division has provided the services and interventions described
31 in the plan, and whether those services and interventions are assisting, or will assist, the parent and

1 child to achieve the plan's objectives within the statutory time limitations;

2 (d) the extent to which the parent and child have willingly and actively participated in the
3 interventions described in the plan;

4 (e) the continuing necessity for and appropriateness of the child's placement;

5 (f) the extent of progress that has been made toward alleviating or mitigating the causes
6 necessitating the child's removal or continued placement;

7 (g) a recommended permanency plan for the child and, if one has been established, an
8 opinion regarding the appropriateness of that permanency plan; and

9 (h) a determination regarding whether the statutory time limitations described in Title 78,
10 Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification
11 services required by Section 78-3a-311 has been complied with. The board shall also render an
12 opinion regarding when it estimates that the child will achieve permanency.

13 (6) (a) Each board shall submit its dispositional report to the court, the division, and to all
14 parties to an action within 30 days after a case is reviewed by the board.

15 (b) The board's dispositional report shall be filed with the court, and shall be made a part
16 of the court's legal file. The dispositional report shall be received and reviewed by the court in the
17 same manner as the court receives and reviews the reports described in Section 78-3a-505. The
18 report by a board, if determined to be an ex parte communication with a judge, shall be considered
19 a communication authorized by law. Foster care citizen review board dispositional reports may
20 be received as evidence, and may be considered by the court along with other evidence. The court
21 may require any person who participated in the dispositional report to appear as a witness if the
22 person is reasonably available.

23 (7) Members of boards may not receive financial compensation or benefits for their
24 services. Members may not receive per diem or expenses for their service, except that:

25 (a) members may be reimbursed for mileage on days that they are involved in training, at
26 rates established by the Division of Finance; and

27 (b) members may be provided with a meal on days that they serve on a board.

28 (8) Boards are authorized to receive funds from public and private grants and donations
29 in accordance with the requirements described in Subsection 78-3g-102(8).

30 (9) In districts or areas where foster care citizen review boards have not been established,
31 either the court or the Division of Child and Family Services shall conduct the reviews in

1 accordance with the provisions of Subsections (4)(a) and (b), and Section 78-3a-313.

2 Section 12. Section **78-7-25** is amended to read:

3 **78-7-25. Decisions to be rendered within sixty days -- Procedures for decisions not**
4 **rendered.**

5 (1) A judge of a trial court shall decide all matters submitted for final determination within
6 [~~60 days~~] two months of submission, unless circumstances causing the delay are beyond the
7 judge's personal control.

8 (2) The Judicial Council shall establish reporting procedures for all matters not decided
9 within [~~60 days~~] two months of final submission.

10 Section 13. Section **78-56-108** is amended to read:

11 **78-56-108. Transcripts and copies -- Fees -- Establishment of Court Reporting**
12 **Technology Account.**

13 (1) (a) The fee for a transcript of a court session, or any part of a court session, shall be 80
14 cents per folio for the initial preparation of the transcript and 20 cents per folio for a copy. If two
15 or more persons order copies, the fee shall be 30 cents per folio for the first copy furnished each
16 person, and 20 cents per folio for each additional copy furnished each person. The transcript for
17 an appeal shall be prepared within the time period permitted by the rules of Appellate Procedure.
18 The fee for a transcript prepared within three business days of the request shall be 1-1/2 times the
19 base rate. The fee for a transcript prepared within one business day of the request shall be double
20 the base rate.

21 (b) When a transcript is ordered by the court, the fees shall be paid by the parties to the
22 action in equal proportion or as ordered by the court. The fee for a transcript in a criminal case in
23 which the defendant is found to be impecunious shall be paid pursuant to Section [~~77-32-5~~]
24 77-32-305.

25 (c) There is established within the General Fund a restricted account known as the Court
26 Reporting Technology Account. The clerk of the court shall transfer to the state treasurer for
27 deposit into this account all fees received under this section. The state court administrator may
28 draw upon this account for the purchase, development, and maintenance of court reporting
29 technologies and for other expenses necessary for maintaining a verbatim record of court sessions.

30 (2) The fee for the preparation of a transcript of a court hearing by an official court
31 transcriber other than an official court reporter and the fee for the preparation of the transcript by

- 1 a certified shorthand reporter of a hearing before any referee, master, board, or commission of this
- 2 state shall be as provided in Subsection (1)(a), and shall be payable to the person preparing the
- 3 transcript.

Legislative Review Note**as of 1-28-98 11:53 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel