

**Representative Scott Daniels** proposes to substitute the following bill:

**GOVERNMENT AMENDMENTS REGARDING  
CONSTABLE SERVICES**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Glenn L. Way**

**This act modifies the Judicial Code to provide for penalties for persons serving judicial process without the proper authority.**

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

AMENDS:

**78-12a-2**, as last amended by Chapter 314, Laws of Utah 1995

**78-36-10.5**, as last amended by Chapter 118, Laws of Utah 1998

RENUMBERS AND AMENDS:

**78-12a-2.5**, (Renumbered from 78-27-58, as last amended by Chapter 225, Laws of Utah 1993)

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

Section 1. Section **78-12a-2** is amended to read:

**78-12a-2. Process servers.**

(1) The following persons may serve all process issued by the courts of this state except as otherwise limited by Section ~~[78-27-58]~~ 78-12a-2.5:

(a) a peace officer employed by any political subdivision of the state acting within the scope and jurisdiction of his employment;

(b) a sheriff or appointed deputy sheriff employed by any county of the state;

(c) a constable serving in compliance with applicable law;

(d) an investigator employed by the state and authorized by law to serve civil process; and

(e) private investigators licensed in accordance with Title 53, Chapter 9, Private



26 Investigator Regulation Act.

27 (2) Other persons may serve process as prescribed by Section ~~[78-27-58]~~ 78-12a-2.5.

28 (3) A person serving process shall legibly document the date and time of service and his  
29 name and address on the return of service.

30 Section 2. Section **78-12a-2.5**, which is renumbered from Section 78-27-58 is renumbered  
31 and amended to read:

32 ~~[78-27-58]~~. **78-12a-2.5. Service of judicial process by persons other than law**  
33 **enforcement officers -- Prohibitions -- Penalties.**

34 (1) Persons who are not peace officers, constables, sheriffs, or lawfully appointed deputies  
35 of such officers or authorized state investigators may ~~[not]~~ serve ~~[any forms of civil or criminal~~  
36 ~~process other than]~~ complaints, summonses, petitions, notices, and subpoenas, unless otherwise  
37 prohibited by law.

38 (2) It is a class B misdemeanor for anyone not a constable, sheriff, a lawfully appointed  
39 deputy constable or sheriff, state employed authorized investigator, or other authorized peace  
40 officer, to serve:

41 (a) warrants of arrest;

42 (b) bench warrants;

43 (c) writs of restitution; or

44 (d) writs of execution.

45 (3) It is a class C misdemeanor for anyone not a constable, sheriff, lawfully appointed  
46 deputy constable or sheriff, state employed authorized investigator, or other authorized peace  
47 officer, to serve:

48 (a) writs of garnishment;

49 (b) garnishee orders;

50 (c) temporary restraining orders;

51 (d) protective orders; or

52 (e) orders to show cause.

53 Section 3. Section **78-36-10.5** is amended to read:

54 **78-36-10.5. Order of restitution -- Service -- Enforcement -- Disposition of personal**  
55 **property -- Hearing.**

56 (1) Each order of restitution shall:

57 (a) direct the defendant to vacate the premises, remove his personal property, and restore  
58 possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable;

59 (b) advise the defendant of the time limit set by the court for the defendant to vacate the  
60 premises, which shall be three business days following service of the order, unless the court  
61 determines that a longer or shorter period is appropriate under the circumstances; and

62 (c) advise the defendant of the defendant's right to a hearing to contest the manner of its  
63 enforcement.

64 (2) (a) A copy of the order of restitution and a form for the defendant to request a hearing  
65 as listed on the form shall be served in accordance with Section 78-36-6 by a person authorized  
66 to serve process pursuant to Section ~~[78-27-58]~~ 78-12a-2.5. If personal service is impossible or  
67 impracticable, service may be made by:

68 (i) mailing a copy of the order and the form to the defendant's last-known address and  
69 posting a copy of the order and the form at a conspicuous place on the premises; or

70 (ii) mailing a copy of the order and the form to the commercial tenant defendant's  
71 last-known place of business and posting a copy of the order and the form at a conspicuous place  
72 on the business premises.

73 (b) A request for hearing by the defendant may not stay enforcement of the restitution  
74 order unless:

75 (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond  
76 to the clerk of the court in an amount approved by the court according to the formula set forth in  
77 Subsection 78-36-8.5(2)(b); and

78 (ii) the court orders that the restitution order be stayed.

79 (c) The date of service, the name, title, signature, and telephone number of the person  
80 serving the order and the form shall be legibly endorsed on the copy of the order and the form  
81 served on the defendant.

82 (d) Within ten days of service, the person serving the order and the form shall file proof  
83 of service in accordance with Rule 4(h), Utah Rules of Civil Procedure.

84 (3) (a) If the defendant fails to comply with the order within the time prescribed by the  
85 court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the  
86 least destructive means possible to remove the defendant.

87 (b) Any personal property of the defendant may be removed from the premises by the

88 sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable  
89 may delegate responsibility for storage to the plaintiff, who shall store the personal property in a  
90 suitable place and in a reasonable manner.

91 (c) The personal property removed and stored shall be inventoried by the sheriff or  
92 constable or the plaintiff who shall keep the original inventory and personally deliver or mail the  
93 defendant a copy of the inventory immediately after the personal property is removed.

94 (4) (a) After demand made by the defendant within 30 days of removal of personal  
95 property from the premises, the sheriff or constable or the plaintiff shall promptly return all of the  
96 defendant's personal property upon payment of the reasonable costs incurred for its removal and  
97 storage.

98 (b) The person storing the personal property may sell the property remaining in storage at  
99 a public sale if:

100 (i) the defendant does not request a hearing or demand return of the personal property  
101 within 30 days of its removal from the premises; or

102 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage of  
103 the personal property.

104 (c) In advance of the sale, the person storing the personal property shall mail to the  
105 defendant's last-known address a written notice of the time and place of the sale.

106 (d) If the defendant is present at the sale, he may specify the order in which the personal  
107 property shall be sold, and only so much personal property shall be sold as to satisfy the costs of  
108 removal, storage, advertising, and conducting the sale. The remainder of the personal property,  
109 if any, shall be released to the defendant. If the defendant is not present at the sale, the proceeds,  
110 after deduction of the costs of removal, storage, advertising, and conducting the sale shall be paid  
111 to the plaintiff up to the amount of any judgment the plaintiff obtained against the defendant. Any  
112 surplus shall be paid to the defendant, if the defendant's whereabouts are known. If the defendant's  
113 whereabouts are not known, any surplus shall be disposed of in accordance with Title 67, Chapter  
114 4a, Unclaimed Property Act.

115 (e) The plaintiff may donate the property to charity if:

116 (i) the defendant does not request a hearing or demand return of the personal property  
117 within 30 days of its removal from the premises; or

118 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage of

119 the personal property; and

120 (iii) donation is a commercially reasonable alternative.

121 (f) If the property belonging to a person who is not a defendant is removed and stored in  
122 accordance with this section, that person may claim the property by delivering a written demand  
123 for its release to the sheriff or constable or the plaintiff. If the claimant provides proper  
124 identification and evidence of ownership, the sheriff or constable or the plaintiff shall promptly  
125 release the property at no cost to the claimant.

126 (5) In the event of a dispute concerning the manner of enforcement of the restitution order,  
127 the defendant or any person claiming to own stored personal property may file a request for a  
128 hearing. The court shall set the matter for hearing within ten days from the filing of the request,  
129 or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

130 (6) The Judicial Council shall draft the forms necessary to implement this section.