

JUDICIARY AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill changes the time for appeal of a small court's judgment and makes technical changes.

Highlighted Provisions:

This bill:

- ▶ expands the time period to file an appeal in small claims court from ten days to 30;
- ▶ allows parties to stipulate to a change in venue and requires a decision of the judge;

and

- ▶ clarifies the notice responsibilities in child welfare mediation.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-1-2.2, as last amended by Chapter 190, Laws of Utah 2002

78-1-2.3, as last amended by Chapter 190, Laws of Utah 2002

78-6-10, as last amended by Chapter 215, Laws of Utah 1997

78-7-17.5, as last amended by Chapters 118 and 118, Laws of Utah 2001

78-13-9, Utah Code Annotated 1953

78-31b-7, as last amended by Chapter 288, Laws of Utah 2000

Section 1. Section **78-1-2.2** is amended to read:

78-1-2.2. Number of district judges.

The number of district court judges ~~[may not be more than]~~ shall be:

- (1) four district judges in the First District;
- (2) 13 district judges in the Second District;
- (3) ~~[30]~~ 28 district judges in the Third District~~[-, until the following conditions are met:];~~

~~[(a) upon the retirement, resignation, or death of a judge, the number of district judges in the Third District shall be decreased to 29; and]~~

~~[(b) upon the retirement, resignation, or death of a second judge, the number of district judges in the Third District shall be decreased to 28;]~~

- (4) 12 district judges in the Fourth District;
- (5) ~~[four]~~ five district judges in the Fifth District~~[-, until the condition set forth in~~

~~Subsection (3)(b) is met, then the number of district judges in the Fifth District shall be increased to five];~~

- (6) two district judges in the Sixth District;
- (7) three district judges in the Seventh District; and
- (8) two district judges in the Eighth District.

Section 2. Section **78-1-2.3** is amended to read:

78-1-2.3. Number of juvenile judges and jurisdictions.

The number of juvenile court judges shall be:

- (1) two juvenile judges in the First Juvenile District;
- (2) five juvenile judges in the Second Juvenile District;
- (3) ~~[eight]~~ nine juvenile judges in the Third Juvenile District~~[-, until the condition set forth~~

~~in Subsection 78-1-2.2(3)(a) is met, then the number of juvenile judges in the Third Juvenile District shall be increased to nine];~~

- (4) four juvenile judges in the Fourth Juvenile District;
- (5) two juvenile judges in the Fifth Juvenile District;
- (6) one juvenile judge in the Sixth Juvenile District;

- (7) two juvenile judges in the Seventh Juvenile District; and
- (8) one juvenile judge in the Eighth Juvenile District.

Section 3. Section **78-6-10** is amended to read:

78-6-10. Appeals -- Who may take and jurisdiction.

(1) Either party may appeal the judgment in a small claims action to the district court of the county by filing a notice of appeal in the original trial court within ~~[ten]~~ 30 days ~~[of the notice]~~ of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

(2) The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions, except a record of the trial shall be maintained. The trial de novo may not be heard by a judge pro tempore appointed under Section 78-6-1.5. The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

Section 4. Section **78-7-17.5** is amended to read:

78-7-17.5. Authority of magistrate.

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

- (a) commit a person to incarceration prior to trial;
- (b) set or deny bail under Section 77-20-1 and release upon the payment of bail and satisfaction of any other conditions of release;
- (c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;
- (d) conduct an initial appearance in a felony;
- (e) conduct arraignments;
- (f) conduct a preliminary examination to determine probable cause;
- (g) appoint attorneys and order recoupment of attorney fees;
- (h) order the preparation of presentence investigations and reports;
- (i) issue temporary orders as provided by rule of the Judicial Council; and
- (j) perform any other act or function authorized by statute.

(2) A judge of the justice court may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:

(a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment in a felony case as provided by rule of the Judicial Council;

(b) a judge of the justice court may not set bail in a capital [~~or first degree~~] felony nor deny bail in any case; and

(c) a judge of the justice court may authorize administrative traffic checkpoints under Section 77-23-104 and issue search warrants only within the judicial district.

Section 5. Section **78-13-9** is amended to read:

78-13-9. Grounds.

The court may, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county;

(2) when there is reason to believe that an impartial trial cannot be had in the county, city, or precinct designated in the complaint;

(3) when the convenience of witnesses and the ends of justice would be promoted by the change;

(4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county. [~~Thereupon the court must order the change as agreed upon.~~]

Section 6. Section **78-31b-7** is amended to read:

78-31b-7. Minimum procedures for mediation.

(1) A judge or court commissioner may refer to mediation any case for which the Judicial Council and Supreme Court have established a program or procedures. A party may file with the court an objection to the referral which may be granted for good cause.

(2) (a) Unless all parties and the neutral or neutrals agree only parties, their representatives, and the neutral may attend the mediation sessions.

(b) If the mediation session is pursuant to a referral under Subsection 78-3a-109(9), the ADR provider or ADR organization shall notify all parties to the proceeding and any person

~~[entitled to attend a juvenile court hearing under Section 78-3a-314]~~ designated by a party. The ADR provider may notify any person whose rights may be affected by the mediated agreement or who may be able to contribute to the agreement. A party may request notice be provided to a person who is not a party.

(3) (a) Except as provided in Subsection (3)(b), any settlement agreement between the parties as a result of mediation may be executed in writing, filed with the clerk of the court, and enforceable as a judgment of the court. If the parties stipulate to dismiss the action, any agreement to dismiss shall not be filed with the court.

(b) With regard to mediation affecting any petition filed under Section 78-3a-305 or 78-3a-405:

- (i) all settlement agreements and stipulations of the parties shall be filed with the court;
- (ii) all timelines, requirements, and procedures described in Title 78, Chapter 3a, Parts 3 and 4, and in Title 62A, Chapter 4a, shall be complied with; and
- (iii) the parties to the mediation may not agree to a result that could not have been ordered by the court in accordance with the procedures and requirements of Title 78, Chapter 3a, Parts 3 and 4, and Title 62A, Chapter 4a.