

JUDICIARY AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill makes conforming and correction changes throughout the code regarding the judiciary and courts.

Highlighted Provisions:

This bill:

- ▶ changes the filing fee for a temporary separation to conform with the filing fees in the judicial administration title;
 - ▶ eliminates the requirement that a second notice be sent to a taxpayer when an overpayment of taxes will be applied to the bail on an arrest warrant;
 - ▶ allows the cancellation of a grand jury hearing when no person has been scheduled to testify;
 - ▶ clarifies that references to petition, complaint, or other documents filed with the courts include the cover sheet filed with them;
 - ▶ makes changes to the court reporter chapter, including:
 - requiring that the Judicial Council shall provide for the methods of maintaining court proceedings by rule; and
 - eliminating substitute reporters, traveling expenses, and the Court Reporting Technology Account;
 - ▶ gives justice courts explicit authority to issue writs necessary to carry out its orders;
- and



28 ▶ clarifies notice and hearing provisions for ex parte orders.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **30-3-4.5**, as enacted by Laws of Utah 2007, Chapter 301

36 **59-10-529**, as last amended by Laws of Utah 2009, Chapter 212

37 **77-10a-2**, as last amended by Laws of Utah 1994, Chapter 218

38 **78A-2-402**, as renumbered and amended by Laws of Utah 2008, Chapter 3

39 **78A-2-405**, as renumbered and amended by Laws of Utah 2008, Chapter 3

40 **78A-2-408**, as renumbered and amended by Laws of Utah 2008, Chapter 3

41 **78A-2-409**, as renumbered and amended by Laws of Utah 2008, Chapter 3

42 **78A-5-102**, as last amended by Laws of Utah 2008, Chapters 93, 115 and renumbered
43 and amended by Laws of Utah 2008, Chapter 3

44 **78A-6-115**, as last amended by Laws of Utah 2009, Chapters 146 and 161

45 **78A-7-106**, as last amended by Laws of Utah 2008, Chapters 115, 327 and renumbered
46 and amended by Laws of Utah 2008, Chapter 3

47 **78B-7-107**, as last amended by Laws of Utah 2008, Chapter 163 and renumbered and
48 amended by Laws of Utah 2008, Chapter 3

49 **78B-7-203**, as renumbered and amended by Laws of Utah 2008, Chapter 3

50 ENACTS:

51 **78A-2-229**, Utah Code Annotated 1953

52 REPEALS:

53 **78A-2-406**, as renumbered and amended by Laws of Utah 2008, Chapter 3

54 **78A-2-407**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

57 Section 1. Section **30-3-4.5** is amended to read:

58 **30-3-4.5. Motion for temporary separation order.**

59 (1) A petitioner may file an action for a temporary separation order without filing a
60 petition for divorce by filing a petition for temporary separation and motion for temporary
61 orders if:

- 62 (a) the petitioner is lawfully married to the respondent; and
- 63 (b) both parties are residents of the state for at least 90 days prior to the date of filing.

64 (2) The temporary orders are valid for one year from the date of the hearing, or until
65 one of the following occurs:

- 66 (a) a petition for divorce is filed and consolidated with the petition for temporary
67 separation; or
- 68 (b) the case is dismissed.

69 (3) If a petition for divorce is filed and consolidated with the petition for temporary
70 separation, orders entered in the temporary separation shall continue in the consolidated case.

71 (4) Both parties shall attend the divorce orientation course described in Section
72 30-3-11.4 within 60 days of the filing of the petition, for petitioner, and within 45 days of being
73 served, for respondent.

74 (5) Service shall be made upon respondent, together with a 20-day summons, in
75 accordance with the rules of civil procedure.

76 (6) The fee for filing the petition for temporary separation orders [~~shall be \$25~~] is \$35.
77 If either party files a petition for divorce within one year from the date of filing the petition for
78 temporary separation, the [~~\$25~~] separation filing fee shall be credited towards the filing fee for
79 the divorce.

80 Section 2. Section **59-10-529** is amended to read:

81 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

82 (1) If there has been an overpayment of any tax imposed by this chapter, the amount of
83 overpayment is credited as follows:

- 84 (a) against any income tax then due from the taxpayer;
- 85 (b) against:
 - 86 (i) the amount of any judgment against the taxpayer, including one ordering the
87 payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime Victims
88 Restitution Act, obtained through due process of law by any entity of state government; or
 - 89 (ii) subject to Subsection [~~(3)~~] (4)(a)(i), any child support obligation that is due or past

90 due, as determined by the Office of Recovery Services in the Department of Human Services
91 and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection
92 (2); or

93 (c) subject to Subsection (3), (5), (6), or (7), as bail, to ensure the appearance of the
94 taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer
95 for which bail is due, if a court of competent jurisdiction has not approved an alternative form
96 of payment.

97 (2) If a balance remains after an overpayment is credited in accordance with Subsection
98 (1), the balance shall be refunded to the taxpayer.

99 (3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

100 (a) that is due and related to a warrant that is outstanding on or after February 16, 1984;
101 and

102 (b) in accordance with Subsections (5) and (6).

103 (4) (a) The amount of an overpayment may be credited against an obligation described
104 in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the
105 taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

106 (i) the amount of child support that is due or past due as of the date of the notice or
107 other specified date;

108 (ii) that any overpayment shall be applied to reduce the amount of due or past-due child
109 support specified in the notice; and

110 (iii) that the taxpayer may contest the amount of past-due child support specified in the
111 notice by filing a written request for an adjudicative proceeding with the office within 15 days
112 of the notice being sent.

113 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
114 Office of Recovery Services shall establish rules to implement this Subsection (4), including
115 procedures, in accordance with the other provisions of this section, to ensure:

116 (i) prompt reimbursement to the taxpayer of any amount of an overpayment that was
117 credited against a child support obligation in error; and

118 (ii) prompt distribution of properly credited funds to the obligee parent.

119 (5) The amount of an overpayment may be credited against bail described in
120 Subsection (1)(c) if:

121 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,
122 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

123 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been
124 sent to the person's current address on file with the commission.

125 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that
126 issued the warrant of arrest.

127 (ii) The clerk of the court is authorized to endorse the check or commission warrant of
128 payment on behalf of the payees and deposit the monies in the court treasury.

129 (b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the
130 warrant for arrest of the taxpayer if:

131 (A) the case is a case for which a personal appearance of the taxpayer is not required;
132 and

133 (B) the dollar amount of the overpayment represents the full dollar amount of bail.

134 (ii) In a case except for a case described in Subsection (6)(b)(i):

135 (A) the court receiving the overpayment applied as bail is not required to order the
136 withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

137 (B) the taxpayer may be arrested on the warrant.

138 (c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to
139 resolve the warrant within 40 days after the notice is sent under Subsection (5)(b)[~~-(A)~~], the
140 overpayment applied as bail is forfeited[~~;~~ and].

141 [~~(B) notice of the forfeiture shall be mailed to the taxpayer at the current address on file~~
142 ~~with the commission.~~]

143 (ii) A court may issue another warrant or allow the original warrant to remain in force
144 if:

145 (A) the taxpayer has not complied with an order of the court;

146 (B) the taxpayer has failed to appear and respond to a criminal charge for which a
147 personal appearance is required; or

148 (C) the taxpayer has paid partial but not full bail in a case for which a personal
149 appearance is not required.

150 (d) If the alleged violations named in a warrant are later resolved in favor of the
151 taxpayer, the bail amount shall be remitted to the taxpayer.

152 (7) The fine and bail forfeiture provisions of this section apply to all warrants and fines
153 issued in cases charging a taxpayer with a felony, a misdemeanor, or an infraction described in
154 this section which are outstanding on or after February 16, 1984.

155 (8) If the amount allowable as a credit for tax withheld from a taxpayer exceeds the tax
156 to which the credit relates, the excess is considered an overpayment.

157 (9) (a) Subject to Subsection (9)(b), a claim for credit or refund of an overpayment that
158 is attributable to a net operating loss carry back or carry forward shall be filed within three
159 years from the due date of the return for the taxable year of the net operating loss.

160 (b) The three-year period described in Subsection (9)(a) shall be extended by any
161 extension of time provided in statute for filing the return described in Subsection (9)(a).

162 (10) If there has been an overpayment of a tax that is required to be deducted and
163 withheld under Section 59-10-402, a refund shall be made to the employer only to the extent
164 that the amount of overpayment is not deducted and withheld by the employer.

165 (11) If there is no tax liability for a period in which an amount is paid under this
166 chapter, the amount is an overpayment.

167 (12) If a tax under this chapter is assessed or collected after the expiration of the
168 applicable period of limitation, that amount is an overpayment.

169 (13) (a) A taxpayer may file a claim for a credit or refund of an overpayment within
170 two years from the date a notice of change, notice of correction, or amended return is required
171 to be filed with the commission if the taxpayer is required to:

172 (i) report a change or correction in income reported on the taxpayer's federal income
173 tax return;

174 (ii) report a change or correction that is treated in the same manner as if the change or
175 correction were an overpayment for federal income tax purposes; or

176 (iii) file an amended return with the commission.

177 (b) If a report or amended return is not filed within 90 days, interest on any resulting
178 refund or credit ceases to accrue after the 90-day period.

179 (c) The amount of the credit or refund may not exceed the amount of the reduction in
180 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
181 federal income tax return.

182 (d) Except as provided in Subsection (13)(a), this Subsection (13) does not affect the

183 amount or the time within which a claim for credit or refund may be filed.

184 (14) A credit or refund may not be allowed or made if an overpayment is less than \$1.

185 (15) The amount of a credit or refund may not exceed the tax paid during the three
186 years immediately preceding the filing of the claim, or if no claim is filed, then during the three
187 years immediately preceding the allowance of the credit or refund.

188 (16) In the case of an overpayment of tax by an employer under Part 4, Withholding of
189 Tax, a refund or credit shall be made to the employer only to the extent that the amount of the
190 overpayment is not deducted and withheld from wages under this chapter.

191 (17) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission
192 may make payment to the personal representative of the taxpayer's estate.

193 (b) If there is no personal representative of the taxpayer's estate, payment may be made
194 to those persons who establish entitlement to inherit the property of the decedent in the
195 proportions established in Title 75, Utah Uniform Probate Code.

196 (18) If an overpayment relates to a change in net income described in Subsection
197 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the
198 period within which a deficiency may be assessed.

199 (19) An overpayment of a tax imposed by this chapter shall accrue interest at the rate
200 and in the manner prescribed in Section 59-1-402.

201 Section 3. Section **77-10a-2** is amended to read:

202 **77-10a-2. Panel of judges -- Appointment -- Membership -- Ordering of grand**
203 **jury.**

204 (1) (a) The presiding officer of the Judicial Council shall appoint a panel of five judges
205 from the district courts of the state to hear in secret all persons claiming information that would
206 justify the calling of a grand jury. The presiding officer may appoint senior status district court
207 judges to the panel. The presiding officer shall designate one member of the panel as
208 supervising judge to serve at the pleasure of the presiding officer. The panel has the authority
209 of the district court.

210 (b) To ensure geographical diversity on the panel one judge shall be appointed from the
211 first or second district for a five-year term, one judge shall be appointed from the third district
212 for a four-year term, one judge shall be appointed from the fourth district for a three-year term,
213 one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year

214 term, and one judge shall be appointed from the third district for a one-year term. Following
215 the first term, all terms on the panel are for five years.

216 (c) The panel shall [~~hold~~] schedule hearings in each judicial district at least once every
217 three years and may meet at any location within the state. Three members of the panel
218 constitute a quorum for the transaction of panel business. The panel shall act by the
219 concurrence of a majority of members present and may act through the supervising judge or
220 managing judge. The schedule for the hearings shall be set by the panel and published by the
221 Office of the Court Administrator. Persons who desire to appear before the panel shall
222 schedule an appointment with the Office of the Court Administrator at least 10 days in
223 advance. If no appointments are scheduled, the hearing may be canceled. Persons appearing
224 before the panel shall be placed under oath and examined by the judges conducting the
225 hearings. Hearsay evidence may be presented at the hearings only under the same provisions
226 and limitations that apply to preliminary hearings.

227 (2) (a) If the panel finds good cause to believe a grand jury is necessary, the panel shall
228 make its findings in writing and may order a grand jury to be summoned.

229 (b) The panel may refer a matter to the attorney general, county attorney, district
230 attorney, or city attorney for investigation and prosecution. The referral shall contain as much
231 of the information presented to the panel as the panel determines relevant. The attorney
232 general, county attorney, district attorney, or city attorney shall report to the panel the results of
233 any investigation and whether the matter will be prosecuted by a prosecutor's information. The
234 report shall be filed with the panel within 120 days after the referral unless the panel provides
235 for a different amount of time. If the panel is not satisfied with the action of the attorney
236 general, county attorney, district attorney, or city attorney, the panel may order a grand jury to
237 be summoned.

238 (3) When the attorney general, a county attorney, a district attorney, or a special
239 prosecutor appointed under Section 77-10a-12 certifies in writing to the supervising judge that
240 in his judgment a grand jury is necessary because of criminal activity in the state, the panel,
241 upon a determination of good cause, shall order a grand jury to be summoned.

242 (4) The supervising judge may at the time the grand jury is summoned:

243 (a) order that it be drawn from the state at large as provided in this chapter or from any
244 district within the state; and

245 (b) retain authority to supervise the grand jury or delegate the supervision of the grand
246 jury to any judge of any district court within the state.

247 Section 4. Section **78A-2-229** is enacted to read:

248 **78A-2-229. References to court pleadings and other papers.**

249 Any reference in this code to a petition, complaint, or other court record shall be
250 considered to include any cover sheet or accompanying document required by statute or court
251 rule to be filed with the petition, complaint, or other record.

252 Section 5. Section **78A-2-402** is amended to read:

253 **78A-2-402. Definitions.**

254 As used in this part:

255 (1) "Certified court reporter" has the same meaning as in Title 58, Chapter 74, Certified
256 Court Reporters Licensing Act.

257 (2) "Folio" means 100 words. A number expressed as a numeral counts as one word;
258 however, any portion of the last folio is not counted.

259 [~~(3) "Official court reporter" means a certified court reporter employed by the courts.]~~

260 [~~(4)~~ (3) "Official court transcriber" means a person certified in accordance with rules
261 of the Judicial Council as competent to transcribe into written form an audio or video recording
262 of court proceedings.

263 Section 6. Section **78A-2-405** is amended to read:

264 **78A-2-405. Record of court proceedings.**

265 [(+) The Judicial Council shall by rule provide for the means of maintaining the record
266 of proceedings in the courts of record by official court reporters or by electronic recording
267 devices.

268 [~~(2) The official court reporter assigned to a session of court shall take full verbatim~~
269 ~~stenographic notes of the session, except when the judge dispenses with the verbatim record.]~~

270 [~~(3) The official court reporter shall immediately file with the clerk of the court the~~
271 ~~original stenographic notes of the court session and the computer disk on which the notes are~~
272 ~~stored. If not already on file with the clerk of the court, the official court reporter shall file a~~
273 ~~computer disk containing the reporter's most current dictionary showing the meaning of the~~
274 ~~reporter's stenographic notes.]~~

275 [~~(4) Upon request and the payment of fees established by Section 78A-2-408, the~~

276 ~~official court reporter shall transcribe the stenographic notes or video or audio recording of the~~
277 ~~court session and furnish the transcript to the requesting party.]~~

278 Section 7. Section **78A-2-408** is amended to read:

279 **78A-2-408. Transcripts and copies -- Fees.**

280 (1) The Judicial Council shall by rule provide for a standard page format for transcripts
281 of court hearings.

282 (2) (a) The fee for a transcript of a court session, or any part of a court session, shall be
283 \$3.50 per page, which includes the initial preparation of the transcript and one certified copy.

284 The preparer shall deposit the original text file and printed transcript with the clerk of the court
285 and provide the person requesting the transcript with the certified copy. The cost of additional
286 copies shall be as provided in Subsection 78A-2-301(1). The transcript for an appeal shall be
287 prepared within the time period permitted by the rules of Appellate Procedure. The fee for a
288 transcript prepared within three business days of the request shall be 1-1/2 times the base rate.
289 The fee for a transcript prepared within one business day of the request shall be double the base
290 rate.

291 (b) When a transcript is ordered by the court, the fees shall be paid by the parties to the
292 action in equal proportion or as ordered by the court. The fee for a transcript in a criminal case
293 in which the defendant is found to be impecunious shall be paid pursuant to Section 77-32-305.

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

300 (3) The fee for the preparation of a transcript of a court hearing by an official court
301 transcriber [~~other than an official court reporter~~] and the fee for the preparation of the transcript
302 by a certified [~~shorthand~~] court reporter of a hearing before any court, referee, master, board, or
303 commission of this state shall be as provided in Subsection (2)(a), and shall be payable to the
304 person preparing the transcript.

305 Section 8. Section **78A-2-409** is amended to read:

306 **78A-2-409. Certified transcripts prima facie correct.**

307 A transcript of [~~an official~~] a certified court reporter's notes, written in longhand or
308 typewritten, certified by the court reporter as being a correct transcript of evidence and
309 proceedings, is prima facie a correct statement of the evidence and proceedings.

310 Section 9. Section **78A-5-102** is amended to read:

311 **78A-5-102. Jurisdiction -- Appeals.**

312 (1) The district court has original jurisdiction in all matters civil and criminal, not
313 excepted in the Utah Constitution and not prohibited by law.

314 (2) The district court judges may issue all extraordinary writs and other writs necessary
315 to carry into effect their orders, judgments, and decrees.

316 (3) The district court has jurisdiction over matters of lawyer discipline consistent with
317 the rules of the Supreme Court.

318 (4) The district court has jurisdiction over all matters properly filed in the circuit court
319 prior to July 1, 1996.

320 (5) The district court has appellate jurisdiction over judgments and orders of the justice
321 court as outlined in Section 78A-7-118 and small claims appeals filed pursuant to Section
322 78A-8-106.

323 (6) Appeals from the final orders, judgments, and decrees of the district court are under
324 Sections 78A-3-102 and 78A-4-103.

325 (7) The district court has jurisdiction to review:

326 (a) agency adjudicative proceedings as set forth in Title 63G, Chapter 4,
327 Administrative Procedures Act, and shall comply with the requirements of that chapter, in its
328 review of agency adjudicative proceedings; and

329 (b) municipal administrative proceedings in accordance with Section 10-3-703.7.

330 (8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in
331 class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

332 (a) there is no justice court with territorial jurisdiction;

333 (b) the offense occurred within the boundaries of the municipality in which the district
334 courthouse is located and that municipality has not formed, or has not formed and then
335 dissolved, a justice court; or

336 (c) they are included in an indictment or information covering a single criminal episode
337 alleging the commission of a felony or a class A misdemeanor.

338 (9) If the district court has subject matter jurisdiction pursuant to Subsection (5) or (8),
339 it also has jurisdiction over offenses listed in Section 78A-7-106 even if those offenses are
340 committed by a person 16 years of age or older.

341 (10) The district court has jurisdiction of actions under Title 78B, Chapter 7, Part 2,
342 Child Protective Orders, if the juvenile court transfers the case to the district court.

343 Section 10. Section **78A-6-115** is amended to read:

344 **78A-6-115. Hearings -- Record -- County attorney or district attorney**
345 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
346 **evidence.**

347 (1) (a) A verbatim record of the proceedings shall be taken [~~by an official court~~
348 ~~reporter or by means of a mechanical recording device~~] in all cases that might result in
349 deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also
350 be made unless dispensed with by the court.

351 (b) (i) Notwithstanding any other provision, including Title 63G, Chapter 2,
352 Government Records Access and Management Act, a record of a proceeding made under
353 Subsection (1)(a) shall be released by the court to any person upon a finding on the record for
354 good cause.

355 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the
356 court shall:

357 (A) provide notice to all subjects of the record that a request for release of the record
358 has been made; and

359 (B) allow sufficient time for the subjects of the record to respond before making a
360 finding on the petition.

361 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the
362 court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the
363 request.

364 (iv) For purposes of this Subsection (1)(b):

365 (A) "record of a proceeding" does not include documentary materials of any type
366 submitted to the court as part of the proceeding, including items submitted under Subsection
367 (4)(a); and

368 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal

369 guardian, the Division of Child and Family Services, and any other party to the proceeding.

370 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
371 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
372 case.

373 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child
374 and Family Services, and this chapter, relating to:

375 (i) protection or custody of an abused, neglected, or dependent child; and

376 (ii) petitions for termination of parental rights.

377 (c) The attorney general shall represent the Division of Child and Family Services in
378 actions involving a minor who is not adjudicated as abused or neglected, but who is otherwise
379 committed to the custody of that division by the juvenile court, and who is classified in the
380 division's management information system as having been placed in custody primarily on the
381 basis of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be
382 construed to affect the responsibility of the county attorney or district attorney to represent the
383 state in those matters, in accordance with the provisions of Subsection (2)(a).

384 (3) The board may adopt special rules of procedure to govern proceedings involving
385 violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings
386 involving offenses under Section 78A-6-606 are governed by that section regarding suspension
387 of driving privileges.

388 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
389 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and
390 in hearings upon petitions for termination of parental rights, written reports and other material
391 relating to the minor's mental, physical, and social history and condition may be received in
392 evidence and may be considered by the court along with other evidence. The court may require
393 that the person who wrote the report or prepared the material appear as a witness if the person
394 is reasonably available.

395 (b) For the purpose of determining proper disposition of a minor alleged to be or
396 adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division
397 under Section 78A-6-315 may be received in evidence and may be considered by the court
398 along with other evidence. The court may require any person who participated in preparing the
399 dispositional report to appear as a witness, if the person is reasonably available.

400 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the
401 commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under
402 Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or
403 their counsel any information which the party:

- 404 (i) plans to report to the court at the proceeding; or
- 405 (ii) could reasonably expect would be requested of the party by the court at the
406 proceeding.

407 (b) The disclosure required under Subsection (5)(a) shall be made:

- 408 (i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than
409 five days before the proceeding;

410 (ii) for proceedings under Title 78A, Chapter 6, Part 5, Termination of Parental Rights
411 Act, in accordance with Utah Rules of Civil Procedure; and

412 (iii) for all other proceedings, no less than five days before the proceeding.

413 (c) If a party to a proceeding obtains information after the deadline in Subsection
414 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the
415 party certifies to the court that the information was obtained after the deadline.

416 (d) Subsection (5)(a) does not apply to:

- 417 (i) pretrial hearings; and
- 418 (ii) the frequent, periodic review hearings held in a dependency drug court case to
419 assess and promote the parent's progress in substance abuse treatment.

420 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
421 may, in its discretion, consider evidence of statements made by a child under eight years of age
422 to a person in a trust relationship.

423 Section 11. Section **78A-7-106** is amended to read:

424 **78A-7-106. Jurisdiction.**

425 (1) Justice courts have jurisdiction over class B and C misdemeanors, violation of
426 ordinances, and infractions committed within their territorial jurisdiction by a person 18 years
427 of age or older.

428 (2) Except those offenses over which the juvenile court has exclusive jurisdiction,
429 justice courts have jurisdiction over the following class B and C misdemeanors, violation of
430 ordinances, and infractions committed within their territorial jurisdiction by a person 16 years

431 of age or older:

432 (a) Title 23, Wildlife Resources Code of Utah;

433 (b) Title 41, Chapter 1a, Motor Vehicle Act;

434 (c) Title 41, Chapter 6a, Traffic Code;

435 (d) Title 41, Chapter 12a, [~~Motor Vehicle Financial Responsibility~~] Financial
436 Responsibility of Owners and Operators Act;

437 (e) Title 41, Chapter 22, Off-Highway Vehicles;

438 (f) Title 73, Chapter 18, Safe Boating Act;

439 (g) Title 73, Chapter 18a, Boating - Litter and Pollution Control;

440 (h) Title 73, Chapter 18b, Water Safety; and

441 (i) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators
442 Act.

443 (3) Justice Courts have jurisdiction over class C misdemeanor violations of Title 53,
444 Chapter 3, Part 2, Driver Licensing Act.

445 (4) As used in this section, "the court's jurisdiction" means the territorial jurisdiction of
446 a justice court.

447 (5) An offense is committed within the territorial jurisdiction of a justice court if:

448 (a) conduct constituting an element of the offense or a result constituting an element of
449 the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is
450 itself unlawful;

451 (b) either a person committing an offense or a victim of an offense is located within the
452 court's jurisdiction at the time the offense is committed;

453 (c) either a cause of injury occurs within the court's jurisdiction or the injury occurs
454 within the court's jurisdiction;

455 (d) a person commits any act constituting an element of an inchoate offense within the
456 court's jurisdiction, including an agreement in a conspiracy;

457 (e) a person solicits, aids, or abets, or attempts to solicit, aid, or abet another person in
458 the planning or commission of an offense within the court's jurisdiction;

459 (f) the investigation of the offense does not readily indicate in which court's
460 jurisdiction the offense occurred, and:

461 (i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft

462 passing within the court's jurisdiction;

463 (ii) (A) the offense is committed on or in any body of water bordering on or within this
464 state if the territorial limits of the justice court are adjacent to the body of water; and

465 (B) as used in Subsection (3)(f)(ii)(A), "body of water" includes any stream, river, lake,
466 or reservoir, whether natural or man-made;

467 (iii) a person who commits theft exercises control over the affected property within the
468 court's jurisdiction; or

469 (iv) the offense is committed on or near the boundary of the court's jurisdiction;

470 (g) the offense consists of an unlawful communication that was initiated or received
471 within the court's jurisdiction; or

472 (h) jurisdiction is otherwise specifically provided by law.

473 (6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8,
474 Small Claims Courts, if a defendant resides in or the debt arose within the territorial
475 jurisdiction of the justice court.

476 (7) A justice court judge may transfer a matter in which the defendant is a child to the
477 juvenile court for further proceedings after judgment in the justice court.

478 (8) The court may issue all extraordinary writs and other writs necessary to carry into
479 effect its orders, judgments, and decrees.

480 Section 12. Section **78B-7-107** is amended to read:

481 **78B-7-107. Hearings on ex parte orders.**

482 (1) (a) When a court issues an ex parte protective order the court shall set a date for a
483 hearing on the petition within 20 days after the ex parte order is issued.

484 (b) If at that hearing the court does not issue a protective order, the ex parte protective
485 order shall expire, unless it is otherwise extended by the court. Extensions beyond the 20-day
486 period may not be granted unless:

487 (i) the petitioner is unable to be present at the hearing;

488 (ii) the respondent has not been served;

489 (iii) the respondent has had the opportunity to present a defense at the hearing;

490 (iv) the respondent requests that the ex parte order be extended; or

491 (v) exigent circumstances exist.

492 (c) Under no circumstances may an ex parte order be extended beyond 180 days from

493 the date of initial issuance.

494 (d) If at that hearing the court issues a protective order, the ex parte protective order
495 remains in effect until service of process of the protective order is completed.

496 (e) A protective order issued after notice and a hearing is effective until further order of
497 the court.

498 (f) If the hearing on the petition is heard by a commissioner, either the petitioner or
499 respondent may file an objection within 10 days of the entry of the recommended order and the
500 assigned judge shall hold a hearing within 20 days of the filing of the objection.

501 (2) Upon a hearing under this section, the court may grant any of the relief described in
502 Section 78B-7-106.

503 (3) When a court denies a petition for an ex parte protective order or a petition to
504 modify an order for protection ex parte, upon the request of the petitioner, the court shall set
505 the matter for hearing [~~upon notice to the respondent~~] and notify the petitioner and serve the
506 respondent.

507 (4) A respondent who has been served with an ex parte protective order may seek to
508 vacate the ex parte protective order prior to the hearing scheduled pursuant to Subsection (1)(a)
509 by filing a verified motion to vacate. The respondent's verified motion to vacate and a notice
510 of hearing on that motion shall be personally served on the petitioner at least two days prior to
511 the hearing on the motion to vacate.

512 Section 13. Section **78B-7-203** is amended to read:

513 **78B-7-203. Hearing.**

514 (1) [~~The~~] If an ex parte order is granted, the court shall schedule a hearing within 20
515 days after the ex parte determination. If an ex parte order is denied, the court, upon the request
516 of the petitioner, shall schedule a hearing within 20 days after the ex parte determination.

517 (2) The petition, ex parte child protective order, and notice of hearing shall be served
518 on the respondent, the minor's parent or guardian, and, if appointed, the guardian ad litem. The
519 notice shall contain:

520 (a) the name and address of the person to whom it is directed;

521 (b) the date, time, and place of the hearing;

522 (c) the name of the minor on whose behalf a petition is being brought; and

523 (d) a statement that a person is entitled to have an attorney present at the hearing.

524 (3) The court shall provide an opportunity for any person having relevant knowledge to
525 present evidence or information. The court may hear statements by counsel.

526 (4) An agent of the division served with a subpoena in compliance with the Utah Rules
527 of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.

528 (5) If the court determines, based on a preponderance of the evidence, that the minor is
529 being abused or is in imminent danger of being abused, the court shall enter a child protective
530 order. With the exception of the provisions of Section 78A-6-323, a child protective order
531 does not constitute an adjudication of abuse, neglect, or dependency under Title 78A, Chapter
532 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

533 Section 14. **Repealer.**

534 This bill repeals:

535 Section **78A-2-406, Substitute reporters.**

536 Section **78A-2-407, Compensation -- Traveling expenses -- Frequency of payment.**

Legislative Review Note
as of 1-29-10 7:54 PM

Office of Legislative Research and General Counsel

S.B. 130 - Judiciary Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will increase ongoing General Fund revenue by \$400 annually.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$400	\$400
Total	\$0	\$0	\$0	\$0	\$400	\$400

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and businesses may pay higher fees.