

Part 1 Jury and Witness Act

78B-1-101 Title.

This part is known as the "Jury and Witness Act."

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-102 Definitions.

As used in this part:

- (1) "Clerk" or "clerk of the court" means the person so designated by title and includes any deputy clerk.
- (2) "Court" means trial court.
- (3) "Jury" means a body of persons temporarily selected from the citizens of a particular county invested with the power to present and indict a person for a public offense or to try a question of fact.
- (4) "Master jury list" means the source lists as prescribed by the Judicial Council under Section 78B-1-106.
- (5) "Prospective jury list" means the list of prospective jurors whose names are drawn at random from the master jury list and are determined to be qualified to serve as jurors.
- (6) "Public necessity" means circumstances in which services performed by the prospective juror to members of the public in either a public or a private capacity cannot adequately be performed by others.
- (7) "Trial jury" means a body of persons selected from the citizens of a particular county before a court or officer of competent jurisdiction and sworn to try and determine by verdict a question of fact.
- (8) "Undue hardship" means circumstances in which the prospective juror would:
 - (a) be required to abandon a person under his or her personal care or incur the cost of substitute care which is unreasonable under the circumstances;
 - (b) suffer extreme physical hardship due to an illness, injury, or disability; or
 - (c) incur substantial costs or lost opportunities due to missing an event that was scheduled prior to the initial notice of potential jury service.

Amended by Chapter 115, 2017 General Session

78B-1-103 Jurors selected from random cross section -- Opportunity and obligation to serve.

- (1) It is the policy of this state that:
 - (a) persons selected for jury service be selected at random from a fair cross section of the population of the county;
 - (b) all qualified citizens have the opportunity in accordance with this chapter to be considered for service; and
 - (c) all qualified citizens are obligated to serve when summoned, unless excused.
- (2) A qualified citizen may not be excluded from jury service on account of race, color, religion, sex, national origin, age, occupation, disability, or economic status.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-104 Jury composition.

- (1) A trial jury consists of:
 - (a) 12 persons in a capital case;
 - (b) eight persons in a noncapital first degree felony aggravated murder or other criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;
 - (c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;
 - (d) four persons in a criminal case which carries a term of incarceration of six months or less as a possible sentence for the most serious offense charged; and
 - (e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than \$20,000, exclusive of costs, interest, and attorney fees.
- (2) Except in the trial of a capital felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.
- (3)
 - (a) The verdict in a criminal case shall be unanimous.
 - (b) The verdict in a civil case shall be by not less than three-fourths of the jurors.
- (4) There is no jury in the trial of small claims cases.
- (5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-105 Jurors -- Competency to serve -- Persons not competent to serve as jurors -- Court to determine disqualification.

- (1) A person is competent to serve as a juror if the person is:
 - (a) a citizen of the United States;
 - (b) 18 years of age or older;
 - (c) a resident of the county; and
 - (d) able to read, speak, and understand the English language.
- (2) A person who has been convicted of a felony which has not been expunged is not competent to serve as a juror.
- (3) The court, on its own initiative or when requested by a prospective juror, shall determine whether the prospective juror is disqualified from jury service. The court shall base its decision on:
 - (a) information provided on the juror qualification form;
 - (b) an interview with the prospective juror; or
 - (c) other competent evidence.
- (4) The clerk shall enter the court's determination in the records of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-106 Master jury list -- Inclusive -- Review -- Renewal -- Public examination.

- (1) The Judicial Council shall designate one or more regularly maintained lists of persons residing in each county as the source lists for the master jury list. The master jury list shall be as inclusive of the adult population as is reasonably practicable.

- (2) The Judicial Council shall by rule provide for the biannual review of the master jury list to evaluate the master jury list's inclusiveness of the adult population.
- (3) Not less than once every six months the Administrative Office of the Courts shall renew the master jury list by incorporating any additions, deletions, or amendments to the source lists. The Administrative Office of the Courts shall include any additional source lists designated by the Judicial Council upon the next renewal of the master jury list.
- (4) The person having custody, possession, or control of any list used in compiling the master jury list shall make the list available to the Administrative Office of the Courts at all reasonable times without charge.

Amended by Chapter 115, 2017 General Session

78B-1-107 Master prospective jury list -- Juror qualification form -- Content.

- (1) When a jury trial is anticipated, the jury clerk shall obtain from the master jury list the number of prospective jurors necessary to qualify jurors to empanel a jury in that case.
- (2) Prospective jurors shall be randomly selected from the county in which the trial will be held. A prospective juror shall remain on the prospective jury list until there is no longer a need to empanel a jury in that case.
- (3) The Judicial Council shall by rule govern the process for the qualification of jurors and the selection of qualified jurors for voir dire.
- (4) The process shall gather the following from a prospective juror:
 - (a) confirmation of the prospective juror's name, address, email address, and daytime telephone number;
 - (b) information on whether the prospective juror is competent under statute to serve as a juror; and
 - (c) the prospective juror's declaration that the responses to the requests for information are true to the best of the person's knowledge.

Amended by Chapter 115, 2017 General Session

78B-1-108 Qualified prospective jurors not exempt from jury service.

No qualified prospective juror is exempt from jury service.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-109 Excuse from jury service -- Postponement.

- (1) A court may excuse an individual from jury service:
 - (a) upon a showing:
 - (i) of undue hardship;
 - (ii) of public necessity;
 - (iii) that the individual is a mother who is breastfeeding a child; or
 - (iv) that the individual is incapable of jury service; and
 - (b) for any period for which the grounds described in Subsection (1)(a) exist.
- (2) An individual described in Subsection (1) shall make the showing described in Subsection (1)
 - (a) by affidavit, sworn testimony, or other competent evidence.
- (3) The court may postpone jury service upon a showing of good cause.

Amended by Chapter 69, 2015 General Session

78B-1-110 Limitations on jury service.

- (1) In any two-year period, a person may not:
 - (a) be required to serve on more than one grand jury;
 - (b) be required to serve as both a grand and trial juror;
 - (c) be required to attend court as a trial juror more than one court day, except if necessary to complete service in a particular case; or
 - (d) if summoned for jury service and the summons is complied with as directed, be selected for the prospective jury list more than once.
- (2)
 - (a) Subsection (1)(d) does not apply to counties of the fourth, fifth, and sixth class and counties of the third class with populations up to 75,000.
 - (b)
 - (i) All population figures used for this section shall be derived from the most recent official census or census estimate of the United States Bureau of the Census.
 - (ii) If population estimates are not available from the United States Bureau of the Census, population figures shall be derived from the estimate of the Utah Population Committee.

Amended by Chapter 330, 2018 General Session

78B-1-111 Food allowance for jurors -- Sequestration costs.

- (1) Jurors may be provided with a reasonable food allowance under the rules of the Judicial Council.
- (2) When a jury has been placed in sequestration by order of the court, the necessary expenses for food and lodging shall be provided in accordance with the rules of the Judicial Council.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-112 Jurors -- Preservation of records.

All records and papers compiled in connection with the selection and service of jurors shall be preserved by the clerk for four years, or for any longer period ordered by the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-113 Jury not selected in conformity with chapter -- Procedure to challenge -- Relief available -- Exclusive remedy.

- (1) Within seven days after the moving party discovered, or by the exercise of diligence could have discovered the grounds therefore, and in any event before the trial jury is sworn to try the case, a party may move to stay the proceedings or to quash an indictment, or for other appropriate relief, on the ground of substantial failure to comply with this act in selecting a grand or trial jury.
- (2) Upon motion filed under this section containing a sworn statement of acts which if true would constitute a substantial failure to comply with this act, the moving party may present testimony of the county clerk, the clerk of the court, any relevant records and papers not public or otherwise available used by the jury commission or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand or a trial jury there has been a substantial failure to comply with this act and it appears that actual and substantial injustice and prejudice has resulted or will result to a party in consequence of the failure, the court shall stay the

proceedings pending the selection of the jury in conformity with this act, quash an indictment, or grant other appropriate relief.

- (3) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this act.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-114 Jury fee assessments -- Payment.

- (1) The court has discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror fees against either the plaintiff or defendant or their counsel, or to divide the cost and assess them against both plaintiff and defendant or their counsel, or additional parties plaintiff or defendant, if:
 - (a) a jury demand has been made and is later withdrawn within the 48 hours preceding the commencement of the trial; or
 - (b) the case is settled or continued within 48 hours of trial without just cause for not having settled or continued the case prior to the 48-hour period.
- (2) The party assessed shall make payment to the clerk of the court within a prescribed period. Payment shall be enforced by contempt proceedings.
- (3) The court clerk shall transfer the assessment to the state treasury, or the auditor of the city or county incurring the juror expenses.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-115 Jurors -- Penalties.

- (1) A person who fails to respond timely to questions regarding qualification for jury service shall be in contempt of court and subject to penalties under Title 78B, Chapter 6, Part 3, Contempt.
- (2) A person summoned for jury service who fails to appear or to complete jury service as directed shall be in contempt of court and subject to penalties under Title 78B, Chapter 6, Part 3, Contempt.
- (3) Any person who willfully misrepresents a material fact regarding qualification for, excuse from, or postponement of jury service is guilty of an infraction.

Amended by Chapter 303, 2016 General Session

78B-1-116 Jurors -- Employer not to discharge or threaten employee for jury service -- Criminal penalty -- Civil action by employee.

- (1) An employer may not deprive an employee of employment, threaten or take any adverse employment action, or otherwise coerce the employee regarding employment because the employee receives a summons, responds to it, serves as a juror, or a grand juror, or attends court for prospective jury or grand jury service.
- (2) An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or for time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation, or sick leave to employees under the provisions of this statute who otherwise are not entitled to those benefits under company policies.

- (3) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisoned not more than six months, or both.
- (4) If any employer discharges an employee in violation of this section, the employee within 30 days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable may not exceed lost wages for six weeks. If the employee prevails, the employee shall be allowed reasonable attorney fees fixed by the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-117 Jurors and witnesses -- State payment for jurors and subpoenaed persons -- Appropriations and costs -- Expenses in justice court.

- (1) The state is responsible for payment of all fees and expenses authorized by law for prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs in criminal actions in the courts of record and actions in the juvenile court. The state is responsible for payment of all fees and expenses authorized by law for jurors in the courts of record. For these payments, the Judicial Council shall receive an annual appropriation contained in a separate line item appropriation.
- (2) If expenses, for the purposes of this section, exceed the line item appropriation, the state court administrator shall submit a claim against the state to the Board of Examiners and request the board to recommend and submit a supplemental appropriation request to the Legislature for the deficit incurred.
- (3) In the justice courts, the fees, mileage, and other expenses authorized by law for jurors, prosecution witnesses, witnesses subpoenaed by indigent defendants, and interpreter costs shall be paid by the municipality if the action is prosecuted by the city attorney, and by the county if the action is prosecuted by the county attorney or district attorney.
- (4) Beginning July 1, 2014, the state court administrator shall provide a report during each interim to the Executive Offices and Criminal Justice Appropriations Subcommittee detailing expenses, trends, and efforts made to minimize expenses and maximize performance of the costs under this section.
- (5) The funding of additional full-time equivalent employees shall be authorized by the Legislature through specific intent language.

Amended by Chapter 25, 2018 General Session

78B-1-118 Jurors and witnesses -- Judicial Council rules governing fee payment.

The Judicial Council shall adopt rules governing the method of payment of fees, mileage, and other expenses of jurors and witnesses, authorization for payment, record of payment, and the audit of payment records.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-119 Jurors and witnesses -- Fees and mileage.

- (1) Every juror and witness legally required or in good faith requested to attend a trial court of record or not of record or a grand jury is entitled to:
 - (a) \$18.50 for the first day of attendance and \$49 per day for each subsequent day of attendance; and

- (b) if traveling more than 50 miles, \$1 for each four miles in excess of 50 miles actually and necessarily traveled in going only, regardless of county lines.
- (2) Persons in the custody of a penal institution upon conviction of a criminal offense are not entitled to a witness fee.
- (3) A witness attending from outside the state in a civil case is allowed mileage at the rate of 25 cents per mile and is taxed for the distance actually and necessarily traveled inside the state in going only.
- (4) If the witness is attending from outside the state in a criminal case, the state shall reimburse the witness under Section 77-21-3.
- (5) A prosecution witness or a witness subpoenaed by an indigent defendant attending from outside the county but within the state may receive reimbursement for necessary lodging and meal expenses under rule of the Judicial Council.
- (6) A witness subpoenaed to testify in court proceedings in a civil action shall receive reimbursement for necessary and reasonable parking expenses from the attorney issuing the subpoena under rule of the Judicial Council or Supreme Court.

Amended by Chapter 56, 2017 General Session

78B-1-120 Jurors and witnesses -- Fees in criminal cases -- Daily report of attendance.

Every witness in a criminal case subpoenaed for the state, or for a defendant by order of the court at the expense of the state, and every juror, whether grand or trial, shall, unless temporarily excused, in person report daily to the clerk. No per diem shall be allowed for any day upon which attendance is not so reported.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-121 Jurors and witnesses -- Statement of service -- Certificate.

Whenever a grand juror, or a witness for the state before the grand jury, is finally discharged, the foreman of the grand jury shall furnish to the clerk of the district court a statement containing information necessary for the clerk to make the juror's or witness's certificate.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-122 Jurors and witnesses -- Justice court judge -- Certificate of attendance -- Records and reporting.

Every justice court shall follow the established disbursement process for juror and witness fees within the town, city, or county, or use the following procedure.

- (1) A justice court judge shall provide to each person who has served as a juror or as a witness in a criminal case when summoned for the prosecution by the county or city attorney, or for the defense by order of the court, a numbered certificate that contains:
 - (a) the name of the juror or witness;
 - (b) the title of the proceeding;
 - (c) the number of days in attendance;
 - (d) the number of miles traveled if the witness has traveled more than 50 miles in going only; and
 - (e) the amount due.
- (2) The certificate shall be presented to the county or city attorney. When certified as being correct, it shall be presented to the county or city auditor and when allowed by the county executive or town council, the auditor shall draw a warrant for it on the treasurer.

- (3) Every justice court judge shall keep a record of all certificates issued. The record shall show all of the facts stated in each certificate. On the first Monday of each month a detailed statement of all certificates issued shall be filed with the treasurer.

Amended by Chapter 99, 2015 General Session

78B-1-123 Jurors and witnesses -- Limit of time for presentation of certificate.

Any holder of a witness's or juror's certificate specified in this title shall be required to present it to the county treasurer or to the county auditor, as the case may be, of the county where the certificate was issued within one year from the date of its issuance. If the same is not presented for payment within that time, it is invalid and will not be paid.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-124 Jurors and witnesses -- Statement of certificates -- Contents -- Payment by state.

- (1) At the end of each quarter it shall be the duty of the county treasurer and the county auditor of each county to prepare in duplicate and verify under oath a full and complete itemized statement of all certificates issued by the clerk of the district court since the date of the last statement for mileage and attendance of:
 - (a) grand jurors;
 - (b) trial jurors engaged in the trial of criminal causes in the district court; and
 - (c) witnesses summoned by or on behalf of the state in criminal causes in the district court.
- (2) The statement shall set forth in detail for each certificate:
 - (a) the number of the certificate;
 - (b) the date issued;
 - (c) the name of the person in whose favor it was issued;
 - (d) the nature of the service rendered; and
 - (e) any other information as may be necessary and required by the state auditor.
- (3) Within 30 days of the end of the quarter one of these statements shall be transmitted to the state auditor and the other filed in the office of the county clerk. Upon the timely receipt of this statement the state auditor shall, unless it is found to be incorrect, draw a warrant in favor of the county treasurer upon the state treasurer for the whole amount of jurors' and witnesses' certificates as shown by the statement, and transmit it to the county treasurer.
- (4) The county treasurer shall hold the funds drawn from the state treasury upon the certificates for mileage and attendance of jurors and witnesses as a separate fund for the redemption of jurors' and witnesses' certificates.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-125 Jurors and witnesses -- Certifying excessive fees a felony.

Any clerk or judge of any court, county attorney, district attorney, or other officer who certifies false information as a fact, whereby any witness or juror shall be allowed a greater sum than otherwise entitled to under the provisions of this title, is guilty of a felony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-126 Jurors and witnesses -- Purchase of certificate forbidden -- Penalty.

- (1) No person connected officially with any of the district courts of this state, and no state, district, county or precinct officer, shall purchase or cause to be purchased any certificate issued to any juror or witness under the provisions of this title.
- (2) Any person who violates the provisions of this section is guilty of a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

78B-1-127 Witnesses -- Competency.

Every person is competent to be a witness except as otherwise provided in the Utah Rules of Evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-128 Who may be witnesses -- Jury to judge credibility.

- (1) All persons, without exception, otherwise than as specified in this part, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses.
- (2) Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief.
- (3) The credibility of a witness may be questioned by:
 - (a) the manner in which the witness testifies;
 - (b) the character of the witness testimony;
 - (c) evidence affecting the witness' character for truth, honesty, or integrity;
 - (d) the witness' motives; or
 - (e) contradictory evidence.
- (4) The jury is the exclusive judge of credibility.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-129 Witnesses -- Subpoena defined.

The process by which the attendance of a witness is required is a subpoena. It is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. The person may also be required to bring any books, documents, or other things under the person's control which is required to be produced in evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-130 Witnesses -- Duty when served with subpoena.

A witness served with a subpoena shall:

- (1) attend at the time appointed with any papers required by the subpoena;
- (2) answer all pertinent and legal questions; and
- (3) unless sooner discharged, remain until the testimony is closed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-131 Witnesses -- Liability to forfeiture and damages.

A witness who disobeys a subpoena shall, in addition to any penalty imposed for contempt, be liable to the party aggrieved in the sum of \$100, and all damages sustained by the failure of the witness to attend. Forfeiture and damages may be recovered in a civil action.

Renumbered and Amended by Chapter 3, 2008 General Session

Superseded 7/1/2024

78B-1-132 Employer not to discharge or threaten employee for responding to subpoena -- Criminal penalty -- Civil action by employee.

- (1) An employer may not deprive an employee of employment or threaten or otherwise coerce the employee regarding employment because the employee attends a deposition or hearing in response to a subpoena.
- (2) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisoned not more than six months or both.
- (3) If an employer violates this section, in addition to any other remedy, the employee may bring a civil action in district court for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable may not exceed lost wages for six weeks. If the employee prevails, the employee shall be allowed reasonable attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

Effective 7/1/2024

78B-1-132 Employer not to discharge or threaten employee for responding to subpoena -- Criminal penalty -- Civil action by employee.

- (1) An employer may not deprive an employee of employment or threaten or otherwise coerce the employee regarding employment because the employee attends a deposition or hearing in response to a subpoena.
- (2) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisoned not more than six months or both.
- (3)
 - (a) If an employer violates this section, in addition to any other remedy, the employee may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee.
 - (b) Damages recoverable may not exceed lost wages for six weeks.
 - (c) If the employee prevails, the employee shall be allowed reasonable attorney fees.

Amended by Chapter 401, 2023 General Session

78B-1-133 Witnesses -- Judge or juror may be witness -- Procedure.

The judge or any juror may be called as a witness by either party. It is in the discretion of the court to order the trial to be postponed, suspended, or take place before another judge or jury.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-134 Witnesses -- Duty to answer questions -- Privilege.

- (1) A witness shall answer all questions legal and pertinent to the matter in issue, although an answer may establish a claim against the witness.
- (2) A witness need not give an answer which will subject him to punishment for a felony.
- (3) A witness need not give an answer which will degrade his character, unless it is to the very fact in issue or to a fact from which the fact in issue would be presumed.
- (4) A witness must answer as to the fact of any previous conviction of a felony.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-135 Witnesses -- Proceedings in aid of or supplemental to attachment, garnishment, or execution.

- (1) Notwithstanding the provisions of Section 78B-1-134, a party or a witness examined in proceedings in aid of or supplemental to attachment, garnishment, or execution is not excused from answering a question on the ground that:
 - (a) the answer will tend to convict the party or witness of the commission of a fraud;
 - (b) the answer will prove the party or witness has been a party or privy to, or has knowledge of, a conveyance, assignment, transfer or other disposition of property concerned for any purpose;
 - (c) the party, witness, or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in the debtor's behalf.
- (2) An answer cannot be used as evidence against the person so answering in a criminal action or proceeding, except in an action for perjury against the person for falsely testifying.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-136 Witnesses -- Rights.

It is the right of a witness to be protected from irrelevant, improper or insulting questions, and from harsh or insulting demeanor, to be detained only so long as the interests of justice require it, and to be examined only as to matters legal and pertinent to the issue.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-137 Witnesses -- Privileged communications.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

- (1)
 - (a) Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage.
 - (b) This exception does not apply:
 - (i) to a civil action or proceeding by one spouse against the other;
 - (ii) to a criminal action or proceeding for a crime committed by one spouse against the other;
 - (iii) to the crime of deserting or neglecting to support a spouse or child;
 - (iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or
 - (v) if otherwise specifically provided by law.

- (2) An attorney cannot, without the consent of the client, be examined as to any communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.
- (3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.
- (4) A physician, surgeon, or physician assistant cannot, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable the physician, surgeon, or physician assistant to prescribe or act for the patient. However, this privilege shall be waived by the patient in an action in which the patient places the patient's medical condition at issue as an element or factor of the claim or defense. Under those circumstances, a physician, surgeon, or physician assistant who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.
- (5) A public officer cannot be examined as to communications made in official confidence when the public interests would suffer by the disclosure.
- (6)
 - (a) A sexual assault counselor as defined in Section 77-38-203 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 77-38-203 made by the victim.
 - (b) A victim advocate as defined in Section 77-38-403 may not, without the written consent of the victim, or the victim's guardian or conservator if the guardian or conservator is not the accused, be examined in a civil or criminal proceeding as to a confidential communication, as defined in Section 77-38-403, unless the victim advocate is a criminal justice system victim advocate, as defined in Section 77-38-403, and is examined in camera by a court to determine whether the confidential communication is privileged.

Amended by Chapter 349, 2019 General Session

Amended by Chapter 361, 2019 General Session

78B-1-138 Witnesses -- Exempt from arrest in civil action.

Every person who has been in good faith served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other person, in a case where the disobedience of the witness may be punished as a contempt, is exempt from arrest in a civil action while going to the place of attendance, necessarily remaining there and returning therefrom.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-139 Witnesses -- Unlawful arrest -- Void -- Damages recoverable.

The arrest of a witness contrary to Section 78B-1-138 is void, and when willfully made is a contempt of the court. The person making the arrest is responsible to the witness arrested for double the amount of the damages which may be assessed against the witness, and is also liable to an action at the suit of the party serving the witness with the subpoena for the damages sustained by the party in consequence of the arrest.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-140 Liability of officer making arrest.

- (1) An officer is not liable for making the arrest in ignorance of the facts creating the exemption, but is liable for any subsequent detention of the witness, if the witness claims the exemption and makes an affidavit stating:
 - (a) he has been served with a subpoena to attend as a witness before a court, officer or other person, specifying the same, the place of attendance and the action or proceeding in which the subpoena was issued;
 - (b) he has not been served by his own procurement, with the intention of avoiding an arrest; and
 - (c) he is at the time going to the place of attendance, returning therefrom, or remaining there in obedience to the subpoena.
- (2) The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-141 Witnesses -- Discharge when unlawfully arrested.

The court or officer issuing the subpoena, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of Section 78B-1-138. If the court has adjourned before the arrest or before application for the discharge, a judge of the court may grant the discharge.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-142 Witnesses -- Oaths -- Who may administer.

Every court, every judge, clerk and deputy clerk of any court, every justice, every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-143 Witnesses -- Form of oath.

- (1) An oath or affirmation in an action or proceeding may be administered in the following form:

You do solemnly swear (or affirm) that the evidence you shall give in this issue (or matter) pending between ____ and ____ shall be the truth, the whole truth and nothing but the truth, so help you God (or, under the pains and penalties of perjury).
- (2) The person swearing or affirming shall express assent when addressed.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-144 Witnesses -- Affirmation or declaration instead of oath allowed.

Any person may, instead of taking an oath, opt to make a solemn affirmation or declaration, by assenting, when addressed in the following form:

"You do solemnly affirm (or declare) that... ." etc., as in Section 78B-1-143.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-145 Witnesses -- Variance in form of swearing to suit beliefs.

- (1) Whenever the court before which a person is offered as a witness is satisfied that the person has a peculiar mode of swearing, connected with or in addition to the usual form, which in the person's opinion is more solemn or obligatory, the court may in its discretion adopt that mode.
- (2) A person who believes in a religion other than the Christian religion may be sworn according to the particular ceremonies of the person's religion, if there are any.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-146 Witnesses -- Interpreters -- Subpoena -- Contempt -- Costs.

- (1) When a witness does not understand and speak the English language, an interpreter shall be sworn in to interpret. Any person may be subpoenaed by any court or judge to appear before the court or judge to act as an interpreter in any action or proceeding. Any person so subpoenaed who fails to attend at the time and place named is guilty of a contempt.
- (2) The Judicial Council may establish a fee for the issuance and renewal of a license of a certified court interpreter. Any fee established under this section shall be deposited as a dedicated credit to the Judicial Council.
- (3) If the court appoints an interpreter, the court may assess all or part of the fees and costs of the interpreter against the person for whom the service is provided. The court may not assess interpreter fees or costs against a person found to be impecunious.

Amended by Chapter 391, 2010 General Session

78B-1-147 Witnesses -- Fees in civil cases -- How paid -- Taxed as costs.

- (1) The fees and compensation of witnesses in all civil causes shall be paid by the party who causes the witnesses to attend. A person is not obliged to attend court in a civil cause when subpoenaed unless the person's:
 - (a) fees for one day's attendance are tendered or paid on demand; or
 - (b) fees for attendance for each day are tendered or paid on demand.
- (2) The fees of witnesses paid in civil causes may be taxed as costs against the losing party.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-148 Witnesses -- Only one fee per day allowed.

No witness shall receive fees in more than one criminal cause on the same day.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-149 Witnesses -- Officials subpoenaed not entitled to fee or per diem -- Exception.

No officer of the United States, or the state, or of any county, incorporated city or town within the state, may receive any witness fee or per diem when testifying in a criminal proceeding unless the officer is required to testify at a time other than during normal working hours.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-150 Witnesses -- When criminal defense witness may be called at expense of state.

A witness for a defendant in a criminal cause may not be subpoenaed at the expense of the state, county, or city, except upon order of the court. The order shall be made only upon affidavit of the defendant, showing:

- (1) the defendant is impecunious and unable to pay the per diems of the witness;
- (2) the evidence of the witness is material for defendant's defense as advised by counsel, if counsel is in place; and
- (3) the defendant cannot safely proceed to trial without the witness.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-151 Witnesses -- Expenses for expert witnesses.

- (1) The court may appoint any expert witness agreed upon by the parties or of its own selection. The court shall inform the expert of required duties in writing and a copy shall be filed with the court record.
- (2) The appointed expert shall advise the court and the parties of findings and may be called to testify by the court or by any party. The expert witness is subject to cross-examination by each party.
- (3) The court shall determine the reasonable compensation of the expert and order payment. The parties may call expert witnesses of their own at their own expense. Upon a showing that a defendant is financially unable to pay the compensation of an expert whose services are necessary for an adequate defense, the compensation shall be paid as if the expert were called on behalf of the prosecution.
- (4) Payment by the court for an expert witness in a criminal case is limited to the fee and mileage allowance for witnesses under Section 78B-1-119 and necessary meals and lodging expenses as provided by rule of the Judicial Council. Compensation of an expert witness beyond the statutory fee and mileage allowance shall be paid by the parties under Subsection (3).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-1-152 Witnesses -- Prohibition of expert witness contingent fees in civil actions.

- (1) As used in this section, "contingent fee agreement" means an agreement for the provision of testimony or other evidence and related services by an expert witness in a civil action that specifies:
 - (a) the payment of compensation to the expert witness for the testimony, other evidence, and services is contingent, in whole or in part, upon a judgment being rendered in favor of the plaintiff or defendant in a civil action, upon a favorable settlement being obtained by the plaintiff or defendant in a civil action, or upon the plaintiff in a civil action being awarded in a judgment or settlement damages in at least a specified amount; and
 - (b) upon satisfaction of the contingency described in Subsection (1)(a), the compensation to be paid to the expert witness is in a fixed amount or an amount to be determined by a specified formula, including, but not limited to, a percentage of a judgment rendered in favor of the plaintiff or a percentage of a favorable settlement obtained by the plaintiff.
- (2) A plaintiff or defendant in a civil action may not engage an expert witness by means of a contingent fee agreement unless approval is sought and received from the court.
- (3) An expert witness may be engaged by the plaintiff or defendant on the contingency that the expert actually qualify as an expert. Once the witness is qualified as an expert Subsection (2) applies to his continued participation in the action.

Renumbered and Amended by Chapter 3, 2008 General Session