

## **Part 3 Contempt**

### **78B-6-301 Acts and omissions constituting contempt.**

The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court:

- (1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the course of a trial or other judicial proceeding;
- (2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;
- (3) misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service;
- (4) deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;
- (5) disobedience of any lawful judgment, order or process of the court;
- (6) acting as an officer, attorney or counselor, of a court without authority;
- (7) rescuing any person or property that is in the custody of an officer by virtue of an order or process of the court;
- (8) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial;
- (9) any other unlawful interference with the process or proceedings of a court;
- (10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness;
- (11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action to be tried at the court, or with any other person, concerning the merits of an action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the communication to the court; and
- (12) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-6-302 Contempt in immediate presence of court -- Summary action -- Outside presence of court -- procedure.**

- (1) When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily. An order shall be made, reciting the facts occurring in the immediate view and presence of the court. The order shall state that the person proceeded against is guilty of a contempt and shall be punished as prescribed in Section 78B-6-310.
- (2) When the contempt is not committed in the immediate view and presence of the court or judge, an affidavit or statement of the facts by a judicial officer shall be presented to the court or judge of the facts constituting the contempt.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-303 Warrant of attachment or commitment order to show cause.**

If the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer. If there is no previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted. A warrant of commitment may not be issued without a previous attachment to answer, or a notice or order to show cause.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-304 Bail.**

Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge must direct, by an indorsement on the warrant, that the person charged may be allowed to post bail for the person's appearance, in an amount to be prescribed in the indorsement.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-305 Duty of sheriff -- Excuse for nonappearance -- Unnecessary restraint forbidden.**

- (1) Upon executing the warrant of attachment, the sheriff shall keep the person in custody and bring the person before the court or judge until an order is made in the premises, unless the person arrested posts bail as provided in Section 78B-6-306.
- (2) Whenever by the provisions of this chapter an officer is required to keep in custody a person arrested on a warrant of attachment and to bring the person before a court or judge, the inability from illness or otherwise of the person to attend is a sufficient excuse for not bringing the person up; and the officer must not confine a person arrested upon the warrant in a prison or otherwise restrain the person of personal liberty, except so far as may be necessary to secure the person's personal attendance.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-306 Bail bond -- Form.**

When a direction to allow the person arrested to post bail is contained in the warrant of attachment, the person shall be released if bond is posted and the person executes a written promise to appear on the return of the warrant, and abide by the order of the court or judge.

Amended by Chapter 121, 2020 General Session

**78B-6-307 Officer's return.**

The officer shall return the warrant of arrest, and the undertaking, if any, received from the person arrested, by the return day specified therein.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-308 Procedure when party charged fails to appear.**

When the warrant of arrest has been served, if the person arrested does not appear on the specified day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted or both. If the undertaking is prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-309 Hearing.**

When the person arrested has been brought up or has appeared, the court shall proceed to investigate the charge, and hear any answer which the person arrested may make. The court may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time, if necessary.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-310 Contempt -- Action by court.**

- (1) The court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding \$1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed \$500 or by incarceration for five days or both.
- (2) A fine imposed under this section is subject to the limitations of Subsection 76-3-301(2).

Amended by Chapter 234, 2018 General Session

**78B-6-311 Damages to party aggrieved.**

- (1) If an actual loss or injury to a party in an action or special proceeding is caused by the contempt, the court:
  - (a) in lieu of or in addition to the fine or imprisonment imposed for the contempt, may order the person proceeded against to pay the party aggrieved a sum of money sufficient to indemnify and satisfy the aggrieved party's costs and expenses; and
  - (b) may order that any bail posted by the person proceeded against be used to satisfy all or part of the money ordered to be paid to the aggrieved party.
- (2) The order described in Subsection (1)(b), and the acceptance of money under the order, is a bar to an action by the aggrieved party for the loss and injury.

Amended by Chapter 121, 2020 General Session

**78B-6-312 Imprisonment to compel performance.**

When the contempt consists of the omission to perform an act enjoined by law, which is yet in the power of the person to perform, the person may be imprisoned until the act is performed, or until released by the court. The act shall be specified in the warrant of commitment.

Renumbered and Amended by Chapter 3, 2008 General Session

***Superseded 7/1/2024***

**78B-6-313 Contempt of process of nonjudicial officer -- Procedure.**

- (1) If a person, officer, referee, arbitrator, board, or committee with the authority to compel the attendance of witnesses or the production of documents issues a subpoena and the person to whom the subpoena is issued refuses to appear or produce the documents ordered, the person shall be considered in contempt.

- (2) The person, officer, referee, arbitrator, board, or committee may report the person to whom the subpoena is issued to the judge of the district court. The court may then issue a warrant of attachment or order to show cause to compel the person's appearance.
- (3) When a person charged has been brought up or has appeared, the person's contempt may be purged in the same manner as other contempts mentioned in this part.

Enacted by Chapter 3, 2008 General Session

***Effective 7/1/2024***

**78B-6-313 Contempt of process of nonjudicial officer -- Procedure.**

- (1) If a person, officer, referee, arbitrator, board, or committee with the authority to compel the attendance of witnesses or the production of documents issues a subpoena and the person to whom the subpoena is issued refuses to appear or produce the documents ordered, the person shall be considered in contempt.
- (2)
  - (a) The person, officer, referee, arbitrator, board, or committee may report the person to whom the subpoena is issued to the court.
  - (b) The court may then issue a warrant of attachment or order to show cause to compel the person's appearance.
- (3) When a person charged has been brought up or has appeared, the person's contempt may be purged in the same manner as other contempts mentioned in this part.

Amended by Chapter 401, 2023 General Session

**78B-6-314 Re-entry after eviction from real property.**

- (1) A person who is ordered to vacate real property by a court of competent jurisdiction, who, not having a right so to do, refuses to vacate, re-enters, or takes possession of, the real property, is guilty of a contempt of the court issuing the judgment.
- (2) Upon a conviction for the contempt, the court shall immediately issue an alias process, directed to the proper officer, requiring the person to restore possession of the property to the party entitled to possession under the original judgment or process.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-315 Noncompliance with child support order.**

- (1) When a court of competent jurisdiction, or the Office of Recovery Services pursuant to an action under Title 63G, Chapter 4, Administrative Procedures Act, makes an order requiring a parent to furnish support or necessary food, clothing, shelter, medical care, or other remedial care for his child, and the parent fails to do so, proof of noncompliance shall be prima facie evidence of contempt of court.
- (2) Proof of noncompliance may be demonstrated by showing that:
  - (a) the order was made, and filed with the district court; and
  - (b) the parent knew of the order because:
    - (i) the order was mailed to the parent at his last-known address as shown on the court records;
    - (ii) the parent was present in court at the time the order was pronounced;
    - (iii) the parent entered into a written stipulation and the parent or counsel for the parent was sent a copy of the order;

- (iv) counsel was present in court and entered into a stipulation which was accepted and the order based upon the stipulation was then sent to counsel for the parent; or
  - (v) the parent was properly served and failed to answer.
- (3) Upon establishment of a prima facie case of contempt under Subsection (2), the obligor under the child support order has the burden of proving inability to comply with the child support order.
- (4) A court may, in addition to other available sanctions, withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses and impose conditions for reinstatement upon a finding that:
- (a) an obligor has:
    - (i) made no payment for 60 days on a current obligation of support as set forth in an administrative or court order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the support obligation in accordance with the order; or
    - (ii) made no payment for 60 days on an arrearage obligation of support as set forth in a payment schedule, written agreement with the Office of Recovery Services, or an administrative or judicial order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the arrearage obligation in accordance with the payment schedule, agreement, or order; and
    - (iii) not obtained a judicial order staying enforcement of the support or arrearage obligation for which the obligor would be otherwise delinquent;
  - (b) a custodial parent has:
    - (i) violated a parent-time order by denying contact for 60 days between a noncustodial parent and a child and, thereafter, has failed to make a good faith effort under the circumstances to comply with a parent-time order; and
    - (ii) not obtained a judicial order staying enforcement of the parent-time order; or
  - (c) an obligor or obligee, after receiving appropriate notice, has failed to comply with a subpoena or order relating to a paternity or child support proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-316 Compensatory service for violation of parent-time order or failure to pay child support.**

- (1) If a court finds by a preponderance of the evidence that a parent has refused to comply with the minimum amount of parent-time ordered in a decree of divorce, the court shall order the parent to:
- (a) perform a minimum of 10 hours of compensatory service; and
  - (b) participate in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.
- (2) If a custodial parent is ordered to perform compensatory service or undergo court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted parent-time by the court to provide child care during the time the custodial parent is complying with compensatory service or education in order to recompense him for parent-time wrongfully denied by the custodial parent under the divorce decree.
- (3) If a noncustodial parent is ordered to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the noncustodial parent's parent-time with the child.
- (4) The person ordered to participate in court-ordered education is responsible for expenses of workshops, classes, and individual counseling.

- (5) If a court finds by a preponderance of the evidence that an obligor, as defined in Section 78B-12-102, has refused to pay child support as ordered by a court in accordance with Title 78B, Chapter 12, Utah Child Support Act, the court shall order the obligor to:
  - (a) perform a minimum of 10 hours of compensatory service; and
  - (b) participate in workshops, classes, or individual counseling to educate the obligor about the importance of complying with the court order and providing the children with a regular and stable source of support.
- (6) The obligor is responsible for the expenses of workshops, classes, and individual counseling ordered by the court.
- (7) If a court orders an obligor to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the obligor's parent-time with the child.
- (8) The sanctions that the court shall impose under this section do not prevent the court from imposing other sanctions or prevent any person from bringing a cause of action allowed under state or federal law.
- (9) The Legislature shall allocate the money from the Children's Legal Defense Account to the judiciary to defray the cost of enforcing and administering this section.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-317 Willful failure to pay a civil accounts receivable or a civil judgment of restitution.**

- (1) As used in this section:
  - (a) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.
  - (b) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.
  - (c) "Default" means the same as that term is defined in Section 77-32b-102.
  - (d) "Delinquent" means the same as that term is defined in Section 77-32b-102.
- (2) If a civil accounts receivable or a civil judgment of restitution is delinquent or in default, the court, by motion of the prosecuting attorney, a judgment creditor, or on the court's own motion, may order the defendant to appear and show cause why the delinquency or default should not be treated as contempt of court under this section.
- (3)
  - (a) The moving party or a clerk of the court shall provide a declaration outlining:
    - (i) the nature of the debt;
    - (ii) the way in which the civil accounts receivable or civil judgment of restitution is delinquent or in default;
    - (iii) if the moving party is the Office of State Debt Collection, the attempts that have been made to collect the civil accounts receivable or the civil judgment of restitution before moving for an order to show cause; and
    - (iv) if the moving party is not the Office of State Debt Collection, that the defendant has failed to comply with any payment agreement that the defendant has with the Office of State Debt Collection.
  - (b) Upon receipt of a declaration under Subsection (3)(a), the court shall:
    - (i) set the matter for a hearing; and
    - (ii) provide notice of the hearing to the defendant by mailing notice of the hearing to the defendant's last known address and by any other means the court finds likely to provide defendant notice of the hearing.

- (c) If it appears to the court that the defendant is not likely to appear at the hearing, the court may issue an arrest warrant with a bail amount reasonably likely to guarantee the defendant's appearance.
- (d) If the defendant is a corporation or an unincorporated association, the court shall cite the person authorized to make disbursement from the assets of the corporation or association to appear to answer for the alleged contempt.
- (4) At the hearing, the defendant is entitled to be:
  - (a) represented by counsel; and
  - (b) if the court is considering a period of incarceration as a potential sanction, appointed counsel if the court determines that the defendant is indigent in accordance with Title 78B, Chapter 22, Indigent Defense Act.
- (5) To find the defendant in contempt, the court shall find beyond a reasonable doubt that the defendant:
  - (a) was aware of the obligation to pay the civil accounts receivable or the civil judgment of restitution;
  - (b) had the capacity to make a payment towards the civil accounts receivable or the civil judgment of restitution; and
  - (c) failed to make a payment towards the civil accounts receivable or the civil judgment of restitution.
- (6) Subject to the limitations in Subsections (7) through (9), if the court finds the defendant in contempt for nonpayment, the court may impose the sanctions for contempt under Section 78B-6-310.
- (7) If the court imposes a jail sanction for the contempt, the number of jail days may not exceed one day for each \$100 of the amount the court finds was contemptuously unpaid with a maximum of:
  - (a) five days for contempt arising from a class B misdemeanor or lesser offense; and
  - (b) 30 days for a class A misdemeanor or felony offense.
- (8)
  - (a) Any jail sanction imposed for contempt under this section shall serve to satisfy the civil accounts receivable at \$100 for each day served.
  - (b) Subsection (8)(a) does not apply to a civil judgment of restitution.
- (9) A financial penalty ordered by the court under Section 78B-6-310 may only become due after the satisfaction of the civil accounts receivable or the civil judgment of restitution.
- (10) The order of the court finding the defendant in contempt and ordering sanctions is a final appealable order.

Amended by Chapter 260, 2021 General Session