

**JUDICIARY AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Kay L. McIff

---

---

**LONG TITLE**

**General Description:**

This bill makes technical changes to the judiciary statutes and conforming changes throughout the code.

**Highlighted Provisions:**

This bill:

- ▶ clarifies requirements for judicial review of an offer of restriction in situations which may pose a threat to public health;
- ▶ clarifies that the district court has appellate jurisdiction over justice and small claims court decisions;
- ▶ clarifies juvenile court jurisdiction;
- ▶ eliminates the requirement that the petitioner on a child protective order notify the court of their current address 30 days before the expiration date;
- ▶ sets a specific time period for a child protective order; and
- ▶ clarifies justice court jurisdiction over minors.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



- 28           **10-3-1106**, as last amended by Laws of Utah 2004, Chapter 260
- 29           **26-6b-3**, as last amended by Laws of Utah 2006, Chapter 185
- 30           **26-6b-3.3**, as enacted by Laws of Utah 2006, Chapter 185
- 31           **26-6b-3.4**, as enacted by Laws of Utah 2006, Chapter 185
- 32           **26-6b-4**, as last amended by Laws of Utah 2006, Chapter 185
- 33           **26-6b-5**, as last amended by Laws of Utah 2006, Chapter 185
- 34           **26-6b-6**, as last amended by Laws of Utah 2007, Chapter 38
- 35           **78-3-4**, as last amended by Laws of Utah 2004, Chapter 201
- 36           **78-3a-104**, as last amended by Laws of Utah 2006, Chapters 55, 132, and 281
- 37           **78-3h-104**, as last amended by Laws of Utah 2006, Chapter 157
- 38           **78-3h-105**, as last amended by Laws of Utah 2007, Chapter 326
- 39           **78-5-104**, as last amended by Laws of Utah 1997, Chapter 215
- 40           **78-45-7.2**, as last amended by Laws of Utah 2007, Chapters 282 and 354

41 REPEALS:

- 42           **78-5-105**, as last amended by Laws of Utah 1997, Chapter 365



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

45           Section 1. Section **10-3-1106** is amended to read:

46           **10-3-1106. Discharge, suspension without pay, or involuntary transfer -- Appeals**  
 47 **-- Board -- Procedure.**

48           (1) An employee to which Section 10-3-1105 applies may not be discharged, suspended  
 49 without pay, or involuntarily transferred to a position with less remuneration:

- 50           (a) because of the employee's politics or religious belief; or
- 51           (b) incident to, or through changes, either in the elective officers, governing body, or  
 52 heads of departments.

53           (2) (a) If an employee is discharged, suspended for more than two days without pay, or  
 54 involuntarily transferred from one position to another with less remuneration for any reason,  
 55 the employee may, subject to Subsection (2)(b), appeal the discharge, suspension without pay,  
 56 or involuntary transfer to a board to be known as the appeal board, established under  
 57 Subsection (7).

58           (b) If the municipality provides an internal grievance procedure, the employee shall

59 exhaust the employee's rights under that grievance procedure before appealing to the board.

60 (3) (a) Each appeal under Subsection (2) shall be taken by filing written notice of the  
61 appeal with the municipal recorder within ten days after:

62 (i) if the municipality provides an internal grievance procedure, the employee receives  
63 notice of the final disposition of the municipality's internal grievance procedure; or

64 (ii) if the municipality does not provide an internal grievance procedure, the discharge,  
65 suspension, or involuntary transfer.

66 (b) (i) Upon the filing of an appeal under Subsection (3)(a), the municipal recorder  
67 shall forthwith refer a copy of the appeal to the appeal board.

68 (ii) Upon receipt of the referral from the municipal recorder, the appeal board shall  
69 forthwith commence its investigation, take and receive evidence, and fully hear and determine  
70 the matter which relates to the cause for the discharge, suspension, or transfer.

71 (4) An employee who is the subject of the discharge, suspension, or transfer may:

72 (a) appear in person and be represented by counsel;

73 (b) have a public hearing;

74 (c) confront the witness whose testimony is to be considered; and

75 (d) examine the evidence to be considered by the appeal board.

76 (5) (a) (i) Each decision of the appeal board shall be by secret ballot, and shall be  
77 certified to the recorder within 15 days from the date the matter is referred to it, except as  
78 provided in Subsection (5)(a)(ii).

79 (ii) For good cause, the board may extend the 15-day period under Subsection (5)(a)(i)  
80 to a maximum of 60 days, if the employee and municipality both consent.

81 (b) If it finds in favor of the employee, the board shall provide that the employee shall  
82 receive:

83 (i) the employee's salary for the period of time during which the employee is  
84 discharged or suspended without pay; or

85 (ii) any deficiency in salary for the period during which the employee was transferred  
86 to a position of less remuneration.

87 (6) (a) A final action or order of the appeal board may be ~~[appealed to]~~ reviewed by the  
88 Court of Appeals by filing with that court a ~~[notice of appeal]~~ petition for review.

89 (b) Each ~~[notice of appeal]~~ petition under Subsection (6)(a) shall be filed within 30

90 days after the issuance of the final action or order of the appeal board.

91 (c) The Court of Appeals' review shall be on the record of the appeal board and for the  
92 purpose of determining if the appeal board abused its discretion or exceeded its authority.

93 (7) (a) The method and manner of choosing the members of the appeal board, the  
94 number of members, the designation of their terms of office, and the procedure for conducting  
95 an appeal and the standard of review shall be prescribed by the governing body of each  
96 municipality by ordinance.

97 (b) For a municipality operating under a form of government other than a  
98 council-mayor form under Part 12, Optional Forms of Municipal Government Act, an  
99 ordinance adopted under Subsection (7)(a) may provide that the governing body of the  
100 municipality shall serve as the appeal board.

101 Section 2. Section **26-6b-3** is amended to read:

102 **26-6b-3. Order of restriction.**

103 (1) The department having jurisdiction over the location where an individual or a group  
104 of individuals who are subject to restriction are found, may:

105 (a) issue a written order of restriction for the individual or group of individuals  
106 pursuant to Subsection 26-1-30(2) or 26A-1-114(1)(b) upon compliance with the requirements  
107 of this chapter; and

108 (b) issue a verbal order of restriction for an individual or group of individuals pursuant  
109 to Subsection (2)(c).

110 (2) (a) A department's determination to issue an order of restriction shall be based upon  
111 the totality of circumstances reported to and known by the department, including:

112 (i) observation;

113 (ii) information that the department determines is credible and reliable information;

114 and

115 (iii) knowledge of current public health risks based on medically accepted guidelines as  
116 may be established by the Department of Health by administrative rule.

117 (b) An order of restriction issued by a department must:

118 (i) in the opinion of the public health official, be for the shortest reasonable period of  
119 time necessary to protect the public health;

120 (ii) use the least intrusive method of restriction that, in the opinion of the department,

121 is reasonable based on the totality of circumstances known to the health department issuing the  
122 order of restriction;

123 (iii) be in writing unless the provisions of Subsection (2)(c) apply; and

124 (iv) contain notice of an individual's rights as required in Section 26-6b-3.3.

125 (c) (i) A department may issue a verbal order of restriction, without prior notice to the  
126 individual or group of individuals if the delay in imposing a written order of restriction would  
127 significantly jeopardize the department's ability to prevent or limit:

128 (A) the transmission of a communicable or possibly communicable disease that poses a  
129 threat to public health;

130 (B) the transmission of an infectious agent or possibly infectious agent that poses a  
131 threat to public health; ~~or~~

132 (C) the exposure or possible exposure of a chemical or biological agent that poses a  
133 threat to public health; or

134 (D) the exposure or transmission of a condition that poses a threat to public health.

135 (ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):

136 (A) is valid for 24 hours from the time the order of restriction is issued;

137 (B) may be verbally communicated to the individuals or group of individuals subject to  
138 restriction by a first responder;

139 (C) may be enforced by the first responder until the department is able to establish and  
140 maintain the place of restriction; and

141 (D) may only be continued beyond the initial 24 hours if a written order of restriction is  
142 issued pursuant to the provisions of Section 26-6b-3.3.

143 (3) Pending issuance of a written order of restriction under Section 26-6b-3.3, or  
144 judicial review of an order of restriction by the district court pursuant to Section 26-6b-6, an  
145 individual who is subject to the order of restriction may be required to submit to involuntary  
146 examination, quarantine, isolation, or treatment in his home, a hospital, or any other suitable  
147 facility under reasonable conditions prescribed by the department.

148 (4) The department that issued the order of restriction shall take reasonable measures,  
149 including the provision of medical care, as may be necessary to assure proper care related to the  
150 reason for the involuntary examination, treatment, isolation, or quarantine of an individual  
151 ordered to submit to an order of restriction.

152 Section 3. Section **26-6b-3.3** is amended to read:

153 **26-6b-3.3. Contents of notice of order of restriction -- Rights of individuals.**

154 (1) A written order of restriction issued by a department shall include the following  
155 information:

156 (a) the identity of the individual or a description of the group of individuals subject to  
157 the order of restriction;

158 (b) the identity or location of any premises that may be subject to restriction;

159 (c) the date and time for which the restriction begins and the expected duration of the  
160 restriction;

161 (d) the suspected communicable disease, infectious, chemical or biological agent, or  
162 other condition that poses a threat to public health;

163 (e) the requirements for termination of the order of restriction, such as necessary  
164 laboratory reports, the expiration of an incubation period, or the completion of treatment for the  
165 communicable disease;

166 (f) any conditions on the restriction, such as limitation of visitors or requirements for  
167 medical monitoring;

168 (g) the medical or scientific information upon which the restriction is based;

169 (h) a statement advising of the right to a judicial review of the order of restriction by  
170 the district court; and

171 (i) pursuant to Subsection (2), the rights of each individual subject to restriction.

172 (2) An individual subject to restriction has the following rights:

173 (a) the right to be represented by legal counsel in any judicial review of the order of  
174 restriction in accordance with Subsection 26-6b-4(3);

175 (b) the right to be provided with prior notice of the date, time, and location of any  
176 hearing concerning the order of restriction;

177 (c) the right to participate in any hearing, in a manner established by the court based on  
178 precautions necessary to prevent additional exposure to communicable or possibly  
179 communicable diseases or to protect the public health;

180 (d) the right to respond and present evidence and arguments on the individual's own  
181 behalf in any hearing;

182 (e) the right to cross examine witnesses; and

183 (f) the right to review and copy all records in the possession of the department that  
184 issued the order of restriction which relate to the subject of the written order of restriction.

185 (3) (a) Notwithstanding the provisions of Subsection (1), if a department issues an  
186 order of restriction for a group of individuals, the department may modify the method of  
187 providing notice to the group or modify the information contained in the notice, if the public  
188 health official determines the modification of the notice is necessary to:

- 189 (i) protect the privacy of medical information of individuals in the group; or
- 190 (ii) provide notice to the group in a manner that will efficiently and effectively notify  
191 the individuals in the group within the period of time necessary to protect the public health.

192 (b) When a department modifies notice to a group of individuals under Subsection  
193 (3)(a), the department shall provide each individual in the group with notice that complies with  
194 the provisions of Subsection (1) as soon as reasonably practical.

195 (4) (a) In addition to the rights of an individual described in Subsections (1) and (2), an  
196 individual subject to an order of restriction may not be terminated from employment if the  
197 reason for termination is based solely on the fact that the individual is or was subject to an  
198 order of restriction.

199 (b) The department issuing the order of restriction shall give the individual subject to  
200 the order of restriction notice of the individual's employment rights under Subsection (4)(a).

201 (c) An employer in the state, including an employer who is the state or a political  
202 subdivision of the state, may not violate the provisions of Subsection (4)(a).

203 Section 4. Section **26-6b-3.4** is amended to read:

204 **26-6b-3.4. Medical records -- Privacy protections.**

205 (1) (a) Health care providers as defined in Section 78-14-3, health care facilities  
206 licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and  
207 governmental entities, shall, when requested, provide the public health official and the  
208 individual subject to an order of restriction, a copy of medical records that are relevant to the  
209 order of restriction.

210 (b) The records requested under Subsection (1)(a) shall be provided as soon as  
211 reasonably possible after the request is submitted to the health care provider or health care  
212 facility, or as soon as reasonably possible after the health care provider or facility receives the  
213 results of any relevant diagnostic testing of the individual.

214 (2) (a) The production of records under the provisions of this section is for the benefit  
215 of the public health and safety of the citizens of the state. A health care provider or facility is  
216 encouraged to provide copies of medical records or other records necessary to carry out the  
217 purpose of this chapter free of charge.

218 (b) Notwithstanding the provisions of Subsection (2)(c), a health care facility that is a  
219 state governmental entity shall provide medical records or other records necessary to carry out  
220 the purposes of this chapter, free of charge.

221 (c) If a health care provider or health care facility does not provide medical records free  
222 of charge under the provisions of Subsection (2)(a) or (b), the health care provider or facility  
223 may charge a fee for the records that does not exceed the presumed reasonable charges  
224 established for workers' compensation by administrative rule adopted by the Labor  
225 Commission.

226 (3) Medical records held by a court related to orders of restriction under this chapter  
227 shall be sealed by the district court at the conclusion of the case.

228 Section 5. Section **26-6b-4** is amended to read:

229 **26-6b-4. Judicial review by the district court -- Required notice -- Representation**  
230 **by counsel -- Conduct of proceedings.**

231 (1) The provisions of this section and Sections 26-6b-5 through 26-6b-7 apply if a  
232 department issues an order for restriction, and:

233 (a) an individual subject to the order of restriction refuses to consent to the order of  
234 restriction;

235 (b) an individual subject to an order of restriction has withdrawn consent to an order of  
236 restriction under the provisions of Subsection 26-6b-3.1(1)(b)(iv)(B); or

237 (c) the department chooses to not attempt to obtain consent to an order of restriction  
238 and files an action for judicial review of the order of restriction.

239 (2) (a) If the individual who is subject to an order of restriction is in custody, the  
240 department, which is the petitioner, shall provide to the individual written notice of the petition  
241 for judicial review of the order of restriction and hearings held pursuant to Sections 26-6b-5  
242 through 26-6b-7 as soon as practicable, and shall send the notice to the legal guardian, legal  
243 counsel for the parties involved, and any other persons and immediate adult family members  
244 whom the individual or the district court designates. The notice shall advise these persons that



245 a hearing may be held within the time provided by this chapter.

246 (b) If the individual has refused to permit release of information necessary for the  
247 provision of notice under this Subsection (2), the extent of notice shall be determined by the  
248 district court.

249 (c) Notwithstanding the notice requirement in Subsection (2)(a), if the court determines  
250 that written notice to each individual in a group of individuals subject to an order of restriction  
251 is not practical considering the circumstances of the threat to public health, the court may order  
252 the department to provide notice to the individual or group of individuals in a manner  
253 determined by the court.

254 (3) (a) If the individual who is subject to an order of restriction is in custody, he shall  
255 be afforded an opportunity to be represented by counsel. If neither the individual nor others  
256 provide for counsel, the district court shall appoint counsel and allow counsel sufficient time to  
257 consult with the individual prior to the hearing. If the individual is indigent, the payment of  
258 reasonable ~~[attorneys']~~ attorney fees for counsel, as determined by the district court, shall be  
259 made by the county in which the individual resides or was found.

260 (b) The ~~[individual, the petitioner, and all other persons to whom notice is required to~~  
261 ~~be given shall be afforded an opportunity to]~~ parties may appear at the hearings, to testify, and  
262 to present and cross-examine witnesses. The district court may, in its discretion, receive the  
263 testimony of any other individual.

264 (c) The district court may allow a waiver of the individual's right to appear only for  
265 good cause shown, and that cause shall be made a part of the court record.

266 (d) The district court may order that the individual participate in the hearing by  
267 telephonic or other electronic means if the individual's condition poses a health threat to those  
268 who physically attend the hearing or to others if the individual is transported to the court.

269 (4) The district court may, in its discretion, order that the individual be moved to a  
270 more appropriate treatment, quarantine, or isolation facility outside of its jurisdiction, and may  
271 transfer the proceedings to any other district court within this state where venue is proper,  
272 provided that the transfer will not be adverse to the legal interests of the individual.

273 (5) All persons to whom notice is required to be given may attend the hearings. The  
274 district court may exclude from the hearing all persons not necessary for the conduct of the  
275 proceedings.

276 (6) All hearings shall be conducted in as informal a manner as may be consistent with  
277 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the  
278 health of the individual or others required to participate in the hearing.

279 (7) The district court shall receive all relevant and material evidence which is offered,  
280 subject to Utah Rules of Evidence.

281 (8) The district court may order law enforcement to assist the petitioner in locating the  
282 individuals subject to restriction and enforcing the order of restriction.

283 Section 6. Section **26-6b-5** is amended to read:

284 **26-6b-5. Petition for judicial review of order of restriction -- Court-ordered**  
285 **examination period.**

286 (1) (a) A department may petition for a judicial review of the department's order of  
287 restriction for an individual or group of individuals who are subject to restriction by filing a  
288 written petition with the district court of the county in which the individual or group of  
289 individuals reside or are located.

290 (b) (i) The county attorney for the county where the individual or group of individuals  
291 reside or are located shall represent the local health department in any proceedings under this  
292 chapter.

293 (ii) The Office of the Attorney General shall represent the department when the  
294 petitioner is the Department of Health in any proceedings under this chapter.

295 (2) The [~~application~~] petition under Subsection (1) shall be accompanied by:

296 (a) written affidavit of the department stating:

297 (i) a belief the individual or group of individuals are subject to restriction;

298 (ii) a belief that the individual or group of individuals who are subject to restriction are  
299 likely to fail to submit to examination, treatment, quarantine, or isolation if not immediately  
300 restrained;

301 (iii) this failure would pose a threat to the public health; and

302 (iv) the personal knowledge of the individual's or group of individuals' condition or the  
303 circumstances that lead to that belief; and

304 (b) a written statement by a licensed physician indicating the physician finds the  
305 individual or group of individuals are subject to restriction.

306 (3) The court shall issue an [~~examination~~] order of restriction requiring the individual

307 or group of individuals to submit to involuntary restriction to protect the public health if the  
308 district court finds:

309 (a) there is a reasonable basis to believe that the individual's or group of individuals'  
310 condition requires involuntary examination, quarantine, treatment, or isolation pending  
311 examination and hearing; or

312 (b) the individual or group of individuals have refused to submit to examination by a  
313 health professional as directed by the department or to voluntarily submit to examination,  
314 treatment, quarantine, or isolation.

315 (4) If the individual or group of individuals who are subject to restriction are not in  
316 custody, the court may make its determination and issue its ~~[examination]~~ order of restriction  
317 in an ex parte hearing.

318 (5) At least 24 hours prior to the hearing required by Section 26-6b-6, the department  
319 which is the petitioner, shall report to the court, in writing, the opinion of qualified health care  
320 providers:

321 (a) regarding whether the individual or group of individuals are infected by or  
322 contaminated with:

323 (i) ~~[are afflicted with an infectious]~~ a communicable or possible communicable disease  
324 that ~~[is]~~ poses a threat to ~~[the]~~ public health;

325 (ii) ~~[are contaminated with a chemical or biological]~~ an infectious agent or possibly  
326 infectious agent that ~~[is]~~ poses a threat to ~~[the]~~ public health; ~~[or]~~

327 (iii) ~~[are in a condition, the exposure to which]~~ a chemical or biological agent that  
328 poses a threat to public health; or

329 (iv) a condition that poses a threat to public health;

330 (b) that despite the exercise of reasonable diligence, the diagnostic studies have not  
331 been completed;

332 (c) whether the individual or group of individuals have agreed to voluntarily comply  
333 with necessary examination, treatment, quarantine, or isolation; and

334 (d) whether the petitioner believes the individual or group of individuals will comply  
335 without court proceedings.

336 Section 7. Section **26-6b-6** is amended to read:

337 **26-6b-6. Court determination for an order of restriction after examination**

338 **period.**

339 (1) The district court shall set a hearing regarding the involuntary order of restriction of  
340 an individual or group of individuals, to be held within ten business days of the issuance of its  
341 ~~[examination]~~ order of restriction issued pursuant to Section 26-6b-5, unless the petitioner  
342 informs the district court prior to this hearing that the individual or group of individuals:

- 343 (a) are not subject to restriction; or
- 344 (b) have stipulated to the issuance of an order of restriction.

345 ~~[(2)(a) If the individual or group of individuals are not subject to restriction, the court  
346 may, without taking any further action, terminate the proceedings and dismiss the petition.]~~

347 ~~[(b)]~~ (2) If the individual or an individual in a group of individuals has stipulated to the  
348 issuance of an order of restriction, the court may issue an order as provided in Subsection (6)  
349 for those individuals without further hearing.

350 (3) (a) If the examination report required in Section 26-6b-5 proves the individual or  
351 group of individuals are not subject to restriction, the court may without further hearing  
352 terminate the proceedings and dismiss the petition.

353 (b) The court may, after a hearing at which the individual or group of individuals are  
354 present in person or by telephonic or other electronic means and have had the opportunity to be  
355 represented by counsel, extend its ~~[examination]~~ order of restriction for a reasonable period,  
356 not to exceed 90 days, if the court has reason to believe the individual or group of individuals  
357 are infected by or contaminated with:

358 (i) ~~[are contaminated with a chemical or biological agent]~~ a communicable or possibly  
359 communicable disease that [is] poses a threat to [the] public health; [or]

360 (ii) an infectious agent or possibly infectious agent that poses a threat to public health;

361 (iii) a chemical or biological agent that poses a threat to public health; or

362 ~~[(ii) are in]~~ (iv) a condition~~[-, the exposure to which]~~ that poses a threat to public  
363 health, but, despite the exercise of reasonable diligence the diagnostic studies have not been  
364 completed.

365 (4) The petitioner shall, at the time of the hearing, provide the district court with the  
366 following items, to the extent that they have been issued or are otherwise available:

- 367 (a) the order of restriction issued by the petitioner;
- 368 (b) admission notes if any individual was hospitalized; and

369 (c) medical records pertaining to the current order of restriction.

370 (5) The information provided to the court under Subsection (4) shall also be provided  
371 to the individual's or group of individual's counsel at the time of the hearing, and at any time  
372 prior to the hearing upon request of counsel.

373 (6) (a) The district court shall order the individual and each individual in a group of  
374 individuals to submit to the order of restriction if, upon completion of the hearing and  
375 consideration of the record, it finds by clear and convincing evidence that:

376 (i) the individual or group of individuals are infected with a communicable disease or  
377 infectious agent, are contaminated with a chemical or biological agent, or are in a condition[;  
378 ~~the exposure to which~~] that poses a threat to public health[~~, or are in a condition which if~~  
379 ~~treatment is not completed the individual or group of individuals will pose a threat to public~~  
380 ~~health~~];

381 (ii) there is no appropriate and less restrictive alternative to a court order of  
382 examination, quarantine, isolation, and treatment, or any of them;

383 (iii) the petitioner can provide the individual or group of individuals with treatment  
384 that is adequate and appropriate to the individual's or group of individuals' conditions and  
385 needs; and

386 (iv) it is in the public interest to order the individual or group of individuals to submit  
387 to involuntary examination, quarantine, isolation, and treatment, or any of them after weighing  
388 the following factors:

389 (A) the personal or religious beliefs, if any, of the individual that are opposed to  
390 medical examination or treatment;

391 (B) the ability of the department to control the public health threat with treatment  
392 alternatives that are requested by the individual;

393 (C) the economic impact for the department if the individual is permitted to use an  
394 alternative to the treatment recommended by the department; and

395 (D) other relevant factors as determined by the court.

396 (b) If upon completion of the hearing the court does not find all of the conditions listed  
397 in Subsection (6)(a) exist, the court shall immediately dismiss the petition.

398 (7) The order of restriction shall designate the period, subject to Subsection (8), for  
399 which the individual or group of individuals shall be examined, treated, isolated, or

400 quarantined.

401 (8) (a) The order of restriction may not exceed six months without benefit of a district  
402 court review hearing.

403 (b) The district court review hearing shall be held prior to the expiration of the order of  
404 restriction issued under Subsection (7). At the review hearing the court may issue an order of  
405 restriction for up to an indeterminate period, if the district court enters a written finding in the  
406 record determining by clear and convincing evidence that the required conditions in Subsection  
407 (6) will continue for an indeterminate period.

408 Section 8. Section **78-3-4** is amended to read:

409 **78-3-4. Jurisdiction -- Appeals.**

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

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

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

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

418 (5) The district court has appellate jurisdiction [~~to adjudicate trials de novo of the~~] over  
419 judgments and orders of the justice court as outlined in Section 78-5-120 and [~~of the~~] small  
420 claims [department of the district court] appeals filed pursuant to Section 78-6-10.

421 (6) Appeals from the final orders, judgments, and decrees of the district court are under  
422 Sections 78-2-2 and 78-2a-3.

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

424 (a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b,  
425 Administrative Procedures Act, and shall comply with the requirements of that chapter, in its  
426 review of agency adjudicative proceedings; and

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

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

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

431 (b) the matter was properly filed in the circuit court prior to July 1, 1996;

432 (c) the offense occurred within the boundaries of the municipality in which the district  
433 courthouse is located and that municipality has not formed a justice court; or

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

436 (9) If the district court has subject matter jurisdiction pursuant to Subsection (5) or (8),  
437 it also has jurisdiction over offenses listed in Section 78-5-104 even if those offenses are  
438 committed by a person 16 years of age or older.

439 ~~[(9)]~~ (10) The district court has jurisdiction of actions under Title 78, Chapter 3h,  
440 Child Protective Orders, if the juvenile court transfers the case to the district court.

441 Section 9. Section **78-3a-104** is amended to read:

442 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

443 (1) Except as otherwise provided by law, the juvenile court has exclusive original  
444 jurisdiction in proceedings concerning:

445 (a) a child who has violated any federal, state, or local law or municipal ordinance or a  
446 person younger than 21 years of age who has violated any law or ordinance before becoming  
447 18 years of age, regardless of where the violation occurred, excluding ~~[traffic laws and boating~~  
448 ~~and ordinances]~~ offenses in Subsection 78-5-104(2);

449 (b) a person 21 years of age or older who has failed or refused to comply with an order  
450 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's  
451 21st birthday; however, the continuing jurisdiction is limited to causing compliance with  
452 existing orders;

453 (c) a child who is an abused child, neglected child, or dependent child, as those terms  
454 are defined in Section 78-3a-103;

455 (d) a protective order for a child pursuant to the provisions of Title 78, Chapter 3h,  
456 Child Protective Orders, which the juvenile court may transfer to the district court if the  
457 juvenile court has entered an ex parte protective order and finds that:

458 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step  
459 parent of the child who is the object of the petition;

460 (ii) the district court has a petition pending or an order related to custody or parent-time  
461 entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6, Cohabitant Abuse Act, or Title

462 78, Chapter 45g, Utah Uniform Parentage Act, in which the petitioner and the respondent are  
463 parties; and

464 (iii) the best interests of the child will be better served in the district court;

465 (e) appointment of a guardian of the person or other guardian of a minor who comes  
466 within the court's jurisdiction under other provisions of this section;

467 (f) the emancipation of a minor in accordance with Part 10, Emancipation;

468 (g) the termination of the legal parent-child relationship in accordance with Part 4,  
469 Termination of Parental Rights Act, including termination of residual parental rights and  
470 duties;

471 (h) the treatment or commitment of a mentally retarded minor;

472 (i) a minor who is a habitual truant from school;

473 (j) the judicial consent to the marriage of a child under age 16 upon a determination of  
474 voluntariness or where otherwise required by law, employment, or enlistment of a child when  
475 consent is required by law;

476 (k) any parent or parents of a child committed to a secure youth corrections facility, to  
477 order, at the discretion of the court and on the recommendation of a secure facility, the parent  
478 or parents of a child committed to a secure facility for a custodial term, to undergo group  
479 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of  
480 that parent's or parents' child, or any other therapist the court may direct, for a period directed  
481 by the court as recommended by a secure facility;

482 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

483 (m) the treatment or commitment of a mentally ill child. The court may commit a child  
484 to the physical custody of a local mental health authority in accordance with the procedures and  
485 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to  
486 Division of Substance Abuse and Mental Health. The court may not commit a child directly to  
487 the Utah State Hospital;

488 (n) the commitment of a child in accordance with Section 62A-15-301;

489 (o) de novo review of final agency actions resulting from an informal adjudicative  
490 proceeding as provided in Section 63-46b-15; and

491 (p) adoptions conducted in accordance with the procedures described in Title 78,  
492 Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the



493 rights of a parent and finds that adoption is in the best interest of the child.

494 (2) ~~[In addition to the provisions of Subsection (1)(a)]~~ Notwithstanding Section  
 495 78-5-104 and Subsection 78-3-4(9), the juvenile court has exclusive jurisdiction over ~~[any~~  
 496 ~~traffic or boating offense committed by a person under 16 years of age and concurrent~~  
 497 ~~jurisdiction over all other traffic or boating offenses committed by a person 16 years of age or~~  
 498 ~~older, except that the court shall have exclusive jurisdiction over]~~ the following offenses  
 499 committed by a child:

500 ~~[(a) Section 76-5-207, automobile homicide;]~~

501 ~~[(b) Section 41-6a-502, operating a vehicle while under the influence of alcohol or~~  
 502 ~~drugs;]~~

503 (a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

504 ~~[(e)]~~ (b) [Section 41-6a-528, reckless driving or] Section 73-18-12, reckless operation;  
 505 and

506 ~~[(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or~~  
 507 ~~semitrailer for an extended period of time; and]~~

508 ~~[(e) Section 41-6a-210 or 73-18-20, fleeing a peace officer.]~~

509 ~~[(3)]~~ (c) [The court also has jurisdiction over traffic and boating offenses] class B and  
 510 C misdemeanors, infractions, or violations of ordinances that are part of a single criminal  
 511 episode filed in a petition that contains an offense over which the court has jurisdiction.

512 ~~[(4)]~~ (3) The juvenile court has jurisdiction over an ungovernable or runaway child  
 513 who is referred to it by the Division of Child and Family Services or by public or private  
 514 agencies that contract with the division to provide services to that child where, despite earnest  
 515 and persistent efforts by the division or agency, the child has demonstrated that the child:

516 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school  
 517 authorities to the extent that the child's behavior or condition endangers the child's own welfare  
 518 or the welfare of others; or

519 (b) has run away from home.

520 ~~[(5)]~~ (4) This section does not restrict the right of access to the juvenile court by private  
 521 agencies or other persons.

522 ~~[(6)]~~ (5) The juvenile court has jurisdiction of all magistrate functions relative to cases  
 523 arising under Section 78-3a-602.

524           ~~[(7)]~~ (6) The juvenile court has jurisdiction to make a finding of substantiated,  
525 unsubstantiated, or without merit, in accordance with Section 78-3a-320.

526           (7) The juvenile court has jurisdiction of matters transferred to it by another trial court  
527 pursuant to Subsection 78-3-4(9) or 78-5-104(5).

528           Section 10. Section **78-3h-104** is amended to read:

529           **78-3h-104. Content of order.**

530           (1) A child protective order or an ex parte child protective order may contain the  
531 following provisions the violation of which is a class A misdemeanor under Section 77-36-2.4:

532           (a) enjoin the respondent from threatening to commit or committing abuse of the  
533 minor;

534           (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise  
535 communicating with the minor, directly or indirectly;

536           (c) prohibit the respondent from entering or remaining upon the residence, school, or  
537 place of employment of the minor and the premises of any of these or any specified place  
538 frequented by the minor;

539           (d) upon finding that the respondent's use or possession of a weapon may pose a  
540 serious threat of harm to the minor, prohibit the respondent from purchasing, using, or  
541 possessing a firearm or other specified weapon; and

542           (e) determine ownership and possession of personal property and direct the appropriate  
543 law enforcement officer to attend and supervise the petitioner's or respondent's removal of  
544 personal property.

545           (2) A child protective order or an ex parte child protective order may contain the  
546 following provisions the violation of which is contempt of court:

547           (a) determine temporary custody of a minor who is the subject of the petition;

548           (b) determine parent-time with a minor who is the subject of the petition, including  
549 denial of parent-time if necessary to protect the safety of the minor, and require supervision of  
550 parent-time by a third party;

551           (c) determine support in accordance with Title 78, Chapter 45, Uniform Civil Liability  
552 for Support Act; and

553           (d) order any further relief the court considers necessary to provide for the safety and  
554 welfare of the minor.

555 (3) A child protective order and an ex parte child protective order shall include:

556 (a) a statement that violation of a criminal provision is a class A misdemeanor and  
557 violation of a civil provision is contempt of court; and

558 (b) information the petitioner is able to provide to facilitate identification of the  
559 respondent, such as Social Security number, driver license number, date of birth, address,  
560 telephone number, and physical description.

561 (4) A child protective order shall include:

562 (a) the date the order expires;

563 ~~[(a)] (b) a statement that [(i) two years from entry of the order, the respondent may~~  
564 ~~petition to dismiss the criminal portion of the order; (ii) the petitioner should, within the 30~~  
565 ~~days prior to the end of the two-year period, advise the court of the petitioner's address for~~  
566 ~~notice of any hearing; and (iii)] the address provided by the petitioner will not be made~~  
567 available to the respondent; and

568 ~~[(b) the date when the civil portion of the order will expire or be reviewed; and]~~

569 (c) the following statement: "Respondent was afforded notice and opportunity to be  
570 heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act  
571 of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United  
572 States, the District of Columbia, tribal lands, and United States territories. This order complies  
573 with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

574 Section 11. Section **78-3h-105** is amended to read:

575 **78-3h-105. Service -- Income withholding -- Expiration.**

576 (1) If the court enters an ex parte child protective order or a child protective order, the  
577 court shall:

578 (a) make reasonable efforts to ensure that the order is understood by the petitioner and  
579 the respondent, if present;

580 (b) as soon as possible transmit the order to the county sheriff for service; and

581 (c) by the end of the next business day after the order is entered transmit a copy of the  
582 order to any law enforcement agency designated by the petitioner and to the statewide domestic  
583 violence network described in Section 30-6-8.

584 (2) The county sheriff shall serve the order and transmit verification of service to the  
585 statewide domestic violence network described in Section 30-6-8 in an expeditious manner.

586 Any law enforcement agency may serve the order and transmit verification of service to the  
587 statewide domestic violence network if the law enforcement agency has contact with the  
588 respondent or if service by that law enforcement agency is in the best interests of the child.

589 (3) When an order is served on a respondent in a jail, prison, or other holding facility,  
590 the law enforcement agency managing the facility shall notify the petitioner of the respondent's  
591 release. Notice to the petitioner consists of a prompt, good faith effort to provide notice,  
592 including mailing the notice to the petitioner's last-known address.

593 (4) Child support orders issued as part of a child protective order are subject to  
594 mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in  
595 IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

596 (5) After notice and hearing a court may modify or vacate a child protective order  
597 without a showing of substantial and material change in circumstances, except that the criminal  
598 provisions of the child protective order may not be vacated within two years of issuance unless  
599 the petitioner:

600 (a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of  
601 Civil Procedure, and the petitioner personally appears before the court and gives specific  
602 consent to the vacation of the criminal provisions of the protective order; or

603 (b) submits a verified affidavit, stating agreement to the vacation of the criminal  
604 provisions of the protective order.

605 (6) The [~~civil provisions of the~~] child protective order [~~expire~~] expires 150 days after  
606 the date of the order unless a different date is set by the court. The court may not set a date  
607 more than 150 days after the date of the order without a finding of good cause. The court may  
608 review and extend the expiration date, but may not extend it to more than 150 days after the  
609 date of the order without a finding of good cause.

610 (7) Notwithstanding Subsections (5) and (6), unless the judge orders otherwise all child  
611 protective orders expire when the subject of the order is 18 years of age, unless the judge  
612 vacates the order earlier.

613 Section 12. Section **78-5-104** is amended to read:

614 **78-5-104. Jurisdiction.**

615 (1) Justice courts have jurisdiction over class B and C misdemeanors, violation of  
616 ordinances, and infractions committed within their territorial jurisdiction[~~, except~~] by a person

617 18 year of age or older.

618 (2) Except those offenses over which the juvenile court has exclusive jurisdiction,  
 619 justice courts have jurisdiction over the following class B and C misdemeanors, violation of  
 620 ordinances, and infractions committed within their territorial jurisdiction by a person 16 years  
 621 of age or older:

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

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

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

625 (d) Title 41, Chapter 12a, Motor Vehicle Financial Responsibility Act;

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

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

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

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

630 (i) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators

631 Act.

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

634 ~~[(2)]~~ (4) Justice courts have jurisdiction of small claims cases under Title 78, Chapter  
 635 6, Small Claims Courts, if the defendant resides in or the debt arose within the territorial  
 636 jurisdiction of the justice court.

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

639 Section 13. Section **78-45-7.2** is amended to read:

640 **78-45-7.2. Application of guidelines -- Use of ordered child support.**

641 (1) The guidelines apply to any judicial or administrative order establishing or  
 642 modifying an award of child support entered on or after July 1, 1989.

643 (2) (a) The child support guidelines shall be applied as a rebuttable presumption in  
 644 establishing or modifying the amount of temporary or permanent child support.

645 (b) The rebuttable presumption means the provisions and considerations required by  
 646 the guidelines, the award amounts resulting from the application of the guidelines, and the use  
 647 of worksheets consistent with these guidelines are presumed to be correct, unless rebutted

648 under the provisions of this section.

649 (3) A written finding or specific finding on the record supporting the conclusion that  
650 complying with a provision of the guidelines or ordering an award amount resulting from use  
651 of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a  
652 particular case is sufficient to rebut the presumption in that case. If an order rebuts the  
653 presumption through findings, it is considered a deviated order.

654 (4) The following shall be considered deviations from the guidelines, if:

655 (a) the order includes a written finding that it is a deviation from the guidelines;

656 (b) the guidelines worksheet has:

657 (i) the box checked for a deviation; and

658 (ii) an explanation as to the reason; or

659 (c) the deviation is made because there were more children than provided for in the  
660 guidelines table.

661 (5) If the amount in the order and the amount on the guidelines worksheet differ by \$10  
662 or more:

663 (a) the order is considered deviated; and

664 (b) the incomes listed on the worksheet may not be used in adjusting support for  
665 emancipation.

666 (6) (a) Natural or adoptive children of either parent who live in the home of that parent  
667 and are not children in common to both parties may at the option of either party be taken into  
668 account under the guidelines in setting or modifying a child support award, as provided in  
669 Subsection (7). Credit may not be given if:

670 (i) by giving credit to the obligor, children for whom a prior support order exists would  
671 have their child support reduced; or

672 (ii) by giving credit to the obligee for a present family, the obligation of the obligor  
673 would increase.

674 (b) Additional worksheets shall be prepared that compute the obligations of the  
675 respective parents for the additional children. The obligations shall then be subtracted from the  
676 appropriate parent's income before determining the award in the instant case.

677 (7) In a proceeding to adjust or modify an existing award, consideration of natural or  
678 adoptive children born after entry of the order and who are not in common to both parties may

679 be applied to mitigate an increase in the award but may not be applied:

680 (a) for the benefit of the obligee if the credit would increase the support obligation of  
681 the obligor from the most recent order; or

682 (b) for the benefit of the obligor if the amount of support received by the obligee would  
683 be decreased from the most recent order.

684 (8) (a) If a child support order has not been issued or modified within the previous  
685 three years, a parent[;] or legal guardian[; ~~or the office~~] may [~~move~~] petition the court to adjust  
686 the amount of a child support order. The office may file a motion under Section 62A-11-306.2.

687 (b) Upon receiving a petition or motion under Subsection (8)(a), the court shall, taking  
688 into account the best interests of the child:

689 (i) determine whether there is a difference between the payor's ordered support amount  
690 and the payor's support amount that would be required under the guidelines; and

691 (ii) if there is a difference as described in Subsection (8)(b)(i), adjust the payor's  
692 ordered support amount to the payor's support amount provided in the guidelines if:

693 (A) the difference is 10% or more;

694 (B) the difference is not of a temporary nature; and

695 (C) the order adjusting the payor's ordered support amount does not deviate from the  
696 guidelines.

697 (c) A showing of a substantial change in circumstances is not necessary for an  
698 adjustment under this Subsection (8).

699 (9) (a) A parent, legal guardian, or the office may at any time petition the court to  
700 adjust the amount of a child support order if there has been a substantial change in  
701 circumstances. A change in the base combined child support obligation table set forth in  
702 Section 78-45-7.14 is not a substantial change in circumstances for the purposes of this  
703 Subsection (9).

704 (b) For purposes of this Subsection (9), a substantial change in circumstances may  
705 include:

706 (i) material changes in custody;

707 (ii) material changes in the relative wealth or assets of the parties;

708 (iii) material changes of 30% or more in the income of a parent;

709 (iv) material changes in the employment potential and ability of a parent to earn;

710 (v) material changes in the medical needs of the child; or  
711 (vi) material changes in the legal responsibilities of either parent for the support of  
712 others.  
713 (c) Upon receiving a petition under Subsection (9)(a), the court shall, taking into  
714 account the best interests of the child:  
715 (i) determine whether a substantial change has occurred;  
716 (ii) if a substantial change has occurred, determine whether the change results in a  
717 difference of 15% or more between the payor's ordered support amount and the payor's support  
718 amount that would be required under the guidelines; and  
719 (iii) adjust the payor's ordered support amount to that which is provided for in the  
720 guidelines if:  
721 (A) there is a difference of 15% or more; and  
722 (B) the difference is not of a temporary nature.  
723 (10) Notice of the opportunity to adjust a support order under Subsections (8) and (9)  
724 shall be included in each child support order.  
725 **Section 14. Repealer.**  
726 This bill repeals:  
727 **Section 78-5-105, Jurisdiction of justice court and juvenile court.**

---

---

**Legislative Review Note**  
as of **2-6-08 9:53 AM**

**Office of Legislative Research and General Counsel**



---

---

**S.B. 236 - Judiciary Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

---

---

**State Impact**

Enactment of this bill will not require additional appropriations.

---

**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

---