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**JUDICIARY AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Kay L. McIff

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**LONG TITLE**

**General Description:**

This bill makes technical amendments to the Judiciary's areas of responsibility within the code.

**Highlighted Provisions:**

This bill:

- ▶ adds the crime of domestic violence to the list of offenses ineligible for diversion;
- ▶ clarifies when justice court judges will stand for retention election;
- ▶ requires courts to transmit certain orders to law enforcement agencies electronically;
- ▶ removes references to a pilot program that has been repealed;
- ▶ clarifies that, in a stepparent adoption, the rights of the parent married to the stepparent are not terminated;
- ▶ repeals the statute on admissibility of out of court statements of child sexual abuse victims because it is covered by court rule; and
- ▶ makes technical cross-reference changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28           **30-3-11.3**, as last amended by Laws of Utah 2008, Chapter 382  
 29           **77-2-9**, as last amended by Laws of Utah 2006, Chapters 18 and 166  
 30           **78A-2-309**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 31           **78A-6-103**, as last amended by Laws of Utah 2008, Chapter 115 and renumbered and  
 32 amended by Laws of Utah 2008, Chapter 3  
 33           **78A-6-115**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 34           **78A-7-202**, as last amended by Laws of Utah 2008, Chapter 19 and renumbered and  
 35 amended by Laws of Utah 2008, Chapter 3 and repealed and reenacted by Laws of  
 36 Utah 2008, Chapter 93  
 37           **78A-7-203**, as last amended by Laws of Utah 2008, Chapter 93 and renumbered and  
 38 amended by Laws of Utah 2008, Chapter 3  
 39           **78B-2-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 40           **78B-2-211**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 40a **Ŝ→** **78B-3-106, as renumbered and amended by Laws of Utah 2008, Chapter 3** **←Ŝ**  
 41           **78B-3-413**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 42           **78B-3-502**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 43           **78B-4-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 44 **Ŝ→** [~~**78B-6-138, as renumbered and amended by Laws of Utah 2008, Chapter 3**~~] **←Ŝ**  
 45           **78B-6-802**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
 46           **78B-6-901**, as last amended by Laws of Utah 2008, Chapter 123 and renumbered and  
 47 amended by Laws of Utah 2008, Chapter 3  
 48           **78B-7-106**, as last amended by Laws of Utah 2008, Chapter 163 and renumbered and  
 49 amended by Laws of Utah 2008, Chapter 3  
 50           **78B-7-205**, as last amended by Laws of Utah 2008, Chapter 115 and renumbered and  
 51 amended by Laws of Utah 2008, Chapter 3  
 52 REPEALS:  
 53           **76-5-411**, as last amended by Laws of Utah 1989, Chapter 187

54

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

56           Section 1. Section **30-3-11.3** is amended to read:

57           **30-3-11.3. Mandatory educational course for divorcing parents -- Purpose --**

58 **Curriculum -- Exceptions.**

59 (1) There is established a mandatory course for divorcing parents as a pilot program in  
60 the third and fourth judicial districts to be administered by the Administrative Office of the  
61 Courts from July 1, 1992, to June 30, 1994. On July 1, 1994, an approved course shall be  
62 implemented in all judicial districts. The mandatory course is designed to educate and  
63 sensitize divorcing parties to their children's needs both during and after the divorce process.

64 (2) The Judicial Council shall adopt rules to implement and administer this program.

65 (3) As a prerequisite to receiving a divorce decree, both parties are required to attend a  
66 mandatory course on their children's needs after filing a complaint for divorce and receiving a  
67 docket number, unless waived under Section 30-3-4. If that requirement is waived, the court  
68 may permit the divorce action to proceed.

69 (4) The court may require unmarried parents to attend this educational course when  
70 those parents are involved in a visitation or custody proceeding before the court.

71 (5) The mandatory course shall instruct both parties:

72 (a) about divorce and its impacts on:

73 [~~a~~] (i) their child or children;

74 [~~b~~] (ii) their family relationship; and

75 [~~c~~] (iii) their financial responsibilities for their child or children; and

76 [~~d~~] (b) that domestic violence has a harmful effect on children and family  
77 relationships.

78 (6) The Administrative Office of the Courts shall administer the course pursuant to  
79 Title 63G, Chapter 6, Utah Procurement Code, through private or public contracts and organize  
80 the program in each of Utah's judicial districts. The contracts shall provide for the recoupment  
81 of administrative expenses through the costs charged to individual parties, pursuant to  
82 Subsection (8).

83 (7) A certificate of completion constitutes evidence to the court of course completion  
84 by the parties.

85 (8) (a) Each party shall pay the costs of the course to the independent contractor  
86 providing the course at the time and place of the course. A fee of \$8 shall be collected, as part  
87 of the course fee paid by each participant, and deposited in the Children's Legal Defense  
88 Account, described in Section 51-9-408.

89 (b) Each party who is unable to pay the costs of the course may attend the course

90 without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of  
91 impecuniosity filed in the district court. In those situations, the independent contractor shall be  
92 reimbursed for its costs from the appropriation to the Administrative Office of the Courts for  
93 "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce  
94 may be entered, the court shall make a final review and determination of impecuniosity and  
95 may order the payment of the costs if so determined.

96 (9) Appropriations from the General Fund to the Administrative Office of the Courts  
97 for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay  
98 the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

99 (10) The Administrative Office of the Courts shall adopt a program to evaluate the  
100 effectiveness of the mandatory educational course. Progress reports shall be provided annually  
101 to the Judiciary Interim Committee.

102 Section 2. Section **77-2-9** is amended to read:

103 **77-2-9. Offenses ineligible for diversion.**

104 (1) Except as provided in Subsection (2), diversion may not be granted by a magistrate  
105 for:

- 106 (a) a capital felony;
- 107 (b) a felony in the first degree;
- 108 (c) any case involving a sexual offense against a victim who is under the age of 14;
- 109 (d) any motor vehicle related offense involving alcohol or drugs;
- 110 (e) any case involving using a motor vehicle in the commission of a felony;
- 111 (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended  
112 license; ~~or~~

113 (g) any case involving operating a commercial motor vehicle in a negligent manner  
114 causing the death of another including the offenses of:

- 115 (i) manslaughter under Section 76-5-205; or
- 116 (ii) negligent homicide under Section 76-5-206~~[-]; or~~
- 117 (h) a crime of domestic violence as defined in Section 77-36-1.

118 (2) When a person under the age of 16 is alleged to have committed any violation of  
119 Title 76, Chapter 5, Part 4, Sexual Offenses, the court may enter a diversion in the matter if the  
120 court enters on the record its findings that:

- 121 (a) the person did not use coercion or force;
- 122 (b) there is no more than two years' difference between the ages of the participants; and
- 123 (c) it would be in the best interest of the person to grant diversion.

124 Section 3. Section **78A-2-309** is amended to read:

125 **78A-2-309. Liability for fees if successful in litigation.**

126 Nothing in this part shall prevent a justice court judge, clerk, constable, or sheriff from  
127 collecting [~~their~~] his or her regular fees for all services rendered for the impecunious person, in  
128 the event the person is successful in litigation. All fees and costs shall be regularly taxed and  
129 included in any judgment recovered by the person. The fees and costs shall be paid to a justice  
130 court judge, clerk, constable, or sheriff. If the person fails in the action or appeal, then the  
131 costs of the action or appeal shall be adjudged against the person.

132 Section 4. Section **78A-6-103** is amended to read:

133 **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

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

136 (a) a child who has violated any federal, state, or local law or municipal ordinance or a  
137 person younger than 21 years of age who has violated any law or ordinance before becoming  
138 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection  
139 78A-7-106(2);

140 (b) a person 21 years of age or older who has failed or refused to comply with an order  
141 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's  
142 21st birthday; however, the continuing jurisdiction is limited to causing compliance with  
143 existing orders;

144 (c) a child who is an abused child, neglected child, or dependent child, as those terms  
145 are defined in Section 78A-6-105;

146 (d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7,  
147 Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the  
148 juvenile court has entered an ex parte protective order and finds that:

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

151 (ii) the district court has a petition pending or an order related to custody or parent-time

152 entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act,  
153 or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the  
154 respondent are parties; and

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

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

158 (f) the emancipation of a minor in accordance with Part 8, Emancipation;

159 (g) the termination of the legal parent-child relationship in accordance with Part 5,  
160 Termination of Parental Rights Act, including termination of residual parental rights and  
161 duties;

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

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

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

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

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

174 (m) the treatment or commitment of a mentally ill child. The court may commit a child  
175 to the physical custody of a local mental health authority in accordance with the procedures and  
176 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to  
177 Division of Substance Abuse and Mental Health[~~- The court may~~], but not [~~commit a child~~]  
178 directly to the Utah State Hospital;

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

180 (o) de novo review of final agency actions resulting from an informal adjudicative  
181 proceeding as provided in Section 63G-4-402; and

182 (p) adoptions conducted in accordance with the procedures described in Title 78B,

183 Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order  
184 terminating the rights of a parent and finds that adoption is in the best interest of the child.

185 (2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile  
186 court has exclusive jurisdiction over the following offenses committed by a child:

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

188 (b) Section 73-18-12, reckless operation; and

189 (c) class B and C misdemeanors, infractions, or violations of ordinances that are part of  
190 a single criminal episode filed in a petition that contains an offense over which the court has  
191 jurisdiction.

192 (3) The juvenile court has jurisdiction over an ungovernable or runaway child who is  
193 referred to it by the Division of Child and Family Services or by public or private agencies that  
194 contract with the division to provide services to that child where, despite earnest and persistent  
195 efforts by the division or agency, the child has demonstrated that the child:

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

199 (b) has run away from home.

200 (4) This section does not restrict the right of access to the juvenile court by private  
201 agencies or other persons.

202 (5) The juvenile court has jurisdiction of all magistrate functions relative to cases  
203 arising under Section 78A-6-702.

204 (6) The juvenile court has jurisdiction to make a finding of substantiated,  
205 unsubstantiated, or without merit, in accordance with Section 78A-6-323.

206 (7) The juvenile court has jurisdiction of matters transferred to it by another trial court  
207 pursuant to Subsection [~~78A-5-102(9)~~ or ~~78A-7-106(4)~~] 78A-7-106(7).

208 Section 5. Section **78A-6-115** is amended to read:

209 **78A-6-115. Hearings -- Record -- County attorney or district attorney**  
210 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**  
211 **evidence.**

212 (1) (a) A verbatim record of the proceedings shall be taken by an official court reporter  
213 or by means of a mechanical recording device in all cases that might result in deprivation of

214 custody as defined in this chapter. In all other cases a verbatim record shall also be made  
215 unless dispensed with by the court.

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

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

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

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

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

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

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

233 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal  
234 guardian, the Division of Child and Family Services, and any other party to the proceeding.

235 [~~(v) This Subsection (1)(b) applies:~~]

236 [~~(A) to records of proceedings made on or after November 1, 2003 in districts selected  
237 by the Judicial Council as pilot districts under Subsection 78A-2-104(15); and]~~

238 [~~(B) to records of proceedings made on or after July 1, 2004 in all other districts.]~~

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

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

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



245 (ii) petitions for termination of parental rights.

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

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

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

264 (b) For the purpose of determining proper disposition of a minor alleged to be or  
265 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care  
266 Citizen Review Boards pursuant to Section 78B-8-103 may be received in evidence and may be  
267 considered by the court along with other evidence. The court may require any person who  
268 participated in preparing the dispositional report to appear as a witness, if the person is  
269 reasonably available.

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

274 (i) plans to report to the court at the proceeding; or

275 (ii) could reasonably expect would be requested of the party by the court at the

276 proceeding.

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

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

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

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

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

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

287 (i) pretrial hearings; and

288 (ii) the frequent, periodic review hearings held in a dependency drug court case to  
289 assess and promote the parent's progress in substance abuse treatment.

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

293 Section 6. Section **78A-7-202** is amended to read:

294 **78A-7-202. Justice court judges to be appointed -- Procedure -- Retention.**

295 (1) As used in this section:

296 (a) "Local government executive" means:

297 (i) for a county:

298 (A) the chair of the county commission in a county operating under the county  
299 commission or expanded county commission form of county government;

300 (B) the county executive in a county operating under the county executive-council form  
301 of county government; and

302 (C) the county manager in a county operating under the council-manager form of  
303 county government; and

304 (ii) for a city or town[;]:

305 (A) the mayor of the city or town[;]; or

306 (B) the city manager, in the council-manager form of government described in

307 Subsection 10-3b-103(6).

308 (b) "Local legislative body" means:

309 (i) for a county, the county commission or county council; and

310 (ii) for a city or town, the council of the city or town.

311 (2) There is created in each county a county justice court nominating commission to  
312 review applicants and make recommendations to the appointing authority for a justice court  
313 position. The commission shall be convened when a new justice court judge position is created  
314 or when a vacancy in an existing court occurs for a justice court located within the county.

315 (a) Membership of the justice court nominating commission shall be as follows:

316 (i) one member appointed by:

317 (A) the county commission if the county has a county commission form of  
318 government; or

319 (B) the county executive if the county has an executive-council form of government;

320 (ii) one member appointed by the municipalities in the counties as follows:

321 (A) if the county has only one municipality, appointment shall be made by the  
322 governing authority of that municipality; or

323 (B) if the county has more than one municipality, appointment shall be made by a  
324 municipal selection committee composed of the mayors of each municipality in the county;

325 (iii) one member appointed by the county bar association; and

326 (iv) two members appointed by the governing authority of the jurisdiction where the  
327 judicial office is located.

328 (b) If there is no county bar association, the member in Subsection (2)(a)(iii) shall be  
329 appointed by the regional bar association. If no regional bar association exists, the state bar  
330 association shall make the appointment.

331 (c) Members appointed under Subsections (2)(a)(i) and (ii) may not be an elected  
332 official of the county or municipality.

333 (d) The nominating commission shall submit at least two names to the appointing  
334 authority of the jurisdiction expected to be served by the judge. The local government  
335 executive shall appoint a judge from the list submitted and the appointment ratified by the local  
336 legislative body.

337 (e) The state court administrator shall provide staff to the commission. The Judicial

338 Council shall establish rules and procedures for the conduct of the commission.

339 (3) Judicial vacancies shall be advertised in a newspaper of general circulation, through  
340 the Utah State Bar, and other appropriate means.

341 (4) Selection of candidates shall be based on compliance with the requirements for  
342 office and competence to serve as a judge.

343 (5) Once selected, the Judicial Council shall certify the judge as qualified to hold office  
344 upon successful completion of the orientation program.

345 (6) The selection of a person to fill the office of justice court judge is effective upon  
346 certification of the judge by the Judicial Council. A justice court judge may not perform  
347 judicial duties until certified by the Judicial Council.

348 (7) Upon the expiration of a justice court judge's term of office, the judge shall be  
349 subject to an unopposed retention election in the county or counties in which the court to which  
350 the judge is appointed is located, in accordance with the procedures set forth in Section  
351 20A-12-201.

352 (8) Before each retention election, each justice court judge shall be evaluated in  
353 accordance with the performance evaluation program established in Subsection 78A-2-104(5).

354 Section 7. Section **78A-7-203** is amended to read:

355 **78A-7-203. Term of office for justice court judge.**

356 (1) The term of a justice court judge is six years beginning the first Monday in January  
357 ~~§~~ → [2010] ← ~~§~~ [— (2) Judges] following the date of election.

358 (2) Notwithstanding Section 20A-12-201, justice court judges holding office or  
359 appointed to fill any vacancy before January 1, 2009 [hold office until the next general  
360 election:] will stand for election in the 2010 general election, unless a municipal justice court  
361 judge chooses not to stand for election.

362 (3) (a) Notwithstanding Section 20A-12-201, any municipal justice court judge holding  
363 office on January 1, 2009 may serve out their current term if the judge:

364 (i) stands for retention election in 2010, and is not retained in that election; or  
365 (ii) chooses not to stand for election in 2010.

366 (b) A vacancy shall then exist in the office on the first Monday in February 2012.

367 Section 8. Section **78B-2-201** is amended to read:

368 **78B-2-201. Actions by the state.**

369 The state may not bring an action against any person for or with respect to any real  
 370 property, its issues or profits, based upon the state's right or title to the real property, unless:

371 (1) the right or title to the property accrued within seven years before any action or  
 372 other proceeding is commenced; or

373 (2) the state or those from whom it claims received all [of] or a portion of the rents and  
 374 profits from the real property within the immediately preceding seven years.

375 Section 9. Section **78B-2-211** is amended to read:

376 **78B-2-211. What constitutes adverse possession under written instrument.**

377 For the purpose of constituting an adverse possession by any person claiming a title  
 378 based upon a written instrument or a judgment or decree, the property is considered to have  
 379 been possessed [~~and~~] if:

380 (1) it has been usually cultivated or improved;

381 (2) it has been protected by a substantial enclosure;

382 (3) although not enclosed, it has been used for the supply of fuel, fencing timber, for  
 383 the purpose of husbandry, or for pasturage or for the ordinary use of the occupant; or

384 (4) where a known farm or single lot has been partly improved, the portion of the farm  
 385 or lot which may have been left not cleared or not inclosed according to the usual course and  
 386 custom of the adjoining county is considered to have been occupied for the same length of time  
 387 as the part improved and cultivated.

387a **§→ Section 10. Section 78B-3-106 is amended to read:**

387b **78B-3-106. Death of adult -- Suit by heir or personal representative.**

387c (1) **Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, when the**  
 387d **death of a person who is not a minor is caused by the wrongful act or neglect of another, his**  
 387e **heirs, or his personal representatives for the benefit of his heirs, may maintain an action for**  
 387f **damages against the person causing the death, or, if the person is employed by another person**  
 387g **who is responsible for his conduct, then against the other person.**

387h (2) **If the adult person has a guardian at the time of his death, only one action may be**  
 387i **maintained for the person's injury or death.**

387j (3) **The action may be brought by either the personal representatives of the adult**  
 387k **deceased person, for the benefit of the person's heirs, or by the guardian for the benefit of the**  
 387l **heirs, as defined in Section 78B-3-105.**

387m **(4) In every action under this section and Section 78B-3-105 damages may be given as**  
 387n **under all the circumstances of the case may be just. ←§**

388 Section **§→ [10] (11) ←§** . Section **78B-3-413** is amended to read:

389           **78B-3-413. Professional liability insurance coverage for providers -- Insurance**  
390 **commissioner may require joint underwriting authority.**

391           (1) The commissioner may, after a public hearing, find that professional liability  
392 insurance coverage for health care providers is not readily available in the voluntary market in  
393 a specific part of this state, and that the public interest requires [~~the~~] that action be taken.

394           (2) The commissioner may promulgate rules and implement plans to provide insurance  
395 coverage through all insurers issuing professional liability policies and individual and group  
396 accident and sickness policies providing medical, surgical or hospital expense coverage on  
397 either a prepaid or an expense incurred basis, including personal injury protection and medical  
398 expense coverage issued incidental to liability insurance policies.

399           Section ~~§~~ → [11] (12) ← ~~§~~ . Section **78B-3-502** is amended to read:

400           **78B-3-502. Limitation of therapist's duty to warn.**

401           (1) A therapist has no duty to warn or take precautions to provide protection from any  
402 violent behavior of his client or patient, except when that client or patient communicated to the  
403 therapist an actual threat of physical violence against a clearly identified or reasonably  
404 identifiable victim. That duty shall be discharged if the therapist makes reasonable efforts to  
405 communicate the threat to the victim, and notifies a law enforcement officer or agency of the  
406 threat.

407           (2) [~~A cause of~~] An action may not be brought against a therapist for breach of trust or  
408 privilege, or for disclosure of confidential information, based on a therapist's communication of  
409 information to a third party in an effort to discharge his duty in accordance with Subsection (1).

410           (3) This section does not limit or effect a therapist's duty to report child abuse or  
411 neglect in accordance with Section 62A-4a-403.

412           Section 12. Section **78B-4-102** is amended to read:

413           **78B-4-102. Liability protection for volunteers -- Exceptions.**

414           (1) Except as provided in Subsection (2), no volunteer providing services for a  
415 nonprofit organization incurs any legal liability for any act or omission of the volunteer while  
416 providing services for the nonprofit organization and no volunteer incurs any personal financial  
417 liability for any tort claim or other action seeking damage for an injury arising from any act or  
418 omission of the volunteer while providing services for the nonprofit organization if:

419           (a) the individual was acting in good faith and reasonably believed he was acting  
420 within the scope of his official functions and duties with the nonprofit organization; and

421           (b) the damage or injury was not caused by an intentional or knowing act by the  
422 volunteer which constitutes illegal, willful, or wanton misconduct.

423           (2) The protection against volunteer liability provided by this section does not apply:

424           (a) to injuries resulting from a volunteer's operation of a motor vehicle, a vessel,  
425 aircraft or other vehicle for which a pilot or operator's license is required;

426           (b) when a suit is brought by an authorized officer of a state or local government to  
427 enforce a federal, state, or local law; or

428           (c) where the nonprofit organization for which the volunteer is working fails to provide  
429 a financially secure source of recovery for individuals who suffer injuries as a result of actions  
430 taken by the volunteer on behalf of the nonprofit organization.

431 (3) Nothing in this section shall bar an action by a volunteer against an organization, its  
 432 officers, or other persons who intentionally or knowingly misrepresent that a financially secure  
 433 source of recovery does or will exist during a period when such a source does not or will not in  
 434 fact exist.

435 (4) Nothing in this section shall be construed to place a duty upon a nonprofit  
 436 organization to provide a financially secure source of recovery.

437 (5) The granting of immunity from liability to a volunteer under this section does not  
 438 effect [on] the liability of the nonprofit organization providing the financially secure source of  
 439 recovery.

440 **§→ Section 13. Section 78B-6-138 is amended to read:**

441 ~~78B-6-138. Birth parent's rights and duties dissolved.~~

442 ~~[A] (1) Except as provided in Subsection (2), a birth parent of an adopted child is~~  
 443 ~~released from all parental duties toward and all responsibilities for the adopted child, and has~~  
 444 ~~no further rights with regard to that child at the earlier of:~~

445 ~~— [(1)] (a) the time the parent's parental rights are terminated; or~~

446 ~~— [(2)] (b) the time the final decree of adoption is entered.~~

447 ~~— (2) [At the time the final decree of adoption is entered, a birth parent who is the spouse~~  
 448 ~~of the adopting parent, is not released from any parental duties or responsibilities for the~~  
 449 ~~adopted child, nor does the decree of adoption terminate any of that birth parent's rights with~~  
 450 ~~regard to the child.] ←§~~

451 Section **§→ [14] 13 ←§** . Section 78B-6-802 is amended to read:

452 **78B-6-802. Unlawful detainer by tenant for term less than life.**

453 (1) A tenant holding real property for a term less than life, is guilty of an unlawful  
 454 detainer if the tenant:

455 (a) continues in possession, in person or by subtenant, of the property or any part of it,  
 456 after the expiration of the specified term or period for which it is let to him, which specified  
 457 term or period, whether established by express or implied contract, or whether written or parol,  
 458 shall be terminated without notice at the expiration of the specified term or period;

459 (b) having leased real property for an indefinite time with monthly or other periodic  
 460 rent reserved:

461 (i) continues in possession of it in person or by subtenant after the end of any month or



462 period, in cases where the owner, the owner's designated agent, or any successor in estate of the  
463 owner, 15 calendar days or more prior to the end of that month or period, has served notice  
464 requiring the tenant to quit the premises at the expiration of that month or period; or

465 (ii) in cases of tenancies at will, remains in possession of the premises after the  
466 expiration of a notice of not less than five calendar days;

467 (c) continues in possession, in person or by subtenant, after default in the payment of  
468 any rent or other amounts due and after a notice in writing requiring in the alternative the  
469 payment of the rent and other amounts due or the surrender of the detained premises, has  
470 remained uncomplied with for a period of three calendar days after service, which notice may  
471 be served at any time after the rent becomes due;

472 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or  
473 commits or permits waste on the premises after service of a three calendar days' notice to quit;

474 (e) sets up or carries on any unlawful business on or in the premises after service of a  
475 three calendar days' notice to quit;

476 (f) suffers, permits, or maintains on or about the premises any nuisance, including  
477 nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;

478 (g) commits a criminal act on the premises and remains in possession after service of a  
479 three calendar days' notice to quit; or

480 (h) continues in possession, in person or by subtenant, after a neglect or failure to  
481 perform any condition or covenant of the lease or agreement under which the property is held,  
482 other than those previously mentioned, and after notice in writing requiring in the alternative  
483 the performance of the conditions or covenant or the surrender of the property, served upon the  
484 tenant and upon any subtenant in actual occupation of the premises remains uncomplied with  
485 for three calendar days after service.

486 (2) Within three calendar days after the service of the notice, the tenant, any subtenant  
487 in actual occupation of the premises, any mortgagee of the term, or other person interested in  
488 its continuance may perform the condition or covenant and thereby save the lease from  
489 forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot  
490 afterwards be performed, or the violation cannot be brought into compliance, the notice  
491 provided for in Subsections (1)(d) through (g) may be given.

492 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title

493 57, Chapter 16, Mobile Home Park Residency Act.

494 (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to  
495 nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

496 Section 15. Section **78B-6-901** is amended to read:

497 **78B-6-901. Form of action -- Judgment -- Special execution.**

498 (1) There is only one action for the recovery of any debt, or the enforcement of any  
499 right, secured solely by mortgage upon real estate and that action shall be in accordance with  
500 the provisions of this chapter.

501 (2) A judgment shall include:

502 (a) the amount due, with costs and disbursements;

503 (b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount  
504 and accruing costs;

505 (c) direction to the sheriff to proceed and sell the property according to the provisions  
506 of law relating to sales on execution; and

507 (d) a special execution or order of sale shall be issued for that purpose.

508 Section 16. Section **78B-7-106** is amended to read:

509 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**  
510 **orders -- Service of process -- Duties of the court.**

511 (1) If it appears from a petition for an order for protection or a petition to modify an  
512 order for protection that domestic violence or abuse has occurred or a modification of an order  
513 for protection is required, a court may:

514 (a) without notice, immediately issue an order for protection ex parte or modify an  
515 order for protection ex parte as it considers necessary to protect the petitioner and all parties  
516 named to be protected in the petition; or

517 (b) upon notice, issue an order for protection or modify an order after a hearing,  
518 whether or not the respondent appears.

519 (2) A court may grant the following relief without notice in an order for protection or a  
520 modification issued ex parte:

521 (a) enjoin the respondent from threatening to commit or committing domestic violence  
522 or abuse against the petitioner and any designated family or household member;

523 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise

524 communicating with the petitioner, directly or indirectly;

525 (c) order that the respondent is excluded from the petitioner's residence and its  
526 premises, and order the respondent to stay away from the residence, school, or place of  
527 employment of the petitioner, and the premises of any of these, or any specified place  
528 frequented by the petitioner and any designated family or household member;

529 (d) upon finding that the respondent's use or possession of a weapon may pose a  
530 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or  
531 possessing a firearm or other weapon specified by the court;

532 (e) order possession and use of an automobile and other essential personal effects, and  
533 direct the appropriate law enforcement officer to accompany the petitioner to the residence of  
534 the parties to ensure that the petitioner is safely restored to possession of the residence,  
535 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's  
536 removal of personal belongings;

537 (f) grant to the petitioner temporary custody of any minor children of the parties;

538 (g) order the appointment of the office of the Guardian Ad Litem to represent the  
539 interests of any minor children of the parties, if abuse or neglect of the minor children is  
540 alleged, or appoint a private guardian ad litem, if appropriate, pursuant to Section 78A-2-228;

541 (h) order any further relief that the court considers necessary to provide for the safety  
542 and welfare of the petitioner and any designated family or household member; and

543 (i) if the petition requests child support or spousal support, at the hearing on the  
544 petition order both parties to provide verification of current income, including year-to-date pay  
545 stubs or employer statements of year-to-date or other period of earnings, as specified by the  
546 court, and complete copies of tax returns from at least the most recent year.

547 (3) A court may grant the following relief in an order for protection or a modification  
548 of an order after notice and hearing, whether or not the respondent appears:

549 (a) grant the relief described in Subsection (2); and

550 (b) specify arrangements for parent-time of any minor child by the respondent and  
551 require supervision of that parent-time by a third party or deny parent-time if necessary to  
552 protect the safety of the petitioner or child.

553 (4) Following the protective order hearing, the court shall:

554 (a) as soon as possible, deliver the order to the county sheriff for service of process;

555 (b) make reasonable efforts to ensure that the order for protection is understood by the  
556 petitioner, and the respondent, if present;

557 (c) transmit electronically, by the end of the next business day after the order is issued,  
558 a copy of the order for protection to the local law enforcement agency or agencies designated  
559 by the petitioner; and

560 (d) transmit a copy of the order to the statewide domestic violence network described  
561 in Section 78B-7-113.

562 (5) (a) Each protective order shall include two separate portions, one for provisions, the  
563 violation of which are criminal offenses, and one for provisions, the violation of which are civil  
564 violations, as follows:

565 (i) criminal offenses are those under Subsections (2)(a) through (e), and under  
566 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

567 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)  
568 as it refers to Subsections (2)(f), (h), and (i).

569 (b) The criminal provision portion shall include a statement that violation of any  
570 criminal provision is a class A misdemeanor.

571 (c) The civil provision portion shall include a notice that violation of or failure to  
572 comply with a civil provision is subject to contempt proceedings.

573 (6) The protective order shall include:

574 (a) a designation of a specific date, determined by the court, when the civil portion of  
575 the protective order either expires or is scheduled for review by the court, which date may not  
576 exceed 150 days after the date the order is issued, unless the court indicates on the record the  
577 reason for setting a date beyond 150 days;

578 (b) information the petitioner is able to provide to facilitate identification of the  
579 respondent, such as Social Security number, driver license number, date of birth, address,  
580 telephone number, and physical description; and

581 (c) a statement advising the petitioner that:

582 (i) after two years from the date of issuance of the protective order, a hearing may be  
583 held to dismiss the criminal portion of the protective order;

584 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,  
585 advise the court of the petitioner's current address for notice of any hearing; and

586 (iii) the address provided by the petitioner will not be made available to the respondent.

587 (7) Child support and spouse support orders issued as part of a protective order are  
588 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income  
589 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non  
590 IV-D Cases, except when the protective order is issued ex parte.

591 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection  
592 (5)(a), shall provide expedited service for orders for protection issued in accordance with this  
593 chapter, and shall transmit verification of service of process, when the order has been served, to  
594 the statewide domestic violence network described in Section 78B-7-113.

595 (b) This section does not prohibit any law enforcement agency from providing service  
596 of process if that law enforcement agency:

597 (i) has contact with the respondent and service by that law enforcement agency is  
598 possible; or

599 (ii) determines that under the circumstances, providing service of process on the  
600 respondent is in the best interests of the petitioner.

601 (9) (a) When an order is served on a respondent in a jail or other holding facility, the  
602 law enforcement agency managing the facility shall make a reasonable effort to provide notice  
603 to the petitioner at the time the respondent is released from incarceration.

604 (b) Notification of the petitioner shall consist of a good faith reasonable effort to  
605 provide notification, including mailing a copy of the notification to the last-known address of  
606 the victim.

607 (10) A court may modify or vacate an order of protection or any provisions in the order  
608 after notice and hearing, except that the criminal provisions of a protective order may not be  
609 vacated within two years of issuance unless the petitioner:

610 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah  
611 Rules of Civil Procedure, and the petitioner personally appears before the court and gives  
612 specific consent to the vacation of the criminal provisions of the protective order; or

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

615 (11) A protective order may be modified without a showing of substantial and material  
616 change in circumstances.

617 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of  
618 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

619 Section 17. Section **78B-7-205** is amended to read:

620 **78B-7-205. Service -- Income withholding -- Expiration.**

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

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

625 (b) as soon as possible transmit the order to the county sheriff for service; ~~§~~ → [f] and [j] ← ~~§~~

626 (c) by the end of the next business day after the order is entered, transmit electronically  
627 a copy of the order to any law enforcement agency designated by the petitioner and to the  
628 statewide domestic violence network described in Section 78B-7-113 ~~§~~ → [f] . [j] [~~;~~ and

629 ~~(d) transmit a copy of the order to the statewide domestic violence network described~~  
630 ~~in Section 78B-7-113.] ← ~~§~~~~

631 (2) The county sheriff shall serve the order and transmit verification of service to the  
632 statewide domestic violence network described in Section 78B-7-113 in an expeditious  
633 manner. Any law enforcement agency may serve the order and transmit verification of service  
634 to the statewide domestic violence network if the law enforcement agency has contact with the  
635 respondent or if service by that law enforcement agency is in the best interests of the child.

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

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

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

647 (a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of

648 Civil Procedure, and the petitioner personally appears before the court and gives specific  
649 consent to the vacation of the criminal provisions of the protective order; or

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

652 (6) The child protective order expires 150 days after the date of the order unless a  
653 different date is set by the court. The court may not set a date more than 150 days after the date  
654 of the order without a finding of good cause. The court may review and extend the expiration  
655 date, but may not extend it to more than 150 days after the date of the order without a finding  
656 of good cause.

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

660 Section 18. **Repealer.**

661 This bill repeals:

662 Section **76-5-411, Admissibility of out-of-court statement of child victim of sexual**  
663 **abuse.**

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Legislative Review Note  
as of 2-4-09 8:32 AM

Office of Legislative Research and General Counsel

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**S.B. 170 - Judiciary Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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