

Senator Lyle W. Hillyard proposes the following substitute bill:

JUDICIARY AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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



26 ▶ gives justice courts explicit authority to issue writs necessary to carry out its orders;
27 and

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

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

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

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

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

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

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

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

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

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

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

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

47 **78A-8-105**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

50 **78B-7-203**, as renumbered and amended by Laws of Utah 2008, Chapter 3

51 **ENACTS:**

52 **78A-2-229**, Utah Code Annotated 1953

53 **REPEALS:**

54 **78A-2-406**, as renumbered and amended by Laws of Utah 2008, Chapter 3

55 **78A-2-407**, as renumbered and amended by Laws of Utah 2008, Chapter 3

56

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

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

59 **30-3-4.5. Motion for temporary separation order.**

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

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

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

67 (a) a petition for divorce is filed and consolidated with the petition for temporary
68 separation; or

69 (b) the case is dismissed.

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

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

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

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

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

82 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

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

85 (a) against any income tax then due from the taxpayer;

86 (b) against:

87 (i) the amount of any judgment against the taxpayer, including one ordering the

88 payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime Victims
89 Restitution Act, obtained through due process of law by any entity of state government; or

90 (ii) subject to Subsection [~~(3)~~] (4)(a)(i), any child support obligation that is due or past
91 due, as determined by the Office of Recovery Services in the Department of Human Services
92 and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection
93 (2); or

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

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

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

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

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

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

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

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

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

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

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

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

120 (5) The amount of an overpayment may be credited against bail described in

121 Subsection (1)(c) if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (C) the taxpayer has paid partial but not full bail in a case for which a personal

150 appearance is not required.

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (c) The amount of the credit or refund may not exceed the amount of the reduction in

181 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
182 federal income tax return.

183 (d) Except as provided in Subsection (13)(a), this Subsection (13) does not affect the
184 amount or the time within which a claim for credit or refund may be filed.

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

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

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

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

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

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

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

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

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

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

211 (b) To ensure geographical diversity on the panel one judge shall be appointed from the

212 first or second district for a five-year term, one judge shall be appointed from the third district
213 for a four-year term, one judge shall be appointed from the fourth district for a three-year term,
214 one judge shall be appointed from the fifth, sixth, seventh, or eighth districts for a two-year
215 term, and one judge shall be appointed from the third district for a one-year term. Following
216 the first term, all terms on the panel are for five years.

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

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

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

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

243 (4) The supervising judge may at the time the grand jury is summoned:
244 (a) order that it be drawn from the state at large as provided in this chapter or from any
245 district within the state; and

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

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

249 **78A-2-229. References to court pleadings and other papers.**

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

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

254 **78A-2-402. Definitions.**

255 As used in this part:

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

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

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

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

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

265 **78A-2-405. Record of court proceedings.**

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

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

271 [~~(3) The official court reporter shall immediately file with the clerk of the court the~~
272 ~~original stenographic notes of the court session and the computer disk on which the notes are~~
273 ~~stored. If not already on file with the clerk of the court, the official court reporter shall file a~~

274 computer disk containing the reporter's most current dictionary showing the meaning of the
275 reporter's stenographic notes.]

276 [~~(4) Upon request and the payment of fees established by Section 78A-2-408, the~~
277 ~~official court reporter shall transcribe the stenographic notes or video or audio recording of the~~
278 ~~court session and furnish the transcript to the requesting party.]~~

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

280 **78A-2-408. Transcripts and copies -- Fees.**

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

283 (2) (a) The fee for a transcript of a court session, or any part of a court session, shall be
284 \$3.50 per page, which includes the initial preparation of the transcript and one certified copy.
285 The preparer shall deposit the original text file and printed transcript with the clerk of the court
286 and provide the person requesting the transcript with the certified copy. The cost of additional
287 copies shall be as provided in Subsection 78A-2-301(1). The transcript for an appeal shall be
288 prepared within the time period permitted by the rules of Appellate Procedure. The fee for a
289 transcript prepared within three business days of the request shall be 1-1/2 times the base rate.
290 The fee for a transcript prepared within one business day of the request shall be double the base
291 rate.

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

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

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

305 person preparing the transcript.

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

307 **78A-2-409. Certified transcripts prima facie correct.**

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

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

312 **78A-5-102. Jurisdiction -- Appeals.**

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

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

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

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

321 (5) The district court has appellate jurisdiction over judgments and orders of the justice
322 court as outlined in Section 78A-7-118 and small claims appeals filed pursuant to Section
323 78A-8-106.

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

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

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

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

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

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

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

336 dissolved, a justice court; or

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

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

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

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

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

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

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

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

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

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

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

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

366 (A) "record of a proceeding" does not include documentary materials of any type

367 submitted to the court as part of the proceeding, including items submitted under Subsection
368 (4)(a); and

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

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

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

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

377 (ii) petitions for termination of parental rights.

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

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

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

396 (b) For the purpose of determining proper disposition of a minor alleged to be or
397 adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division

398 under Section 78A-6-315 may be received in evidence and may be considered by the court
399 along with other evidence. The court may require any person who participated in preparing the
400 dispositional report to appear as a witness, if the person is reasonably available.

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

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

406 (ii) could reasonably expect would be requested of the party by the court at the
407 proceeding.

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

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

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

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

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

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

418 (i) pretrial hearings; and

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

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

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

425 **78A-7-106. Jurisdiction.**

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

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

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

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

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

436 (d) Title 41, Chapter 12a, [~~Motor Vehicle Financial Responsibility~~] Financial

437 Responsibility of Owners and Operators Act;

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

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

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

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

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

443 Act.

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

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

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

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

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

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

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

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

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

462 (i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft
463 passing within the court's jurisdiction;

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

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

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

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

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

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

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

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

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

481 Section 12. Section **78A-8-105** is amended to read:

482 **78A-8-105. Civil filing fees.**

483 (1) Except as provided in this section, the fees for a small claims action in justice court
484 shall be the same as provided in Section 78A-2-301.

485 (2) Fees collected in small claims actions filed in municipal justice court are remitted
486 to the municipal treasurer. Fees collected in small claims actions filed in a county justice court
487 are remitted to the county treasurer.

488 ~~[(3)(a) Seven dollars and 50 cents shall be withheld from the fee for the small claims~~
489 ~~affidavit and allocated to the Judges' Retirement Trust Fund. Five dollars shall be withheld~~
490 ~~from the fee for a small claims counter affidavit and allocated to the Judges' Retirement Trust~~

491 Fund.]

492 [~~(b) Four dollars withheld from the civil filing fee in a court of record as provided in~~
493 ~~Subsection 51-9-408(4)(b) may not apply to the fees collected for small claims actions in~~
494 ~~justice court.~~]

495 [(4)] (3) The fee in the justice court for filing a notice of appeal for trial de novo in a
496 court of record is \$10. The fee covers all services of the justice court on appeal but does not
497 satisfy the trial de novo filing fee in the court of record.

498 Section 13. Section **78B-7-107** is amended to read:

499 **78B-7-107. Hearings on ex parte orders.**

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

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

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

506 (ii) the respondent has not been served;

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

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

509 (v) exigent circumstances exist.

510 (c) Under no circumstances may an ex parte order be extended beyond 180 days from
511 the date of initial issuance.

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

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

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

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

521 (3) When a court denies a petition for an ex parte protective order or a petition to

522 modify an order for protection ex parte, upon the request of the petitioner, the court shall set
523 the matter for hearing [~~upon notice to the respondent~~] and notify the petitioner and serve the
524 respondent.

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

530 Section 14. Section **78B-7-203** is amended to read:

531 **78B-7-203. Hearing.**

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

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

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

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

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

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

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

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

546 (5) If the court determines, based on a preponderance of the evidence, that the minor is
547 being abused or is in imminent danger of being abused, the court shall enter a child protective
548 order. With the exception of the provisions of Section 78A-6-323, a child protective order
549 does not constitute an adjudication of abuse, neglect, or dependency under Title 78A, Chapter
550 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

551 **Section 15. Repealer.**

552 This bill repeals:

553 Section 78A-2-406, Substitute reporters.

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

S.B. 130 1st Sub. (Green) - Judiciary Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will increase ongoing General Fund revenue by \$400 annually and decrease restricted account revenue to the Judicial Retirement Account by \$2,000 annually.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$400	\$400
Restricted Funds	\$0	\$0	\$0	\$0	(\$2,000)	(\$2,000)
Total	\$0	\$0	\$0	\$0	(\$1,600)	(\$1,600)

Individual, Business and/or Local Impact

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