

JUDICIARY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ permits a person to be a candidate for more than one justice court judge office;
- ▶ requires an appointee or a candidate to more than one justice court office to:
 - pay a filing fee for each office; and
 - identify on the declaration of candidacy all of the courts included in the general election;
- ▶ allows a declaration of candidacy in one county to be valid in any other county in which the candidate may be appointed or elected;
- ▶ requires the ballot title to include the name of a court created by interlocal agreement;
- ▶ removes the requirement that all registered voters in a county vote in the retention election of a county justice court judge;
- ▶ removes the requirement that the governing bodies of a county and a municipality within that county both concur when a justice court judge is permitted to hold office as both a county and a municipal justice court judge.
- ▶ modifies a provision regarding child protective orders to comply with Rule 4 of the Utah Rules of Civil Procedure;



- 28 ▶ allows any court, without a jury, to determine questions of fact and law and any
- 29 constitutional issue presented in the pleadings;
- 30 ▶ limits the scope of those who may petition the court for a modification or revocation
- 31 of the court's child custody order to the child's parent or guardian.
- 32 ▶ limits the scope of those who may petition the court for a new hearing on the ground
- 33 that new evidence has been discovered;
- 34 ▶ requires that disposition orders include notice that the right to appeal must be taken
- 35 within 15 days from the entry of the order, decree, or judgement;
- 36 ▶ authorizes the court to include in a minor's disposition order, an order to a minor's
- 37 parent or guardian to pay restitution as authorized by law;
- 38 ▶ requires the minimum payment of restitution to be at least \$5, unless the payment is
- 39 the final payment and less than \$5 is owed;
- 40 ▶ removes the authorization for a justice court judge to order administrative traffic
- 41 checkpoints and issue search warrants; and
- 42 ▶ allows the certificate of admission fee charged to new attorneys to be nonlapsing.

43 **Money Appropriated in this Bill:**

44 None

45 **Other Special Clauses:**

46 None

47 **Utah Code Sections Affected:**

48 AMENDS:

- 49 **20A-9-201**, as last amended by Laws of Utah 2010, Chapter 12
- 50 **20A-12-201**, as last amended by Laws of Utah 2008, Chapters 93 and 225
- 51 **63G-4-402**, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and
- 52 amended by Laws of Utah 2008, Chapter 382
- 53 **63J-1-602.5**, as enacted by Laws of Utah 2010, Chapter 265
- 54 **77-38a-404**, as last amended by Laws of Utah 2008, Chapter 3
- 55 **78A-2-220**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 56 **78A-6-1103**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 57 **78A-6-1108**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 58 **78A-6-1109**, as renumbered and amended by Laws of Utah 2008, Chapter 3

- 59 78A-6-1113, as last amended by Laws of Utah 2009, Chapter 331
- 60 78A-7-105, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 61 78A-7-204, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 62 78B-7-205, as last amended by Laws of Utah 2009, Chapter 146



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

65 Section 1. Section 20A-9-201 is amended to read:

66 **20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of**
 67 **more than one political party prohibited with exceptions -- General filing and form**
 68 **requirements -- Affidavit of impecuniosity.**

69 (1) Before filing a declaration of candidacy for election to any office, a person shall:

- 70 (a) be a United States citizen; and
- 71 (b) meet the legal requirements of that office.

72 (2) (a) Except as provided in Subsection (2)(b), a person may not:

- 73 (i) file a declaration of candidacy for, or be a candidate for, more than one office in
- 74 Utah during any election year; or
- 75 (ii) appear on the ballot as the candidate of more than one political party.

76 (b) (i) A person may file a declaration of candidacy for, or be a candidate for, President
 77 or Vice President of the United States and another office, if the person resigns the person's
 78 candidacy for the other office after the person is officially nominated for President or Vice
 79 President of the United States.

80 (ii) A person may file a declaration of candidacy for, or be a candidate for, more than
 81 one justice court judge office.

82 (3) (a) (i) Except for presidential candidates, before the filing officer may accept any
83 declaration of candidacy, the filing officer shall:

- 84 (A) read to the prospective candidate the constitutional and statutory qualification
- 85 requirements for the office that the candidate is seeking; and
- 86 (B) require the candidate to state whether or not the candidate meets those
- 87 requirements.

88 (ii) Before accepting a declaration of candidacy for the office of county attorney, the
89 county clerk shall ensure that the person filing that declaration of candidacy is:

90 (A) a United States citizen;

91 (B) an attorney licensed to practice law in Utah who is an active member in good
92 standing of the Utah State Bar;

93 (C) a registered voter in the county in which he is seeking office; and

94 (D) a current resident of the county in which he is seeking office and either has been a
95 resident of that county for at least one year or was appointed and is currently serving as county
96 attorney and became a resident of the county within 30 days after appointment to the office.

97 (iii) Before accepting a declaration of candidacy for the office of district attorney, the
98 county clerk shall ensure that, as of the date of the election, the person filing that declaration of
99 candidacy is:

100 (A) a United States citizen;

101 (B) an attorney licensed to practice law in Utah who is an active member in good
102 standing of the Utah State Bar;

103 (C) a registered voter in the prosecution district in which he is seeking office; and

104 (D) a current resident of the prosecution district in which he is seeking office and either
105 will have been a resident of that prosecution district for at least one year as of the date of the
106 election or was appointed and is currently serving as district attorney and became a resident of
107 the prosecution district within 30 days after receiving appointment to the office.

108 (iv) Before accepting a declaration of candidacy for the office of county sheriff, the
109 county clerk shall ensure that the person filing the declaration of candidacy:

110 (A) as of the date of filing:

111 (I) is a United States citizen;

112 (II) is a registered voter in the county in which the person seeks office;

113 (III) (Aa) has successfully met the standards and training requirements established for
114 law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and
115 Certification Act; or

116 (Bb) has passed a certification examination as provided in Section 53-6-206; and

117 (IV) is qualified to be certified as a law enforcement officer, as defined in Section
118 53-13-103; and

119 (B) as of the date of the election, shall have been a resident of the county in which the
120 person seeks office for at least one year.

121 (v) Before accepting a declaration of candidacy for the office of governor, lieutenant
122 governor, state auditor, state treasurer, attorney general, state legislator, or State Board of
123 Education member, the filing officer shall ensure:

124 (A) that the person filing the declaration of candidacy also files the financial disclosure
125 required by Section 20A-11-1603; and

126 (B) if the filing officer is not the lieutenant governor, that the financial disclosure is
127 provided to the lieutenant governor according to the procedures and requirements of Section
128 20A-11-1603.

129 (b) If the prospective candidate states that he does not meet the qualification
130 requirements for the office, the filing officer may not accept the prospective candidate's
131 declaration of candidacy.

132 (c) If the candidate meets the requirements of Subsection (3)(a) and states that he meets
133 the requirements of candidacy, the filing officer shall:

134 (i) inform the candidate that:

135 (A) the candidate's name will appear on the ballot as it is written on the declaration of
136 candidacy;

137 (B) the candidate may be required to comply with state or local campaign finance
138 disclosure laws; and

139 (C) the candidate is required to file a financial statement before the candidate's political
140 convention under:

141 (I) Section 20A-11-204 for a candidate for constitutional office;

142 (II) Section 20A-11-303 for a candidate for the Legislature; or

143 (III) local campaign finance disclosure laws, if applicable;

144 (ii) provide the candidate with a copy of the current campaign financial disclosure laws
145 for the office the candidate is seeking and inform the candidate that failure to comply will
146 result in disqualification as a candidate and removal of the candidate's name from the ballot;

147 (iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide
148 Electronic Voter Information Website Program and inform the candidate of the submission
149 deadline under Subsection 20A-7-801(4)(a);

150 (iv) provide the candidate with a copy of the pledge of fair campaign practices
151 described under Section 20A-9-206 and inform the candidate that:

152 (A) signing the pledge is voluntary; and
 153 (B) signed pledges shall be filed with the filing officer;
 154 (v) accept the candidate's declaration of candidacy; and
 155 (vi) if the candidate has filed for a partisan office, provide a certified copy of the
 156 declaration of candidacy to the chair of the county or state political party of which the
 157 candidate is a member.

158 (d) If the candidate elects to sign the pledge of fair campaign practices, the filing
 159 officer shall:

160 (i) accept the candidate's pledge; and
 161 (ii) if the candidate has filed for a partisan office, provide a certified copy of the
 162 candidate's pledge to the chair of the county or state political party of which the candidate is a
 163 member.

164 (4) Except for presidential candidates, the form of the declaration of candidacy shall be
 165 substantially as follows:

166 "State of Utah, County of ____
 167 I, _____, declare my intention of becoming a candidate for the office of
 168 ____ as a candidate for the ____ party. I do solemnly swear that: I will meet the qualifications
 169 to hold the office, both legally and constitutionally, if selected; I reside at _____ in
 170 the City or Town of ____, Utah, Zip Code ____ Phone No. ____; I will not knowingly violate
 171 any law governing campaigns and elections; I will file all campaign financial disclosure reports
 172 as required by law; and I understand that failure to do so will result in my disqualification as a
 173 candidate for this office and removal of my name from the ballot. The mailing address that I
 174 designate for receiving official election notices is _____.

175 _____
 176 Subscribed and sworn before me this _____(month\day\year).
 177 Notary Public (or other officer qualified to administer oath.)"

178 (5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy
 179 is:

180 (i) \$25 for candidates for the local school district board; and
 181 (ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person
 182 holding the office, but not less than \$5, for all other federal, state, and county offices.

183 (b) Except for presidential candidates, the filing officer shall refund the filing fee to
184 any candidate:

185 (i) who is disqualified; or

186 (ii) who the filing officer determines has filed improperly.

187 (c) (i) The county clerk shall immediately pay to the county treasurer all fees received
188 from candidates.

189 (ii) The lieutenant governor shall:

190 (A) apportion to and pay to the county treasurers of the various counties all fees
191 received for filing of nomination certificates or acceptances; and

192 (B) ensure that each county receives that proportion of the total amount paid to the
193 lieutenant governor from the congressional district that the total vote of that county for all
194 candidates for representative in Congress bears to the total vote of all counties within the
195 congressional district for all candidates for representative in Congress.

196 (d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy
197 without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by
198 an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer,
199 a financial statement filed at the time the affidavit is submitted.

200 (ii) A person who is able to pay the filing fee may not claim impecuniosity.

201 (iii) (A) False statements made on an affidavit of impecuniosity or a financial
202 statement filed under this section shall be subject to the criminal penalties provided under
203 Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

204 (B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be
205 considered an offense under this title for the purposes of assessing the penalties provided in
206 Subsection 20A-1-609(2).

207 (iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in
208 substantially the following form:

209 "Affidavit of Impecuniosity

210 Individual Name

211 _____ Address _____

212 Phone Number _____

213 I, _____ (name), do solemnly [swear] [affirm], under penalty of law

214 for false statements, that, owing to my poverty, I am unable to pay the filing fee required by
215 law.

216 Date _____ Signature _____

217 Affiant

218 Subscribed and sworn to before me on _____ (month\day\year)

219 _____
220 (signature)

221 Name and Title of Officer Authorized to Administer Oath _____"

222 (v) The filing officer shall provide to a person who requests an affidavit of
223 impecuniosity a statement printed in substantially the following form, which may be included
224 on the affidavit of impecuniosity:

225 "Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a
226 candidate who is found guilty of filing a false statement, in addition to being subject to criminal
227 penalties, will be removed from the ballot."

228 (vi) The filing officer may request that a person who makes a claim of impecuniosity
229 under this Subsection (5)(d) file a financial statement on a form prepared by the election
230 official.

231 (6) Any person who fails to file a declaration of candidacy or certificate of nomination
232 within the time provided in this chapter is ineligible for nomination to office.

233 (7) A declaration of candidacy filed under this section may not be amended or
234 modified after the final date established for filing a declaration of candidacy.

235 Section 2. Section **20A-12-201** is amended to read:

236 **20A-12-201. Judicial appointees -- Retention elections.**

237 (1) (a) Each judicial appointee to a court is subject to an unopposed retention election
238 at the first general election held more than three years after the judge or justice was appointed.

239 (b) After the first retention election:

240 (i) each Supreme Court justice shall be on the regular general election ballot for an
241 unopposed retention election every tenth year; and

242 (ii) each judge of other courts shall be on the regular general election ballot for an
243 unopposed retention election every sixth year.

244 (2) (a) Each justice or judge of a court of record who wishes to retain office shall, in

245 the year the justice or judge is subject to a retention election:

246 (i) file a declaration of candidacy as if a candidate for multi-county office in
247 accordance with Section 20A-9-202; and

248 (ii) pay a filing fee of \$50.

249 (b) (i) Each justice court judge who wishes to retain office shall, in the year the justice
250 court judge is subject to a retention election:

251 ~~[(i)]~~ (A) file a declaration of candidacy as if a candidate for county office in accordance
252 with Section 20A-9-202; and

253 ~~[(ii)]~~ (B) pay a filing fee of \$25 for each judicial office.

254 (ii) If a justice court judge is appointed or elected to more than one judicial office, the
255 declaration of candidacy shall identify all of the courts included in the same general election.

256 (iii) If a justice court judge is appointed or elected to more than one judicial office,
257 filing a declaration of candidacy in one county in which one of those courts is located is valid
258 for the courts in any other county.

259 (3) (a) The lieutenant governor shall, no later than September 8 of each regular general
260 election year:

261 (i) transmit a certified list containing the names of the justices of the Supreme Court
262 and judges of the Court of Appeals declaring their candidacy to the county clerk of each
263 county; and

264 (ii) transmit a certified list containing the names of judges of other courts declaring
265 their candidacy to the county clerk of each county in the geographic division in which the judge
266 filing the declaration holds office.

267 (b) Each county clerk shall place the names of justices and judges standing for
268 retention election in the nonpartisan section of the ballot.

269 (4) (a) At the general election, the ballots shall contain, as to each justice or judge of
270 any court to be voted on in the county, the following question:

271 "Shall _____(name of justice or judge) be retained in the
272 office of _____?" (name of office, such as "Justice of the Supreme
273 Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the
274 Third Judicial District;" "Judge of the Juvenile Court of the Fourth Juvenile Court District"; "
275 Justice Court Judge of (name of county) County or (name of municipality)")

276 Yes ()
277 No ()."

278 (b) If a justice court exists by means of an interlocal agreement under Section
279 78A-7-102, the ballot question for the judge shall include the name of that court.

280 (5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge
281 is retained for the term of office provided by law.

282 (b) If the justice or judge does not receive more yes votes than no votes, the justice or
283 judge is not retained, and a vacancy exists in the office on the first Monday in January after the
284 regular general election.

285 (6) A justice or judge not retained is ineligible for appointment to the office for which
286 the justice or judge was defeated until after the expiration of that term of office.

287 Section 3. Section **63G-4-402** is amended to read:

288 **63G-4-402. Judicial review -- Informal adjudicative proceedings.**

289 (1) (a) The district courts have jurisdiction to review by trial de novo all final agency
290 actions resulting from informal adjudicative proceedings, except that the juvenile courts have
291 jurisdiction over all state agency actions relating to:

- 292 (i) the removal or placement of children in state custody;
- 293 (ii) the support of children under Subsection (1)(a)(i) as determined administratively
294 under Section 78A-6-1106; and
- 295 (iii) substantiated findings of abuse or neglect made by the Division of Child and
296 Family Services, after an evidentiary hearing.

297 (b) Venue for judicial review of informal adjudicative proceedings shall be as provided
298 in the statute governing the agency or, in the absence of such a venue provision, in the county
299 where the petitioner resides or maintains the petitioner's principal place of business.

300 (2) (a) The petition for judicial review of informal adjudicative proceedings shall be a
301 complaint governed by the Utah Rules of Civil Procedure and shall include:

- 302 (i) the name and mailing address of the party seeking judicial review;
- 303 (ii) the name and mailing address of the respondent agency;
- 304 (iii) the title and date of the final agency action to be reviewed, together with a copy,
305 summary, or brief description of the agency action;
- 306 (iv) identification of the persons who were parties in the informal adjudicative

307 proceedings that led to the agency action;

308 (v) a copy of the written agency order from the informal proceeding;

309 (vi) facts demonstrating that the party seeking judicial review is entitled to obtain
310 judicial review;

311 (vii) a request for relief, specifying the type and extent of relief requested; and

312 (viii) a statement of the reasons why the petitioner is entitled to relief.

313 (b) All additional pleadings and proceedings in the district court are governed by the
314 Utah Rules of Civil Procedure.

315 (3) (a) The [~~district~~] court, without a jury, shall determine all questions of fact and law
316 and any constitutional issue presented in the pleadings.

317 (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

318 Section 4. Section **63J-1-602.5** is amended to read:

319 **63J-1-602.5. List of nonlapsing funds and accounts -- Title 64 and thereafter.**

320 (1) Funds collected by the housing of state probationary inmates or state parole
321 inmates, as provided in Subsection 64-13e-104(2).

322 (2) The Sovereign Lands Management account created in Section 65A-5-1.

323 (3) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and
324 State Lands, as provided in Section 65A-8-103.

325 (4) The Department of Human Resource Management user training program, as
326 provided in Section 67-19-6.

327 (5) Funds for the University of Utah Poison Control Center program, as provided in
328 Section 69-2-5.5.

329 (6) Appropriations to the Transportation Corridor Preservation Revolving Loan Fund,
330 as provided in Section 72-2-117.

331 (7) Appropriations to the Local Transportation Corridor Preservation Fund, as provided
332 in Section 72-2-117.5.

333 (8) Appropriations to the Tollway Special Revenue Fund, as provided in Section
334 72-2-120.

335 (9) Appropriations to the Aeronautics Construction Revolving Loan Fund, as provided
336 in Section 72-2-122.

337 (10) The Traffic Noise Abatement Program created in Section 72-6-112.

338 (11) Certain funds received by the Office of the State Engineer for well drilling fines or
339 bonds, as provided in Section 73-3-25.

340 (12) Certain monies appropriated to increase the carrying capacity of the Jordan River
341 that are transferred to the Division of Parks and Recreation, as provided in Section 73-10e-1.

342 (13) Certain funds in the Water Development and Flood Mitigation Reserve Account,
343 as provided in Section 73-10e-1.

344 (14) Certain monies appropriated from the Water Resources Conservation and
345 Development Fund, as provided in Section 73-23-2.

346 (15) The Lake Powell Pipeline Project Operation and Maintenance Fund created in
347 Section 73-28-404.

348 (16) Certain funds appropriated for compensation for special prosecutors, as provided
349 in Section 77-10a-19.

350 (17) The Indigent Aggravated Murder Defense Trust Fund created in Section
351 77-32-601.

352 (18) The Indigent Felony Defense Trust Fund created in Section 77-32-701.

353 (19) Funds donated or paid to a juvenile court by private sources, as provided in
354 Subsection 78A-6-203(1)(c).

355 (20) A state rehabilitative employment program, as provided in Section 78A-6-210.

356 (21) The account for the Utah Geological Survey, as provided in Section 79-3-401.

357 (22) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State
358 Park, Jordan River State Park, and Green River State Park, as provided under Section
359 79-4-403.

360 (23) Certain funds received by the Division of Parks and Recreation from the sale or
361 disposal of buffalo, as provided under Section 79-4-1001.

362 (24) The Bonneville Shoreline Trail Program created under Section 79-5-503.

363 (25) Fees for certificate of admission created under Section 78A-9-102.

364 Section 5. Section **77-38a-404** is amended to read:

365 **77-38a-404. Priority.**

366 (1) Restitution payments made pursuant to a court order shall be disbursed to victims
367 within 60 days of receipt from the defendant by the court or department provided:

368 (a) [~~provided~~] the victim has complied with Subsection 77-38a-203(1)(b); [~~and~~]

369 (b) if the defendant has tendered a negotiable instrument, funds from the financial
370 institution are actually received[-]; and

371 (c) the payment to the victim is at least \$5, unless the payment is the final payment.

372 (2) If restitution to more than one person, agency, or entity is required at the same time,
373 the department shall establish the following priorities of payment, except as provided in
374 Subsection (4):

375 (a) the crime victim;

376 (b) the Office of Crime Victim Reparations;

377 (c) any other government agency which has provided reimbursement to the victim as a
378 result of the offender's criminal conduct;

379 (d) the person, entity, or governmental agency that has offered and paid a reward under
380 Section 76-3-201.1 or 78A-6-117;

381 (e) any insurance company which has provided reimbursement to the victim as a result
382 of the offender's criminal conduct; and

383 (f) any county correctional facility to which the defendant is required to pay restitution
384 under Subsection 76-3-201(6).

385 (3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and
386 surcharges are paid.

387 (4) If the offender is required under Section 53-10-404 to reimburse the department for
388 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after
389 restitution to the crime victim under Subsection (2)(a).

390 (5) All money collected for court-ordered obligations from offenders by the department
391 will be applied:

392 (a) first, to victim restitution, except the current and past due amount of \$30 per month
393 required to be collected by the department under Section 64-13-21, if applicable; and

394 (b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection
395 (4).

396 (6) Restitution owed to more than one victim shall be disbursed to each victim
397 according to the percentage of each victim's share of the total restitution order.

398 Section 6. Section **78A-2-220** is amended to read:

399 **78A-2-220. Authority of magistrate.**

400 (1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3
401 shall have the authority to:

- 402 (a) commit a person to incarceration prior to trial;
- 403 (b) set or deny bail under Section 77-20-1 and release upon the payment of bail and
404 satisfaction of any other conditions of release;
- 405 (c) issue to any place in the state summonses and warrants of search and arrest and
406 authorize administrative traffic checkpoints under Section 77-23-104;
- 407 (d) conduct an initial appearance in a felony;
- 408 (e) conduct arraignments;
- 409 (f) conduct a preliminary examination to determine probable cause;
- 410 (g) appoint attorneys and order recoupment of attorney fees;
- 411 (h) order the preparation of presentence investigations and reports;
- 412 (i) issue temporary orders as provided by rule of the Judicial Council; and
- 413 (j) perform any other act or function authorized by statute.

414 (2) A judge of the justice court may exercise the authority of a magistrate specified in
415 Subsection (1) with the following limitations:

- 416 (a) a judge of the justice court may conduct an initial appearance, preliminary
417 examination, or arraignment in a felony case as provided by rule of the Judicial Council; and
- 418 (b) a judge of the justice court may not set bail in a capital felony nor deny bail in any
419 case[; ~~and~~].

420 [~~(c) a judge of the justice court may authorize administrative traffic checkpoints under~~
421 ~~Section 77-23-104 and issue search warrants only within the judicial district.~~]

422 Section 7. Section **78A-6-1103** is amended to read:

423 **78A-6-1103. Modification or termination of custody order or decree -- Grounds --**
424 **Procedure.**

425 (1) A parent[;] or guardian[; ~~or next friend~~] of [a] any child whose legal custody has
426 been transferred by the court to an individual, agency, or institution, except a secure youth
427 corrections facility, may petition the court for restoration of custody or other modification or
428 revocation of the court's order, on the ground that a change of circumstances has occurred
429 which requires such modification or revocation in the best interest of the child or the public.

430 (2) The court shall make a preliminary investigation. If the court finds that the alleged

431 change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If
432 the court finds that a further examination of the facts is needed, or if the court on its own
433 motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall
434 be given to all persons concerned. At the hearing, the court may enter an order continuing,
435 modifying, or terminating the decree.

436 (3) A petition by a parent may not be filed under this section after the parent's parental
437 rights have been terminated in accordance with Part 5, Termination of Parental Rights Act.

438 (4) An individual, agency, or institution vested with legal custody of a child may
439 petition the court for a modification of the custody order on the ground that the change is
440 necessary for the welfare of the child or in the public interest. The court shall proceed upon the
441 petition in accordance with Subsections (1) and (2).

442 Section 8. Section **78A-6-1108** is amended to read:

443 **78A-6-1108. New hearings authorized -- Grounds and procedure.**

444 (1) A parent, guardian, or custodian[~~or next friend~~] of any child adjudicated under this
445 chapter, or any minor who is at least 18 years old, or adult affected by a decree in a proceeding
446 under this chapter, may at any time petition the court for a new hearing on the ground that new
447 evidence which was not known and could not with due diligence have been made available at
448 the original hearing and which might affect the decree, has been discovered.

449 (2) If it appears to the court that there is new evidence which might affect its decree, it
450 shall order a new hearing, enter a decree, and make any disposition of the case warranted by all
451 the facts and circumstances and the best interests of the minor.

452 (3) This section does not apply to a minor's case handled under the provisions of
453 Section 78A-6-702.

454 Section 9. Section **78A-6-1109** is amended to read:

455 **78A-6-1109. Appeals.**

456 (1) An appeal to the Court of Appeals may be taken from any order, decree, or
457 judgment of the juvenile court.

458 (2) Appeals of right from juvenile court orders related to abuse, neglect, dependency,
459 termination, and adoption proceedings, shall be taken within 15 days from entry of the order,
460 decree, or judgment appealed from. In addition, the notice of appeal must be signed by
461 appellant's counsel, if any, and by appellant, unless the appellant is a child or state agency. If

462 an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

463 ~~[(3) If the parties are present in the courtroom, the court shall inform them of:]~~

464 (3) The disposition order shall include the following information:

465 (a) notice that the right to appeal is time sensitive and must be taken within 15 days
466 from entry of the order, decree, or judgement appealed from;

467 ~~[(a)]~~ (b) ~~[their]~~ the right to appeal within the specified time limits;

468 ~~[(b)]~~ (c) the need for ~~[their]~~ the signature of the parties on a notice of appeal in appeals
469 from juvenile court orders related to abuse, neglect, dependency, termination, and adoption
470 proceedings; and

471 ~~[(c)]~~ (d) the need for parties to maintain regular contact with their counsel and to keep
472 all other parties and the appellate court informed of their whereabouts.

473 (4) If the parties are not present in the courtroom, the court shall mail a written
474 statement containing the information provided in Subsection (3) to the parties at their last
475 known address.

476 (5) (a) The court shall inform the parties' counsel at the conclusion of the proceedings
477 that, if an appeal is filed, they must represent their clients throughout the appellate process
478 unless relieved of that obligation by the juvenile court upon a showing of extraordinary
479 circumstances.

480 (b) Until the petition on appeal is filed, claims of ineffective assistance of counsel do
481 not constitute extraordinary circumstances. If a claim is raised by trial counsel or a party, it
482 must be included in the petition on appeal.

483 (6) During the pendency of an appeal from juvenile court orders related to abuse,
484 neglect, dependency, termination, and adoption proceedings, parties shall maintain regular
485 contact with their counsel, if any, and keep all other parties and the appellate court informed of
486 their whereabouts.

487 (7) In all other appeals of right, the appeal shall be taken within 30 days from the entry
488 of the order, decree, or judgment appealed from and the notice of appeal must be signed by
489 appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all
490 appeals under this chapter.

491 (8) Unless the juvenile court stays its order, the pendency of an appeal does not stay the
492 order or decree appealed from in a minor's case, unless otherwise ordered by the Court of

493 Appeals, if suitable provision for the care and custody of the minor involved is made pending
494 the appeal.

495 (9) The name of the minor may not appear on the record on appeal.

496 Section 10. Section **78A-6-1113** is amended to read:

497 **78A-6-1113. Property damage caused by a minor -- Liability of parent or legal**
498 **guardian -- Criminal conviction or adjudication for criminal mischief or criminal**
499 **trespass not a prerequisite for civil action under chapter -- When parent or guardian not**
500 **liable.**

501 (1) The parent or legal guardian having legal custody of the minor is liable for damages
502 sustained to property not to exceed \$2,000 when:

503 (a) the minor intentionally damages, defaces, destroys, or takes the property of another;

504 (b) the minor recklessly or willfully shoots or propels a missile, or other object at or
505 against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether
506 moving or standing; or

507 (c) the minor intentionally and unlawfully tampers with the property of another and
508 thereby recklessly endangers human life or recklessly causes or threatens a substantial
509 interruption or impairment of any public utility service.

510 (2) The parent or legal guardian having legal custody of the minor is liable for damages
511 sustained to property not to exceed \$5,000 when the minor commits an offense under Section
512 (1):

513 (a) for the benefit of, at the direction of, or in association with any criminal street gang
514 as defined in Section 76-9-802; or

515 (b) to gain recognition, acceptance, membership, or increased status with a criminal
516 street gang.

517 (3) The court may make an order for the restitution authorized in this section to be paid
518 by the minor's parent or guardian as part of the minor's disposition order.

519 [~~3~~] (4) As used in this section, property damage described under Subsection (1)(a) or
520 (c), or Subsection (2), includes graffiti, as defined in Section 76-6-107.

521 [~~4~~] (5) A court may waive part or all of the liability for damages under this section by
522 the parent or legal guardian if the offender is adjudicated in the juvenile court under Section
523 78A-6-117 only upon stating on the record that the court finds:

- 524 (a) good cause; or
 - 525 (b) the parent or legal guardian:
 - 526 (i) made a reasonable effort to restrain the wrongful conduct; and
 - 527 (ii) reported the conduct to the property owner involved or the law enforcement agency
- 528 having primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

529 ~~[(5)]~~ (6) A report is not required under Subsection (4)(b) from a parent or legal
 530 guardian if the minor was arrested or apprehended by a peace officer or by anyone acting on
 531 behalf of the property owner involved.

532 ~~[(6)]~~ (7) A conviction for criminal mischief under Section 76-6-106, criminal trespass
 533 under Section 76-6-206, or an adjudication under Section 78A-6-117 is not a condition
 534 precedent to a civil action authorized under Subsection (1) or (2).

535 ~~[(7)]~~ (8) A parent or guardian is not liable under Subsection (1) or (2) if the parent or
 536 guardian made a reasonable effort to supervise and direct their minor child, or, in the event the
 537 parent or guardian knew in advance of the possible taking, injury, or destruction by their minor
 538 child, made a reasonable effort to restrain the child.

539 Section 11. Section **78A-7-105** is amended to read:

540 **78A-7-105. Territorial jurisdiction -- Voting.**

541 (1) The territorial jurisdiction of county justice courts extends to the limits of the
 542 precinct for which the justice court is created and includes all cities or towns within the
 543 precinct, except cities where a municipal justice court exists.

544 (2) The territorial jurisdiction of municipal justice courts extends to the corporate
 545 limits of the municipality in which the justice court is created.

546 (3) The territorial jurisdiction of county and municipal justice courts functioning as
 547 magistrates extends beyond the boundaries in Subsections (1) and (2):

548 (a) as set forth in Section 78A-2-220; and

549 (b) to the extent necessary to carry out magisterial functions under Subsection
 550 77-7-23(2) regarding jailed persons.

551 ~~[(4) For election of county justice court judges, all registered voters in the county
 552 justice court precinct may vote at the judge's retention election.]~~

553 Section 12. Section **78A-7-204** is amended to read:

554 **78A-7-204. Offices of justice court judges.**

555 (1) Justice court judges holding office in:

556 (a) county precincts are county justice court judges; and

557 (b) cities or towns are municipal justice court judges.

558 [~~(2) With the concurrence of the governing bodies of both the county and municipality,~~
559 ~~a justice court judge may hold both the offices of county and municipal justice court judge.]~~

560 [(3)] (2) The county legislative body may establish a single precinct or divide the
561 county into multiple precincts to create county justice courts for public convenience.

562 [(4)] (3) (a) The governing body may assign as many justice court judges to a court as
563 required for efficient judicial administration.

564 (b) If more than one judge is assigned to a court, any citations, informations, or
565 complaints within that court shall be assigned to the judges at random.

566 [(5)] (4) A municipality or county may contract with any other municipality or
567 municipalities within the county under Title 11, Chapter 13, Interlocal Cooperation Act, to
568 establish a justice court. A justice court established under Title 11, Chapter 13, shall meet the
569 requirements for certification under Section 78A-7-103. A justice court established under Title
570 11, Chapter 13, shall have territorial jurisdiction as if established separately.

571 Section 13. Section **78B-7-205** is amended to read:

572 **78B-7-205. Service -- Income withholding -- Expiration.**

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

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

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

578 (c) by the end of the next business day after the order is entered, transmit electronically
579 a copy of the order to any law enforcement agency designated by the petitioner and to the
580 statewide domestic violence network described in Section 78B-7-113.

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

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

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

593 (5) After notice, as provided in Rule 4 of the Utah Rules of Civil Procedure, and
594 hearing, a court may modify or vacate a child protective order ~~[without]~~ with a showing of
595 substantial and material change in circumstances~~[-except that the criminal provisions of the~~
596 ~~child protective order may not be vacated within two years of issuance unless the petitioner:].~~

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

600 ~~[(b) submits a verified affidavit, stating agreement to the vacation of the criminal~~
601 ~~provisions of the protective order.]~~

602 (6) The child protective order expires 150 days after the date of the order unless a
603 different date is set by the court. The court may not set a date more than 150 days after the date
604 of the order without a finding of good cause. The court may review and extend the expiration
605 date, but may not extend it to more than 150 days after the date of the order without a finding
606 of good cause.

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

Legislative Review Note
as of 1-27-11 10:45 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 143

SHORT TITLE: **Judiciary Amendments**

SPONSOR: **Hillyard, L.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.