

JUDICIARY AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill makes amendments related to the judiciary.

Highlighted Provisions:

This bill:

- ▶ clarifies the penalties for driving a vehicle without registration or certificate of title;
- ▶ makes technical changes regarding the Children's Legal Defense Account;
- ▶ changes the role of the Judicial Council in determining reasonable compensation for an attorney in the administration and probate of wills;
- ▶ makes technical changes regarding the roles of the prosecuting attorney in expungement cases;
- ▶ prohibits a magistrate from conducting an initial appearance in a felony;
- ▶ makes changes regarding judgment awarded and fees and collection costs for the state or state agencies in justice courts; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:



28 **41-1a-1303**, as last amended by Laws of Utah 2002, Chapter 56
 29 **51-9-408 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapter 223
 30 **75-3-718**, as last amended by Laws of Utah 1992, Chapter 179
 31 **77-32-202**, as last amended by Laws of Utah 2012, Chapter 180
 32 **77-36-2.5**, as last amended by Laws of Utah 2011, Chapter 113
 33 **77-40-107**, as enacted by Laws of Utah 2010, Chapter 283
 34 **78A-2-220**, as last amended by Laws of Utah 2011, Chapter 208
 35 **78A-2-301.5**, as enacted by Laws of Utah 2012, Chapter 205
 36 **78A-6-1109**, as last amended by Laws of Utah 2011, Chapter 208

37 ENACTS:

38 **41-1a-1303.5**, Utah Code Annotated 1953



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

41 Section 1. Section **41-1a-1303** is amended to read:

42 **41-1a-1303. Driving without registration or certificate of title -- Class C**
 43 **misdemeanor.**

44 ~~[(1)-(a)]~~ Except as provided in ~~[Subsection (2) or]~~ Section 41-1a-211 or 41-1a-1303.5,
 45 a person may not drive or move, or an owner may not knowingly permit to be driven or moved
 46 upon any highway any vehicle of a type required to be registered in this state:

47 ~~[(i)]~~ (1) that is not properly registered or for which a certificate of title has not been
 48 issued or applied for; or

49 ~~[(ii)]~~ (2) for which the required fee has not been paid.

50 ~~[(b) A violation of this Subsection (1) is a class C misdemeanor.]~~

51 ~~[(2) (a) A violation of Subsection 41-1a-202(3), related to registration of vehicles after~~
 52 ~~establishing residency, is a class B misdemeanor and except as provided in Subsection (2)(b),~~
 53 ~~has a minimum fine of \$1000.]~~

54 ~~[(b) A court may not dismiss an action brought for a violation of Subsection~~
 55 ~~41-1a-202(3) merely because the defendant has obtained the appropriate registration~~
 56 ~~subsequent to violating the section. The court may, however, reduce the fine to \$200 if the~~
 57 ~~violator presents evidence at the time of his hearing that:]~~

58 ~~[(i) the vehicle is currently registered properly; and]~~

59 ~~[(ii) the violation has not existed for more than one year.]~~

60 ~~[(3) A court may require proof of proper motor vehicle registration as part of any~~
61 ~~sentence imposed under this section.]~~

62 Section 2. Section **41-1a-1303.5** is enacted to read:

63 **41-1a-1303.5. Driving without registration or certificate of title -- Class B**
64 **misdemeanor.**

65 (1) (a) A violation of Subsection 41-1a-202(3), related to registration of vehicles after
66 establishing residency, is a class B misdemeanor and, except as provided in Subsection (1)(b),
67 has a minimum fine of \$1000.

68 (b) A court may not dismiss an action brought for a violation of Subsection
69 41-1a-202(3) merely because the defendant has obtained the appropriate registration
70 subsequent to violating the section. The court may, however, reduce the fine to \$200 if the
71 violator presents evidence at the time of the hearing that:

72 (i) the vehicle is currently registered properly; and

73 (ii) the violation has not existed for more than one year.

74 (2) A court may require proof of proper motor vehicle registration as part of any
75 sentence imposed under this section.

76 Section 3. Section **51-9-408 (Effective 07/01/13)** is amended to read:

77 **51-9-408 (Effective 07/01/13). Children's Legal Defense Account.**

78 (1) There is created a restricted account within the General Fund known as the
79 Children's Legal Defense Account.

80 (2) The purpose of the Children's Legal Defense Account is to provide for programs
81 that protect and defend the rights, safety, and quality of life of children.

82 (3) The Legislature shall appropriate money from the account for the administrative
83 and related costs of the following programs:

84 (a) implementing the Mandatory Educational Course on Children's Needs for
85 Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4,
86 ~~[30-3-7,]~~ 30-3-10.3, 30-3-11.3, and 30-3-15.3, ~~[and 30-3-18,]~~ and the Mediation ~~[Pilot]~~
87 Program - Child Custody or Parent-time ~~[as provided in Sections 30-3-15.3 and 30-3-18];~~

88 (b) implementing the use of guardians ad litem as provided in Sections ~~[30-3-5.2,]~~
89 78A-2-228, ~~[78A-6-321,]~~ 78A-6-902, and 78B-3-102; the training of guardians ad litem and

90 volunteers as provided in Section 78A-6-902; and termination of parental rights as provided in
91 Sections 78A-6-117[;] and 78A-6-118, [~~and 78A-6-1103;~~] and Title 78A, Chapter 6, Part 5,
92 Termination of Parental Rights Act. This account may not be used to supplant funding for the
93 guardian ad litem program in the juvenile court as provided in Section 78A-6-902; [~~and~~]

94 (c) implementing and administering the Expedited Parent-time Enforcement Program
95 as provided in Section 30-3-38[-]; and

96 (d) implementing and administering the Divorce Education for Children Program.

97 (4) The following withheld fees shall be allocated only to the Children's Legal Defense
98 Account and used only for the purposes provided in Subsections (3)(a) through [~~(c)~~] (d):

99 (a) the additional \$10 fee withheld on every marriage license issued in the state of Utah
100 as provided in Section 17-16-21; and

101 (b) a fee of \$4 shall be withheld from the existing civil filing fee collected on any
102 complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

103 (5) The Division of Finance shall allocate the money described in Subsection (4) from
104 the General Fund to the Children's Legal Defense Account.

105 (6) Any funds in excess of \$200,000 remaining in the restricted account as of June 30
106 of any fiscal year shall lapse into the General Fund.

107 Section 4. Section **75-3-718** is amended to read:

108 **75-3-718. Compensation of personal representative and attorney.**

109 (1) A personal representative and an attorney are entitled to reasonable compensation
110 for their services. If a petition is filed which either directly or indirectly seeks approval of the
111 personal representative's compensation or the attorney's compensation and if no objection is
112 filed by an interested person to the compensation requested, reasonable compensation shall be
113 the compensation sought in the petition. When an interested person objects to the personal
114 representative's compensation, the court shall determine reasonable compensation for the
115 personal representative based on the quality, quantity, and value of the services rendered to the
116 estate and the circumstances under which those services were rendered, including the practice
117 for other fiduciaries who are in similar circumstances to the personal representative in question.
118 When an interested person objects to the attorney's compensation, the court shall determine
119 reasonable compensation for the attorney [~~based on rules adopted by the Judicial Council~~].

120 (2) When a petition seeks approval of or objects to a personal representative's

121 compensation or an attorney's compensation, at least 10 days before the time set for the hearing
122 of the petition, the petitioner or the petitioner's attorney shall send a copy of the petition to all
123 interested persons either by certified, registered, or first class mail or by hand-delivery.

124 (3) If a will provides for compensation of the personal representative and there is no
125 contract with the decedent regarding compensation, the personal representative may renounce
126 the provision before qualifying and be entitled to reasonable compensation. A personal
127 representative also may renounce his right to all or any part of the compensation. A written
128 renunciation of fee may be filed with the court.

129 Section 5. Section **77-32-202** is amended to read:

130 **77-32-202. Procedure for determination of indigency -- Standards.**

131 (1) A determination of indigency or continuing indigency of any defendant may be
132 made by the court at any stage of the proceedings.

133 (2) (a) Any defendant claiming indigency who is charged with a crime the penalty of
134 which is a class A misdemeanor or serious offense shall file with the court a fully complete
135 affidavit verified by a notary or other person authorized by law to administer an oath and file a
136 copy of that affidavit with the prosecuting entity. The affidavit shall contain the factual
137 information required in this section and by the court.

138 (b) A defendant claiming indigency who is charged with a crime the penalty of which
139 is less than a class A misdemeanor is not required to comply with the requirements of
140 Subsection (2)(a) and Subsection (4).

141 (3) (a) "Indigency" means that a person:

142 (i) does not have sufficient income, assets, credit, or other means to provide for the
143 payment of legal counsel and all other necessary expenses of representation without depriving
144 that person or the family of that person of food, shelter, clothing, and other necessities; or

145 (ii) has an income level at or below 150% of the United States poverty level as defined
146 by the most recently revised poverty income guidelines published by the United States
147 Department of Health and Human Services; and

148 (iii) has not transferred or otherwise disposed of any assets since the commission of the
149 offense with the intent of establishing eligibility for the appointment of counsel under this
150 chapter.

151 (b) In making a determination of indigency, the court shall consider:

- 152 (i) the probable expense and burden of defending the case;
 - 153 (ii) the ownership of, or any interest in, any tangible or intangible personal property or
154 real property, or reasonable expectancy of any such interest;
 - 155 (iii) the amounts of debts owned by the defendant or that might reasonably be incurred
156 by the defendant because of illness or other needs within the defendant's family;
 - 157 (iv) number, ages, and relationships of any dependents;
 - 158 (v) the reasonableness of fees and expenses charged to the defendant by the defendant's
159 attorney and the scope of representation undertaken where the defendant is represented by
160 privately retained defense counsel; and
 - 161 (vi) other factors considered relevant by the court.
- 162 (4) (a) Upon making a finding of indigence, the court shall enter the findings on the
163 record and enter an order assigning a defense services provider to represent the defendant in the
164 case.
- 165 (b) Upon finding indigence when the defendant has privately retained counsel, the
166 court, subject to Section 77-32-303, shall enter the findings into the record and issue an order
167 directing the county or municipality to coordinate the providing of defense resources as
168 appropriate.
- 169 (c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor
170 and to the county clerk or municipal recorder.
- 171 (5) If the county or municipality providing the defense services provider has any
172 objections to or concerns with the finding of indigency and assignment of a defense services
173 provider or the continuing of indigency status and assignment of a defense services provider, it
174 shall file notice with the court and a hearing shall be scheduled to review the findings and give
175 the county or municipality the opportunity to present evidence and arguments as to the reasons
176 the finding of indigency should be reversed and the court shall proceed as provided in
177 ~~[Subsection]~~ Section 77-32-302~~(4)~~.
- 178 (6) (a) If the trial court finds within one year after the determination of indigency that
179 any defendant was erroneously or improperly determined to be indigent, the county or
180 municipality may proceed against that defendant for the reasonable value of the services
181 rendered to the defendant, including all costs paid by the county or municipality in providing
182 the legal defense.

183 (b) Subsection (6)(a) does not affect any restitution required of the defendant by the
184 court pursuant to Chapter 32a, Defense Costs.

185 (c) A defendant claiming indigency has a continuing duty to inform the court of any
186 material changes or change in circumstances that may affect the determination of his eligibility
187 for indigency.

188 (d) Any person who intentionally or knowingly makes a material false statement or
189 omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.

190 Section 6. Section **77-36-2.5** is amended to read:

191 **77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release**
192 **agreements -- Jail release court orders.**

193 (1) (a) Upon arrest for domestic violence, and before the person is released on bail,
194 recognizance, or otherwise, the person may not personally contact the alleged victim of
195 domestic violence.

196 (b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

197 (2) Upon arrest for domestic violence, a person may not be released on bail,
198 recognizance, or otherwise prior to the close of the next court day following the arrest, unless
199 as a condition of that release the person is ordered by the court or agrees in writing that until
200 further order of the court, the person will:

201 (a) have no personal contact with the alleged victim;

202 (b) not threaten or harass the alleged victim; and

203 (c) not knowingly enter onto the premises of the alleged victim's residence or any
204 premises temporarily occupied by the alleged victim.

205 (3) (a) The jail release agreement or jail release court order expires at midnight on the
206 day on which the person arrested appears in person or by video for arraignment or an initial
207 appearance.

208 (b) (i) If criminal charges have not been filed against the arrested person, the court
209 may, for good cause and in writing, extend the jail release agreement or jail release court order
210 beyond the time period under Subsection (3)(a) as provided in Subsection (3)(b)(ii).

211 (ii) (A) The court may extend a jail release agreement or jail release court order under
212 Subsection (3)(b)(i) to no longer than midnight of the third business day after the arrested
213 person's first court appearance.

214 (B) If criminal charges are filed against the arrested person within the three business
215 days under Subsection (3)(b)(ii)(A), the jail release agreement or the jail release court order
216 continues in effect until the arrested person appears in person or by video at the arrested
217 person's next scheduled court appearance.

218 (c) If criminal charges have been filed against the arrested person the court may, upon
219 the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial
220 protective order.

221 (4) As a condition of release, the court may order the defendant to participate in an
222 electronic or other monitoring program and to pay the costs associated with the program.

223 (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in
224 writing any or all of the release conditions described in Subsection (2)(a) or (c). Upon waiver,
225 those release conditions do not apply to the alleged perpetrator.

226 (b) A court or magistrate may modify the release conditions described in [~~Subsections~~
227 ~~(†)~~ Subsection (2)(a) or (c), in writing or on the record, and only for good cause shown.

228 (6) (a) When a person is released pursuant to Subsection (2), the releasing agency shall
229 notify the arresting law enforcement agency of the release, conditions of release, and any
230 available information concerning the location of the victim. The arresting law enforcement
231 agency shall then make a reasonable effort to notify the victim of that release.

232 (b) (i) When a person is released pursuant to Subsection (2) based on a written jail
233 release agreement, the releasing agency shall transmit that information to the statewide
234 domestic violence network described in Section 78B-7-113.

235 (ii) When a person is released pursuant to Subsection (2) or (3) based upon a jail
236 release court order or if a jail release agreement is modified pursuant to Subsection (5)(b), the
237 court shall transmit that order to the statewide domestic violence network described in Section
238 78B-7-113.

239 (iii) A copy of the jail release court order or written jail release agreement shall be
240 given to the person by the releasing agency before the person is released.

241 (c) This Subsection (6) does not create or increase liability of a law enforcement officer
242 or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

243 (7) (a) If a law enforcement officer has probable cause to believe that a person has
244 violated a jail release court order or jail release agreement executed pursuant to Subsection (2)

245 the officer shall, without a warrant, arrest the alleged violator.

246 (b) Any person who knowingly violates a jail release court order or jail release
247 agreement executed pursuant to Subsection (2) is guilty as follows:

248 (i) if the original arrest was for a felony, an offense under this section is a third degree
249 felony; or

250 (ii) if the original arrest was for a misdemeanor, an offense under this section is a class
251 A misdemeanor.

252 (c) City attorneys may prosecute class A misdemeanor violations under this section.

253 (8) An individual who was originally arrested for a felony under this chapter and
254 released pursuant to this section may subsequently be held without bail if there is substantial
255 evidence to support a new felony charge against him.

256 (9) At the time an arrest for domestic violence is made, the arresting officer shall
257 provide the alleged victim with written notice containing:

258 (a) the release conditions described in Subsection (2), and notice that those release
259 conditions shall be ordered by a court or must be agreed to by the alleged perpetrator prior to
260 release;

261 (b) notification of the penalties for violation of any jail release court order or any jail
262 release agreement executed under Subsection (2);

263 (c) notification that the alleged perpetrator is to personally appear in court on the next
264 day the court is open for business after the day of the arrest;

265 (d) the address of the appropriate court in the district or county in which the alleged
266 victim resides;

267 (e) the availability and effect of any waiver of the release conditions; and

268 (f) information regarding the availability of and procedures for obtaining civil and
269 criminal protective orders with or without the assistance of an attorney.

270 (10) At the time an arrest for domestic violence is made, the arresting officer shall
271 provide the alleged perpetrator with written notice containing:

272 (a) notification that the alleged perpetrator may not contact the alleged victim before
273 being released;

274 (b) the release conditions described in Subsection (2) and notice that those release
275 conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to

276 release;

277 (c) notification of the penalties for violation of any jail release court order or any
278 written jail release agreement executed under Subsection (2); and

279 (d) notification that the alleged perpetrator is to personally appear in court on the next
280 day the court is open for business after the day of the arrest.

281 (11) (a) If the alleged perpetrator fails to personally appear in court as scheduled, the
282 jail release court order or jail release agreement does not expire and continues in effect until the
283 alleged perpetrator makes the personal appearance in court as required by Section 77-36-2.6.

284 (b) If, when the alleged perpetrator personally appears in court as required by Section
285 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow
286 the jail release court order or jail release agreement to expire at midnight on the day of the
287 court appearance or may extend it for good cause.

288 (12) In addition to the provisions of Subsections (2) through (8), because of the unique
289 and highly emotional nature of domestic violence crimes, the high recidivism rate of violent
290 offenders, and the demonstrated increased risk of continued acts of violence subsequent to the
291 release of an offender who has been arrested for domestic violence, it is the finding of the
292 Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which
293 bail may be denied if there is substantial evidence to support the charge, and if the court finds
294 by clear and convincing evidence that the alleged perpetrator would constitute a substantial
295 danger to an alleged victim of domestic violence if released on bail.

296 Section 7. Section **77-40-107** is amended to read:

297 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
298 **Standard of proof -- Exception.**

299 (1) The petitioner shall file a petition for expungement and the certificate of eligibility
300 in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to
301 the prosecuting agency.

302 (2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting
303 attorney shall provide notice of the expungement request by first-class mail to the victim at the
304 most recent address of record on file.

305 (b) The notice shall include a copy of the petition, certificate of eligibility, statutes and
306 rules applicable to the petition, state that the victim has a right to object to the expungement,

307 and provide instructions for registering an objection with the court.

308 (3) The prosecuting attorney and the victim, if applicable, may respond to the petition
309 by filing a recommendation or objection with the court within 30 days after receipt of the
310 petition.

311 (4) (a) The court may request a written response to the petition from the Division of
312 Adult Probation and Parole within the Department of Corrections.

313 (b) If requested, the response prepared by Adult Probation and Parole shall include:

314 (i) the reasons probation was terminated; and

315 (ii) certification that the petitioner has completed all requirements of sentencing and
316 probation or parole.

317 (c) A copy of the response shall be provided to the petitioner and the prosecuting
318 attorney.

319 (5) The petitioner may respond in writing to any objections filed by the prosecutor or
320 the victim and the response prepared by Adult Probation and Parole within 15 days after
321 receipt.

322 (6) (a) If the court receives an objection concerning the petition from any party, the
323 court shall set a date for a hearing and notify the petitioner[;] and the prosecuting attorney[;
324 ~~and~~] of the date set for the hearing. The prosecuting attorney shall notify the victim of the date
325 set for the hearing.

326 (b) The petitioner, the prosecuting attorney, the victim, and any other person who has
327 relevant information about the petitioner may testify at the hearing.

328 (c) The court shall review the petition, the certificate of eligibility, and any written
329 responses submitted regarding the petition.

330 (7) If no objection is received within 60 days from the date the petition for
331 expungement was filed with the court, the expungement may be granted without a hearing.

332 (8) The court shall issue an order of expungement if it finds by clear and convincing
333 evidence that:

334 (a) the petition and certificate of eligibility are sufficient;

335 (b) the statutory requirements have been met; and

336 (c) it is not contrary to the interests of the public to grant the expungement.

337 (9) A court may not expunge a conviction of an offense for which a certificate of

338 eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

339 Section 8. Section **78A-2-220** is amended to read:

340 **78A-2-220. Authority of magistrate.**

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

343 (a) commit a person to incarceration prior to trial;

344 (b) set or deny bail under Section 77-20-1 and release upon the payment of bail and
345 satisfaction of any other conditions of release;

346 (c) issue to any place in the state summonses and warrants of search and arrest and
347 authorize administrative traffic checkpoints under Section 77-23-104;

348 (d) conduct an initial appearance [~~in a felony~~];

349 (e) conduct arraignments;

350 (f) conduct a preliminary examination to determine probable cause;

351 (g) appoint attorneys and order recoupment of attorney fees;

352 (h) order the preparation of presentence investigations and reports;

353 (i) issue temporary orders as provided by rule of the Judicial Council; and

354 (j) perform any other act or function authorized by statute.

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

357 (a) a judge of the justice court may conduct an initial appearance, preliminary
358 examination, or arraignment [~~in a felony case~~] as provided by rule of the Judicial Council; and

359 (b) a judge of the justice court may not set bail in a capital felony nor deny bail in any
360 case.

361 Section 9. Section **78A-2-301.5** is amended to read:

362 **78A-2-301.5. Civil fees for justice courts.**

363 (1) The fee for filing a small claims affidavit is:

364 (a) \$60 if the claim for damages or amount in interpleader exclusive of justice court
365 costs, interest, and attorney fees is \$2,000 or less;

366 (b) \$100 if the claim for damages or amount in interpleader exclusive of justice court
367 costs, interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

368 (c) \$185 if the claim for damages or amount in interpleader exclusive of justice court

369 costs, interest, and attorney fees is \$7,500 or more.

370 (2) The fee for filing a small claims counter affidavit is:

371 (a) \$50 if the claim for relief exclusive of justice court costs, interest, and attorney fees
372 is \$2,000 or less;

373 (b) \$70 if the claim for relief exclusive of justice court costs, interest, and attorney fees
374 is greater than \$2,000, but less than \$7,500; and

375 (c) \$120 if the claim for relief exclusive of justice court costs, interest, and attorney
376 fees is \$7,500 or more.

377 (3) The fee for filing a petition for expungement is \$135.

378 (4) The fee for a petition to open a sealed record is \$35.

379 (5) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
380 addition to any fee for a complaint or petition.

381 (6) The fee for filing a notice of appeal to a court of record is \$10. This fee covers all
382 services of the justice court on appeal but does not satisfy the trial de novo filing fee in the
383 court of record.

384 (7) The fee for a certified copy of a document is \$4 per document plus 50 cents per
385 page.

386 (8) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
387 per page.

388 (9) The fee schedule adopted by the Judicial Council for copies of documents and
389 forms and for the search and retrieval of records under Title 63G, Chapter 2, Government
390 Records Access and Management Act, shall apply.

391 (10) There is no fee for services or the filing of documents not listed in this section or
392 otherwise provided by law.

393 (11) The filing fees under this section may not be charged to the state, its agencies, or
394 political subdivisions filing or defending any action. In judgments awarded in favor of the
395 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
396 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
397 collected under this Subsection (11) shall be applied to the fees after credit to the judgment
398 order, fine, tax, lien, or other penalty and costs permitted by law.

399 Section 10. Section **78A-6-1109** is amended to read:

400 **78A-6-1109. Appeals.**

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

403 (2) Appeals of right from juvenile court orders related to abuse, neglect, dependency,
404 termination, and adoption proceedings, shall be taken within 15 days from entry of the order,
405 decree, or judgment appealed from. In addition, the notice of appeal must be signed by
406 appellant's counsel, if any, and by appellant, unless the appellant is a child or state agency. If
407 an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

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

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

411 (b) the right to appeal within the specified time limits;

412 (c) the need for the signature of the parties on a notice of appeal in appeals from
413 juvenile court orders related to abuse, neglect, dependency, termination, and adoption
414 proceedings; and

415 (d) the need for parties to maintain regular contact with their counsel and to keep all
416 other parties and the appellate court informed of their whereabouts.

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

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

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

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

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

435 (8) Unless the juvenile court stays its order, the pendency of an appeal does not stay the
436 order or decree appealed from in a minor's case, unless otherwise ordered by the Court of
437 Appeals, if suitable provision for the care and custody of the minor involved is made pending
438 the appeal.

439 (9) [~~The name of the minor may not appear on~~] Access to the record on appeal shall be
440 governed by Title 63G, Chapter 2, Government Records Access and Management Act.

441 Section 11. **Effective date.**

442 This bill takes effect on July 1, 2013.

Legislative Review Note
as of 2-14-13 9:55 AM

Office of Legislative Research and General Counsel