

JUDICIARY AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill makes amendments related to the judiciary.

Highlighted Provisions:

This bill:

- ▶ requires a peace officer or public official to include on a citation whether the offense was a domestic violence offense;
- ▶ requires a petitioner applying electronically for the expungement of records to follow certain proceedings;
- ▶ requires an additional \$20 filing fee in civil justice court cases if a person files a complaint, petition, answer, or response prepared through the Online Court Assistance Program;
- ▶ changes the filing fee for a domestic relations order; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-7-20, as last amended by Laws of Utah 2013, Chapter 65



- 28 **77-40-103**, as last amended by Laws of Utah 2013, Chapter 41
- 29 **77-40-107**, as last amended by Laws of Utah 2013, Chapters 41 and 245
- 30 **78A-2-301**, as last amended by Laws of Utah 2012, Chapter 247
- 31 **78A-2-501**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 32 **78B-7-405**, as enacted by Laws of Utah 2013, Chapter 179

33

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

35 Section 1. Section **77-7-20** is amended to read:

36 **77-7-20. Service of citation on defendant -- Filing in court -- Electronic filing --**

37 **Contents of citations.**

38 (1) A peace officer or public official who issues a citation pursuant to Section **77-7-18**
39 shall give the citation to the person cited and shall within five days electronically file the data
40 from Subsections (2)(a) through (2)(g) with the court specified in the citation. The data
41 transmission shall use the court's electronic filing interface. A nonconforming filing is not
42 effective.

43 (2) The citation issued under authority of this chapter shall contain the following data:

44 (a) the name of the court before which the person is to appear;

45 (b) the name of the person cited;

46 (c) a brief description of the offense charged;

47 (d) the date, time, and place at which the offense is alleged to have occurred;

48 (e) the date on which the citation was issued;

49 (f) the name of the peace officer or public official who issued the citation, and the
50 name of the arresting person if an arrest was made by a private party and the citation was
51 issued in lieu of taking the arrested person before a magistrate;

52 (g) the time and date on or before and after which the person is to appear or a statement
53 that the court will notify the person of the time to appear;

54 (h) the address of the court in which the person is to appear; [~~and~~]

55 (i) whether the offense is a domestic violence offense; and

56 [~~(i)~~] (j) a notice containing substantially the following language:

57 READ CAREFULLY

58 This citation is not an information and will not be used as an information without your

59 consent. If an information is filed you will be provided a copy by the court. You MUST
60 appear in court on or before the time set in this citation or as directed by the court. IF YOU
61 FAIL TO APPEAR, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST.

62 (3) By electronically filing the data with the court, the peace officer or public official
63 certifies to the court that:

64 (a) the citation or information, including the summons and complaint, was served upon
65 the defendant in accordance with the law;

66 (b) the defendant committed the offense set forth in the served documents; and

67 (c) the court to which the defendant was directed to appear is the proper court pursuant
68 to Section 77-7-21.

69 Section 2. Section 77-40-103 is amended to read:

70 **77-40-103. Expungement procedure overview.**

71 The process for the expungement of records under this chapter regarding the arrest,
72 investigation, detention, and conviction of a petitioner is as follows:

73 (1) The petitioner shall apply to the bureau for a certificate of eligibility for
74 expungement and pay the application fee established by the department.

75 (2) Once the eligibility process is complete, the bureau shall notify the petitioner.

76 (3) If the petitioner is qualified to receive a certificate of eligibility for expungement,
77 the petitioner shall pay the issuance fee established by the department.

78 (4) The petitioner shall file the certificate of eligibility with a petition for expungement
79 in the court in which the proceedings occurred. If there were no court proceedings, or the court
80 no longer exists, the petition may be filed in the district court where the arrest occurred. If a
81 certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original
82 certificate until the proceedings are concluded. If the original certificate is filed with the
83 petition, the clerk or the court shall scan it and return it to the petitioner or the petitioner's
84 attorney, who shall keep it until the proceedings are concluded.

85 (5) The petitioner shall deliver a copy of the petition and certificate to the prosecutorial
86 office that handled the court proceedings. If there were no court proceedings, the copy of the
87 petition and certificate shall be delivered to the county attorney's office in the jurisdiction
88 where the arrest occurred.

89 (6) If an objection to the petition is filed by the prosecutor or victim, a hearing shall be

90 set by the court and the prosecutor and victim notified of the date.

91 (7) If the court requests a response from Adult Probation and Parole and a response is
92 received, the petitioner may file a written reply to the response within 15 days of receipt of the
93 response.

94 (8) An expungement may be granted without a hearing if no objection is received.

95 (9) Upon receipt of an order of expungement, the petitioner shall deliver copies to all
96 government agencies in possession of records relating to the expunged matter.

97 Section 3. Section 77-40-107 is amended to read:

98 **77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing --**
99 **Standard of proof -- Exception.**

100 (1) The petitioner shall file a petition for expungement and the certificate of eligibility
101 in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to
102 the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's
103 attorney shall keep the original certificate until the proceedings are concluded. If the original
104 certificate is filed with the petition, the clerk of the court shall scan it and return it to the
105 petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

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

109 (b) The notice shall include a copy of the petition, certificate of eligibility, statutes and
110 rules applicable to the petition, state that the victim has a right to object to the expungement,
111 and provide instructions for registering an objection with the court.

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

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

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

118 (i) the reasons probation was terminated; and

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

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

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

126 (6) (a) If the court receives an objection concerning the petition from any party, the
127 court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the
128 date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the
129 hearing.

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

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

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

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

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

139 (b) the statutory requirements have been met;

140 (c) if the petitioner seeks expungement of drug possession offenses allowed under
141 Subsection [77-40-105\(5\)](#), the petitioner is not illegally using controlled substances and is
142 successfully managing any substance addiction; and

143 (d) it is not contrary to the interests of the public to grant the expungement.

144 (9) A court may not expunge a conviction of an offense for which a certificate of
145 eligibility may not be or should not have been issued under Section [77-40-104](#) or [77-40-105](#).

146 Section 4. Section **78A-2-301** is amended to read:

147 **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

148 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
149 court of record not governed by another subsection is \$360.

150 (b) The fee for filing a complaint or petition is:

151 (i) \$75 if the claim for damages or amount in interpleader exclusive of court costs,

152 interest, and attorney fees is \$2,000 or less;

153 (ii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
154 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

155 (iii) \$360 if the claim for damages or amount in interpleader is \$10,000 or more;

156 (iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
157 4, Separate Maintenance;

158 (v) \$35 for a motion for temporary separation order filed under Section 30-3-4.5; and

159 (vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender
160 Registry under Subsection 77-27-21.5(32).

161 (c) The fee for filing a small claims affidavit is:

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

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

166 (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
167 interest, and attorney fees is \$7,500 or more.

168 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
169 complaint, or other claim for relief against an existing or joined party other than the original
170 complaint or petition is:

171 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
172 \$2,000 or less;

173 (ii) \$150 if the claim for relief exclusive of court costs, interest, and attorney fees is
174 greater than \$2,000 and less than \$10,000;

175 (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is
176 \$10,000 or more, or the party seeks relief other than monetary damages; and

177 (iv) \$115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
178 Chapter 4, Separate Maintenance.

179 (e) The fee for filing a small claims counter affidavit is:

180 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
181 \$2,000 or less;

182 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is

183 greater than \$2,000, but less than \$7,500; and

184 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
185 \$7,500 or more.

186 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
187 action already before the court is determined under Subsection (1)(b) based on the amount
188 deposited.

189 (g) The fee for filing a petition is:

190 (i) \$225 for trial de novo of an adjudication of the justice court or of the small claims
191 department; and

192 (ii) \$65 for an appeal of a municipal administrative determination in accordance with
193 Section 10-3-703.7.

194 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
195 petition for writ of certiorari is \$225.

196 (i) The fee for filing a petition for expungement is \$135.

197 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
198 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
199 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
200 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
201 Act.

202 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be
203 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
204 Defense Account, as provided in Section 51-9-408.

205 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),
206 and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided
207 in Section 78B-6-209.

208 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
209 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
210 deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

211 (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and
212 (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court
213 Security Account, as provided in Section 78A-2-602.

214 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
215 United States is \$35.

216 (l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is
217 50% of the fee for filing an original action seeking the same relief.

218 (m) The fee for filing probate or child custody documents from another state is \$35.

219 (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
220 Utah State Tax Commission is \$30.

221 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
222 or a judgment, order, or decree of an administrative agency, commission, board, council, or
223 hearing officer of this state or of its political subdivisions other than the Utah State Tax
224 Commission, is \$50.

225 (o) The fee for filing a judgment by confession without action under Section
226 78B-5-205 is \$35.

227 (p) The fee for filing an award of arbitration for confirmation, modification, or
228 vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an
229 action before the court is \$35.

230 (q) The fee for filing a petition or counter-petition to modify a [~~decree of divorce~~]
231 domestic relations order other than a protective order or stalking injunction is \$100.

232 (r) The fee for filing any accounting required by law is:

233 (i) \$15 for an estate valued at \$50,000 or less;

234 (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;

235 (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;

236 (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and

237 (v) \$175 for an estate valued at more than \$168,000.

238 (s) The fee for filing a demand for a civil jury is \$250.

239 (t) The fee for filing a notice of deposition in this state concerning an action pending in
240 another state under Utah Rule of Civil Procedure 26 is \$35.

241 (u) The fee for filing documents that require judicial approval but are not part of an
242 action before the court is \$35.

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

244 (w) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in

245 addition to any fee for a complaint or petition.

246 (x) (i) The fee for a petition for authorization for a minor to marry required by Section
247 30-1-9 is \$5.

248 (ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6,
249 Part 8, Emancipation, is \$50.

250 (y) The fee for a certificate issued under Section 26-2-25 is \$8.

251 (z) The fee for a certified copy of a document is \$4 per document plus 50 cents per
252 page.

253 (aa) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
254 per page.

255 (bb) The Judicial Council shall by rule establish a schedule of fees for copies of
256 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
257 Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall
258 be credited to the court as a reimbursement of expenditures.

259 (cc) There is no fee for services or the filing of documents not listed in this section or
260 otherwise provided by law.

261 (dd) Except as provided in this section, all fees collected under this section are paid to
262 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
263 accepts the pleading for filing or performs the requested service.

264 (ee) The filing fees under this section may not be charged to the state, its agencies, or
265 political subdivisions filing or defending any action. In judgments awarded in favor of the
266 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
267 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
268 collected under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment,
269 order, fine, tax, lien, or other penalty and costs permitted by law.

270 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
271 shall transfer all revenues representing the difference between the fees in effect after May 2,
272 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
273 Facilities Construction and Management Capital Projects Fund.

274 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
275 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the

276 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
277 initiate the development of a courts complex in Salt Lake City.

278 (B) If the Legislature approves funding for construction of a courts complex in Salt
279 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
280 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
281 (2)(a)(ii) to construct a courts complex in Salt Lake City.

282 (C) After the courts complex is completed and all bills connected with its construction
283 have been paid, the Division of Facilities Construction and Management shall use any money
284 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
285 District Court building.

286 (iii) The Division of Facilities Construction and Management may enter into
287 agreements and make expenditures related to this project before the receipt of revenues
288 provided for under this Subsection (2)(a)(iii).

289 (iv) The Division of Facilities Construction and Management shall:

290 (A) make those expenditures from unexpended and unencumbered building funds
291 already appropriated to the Capital Projects Fund; and

292 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
293 under this Subsection (2).

294 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
295 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
296 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
297 account.

298 (c) The Division of Finance shall deposit all revenues received from the court
299 administrator into the restricted account created by this section.

300 (d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall
301 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
302 Vehicles, in a court of record to the Division of Facilities Construction and Management
303 Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be
304 calculated on the balance of the fine or bail forfeiture paid.

305 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
306 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in

307 a court of record to the Division of Finance for deposit in the restricted account created by this
308 section. The division of money pursuant to Section 78A-5-110 shall be calculated on the
309 balance of the fine or bail forfeiture paid.

310 (3) (a) There is created within the General Fund a restricted account known as the State
311 Courts Complex Account.

312 (b) The Legislature may appropriate money from the restricted account to the
313 administrator of the courts for the following purposes only:

- 314 (i) to repay costs associated with the construction of the court complex that were
315 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and
316 (ii) to cover operations and maintenance costs on the court complex.

317 Section 5. Section 78A-2-501 is amended to read:

318 **78A-2-501. Online court assistance program -- Purpose of program -- User's fee.**

319 (1) There is established an online court assistance program administered by the
320 Administrative Office of the Courts to provide the public with information about civil
321 procedures and to assist the public in preparing and filing civil pleadings and other papers in:

- 322 (a) uncontested divorces;
323 (b) enforcement of orders in the divorce decree;
324 (c) landlord and tenant actions; and
325 (d) other types of proceedings approved by the Online Court Assistance Program
326 Policy Board.

327 (2) The purpose of the online court assistance program shall be to:

- 328 (a) minimize the costs of civil litigation;
329 (b) improve access to the courts; and
330 (c) provide for informed use of the courts and the law by pro se litigants.

331 (3) (a) An additional \$20 shall be added to the filing fee established by [Section]
332 Sections 78A-2-301 and 78A-2-301.5 if a person files a complaint, petition, answer, or
333 response prepared through the program. There shall be no fee for using the program or for
334 papers filed subsequent to the initial pleading.

335 (b) There is created within the General Fund a restricted account known as the Online
336 Court Assistance Account. The [fee] fees collected under this Subsection (3) shall be
337 deposited in the restricted account and appropriated by the Legislature to the Administrative

338 Office of the Courts to develop, operate, and maintain the program and to support the use of
339 the program through education of the public.

340 Section 6. Section **78B-7-405** is amended to read:

341 **78B-7-405. Hearings on ex parte dating violence protective orders.**

342 (1) (a) Within 20 days after the day on which the court issues an ex parte protective
343 order, the district court shall set a date for a hearing on the petition.

344 (b) If, at the hearing described in Subsection (1)(a), the district court does not issue a
345 dating violence protective order, the ex parte dating protective order shall expire, unless it is
346 extended by the district court. Extensions beyond the 20-day period may not be granted unless:

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

348 (ii) the respondent has not been served; or

349 (iii) exigent circumstances exist.

350 (c) Under no circumstances may an ex parte order be extended beyond 180 days from
351 the day on which the court issues the initial ex parte protective order.

352 (d) If, at the hearing described in Subsection (1)(a), the district court issues a dating
353 violence protective order, the ex parte protective order shall remain in effect until service of
354 process of the dating violence protective order is completed.

355 (e) A dating violence protective order issued after notice and a hearing shall remain in
356 effect from 180 days after the day on which the ~~[petition]~~ order is issued.

357 (f) If the hearing on the petition is heard by a commissioner, either the petitioner or
358 respondent may file an objection within 10 calendar days after the day on which the
359 recommended order is entered, and the assigned judge shall hold a hearing on the objection
360 within 20 days after the day on which the objection is filed.

361 (2) Upon a hearing under this section, the district court may grant any of the relief
362 permitted under Section **78B-7-404**, except the district court shall not grant the relief described
363 in Subsection **78B-7-404(3)(b)** without providing the respondent notice and an opportunity to
364 be heard.

365 (3) If a district court denies a petition for an ex parte dating violence protective order or
366 a petition to modify a dating violence protective order ex parte, the district court shall, upon the
367 petitioner's request:

368 (a) set the matter for hearing; and

369 (b) notify and serve the respondent.

Legislative Review Note
as of 11-20-13 9:24 AM

Office of Legislative Research and General Counsel