

JUDICIARY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kraig Powell

LONG TITLE

General Description:

This bill makes amendments related to the judiciary.

Highlighted Provisions:

This bill:

- ▶ requires that a petitioner attend the divorce orientation course within 30 days before filing in order to obtain the course discount fee;

- ▶ provides that a magistrate may set bail when making a probable cause determination, and that a bail commissioner may set bail in misdemeanor cases;

- ▶ requires an officer to submit a request for a court order for a criminal investigation of records concerning an electronic communication system or service or remote computing service to a magistrate rather than a district court judge;

- ▶ corrects a reference to the Utah Rules of Civil Procedure regarding depositions;

- ▶ corrects a statutory reference regarding justice court appeals;

- ▶ increases the amount of the court security surcharge;

- ▶ requires the justice court nominating commission to submit three names to the appointing authority;

- ▶ allows a justice court to follow either the established disbursement process for the local jurisdiction, or the procedure as outlined by statute, for juror and witness reimbursement; and

- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **10-3-920**, as last amended by Laws of Utah 2003, Chapter 292

35 **17-32-1**, as last amended by Laws of Utah 1993, Chapter 227

36 **77-20-1**, as last amended by Laws of Utah 2013, Chapter 240

37 **77-22-2.5**, as last amended by Laws of Utah 2014, Chapter 47

38 **78A-2-301**, as last amended by Laws of Utah 2014, Chapters 189 and 263

39 **78A-2-601**, as last amended by Laws of Utah 2009, Chapter 200

40 **78A-7-118**, as last amended by Laws of Utah 2012, Chapters 205 and 380

41 **78A-7-202**, as last amended by Laws of Utah 2012, Chapter 205

42 **78B-1-122**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

45 Section 1. Section **10-3-920** is amended to read:

46 **10-3-920. Bail commissioner -- Powers and duties.**

47 (1) With the advice and consent of the city council and the board of commissioners in
48 other cities, the mayor of a city of the third, fourth, or fifth class may appoint from among the
49 officers and members of the police department of the city one or more discreet persons as a bail
50 commissioner.

51 (2) A bail commissioner shall have authority to fix and receive bail for a person
52 arrested within the corporate limits of the city in accordance with the uniform bail schedule
53 adopted by the Judicial Council or a reasonable bail for city ordinances not contained in the
54 schedule for:

55 (a) misdemeanors under the laws of the state; or

56 (b) violation of the city ordinances.

57 (3) A person who has been ordered by a bail commissioner to give bail may deposit

58 with the bail commissioner the amount:

59 (a) in money, by cash, certified or cashier's check, personal check with check guarantee
60 card, money order, or credit card, if the bail commissioner has chosen to establish any of those
61 options; or

62 (b) by a bond issued by a licensed bail bond surety [~~qualified under the rules of the~~
63 ~~Judicial Council~~].

64 (4) Any money or bond collected by a bail commissioner shall be delivered to the
65 appropriate court within three days of receipt of the money or bond.

66 (5) The court may review the amount of bail ordered by a bail commissioner and
67 modify the amount of bail required for good cause.

68 Section 2. Section **17-32-1** is amended to read:

69 **17-32-1. Powers and duties of bail commissioners.**

70 (1) The county executive, with the advice and consent of the county legislative body,
71 may appoint one or more responsible and discreet members of the sheriff's department of the
72 county as a bail commissioner.

73 (2) A bail commissioner [~~shall have authority to~~] may:

74 (a) receive bail for persons arrested in the county for a felony; and

75 (b) fix and receive bail for persons arrested in the county for [~~misdemeanors~~] a
76 misdemeanor under the laws of the state, or for a violation of any of the county ordinances in
77 accordance with the uniform bail schedule adopted by the Judicial Council or a reasonable bail
78 for county ordinances not contained in the schedule.

79 (3) Any person who has been ordered by a magistrate, judge, or bail commissioner to
80 give bail may deposit the amount with the bail commissioner:

81 (a) in money, by cash, certified or cashier's check, personal check with check guarantee
82 card, money order, or credit card, if the bail commissioner has chosen to establish any of those
83 options; or

84 (b) by a bond issued by a licensed bail bond surety [~~qualified under the rules of the~~
85 ~~Judicial Council~~].

86 (4) Any money or bond collected by a bail commissioner shall be delivered to the
87 appropriate court within three days of receipt of the money or bond.

88 (5) The court may review the amount of bail ordered by a bail commissioner and may
89 modify the amount of bail required for good cause.

90 Section 3. Section 77-20-1 is amended to read:

91 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

92 (1) A person charged with or arrested for a criminal offense shall be admitted to bail as
93 a matter of right, except if the person is charged with a:

94 (a) capital felony, when the court finds there is substantial evidence to support the
95 charge;

96 (b) felony committed while on probation or parole, or while free on bail awaiting trial
97 on a previous felony charge, when the court finds there is substantial evidence to support the
98 current felony charge;

99 (c) felony when there is substantial evidence to support the charge and the court finds
100 by clear and convincing evidence that the person would constitute a substantial danger to any
101 other person or to the community, or is likely to flee the jurisdiction of the court, if released on
102 bail; or

103 (d) felony when the court finds there is substantial evidence to support the charge and
104 it finds by clear and convincing evidence that the person violated a material condition of
105 release while previously on bail.

106 (2) Any person who may be admitted to bail may be released either on the person's own
107 recognizance or upon posting bail, on condition that the person appear in court for future court
108 proceedings in the case, and on any other conditions imposed in the discretion of the magistrate
109 or court that will reasonably:

110 (a) ensure the appearance of the accused;

111 (b) ensure the integrity of the court process;

112 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
113 appropriate; and

114 (d) ensure the safety of the public.

115 (3) (a) ~~[The]~~ Except as otherwise provided, the initial order denying or fixing the
116 amount of bail shall be issued by the magistrate or court issuing the warrant of arrest ~~[or by the~~
117 ~~magistrate or court presiding over the accused's first judicial appearance]~~.

118 (b) A magistrate may set bail upon determining that there was probable cause for a
119 warrantless arrest.

120 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
121 Sections [10-3-920](#) and [17-32-1](#).

122 ~~[(b)]~~ (d) A person arrested for a violation of a jail release agreement or jail release
123 order issued pursuant to Section [77-36-2.5](#):

124 (i) may not be released before the accused's first judicial appearance; and

125 (ii) may be denied bail by the court under Subsection [77-36-2.5](#)(8) or (12).

126 (4) The magistrate or court may rely upon information contained in:

127 (a) the indictment or information;

128 (b) any sworn probable cause statement;

129 (c) information provided by any pretrial services agency; or

130 (d) any other reliable record or source.

131 (5) (a) A motion to modify the initial order may be made by a party at any time upon
132 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and
133 to permit any victim to be notified and be present.

134 (b) Hearing on a motion to modify may be held in conjunction with a preliminary
135 hearing or any other pretrial hearing.

136 (c) The magistrate or court may rely on information as provided in Subsection (4) and
137 may base its ruling on evidence provided at the hearing so long as each party is provided an
138 opportunity to present additional evidence or information relevant to bail.

139 (6) Subsequent motions to modify bail orders may be made only upon a showing that
140 there has been a material change in circumstances.

141 (7) An appeal may be taken from an order of any court denying bail to the Supreme

142 Court, which shall review the determination under Subsection (1).

143 (8) For purposes of this section, any arrest or charge for a violation of Section
144 76-5-202, Aggravated murder, is a capital felony unless:

145 (a) the prosecutor files a notice of intent to not seek the death penalty; or

146 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
147 has not filed a notice to seek the death penalty.

148 Section 4. Section 77-22-2.5 is amended to read:

149 **77-22-2.5. Court orders for criminal investigations for records concerning an**
150 **electronic communications system or service or remote computing service -- Content --**
151 **Fee for providing information.**

152 (1) As used in this section:

153 (a) (i) "Electronic communication" means any transfer of signs, signals, writing,
154 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
155 radio, electromagnetic, photoelectronic, or photooptical system.

156 (ii) "Electronic communication" does not include:

157 (A) any wire or oral communication;

158 (B) any communication made through a tone-only paging device;

159 (C) any communication from a tracking device; or

160 (D) electronic funds transfer information stored by a financial institution in a
161 communications system used for the electronic storage and transfer of funds.

162 (b) "Electronic communications service" means any service which provides for users
163 the ability to send or receive wire or electronic communications.

164 (c) "Electronic communications system" means any wire, radio, electromagnetic,
165 photooptical, or photoelectronic facilities for the transmission of wire or electronic
166 communications, and any computer facilities or related electronic equipment for the electronic
167 storage of the communication.

168 (d) "Internet service provider" has the same definition as in Section 76-10-1230.

169 (e) "Prosecutor" has the same definition as in Section 77-22-2.

170 ~~[(f) "Sexual offense against a minor" means:]~~
171 ~~[(i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual~~
172 ~~exploitation of a minor;]~~
173 ~~[(ii) a sexual offense or attempted sexual offense committed against a minor in~~
174 ~~violation of Title 76, Chapter 5, Part 4, Sexual Offenses;]~~
175 ~~[(iii) dealing in or attempting to deal in material harmful to a minor in violation of~~
176 ~~Section 76-10-1206; or]~~
177 ~~[(iv) enticement of a minor or attempted enticement of a minor in violation of Section~~
178 ~~76-4-401.]~~

179 ~~[(g) "Remote computing service" means the provision to the public of computer~~
180 ~~storage or processing services by means of an electronic communications system.]~~

181 (f) "Remote computing service" means the provision to the public of computer storage
182 or processing services by means of an electronic communications system.

183 (g) "Sexual offense against a minor" means:

184 (i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual
185 exploitation of a minor;

186 (ii) a sexual offense or attempted sexual offense committed against a minor in violation
187 of Title 76, Chapter 5, Part 4, Sexual Offenses;

188 (iii) dealing in or attempting to deal in material harmful to a minor in violation of
189 Section 76-10-1206; or

190 (iv) enticement of a minor or attempted enticement of a minor in violation of Section
191 76-4-401.

192 (2) When a law enforcement agency is investigating a sexual offense against a minor,
193 an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
194 Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or
195 service or remote computing service has been used in the commission of a criminal offense, a
196 law enforcement agent shall:

197 (a) articulate specific facts showing reasonable grounds to believe that the records or

198 other information sought, as designated in [~~Subsection~~] Subsections (1)(c)(i) through (v), are
199 relevant and material to an ongoing investigation;

200 (b) present the request to a prosecutor for review and authorization to proceed; and

201 (c) submit the request to a [~~district court judge~~] magistrate for a court order, consistent
202 with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service
203 or remote computing service provider that owns or controls the Internet protocol address,
204 websites, email address, or service to a specific telephone number, requiring the production of
205 the following information, if available, upon providing in the court order the Internet protocol
206 address, email address, telephone number, or other identifier, and the dates and times the
207 address, telephone number, or other identifier was suspected of being used in the commission
208 of the offense:

209 (i) names of subscribers, service customers, and users;

210 (ii) addresses of subscribers, service customers, and users;

211 (iii) records of session times and durations;

212 (iv) length of service, including the start date and types of service utilized; and

213 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
214 including any temporarily assigned network address.

215 (3) A court order issued under this section shall state that the electronic
216 communications system or service or remote computing service provider shall produce any
217 records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation
218 of the suspected criminal activity or offense as described in the court order.

219 (4) (a) An electronic communications system or service or remote computing service
220 provider that provides information in response to a court order issued under this section may
221 charge a fee, not to exceed the actual cost, for providing the information.

222 (b) The law enforcement agency conducting the investigation shall pay the fee.

223 (5) The electronic communications system or service or remote computing service
224 provider served with or responding to the court order may not disclose the court order to the
225 account holder identified pursuant to the court order for a period of 90 days.

226 (6) If the electronic communications system or service or remote computing service
227 provider served with the court order does not own or control the Internet protocol address,
228 websites, or email address, or provide service for the telephone number that is the subject of
229 the court order, the provider shall notify the investigating law enforcement agency that it does
230 not have the information.

231 (7) There is no cause of action against any provider or wire or electronic
232 communication service, or its officers, employees, agents, or other specified persons, for
233 providing information, facilities, or assistance in accordance with the terms of the court order
234 issued under this section or statutory authorization.

235 (8) (a) A court order issued under this section is subject to the provisions of Title 77,
236 Chapter 23b, Access to Electronic Communications.

237 (b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b,
238 Access to Electronic Communications, apply to providers and subscribers subject to a court
239 order issued under this section.

240 (9) Every prosecutorial agency shall annually on or before February 15 report to the
241 Commission on Criminal and Juvenile Justice:

242 (a) the number of requests for court orders authorized by the prosecutorial agency;

243 (b) the number of orders issued by the court and the criminal offense, pursuant to
244 Subsection (2), each order was used to investigate; and

245 (c) if the court order led to criminal charges being filed, the type and number of
246 offenses charged.

247 Section 5. Section **78A-2-301** is amended to read:

248 **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

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

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

252 (i) \$75 if the claim for damages or amount in interpleader exclusive of court costs,
253 interest, and attorney fees is \$2,000 or less;

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

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

257 (iv) \$310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
258 4, Separate Maintenance;

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

260 (vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender
261 Registry under Section 77-41-112.

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

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

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

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

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

272 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
273 \$2,000 or less;

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

276 (iii) \$155 if the original petition is filed under Subsection (1)(a), the claim for relief is
277 \$10,000 or more, or the party seeks relief other than monetary damages; and

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

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

281 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is

282 \$2,000 or less;

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

285 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
286 \$7,500 or more.

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

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

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

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

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

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

298 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
299 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
300 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
301 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
302 Act.

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

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

309 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),

310 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
311 deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

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

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

317 (l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is
318 50% of the fee for filing an original action seeking the same relief.

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

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

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

326 (o) The fee for filing a judgment by confession without action under Section
327 78B-5-205 is \$35.

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

331 (q) The fee for filing a petition or counter-petition to modify a domestic relations order
332 other than a protective order or stalking injunction is \$100.

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

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

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

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

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

- 338 (v) \$175 for an estate valued at more than \$168,000.
- 339 (s) The fee for filing a demand for a civil jury is \$250.
- 340 (t) The fee for filing a notice of deposition in this state concerning an action pending in
341 another state under Utah [~~Rule~~] Rules of Civil Procedure [~~26~~], Rule 30 is \$35.
- 342 (u) The fee for filing documents that require judicial approval but are not part of an
343 action before the court is \$35.
- 344 (v) The fee for a petition to open a sealed record is \$35.
- 345 (w) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
346 addition to any fee for a complaint or petition.
- 347 (x) (i) The fee for a petition for authorization for a minor to marry required by Section
348 [30-1-9](#) is \$5.
- 349 (ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6,
350 Part 8, Emancipation, is \$50.
- 351 (y) The fee for a certificate issued under Section [26-2-25](#) is \$8.
- 352 (z) The fee for a certified copy of a document is \$4 per document plus 50 cents per
353 page.
- 354 (aa) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
355 per page.
- 356 (bb) The Judicial Council shall by rule establish a schedule of fees for copies of
357 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
358 Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall
359 be credited to the court as a reimbursement of expenditures.
- 360 (cc) There is no fee for services or the filing of documents not listed in this section or
361 otherwise provided by law.
- 362 (dd) Except as provided in this section, all fees collected under this section are paid to
363 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
364 accepts the pleading for filing or performs the requested service.
- 365 (ee) The filing fees under this section may not be charged to the state, its agencies, or

366 political subdivisions filing or defending any action. In judgments awarded in favor of the
367 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
368 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
369 collected under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment,
370 order, fine, tax, lien, or other penalty and costs permitted by law.

371 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
372 shall transfer all revenues representing the difference between the fees in effect after May 2,
373 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
374 Facilities Construction and Management Capital Projects Fund.

375 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
376 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the
377 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
378 initiate the development of a courts complex in Salt Lake City.

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

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

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

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

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

393 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for

394 under this Subsection (2).

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

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

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

406 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
407 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in
408 a court of record to the Division of Finance for deposit in the restricted account created by this
409 section. The division of money pursuant to Section 78A-5-110 shall be calculated on the
410 balance of the fine or bail forfeiture paid.

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

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

415 (i) to repay costs associated with the construction of the court complex that were
416 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

417 (ii) to cover operations and maintenance costs on the court complex.

418 Section 6. Section 78A-2-601 is amended to read:

419 **78A-2-601. Security surcharge -- Application and exemptions -- Deposit in**
420 **restricted account.**

421 (1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge

422 of ~~[\$33]~~ \$43 shall be assessed in all courts of record on all criminal convictions and juvenile
423 delinquency judgments.

424 (2) The security surcharge may not be imposed upon:

425 (a) nonmoving traffic violations;

426 (b) community service; and

427 (c) penalties assessed by the juvenile court as part of the nonjudicial adjustment of a
428 case under Section [78A-6-602](#).

429 (3) The security surcharge shall be collected after the surcharge under Section
430 [51-9-401](#), but before any fine, and deposited with the state treasurer. A fine that would
431 otherwise have been charged may not be reduced due to the imposition of the security
432 surcharge.

433 (4) The state treasurer shall deposit the collected security surcharge in the restricted
434 account, Court Security Account, as provided in Section [78A-2-602](#).

435 Section 7. Section **78A-7-118** is amended to read:

436 **78A-7-118. Appeals from justice court -- Trial or hearing de novo in district**
437 **court.**

438 (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only
439 if the defendant files a notice of appeal within 30 days of:

440 (a) sentencing, except as provided in Subsection ~~[(3)]~~ (4)(b); or

441 (b) a plea of guilty or no contest in the justice court that is held in abeyance.

442 (2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice
443 court shall be stayed as provided for in Section [77-20-10](#) and the Rules of Criminal Procedure.

444 (3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with
445 the prosecutor, and the defendant did not reserve the right to appeal as part of the plea
446 negotiation, the negotiation is voided by the appeal.

447 (4) A defendant convicted and sentenced in justice court is entitled to a hearing de
448 novo in the district court on the following matters, if the defendant files a notice of appeal
449 within 30 days of:

- 450 (a) an order revoking probation;
- 451 (b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the
- 452 terms of a plea in abeyance agreement;
- 453 (c) a sentence entered pursuant to Subsection (4)(b); or
- 454 (d) an order denying a motion to withdraw a plea.
- 455 (5) The prosecutor is entitled to a hearing de novo in the district court on:
- 456 (a) a final judgment of dismissal;
- 457 (b) an order arresting judgment;
- 458 (c) an order terminating the prosecution because of a finding of double jeopardy or
- 459 denial of a speedy trial;
- 460 (d) a judgment holding invalid any part of a statute or ordinance;
- 461 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
- 462 that evidence prevents continued prosecution of an infraction or class C misdemeanor;
- 463 (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
- 464 that evidence impairs continued prosecution of a class B misdemeanor; or
- 465 (g) an order granting a motion to withdraw a plea of guilty or no contest.
- 466 (6) A notice of appeal for a hearing de novo in the district court on a pretrial order
- 467 excluding evidence under Subsection (5)(e) or (f) shall be filed within 30 days of the order
- 468 excluding the evidence.
- 469 (7) Upon entering a decision in a hearing de novo, the district court shall remand the
- 470 case to the justice court unless:
- 471 (a) the decision results in immediate dismissal of the case;
- 472 (b) with agreement of the parties, the district court consents to retain jurisdiction; or
- 473 (c) the defendant enters a plea of guilty or no contest in the district court.
- 474 (8) The district court shall retain jurisdiction over the case on trial de novo.
- 475 (9) The decision of the district court is final and may not be appealed unless the district
- 476 court rules on the constitutionality of a statute or ordinance.
- 477 Section 8. Section **78A-7-202** is amended to read:

478 **78A-7-202. Justice court judges to be appointed -- Procedure.**

479 (1) As used in this section:

480 (a) "Local government executive" means:

481 (i) for a county:

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

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

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

488 (ii) for a city or town:

489 (A) the mayor of the city or town; or

490 (B) the city manager, in the council-manager form of government described in
491 Subsection [10-3b-103\(6\)](#).

492 (b) "Local legislative body" means:

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

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

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

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

500 (i) one member appointed by:

501 (A) the county commission if the county has a county commission form of
502 government; or

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

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

505 (A) if the county has only one municipality, appointment shall be made by the

506 governing authority of that municipality; or

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

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

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

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

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

517 (d) The nominating commission shall submit at least [~~two~~] three names to the
518 appointing authority of the jurisdiction expected to be served by the judge. The local
519 government executive shall appoint a judge from the list submitted and the appointment
520 ratified by the local legislative body.

521 (e) The state court administrator shall provide staff to the commission. The Judicial
522 Council shall establish rules and procedures for the conduct of the commission.

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

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

527 (5) Once selected, every prospective justice court judge shall attend an orientation
528 seminar conducted under the direction of the Judicial Council. Upon completion of the
529 orientation program, the Judicial Council shall certify the justice court judge as qualified to
530 hold office.

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

534 Section 9. Section **78B-1-122** is amended to read:

535 **78B-1-122. Jurors and witnesses -- Justice court judge -- Certificate of attendance**
536 **-- Records and reporting.**

537 Every justice court shall follow the established disbursement process for juror and
538 witness fees within the town, city, or county, or use the following procedure.

539 (1) ~~[Every]~~ A justice court judge shall ~~[give]~~ provide to each person who has served
540 ~~[before him]~~ as a juror or as a witness in a criminal ~~[cause]~~ case when summoned for the
541 prosecution by the county or city attorney, or for the defense by order of the court, a numbered
542 certificate~~[- in which must be stated]~~ that contains:

- 543 (a) the name of the juror or witness;
- 544 (b) the title of the proceeding;
- 545 (c) the number of days in attendance;
- 546 (d) the number of miles traveled if the witness has traveled more than 50 miles in
547 going only; and
- 548 (e) the amount due.

549 (2) The certificate shall be presented to the county or city attorney. When certified as
550 being correct, it shall be presented to the county or city auditor and when allowed by the county
551 executive or town council, the auditor shall draw a warrant for it on the treasurer.

552 (3) Every justice court judge shall keep a record of all certificates issued. The record
553 shall show all of the facts stated in each certificate. On the first Monday of each month a
554 detailed statement of all certificates issued shall be filed with the treasurer.