

**JUDICIARY AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: V. Lowry Snow

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**LONG TITLE**

**General Description:**

This bill makes amendments related to the judiciary.

**Highlighted Provisions:**

This bill:

- ▶ provides that, in a legal action filed against a county, a district court judge of the defendant county may transfer venue to any county contiguous to the defendant county;
- ▶ provides that a motion to transfer venue may be filed ex parte;
- ▶ clarifies provisions regarding appointment of counsel in juvenile court delinquency cases;
- ▶ clarifies justice court jurisdiction;
- ▶ removes a defendant's entitlement to a hearing de novo in the district court on a finding of a plea in abeyance violation;
- ▶ provides that a defendant is entitled to a hearing de novo in the district court on a sentence following a finding of a plea in abeyance violation;
- ▶ requires that a notice of appeal from a criminal case in justice court be filed within 28 days;
- ▶ provides that a defendant is entitled to a hearing de novo in the district court on:
  - an order denying a motion to withdraw a plea if the plea is held in abeyance and the motion to withdraw the plea is filed within 28 days of entry of the plea;
  - a post-sentence order fixing total or court ordered restitution; or
  - an order denying expungement;

- 30           ▶ provides that a prosecutor is entitled to a hearing de novo in the district court if:
- 31           • an appeal is filed within 28 days of the court entering a certain judgment or
- 32 order; or
- 33           • an appeal is filed within 28 days of the court entering an order for total
- 34 restitution at less than the crime victim requested, or an order granting an
- 35 expungement that was opposed by the prosecutor or victim;
- 36           ▶ removes the endorsement requirement for the number of days within which a
- 37 defendant is required to appear and defend a forcible detainer action included in a
- 38 summons; and
- 39           ▶ makes technical changes.

40 **Money Appropriated in this Bill:**

41           None

42 **Other Special Clauses:**

43           None

44 **Utah Code Sections Affected:**

45 AMENDS:

- 46           **63G-7-502**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 47           **77-7-25**, as renumbered and amended by Laws of Utah 2005, Chapter 2
- 48           **78A-6-1111**, as last amended by Laws of Utah 2015, Chapter 338
- 49           **78A-7-106**, as last amended by Laws of Utah 2012, Chapter 205
- 50           **78A-7-118**, as last amended by Laws of Utah 2015, Chapters 99 and 258
- 51           **78B-2-213**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 52           **78B-6-807**, as last amended by Laws of Utah 2008, Chapter 121 and renumbered and
- 53 amended by Laws of Utah 2008, Chapter 3

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

56           Section 1. Section **63G-7-502** is amended to read:

57           **63G-7-502. Venue of actions.**

58 (1) Actions against the state may be brought in the county in which the claim arose or  
59 in Salt Lake County.

60 (2) (a) Actions against a county may be brought in the county in which the claim arose,  
61 or in the defendant county~~[, or, upon leave granted by a]~~.

62 (b) (i) A district court judge of the defendant county~~[, in]~~ may transfer venue to any  
63 county contiguous to the defendant county.

64 ~~[(b) Leave]~~ (ii) A motion to transfer may be [granted] filed ex parte.

65 (3) Actions against all other political subdivisions, including cities and towns, shall be  
66 brought in the county in which the political subdivision is located or in the county in which the  
67 claim arose.

68 Section 2. Section **77-7-25** is amended to read:

69 **77-7-25. Keeping of records -- Making and forwarding of abstract upon**  
70 **conviction or forfeiture of bail -- Form and contents -- Official misconduct.**

71 (1) A magistrate or judge of a court shall keep a full record of each case in which a  
72 person is charged with:

73 (a) a violation of this chapter; or

74 (b) any other law regulating the operation of a motor vehicle on the highway.

75 (2) (a) Within ~~[+0]~~ five days after the conviction or forfeiture of bail of a person on a  
76 charge of violating a provision of this chapter or other law regulating the operation of a motor  
77 vehicle on the highway, the magistrate of the court or clerk of the court in which the conviction  
78 was made or bail was forfeited shall prepare and immediately forward to the department an  
79 abstract of the record of the court covering the case in which the person was convicted or  
80 forfeited bail.

81 (b) The abstract shall be certified by the person required to prepare the abstract to be  
82 true and correct.

83 (c) A report under this Subsection (2) is not required for a conviction involving the  
84 illegal parking or standing of a vehicle.

85 (3) The abstract must be made in a manner specified by the Driver License Division

86 and shall include the:

- 87 (a) name and address of the party charged;
- 88 (b) number, if any, of the person's driver license;
- 89 (c) license plate number of the vehicle involved;
- 90 (d) nature of the offense;
- 91 (e) date of hearing;
- 92 (f) plea;
- 93 (g) judgment, or whether bail was forfeited; and
- 94 (h) amount of the fine or forfeiture.

95 (4) A court shall provide a copy of the report to the Driver License Division on the  
96 conviction of a person of manslaughter or other felony in which a vehicle was used.

97 (5) The failure, refusal, or neglect of a judicial officer to comply with the requirements  
98 of this section constitutes misconduct in office and is grounds for removal.

99 (6) The Driver License Division shall classify and disclose all abstracts received in  
100 accordance with Section [53-3-109](#).

101 Section 3. Section **78A-6-1111** is amended to read:

102 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

103 (1) (a) In any action in juvenile court initiated by the state, a political subdivision of the  
104 state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be  
105 informed that they may be represented by counsel at every stage of the proceedings.

106 (b) In any action initiated by a private party, the parents or legal guardian shall have the  
107 right to employ counsel of their own choice at their own expense.

108 (c) If, in any action initiated by the state or a political subdivision of the state under  
109 Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights  
110 Act; or Part 10, Adult Offenses, of this chapter or under Section [78A-6-1101](#), a parent or legal  
111 guardian requests an attorney and is found by the court to be indigent, counsel shall be  
112 appointed by the court to represent the parent or legal guardian in all proceedings directly  
113 related to the petition or motion filed by the state, or a political subdivision of the state, subject

114 to the provisions of this section.

115 (d) In any action initiated by the state, a political subdivision of the state, or a private  
116 party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of  
117 Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in  
118 accordance with Sections 78A-6-317 and 78A-6-902. The child shall also be represented by an  
119 attorney guardian ad litem in other actions initiated under this chapter when appointed by the  
120 court under Section 78A-6-902 or as otherwise provided by law.

121 (e) In any action initiated by the state or a political subdivision of the state under Part  
122 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or  
123 against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be  
124 informed that the minor has the right to be represented by counsel at every stage of the  
125 proceedings.

126 (i) In cases where [~~a minor is facing a felony level offense~~] a petition or information  
127 alleging a felony-level offense is filed, the court shall appoint counsel, who shall appear until  
128 counsel is retained on the minor's behalf. The minor may not waive counsel unless the minor  
129 has had a meaningful opportunity to consult with a defense attorney. The court shall make  
130 findings on the record, taking into consideration the minor's unique circumstances and  
131 attributes, that the waiver is knowing and voluntary and the minor understands the  
132 consequences of waiving the right to counsel.

133 (ii) In all other [~~situations~~] cases in which a petition is filed the right to counsel may  
134 not be waived by a minor unless there has been a finding on the record, taking into  
135 consideration the minor's unique circumstances and attributes, that the waiver is knowing and  
136 voluntary, and the minor understands the consequences of waiving the right to counsel.

137 (iii) If the minor is found to be indigent, counsel shall be appointed by the court to  
138 represent the minor in all proceedings directly related to the petition or motion filed by the state  
139 or a political subdivision of the state, subject to the provisions of this section.

140 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance  
141 with the process and procedure defined in Section 77-32-202. The court shall take into account

142 the income and financial ability of the parent or legal guardian to retain counsel in determining  
143 the indigency of the minor.

144 (g) The cost of appointed counsel for a party found to be indigent, including the cost of  
145 counsel and expense of the first appeal, shall be paid by the county in which the trial court  
146 proceedings are held. Counties may levy and collect taxes for these purposes.

147 (2) Counsel appointed by the court may not provide representation as court-appointed  
148 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify  
149 court orders in a proceeding initiated by, a private party.

150 (3) If the county responsible to provide legal counsel for an indigent under Subsection  
151 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting  
152 attorney as legal counsel to represent that indigent.

153 (4) The court may order a parent or legal guardian for whom counsel is appointed, and  
154 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the  
155 county for the cost of appointed counsel.

156 (5) The state, or an agency of the state, may not be ordered to reimburse the county for  
157 expenses incurred under Subsection (1)(g).

158 Section 4. Section **78A-7-106** is amended to read:

159 **78A-7-106. Jurisdiction.**

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

163 (2) Except those offenses over which the juvenile court has exclusive jurisdiction,  
164 justice courts have jurisdiction over the following [~~class B and C misdemeanors, violation of~~  
165 ~~ordinances, and infractions~~] offenses committed within their territorial jurisdiction by a person  
166 who is 16 or 17 years of age [or older]:

167 (a) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver  
168 Licensing Act; and

169 (b) class B and C misdemeanor and infraction violations of:

- 170            ~~[(a)]~~ (i) Title 23, Wildlife Resources Code of Utah;
- 171            ~~[(b)]~~ (ii) Title 41, Chapter 1a, Motor Vehicle Act;
- 172            ~~[(c)]~~ (iii) Title 41, Chapter 6a, Traffic Code;
- 173            ~~[(d)]~~ (iv) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and
- 174 Operators Act;
- 175            ~~[(e)]~~ (v) Title 41, Chapter 22, Off-Highway Vehicles;
- 176            ~~[(f)]~~ (vi) Title 73, Chapter 18, State Boating Act;
- 177            ~~[(g)]~~ (vii) Title 73, Chapter 18a, Boating - Litter and Pollution Control;
- 178            ~~[(h)]~~ (viii) Title 73, Chapter 18b, Water Safety; and
- 179            ~~[(i)]~~ (ix) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and
- 180 Operators Act.

181            ~~[(3)] Justice Courts have jurisdiction over class C misdemeanor violations of Title 53,~~  
 182 ~~Chapter 3, Part 2, Driver Licensing Act.]~~

183            ~~[(4)]~~ (3) As used in this section, "the court's jurisdiction" means the territorial  
 184 jurisdiction of a justice court.

185            ~~[(5)]~~ (4) An offense is committed within the territorial jurisdiction of a justice court if:  
 186            (a) conduct constituting an element of the offense or a result constituting an element of  
 187 the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is  
 188 itself unlawful;

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

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

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

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

197            (f) the investigation of the offense does not readily indicate in which court's

198 jurisdiction the offense occurred, and:

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

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

203 (B) as used in Subsection (5)(f)(ii)(A), "body of water" includes any stream, river, lake,  
204 or reservoir, whether natural or man-made;

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

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

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

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

211 ~~[(6)]~~ (5) A justice court judge may transfer a criminal matter in which the defendant is  
212 a child to the juvenile court for further proceedings if the justice court judge determines and the  
213 juvenile court concurs that the best interests of the minor would be served by the continuing  
214 jurisdiction of the juvenile court.

215 ~~[(7)]~~ (6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter  
216 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial  
217 jurisdiction of the justice court.

218 Section 5. Section **78A-7-118** is amended to read:

219 **78A-7-118. Appeals from justice court -- Trial or hearing de novo in district**  
220 **court.**

221 (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only  
222 if the defendant files a notice of appeal within ~~[30]~~ 28 days of:

223 (a) sentencing, except as provided in Subsection (4)(b); or

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

225 (2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice



226 court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.

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

230 (4) A defendant convicted and sentenced in justice court is entitled to a hearing de  
231 novo in the district court on the following matters, if the defendant files a notice of appeal  
232 within ~~[30]~~ 28 days of:

233 (a) an order revoking probation;

234 (b) ~~[an order entering a judgment of guilt pursuant to the person's failure]~~ imposition of  
235 a sentence, following a determination that a defendant failed to fulfill the terms of a plea in  
236 abeyance agreement;

237 ~~[(c) a sentence entered pursuant to Subsection (4)(b); or]~~

238 ~~[(d)]~~ (c) an order denying a motion to withdraw a plea[-], if the plea is being held in  
239 abeyance and the motion to withdraw the plea is filed within 28 days of the entry of the plea;

240 (d) a postsentence order fixing total or court ordered restitution; or

241 (e) an order denying expungement.

242 (5) The prosecutor is entitled to a hearing de novo in the district court ~~[or]~~ if an appeal  
243 is filed within 28 days of the court entering:

244 (a) a final judgment of dismissal;

245 (b) an order arresting judgment;

246 (c) an order terminating the prosecution because of a finding of double jeopardy or  
247 denial of a speedy trial;

248 (d) a judgment holding invalid any part of a statute or ordinance;

249 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of  
250 that evidence prevents continued prosecution of an infraction or class C misdemeanor;

251 (f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of  
252 that evidence impairs continued prosecution of a class B misdemeanor; ~~[or]~~

253 (g) an order granting a motion to withdraw a plea of guilty or no contest[-];

254 ~~[(6) A notice of appeal for a hearing de novo in the district court on a pretrial order~~  
255 ~~excluding evidence under Subsection (5)(e) or (f) shall be filed within 30 days of the order~~  
256 ~~excluding the evidence.]~~

257 (h) an order fixing total restitution at an amount less than requested by a crime victim;

258 or

259 (i) an order granting an expungement, if the expungement was opposed by the  
260 prosecution or a victim before the order was entered.

261 ~~[(7)]~~ (6) Upon entering a decision in a hearing de novo, the district court shall remand  
262 the case to the justice court unless:

263 (a) the decision results in immediate dismissal of the case;

264 (b) with agreement of the parties, the district court consents to retain jurisdiction; or

265 (c) the defendant enters a plea of guilty or no contest in the district court.

266 ~~[(8)]~~ (7) The district court shall retain jurisdiction over the case on trial de novo.

267 ~~[(9)]~~ (8) The decision of the district court is final and may not be appealed unless the  
268 district court rules on the constitutionality of a statute or ordinance.

269 Section 6. Section **78B-2-213** is amended to read:

270 **78B-2-213. What constitutes adverse possession not under written instrument.**

271 Land is considered to be possessed and occupied adversely by a person claiming title  
272 not founded upon a written instrument, judgment, or decree in the following cases only, where:

273 (1) it has been protected by a substantial enclosure;

274 (2) it has been usually cultivated or improved; ~~and~~ or

275 (3) labor or money amounting to the sum of \$5 per acre has been expended upon dams,  
276 canals, embankments, aqueducts, or otherwise for the purpose of irrigating the land.

277 Section 7. Section **78B-6-807** is amended to read:

278 **78B-6-807. Allegations permitted in complaint -- Time for appearance -- Service**  
279 **of summons.**

280 (1) The plaintiff, in his complaint:

281 (a) shall set forth the facts on which he seeks to recover;

282 (b) may set forth any circumstances of fraud, force, or violence which may have  
283 accompanied the alleged forcible entry, or forcible or unlawful detainer; and

284 (c) claim damages or compensation for the occupation of the premises, or both.

285 (2) If the unlawful detainer charged is after default in the payment of rent, the  
286 complaint shall state the amount of rent due.

287 (3) [~~A judge, court clerk, or plaintiff's counsel shall endorse on the summons~~] The  
288 summons shall include the number of days within which the defendant is required to appear  
289 and defend the action, which shall be three business days from the date of service, unless the  
290 defendant objects to the number of days, and the court determines that the facts of the case  
291 should allow more time.

292 (4) The court may authorize service by publication or mail for cause shown.

293 (5) Service by publication is complete one week after publication.

294 (6) Service by mail is complete three days after mailing.

295 (7) The summons shall be changed in form to conform to the time of service as  
296 ordered, and shall be served as in other cases.