

1 **JUDICIAL PERFORMANCE EVALUATION COMMISSION**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: V. Lowry Snow**

6 Senate Sponsor: Todd Weiler

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to the Judicial Performance Evaluation
11 Commission.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies provisions related to when the commission shall allow a judge to appear
15 before the commission;
- 16 ▶ provides for reconsideration if the Utah Supreme Court issues a public sanction of a
17 judge before the voter information pamphlet is published;
- 18 ▶ addresses confidentiality and anonymity of survey responses;
- 19 ▶ modifies minimum performance standards;
- 20 ▶ addresses intercept surveys for justice court judges administered by the commission;
- 21 and
- 22 ▶ makes technical amendments.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 78A-12-203, as last amended by Laws of Utah 2013, Chapter 209

30 78A-12-204, as last amended by Laws of Utah 2011, Chapter 80

31 78A-12-205, as last amended by Laws of Utah 2011, Chapter 80

32 78A-12-207, as enacted by Laws of Utah 2014, Chapter 152

33

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

35 Section 1. Section 78A-12-203 is amended to read:

36 **78A-12-203. Judicial performance evaluations.**

37 (1) Beginning with the 2012 judicial retention elections, the commission shall prepare
38 a performance evaluation for:

39 (a) each judge in the third and fifth year of the judge's term if the judge is not a justice
40 of the Supreme Court; and

41 (b) each justice of the Utah Supreme Court in the third, seventh, and ninth year of the
42 justice's term.

43 (2) Except as provided in Subsection (3), the performance evaluation for a judge under
44 Subsection (1) shall consider only:

45 (a) the results of the judge's most recent judicial performance survey that is conducted
46 by a third party in accordance with Section 78A-12-204;

47 (b) information concerning the judge's compliance with minimum performance
48 standards established in accordance with Section 78A-12-205;

49 (c) courtroom observation;

50 (d) the judge's judicial disciplinary record, if any;

51 (e) public comment solicited by the commission;

52 (f) information from an earlier judicial performance evaluation concerning the judge;

53 and

54 (g) any other factor that the commission:

55 (i) considers relevant to evaluating the judge's performance for the purpose of a
56 retention election; and

57 (ii) establishes by rule.

58 (3) The commission shall make rules concerning the conduct of courtroom observation

59 under Subsection (2), which shall include the following:

60 (a) an indication of who may perform the courtroom observation;

61 (b) a determination of whether the courtroom observation shall be made in person or
62 may be made by electronic means; and

63 (c) a list of principles and standards used to evaluate the behavior observed.

64 (4) (a) As part of the evaluation conducted under this section, the commission shall
65 determine whether to recommend that the voters retain the judge.

66 (b) (i) If a judge meets the minimum performance standards established in accordance
67 with Section 78A-12-205, there is a rebuttable presumption that the commission will
68 recommend the voters retain the judge.

69 (ii) If a judge fails to meet the minimum performance standards established in
70 accordance with Section 78A-12-205, there is a rebuttable presumption that the commission
71 will recommend the voters not retain the judge.

72 (c) The commission may elect to make no recommendation on whether the voters
73 should retain a judge if the commission determines that the information concerning the judge is
74 insufficient to make a recommendation.

75 (d) (i) If the commission deviates from a presumption for or against recommending the
76 voters retain a judge or elects to make no recommendation on whether the voters should retain
77 a judge, the commission shall provide a detailed explanation of the reason for that deviation or
78 election in the commission's report under Section 78A-12-206.

79 (ii) If the commission makes no recommendation because of a tie vote, the commission
80 shall note that fact in the commission's report.

81 (5) (a) The commission shall allow a judge who is the subject of a judicial performance
82 retention evaluation and who has not passed one or more of the minimum performance
83 standards [~~on the midterm evaluation or~~] on the retention evaluation to appear and speak at any
84 commission meeting[~~, except a closed meeting,~~] during which the judge's judicial performance
85 evaluation is considered.

86 (b) The commission may invite any judge to appear before the commission to discuss
87 concerns about the judge's judicial performance.

88 (c) The commission may meet in a closed meeting to discuss a judge's judicial
89 performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

90 (d) Any record of an individual commissioner's vote on whether [~~or not~~] to recommend
91 that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government
92 Records Access and Management Act.

93 (e) The commission may only disclose the final commission vote on whether or not to
94 recommend that the voters retain a judge.

95 (6) (a) If the Utah Supreme Court issues a public sanction of a judge after the
96 commission makes a decision on whether to recommend the judge for retention, but before the
97 publication of the voter information pamphlet in accordance with Section [20A-7-702](#), the
98 commission may elect to reconsider the commission's recommendation.

99 (b) The commission shall invite the judge described in Subsection (6)(a) to appear
100 before the commission during a closed meeting for the purpose of reconsidering the
101 commission's recommendation.

102 (c) The judge described in Subsection (6)(a) may provide a written statement, not to
103 exceed 100 words, that shall be included in the judge's evaluation report.

104 (d) The commission shall include in the judge's evaluation report:

105 (i) the date of the reconsideration;

106 (ii) any change in the decision of whether to recommend that the voters retain the
107 judge; and

108 (iii) a brief statement explaining the reconsideration.

109 (e) The commission shall publish changes to the evaluation report in the voter
110 information pamphlet, on the commission's website, and through any other means the
111 commission considers appropriate and within budgetary constraints.

112 [~~(6)~~] (7) (a) The commission shall compile a midterm report of [~~its~~] the commission's
113 judicial performance evaluation of a judge.

114 (b) The midterm report of a judicial performance evaluation shall include information
115 that the commission considers appropriate for purposes of judicial self-improvement.

116 (c) The report shall be provided to the evaluated judge and the presiding judge of the
117 district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the
118 midterm report shall be provided to the chair of the board of judges for the court level on which
119 the evaluated judge serves.

120 [~~(7)~~] (8) The commission may make rules in accordance with Title 63G, Chapter 3,

121 Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by
122 this section.

123 Section 2. Section **78A-12-204** is amended to read:

124 **78A-12-204. Judicial performance survey.**

125 (1) ~~[The]~~ A third party under contract to the commission shall conduct, on an ongoing
126 basis during the judge's term in office, the judicial performance survey required by Section
127 78A-12-203 concerning a judge who is subject to a retention election ~~[shall be conducted on an~~
128 ~~ongoing basis during the judge's term in office by a third party under contract to the~~
129 ~~commission].~~

130 (2) The judicial performance survey shall include as respondents a sample of each of
131 the following groups as applicable:

132 (a) attorneys who have appeared before the judge as counsel;

133 (b) jurors who have served in a case before the judge; and

134 (c) court staff who have worked with the judge.

135 (3) The commission may include an additional classification of respondents if the
136 commission:

137 (a) considers a survey of that classification of respondents helpful to voters in
138 determining whether to vote to retain a judge; and

139 (b) establishes the additional classification of respondents by rule.

140 (4) All survey responses are ~~[anonymous]~~ confidential, including comments included
141 with a survey response.

142 (5) If the commission provides ~~[any]~~ information to a judge or the Judicial Council, the
143 commission shall provide the information ~~[shall be provided]~~ in such a way as to protect the
144 ~~[confidentiality]~~ anonymity of a survey respondent.

145 (6) A survey shall be provided to a potential survey respondent within 30 days of the
146 day on which the case in which the person appears in the judge's court is closed, exclusive of
147 any appeal, except for court staff and attorneys, who may be surveyed at any time during the
148 survey period.

149 (7) Survey categories shall include questions concerning a judge's:

150 (a) legal ability, including the following:

151 (i) demonstration of understanding of the substantive law and any relevant rules of

- 152 procedure and evidence;
- 153 (ii) attentiveness to factual and legal issues before the court;
- 154 (iii) adherence to precedent and ability to clearly explain departures from precedent;
- 155 (iv) grasp of the practical impact on the parties of the judge's rulings, including the
- 156 effect of delay and increased litigation expense;
- 157 (v) ability to write clear judicial opinions; and
- 158 (vi) ability to clearly explain the legal basis for judicial opinions;
- 159 (b) judicial temperament and integrity, including the following:
- 160 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's
- 161 court;
- 162 (ii) maintenance of decorum in the courtroom;
- 163 (iii) demonstration of judicial demeanor and personal attributes that promote public
- 164 trust and confidence in the judicial system;
- 165 (iv) preparedness for oral argument;
- 166 (v) avoidance of impropriety or the appearance of impropriety;
- 167 (vi) display of fairness and impartiality toward all parties; and
- 168 (vii) ability to clearly communicate, including the ability to explain the basis for
- 169 written rulings, court procedures, and decisions; and
- 170 (c) administrative performance, including the following:
- 171 (i) management of workload;
- 172 (ii) sharing proportionally the workload within the court or district; and
- 173 (iii) issuance of opinions and orders without unnecessary delay.
- 174 (8) If the commission determines that a certain survey question or category of
- 175 questions is not appropriate for a respondent group, the commission may omit that question or
- 176 category of questions from the survey provided to that respondent group.
- 177 (9) (a) The survey shall allow respondents to indicate responses in a manner
- 178 determined by the commission, which shall be:
- 179 (i) on a numerical scale from one to five, with one representing inadequate
- 180 performance and five representing outstanding performance; or
- 181 (ii) in the affirmative or negative, with an option to indicate the respondent's inability
- 182 to respond in the affirmative or negative.

183 (b) To supplement the responses to questions on either a numerical scale or in the
184 affirmative or negative, the commission may allow respondents to provide written comments.

185 (10) The commission shall compile and make available to each judge that judge's
186 survey results with each of the judge's judicial performance evaluations.

187 (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
188 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

189 Section 3. Section **78A-12-205** is amended to read:

190 **78A-12-205. Minimum performance standards.**

191 (1) The commission shall establish minimum performance standards requiring that:

192 (a) the judge have no more than one public [~~reprimand~~] sanction issued by [~~the Judicial~~
193 ~~Conduct Commission or~~] the Utah Supreme Court during the judge's current term; and

194 (b) the judge receive a minimum score on the judicial performance survey as follows:

195 (i) an average score of no less than 65% on each survey category as provided in
196 Subsection **78A-12-204**(7); and

197 (ii) if the commission includes a question on the survey that does not use the numerical
198 scale, the commission shall establish the minimum performance standard for all questions that
199 do not use the numerical scale to be substantially equivalent to the standard required under
200 Subsection (1)(b)(i).

201 (2) The commission may establish an additional minimum performance standard if the
202 commission by at least two-thirds vote:

203 (a) determines that satisfaction of the standard is necessary to the satisfactory
204 performance of the judge; and

205 (b) adopts the standard.

206 (3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
207 Administrative Rulemaking Act, to establish a minimum performance standard.

208 Section 4. Section **78A-12-207** is amended to read:

209 **78A-12-207. Evaluation of justice court judges.**

210 (1) The Judicial Performance Evaluation Commission shall:

211 (a) conduct a performance evaluation for each justice court judge in the third and fifth
212 year of the justice court judge's term;

213 (b) classify each justice court judge into one of the following three categories:

- 214 (i) full evaluation;
- 215 (ii) midlevel evaluation; or
- 216 (iii) basic evaluation; and
- 217 (c) establish evaluation criteria for each of the three categories.
- 218 (2) A full evaluation justice court judge shall be subject to the requirements of [~~the~~
- 219 ~~Judicial Performance Evaluation Commission Act~~] this chapter.
- 220 (3) A midlevel evaluation justice court judge shall be governed by [~~the Judicial~~
- 221 ~~Performance Evaluation Commission Act~~] this chapter, except as provided below:
- 222 (a) the commission shall administer an [~~electronic~~] intercept survey [~~shall be~~
- 223 ~~administered by the commission~~] periodically outside the courtroom of the evaluated justice
- 224 court judge in lieu of the survey specified in Section [78A-12-204](#); and
- 225 (b) courtroom observation may not be conducted for midlevel evaluation justice court
- 226 judges.
- 227 (4) A basic evaluation justice court judge shall be governed by [~~the Judicial~~
- 228 ~~Performance Evaluation Commission Act~~] this chapter, except as provided below:
- 229 (a) basic evaluation justice court judges shall comply with minimum performance
- 230 standards for judicial education, judicial conduct, cases under advisement, and any other
- 231 standards the commission may promulgate by administrative rule; and
- 232 (b) courtroom observation and surveys may not be conducted for basic evaluation
- 233 justice court judges.

Legislative Review Note
Office of Legislative Research and General Counsel