

JUDICIARY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies provisions relating to the judiciary or acts of the judiciary.

Highlighted Provisions:

This bill:

- ▶ addresses notification regarding termination of supervised probation;
- ▶ addresses which court has jurisdiction regarding an alleged violation of conditions of probation;
- ▶ addresses extradition;
- ▶ deletes a provision limiting the number of successive terms an associate chief justice may serve;
- ▶ omits outdated language regarding evaluation of justice court judges;
- ▶ modifies training of a justice court judge;
- ▶ corrects citations relating to whether a violation of a protective order is a criminal or civil violation; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-18-1, as last amended by Laws of Utah 2018, Chapter 334

- 30 **77-30-25**, as last amended by Laws of Utah 2018, Chapter 281
- 31 **78A-3-101**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 32 **78A-7-203**, as last amended by Laws of Utah 2016, Chapter 146
- 33 **78A-7-205**, as last amended by Laws of Utah 2012, Chapter 205
- 34 **78B-7-106**, as last amended by Laws of Utah 2018, Chapters 124 and 255

35

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

37 Section 1. Section **77-18-1** is amended to read:

38 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
39 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
40 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
41 **monitoring.**

42 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea
43 in abeyance agreement, the court may hold the plea in abeyance as provided in [~~Title 77,~~
44 Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

45 (2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any
46 crime or offense, the court may, after imposing sentence, suspend the execution of the sentence
47 and place the defendant:

48 (i) on probation under the supervision of the Department of Corrections except in cases
49 of class C misdemeanors or infractions;

50 (ii) on probation under the supervision of an agency of local government or with a
51 private organization; or

52 (iii) on court probation under the jurisdiction of the sentencing court.

53 (b) (i) The legal custody of all probationers under the supervision of the department is
54 with the department.

55 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court
56 is vested as ordered by the court.

57 (iii) The court has continuing jurisdiction over all probationers.

58 (iv) Court probation may include an administrative level of services, including
59 notification to the court of scheduled periodic reviews of the probationer's compliance with
60 conditions.

61 (c) Supervised probation services provided by the department, an agency of local
62 government, or a private organization shall specifically address the offender's risk of
63 reoffending as identified by a validated risk and needs screening or assessment.

64 (3) (a) The department shall establish supervision and presentence investigation
65 standards for all individuals referred to the department based on:

66 (i) the type of offense;

67 (ii) the results of a risk and needs assessment;

68 (iii) the demand for services;

69 (iv) the availability of agency resources;

70 (v) public safety; and

71 (vi) other criteria established by the department to determine what level of services
72 shall be provided.

73 (b) Proposed supervision and investigation standards shall be submitted to the Judicial
74 Council and the Board of Pardons and Parole on an annual basis for review and comment prior
75 to adoption by the department.

76 (c) The Judicial Council and the department shall establish procedures to implement
77 the supervision and investigation standards.

78 (d) The Judicial Council and the department shall annually consider modifications to
79 the standards based upon criteria in Subsection (3)(a) and other criteria as they consider
80 appropriate.

81 (e) The Judicial Council and the department shall annually prepare an impact report
82 and submit it to the appropriate legislative appropriations subcommittee.

83 (4) Notwithstanding other provisions of law, the department is not required to
84 supervise the probation of an individual convicted of a class B or C misdemeanor or an
85 infraction or to conduct presentence investigation reports on a class C misdemeanor or

86 infraction. However, the department may supervise the probation of a class B misdemeanor in
87 accordance with department standards.

88 (5) (a) Before the imposition of any sentence, the court may, with the concurrence of
89 the defendant, continue the date for the imposition of sentence for a reasonable period of time
90 for the purpose of obtaining a presentence investigation report from the department or
91 information from other sources about the defendant.

92 (b) The presentence investigation report shall include:

93 (i) a victim impact statement according to guidelines set in Section 77-38a-203
94 describing the effect of the crime on the victim and the victim's family;

95 (ii) a specific statement of pecuniary damages, accompanied by a recommendation
96 from the department regarding the payment of restitution with interest by the defendant in
97 accordance with [~~Title 77,~~] Chapter 38a, Crime Victims Restitution Act;

98 (iii) findings from any screening and any assessment of the offender conducted under
99 Section 77-18-1.1;

100 (iv) recommendations for treatment of the offender; and

101 (v) the number of days since the commission of the offense that the offender has spent
102 in the custody of the jail and the number of days, if any, the offender was released to a
103 supervised release or alternative incarceration program under Section 17-22-5.5.

104 (c) The contents of the presentence investigation report are protected and are not
105 available except by court order for purposes of sentencing as provided by rule of the Judicial
106 Council or for use by the department.

107 (6) (a) The department shall provide the presentence investigation report to the
108 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
109 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
110 presentence investigation report, which have not been resolved by the parties and the
111 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
112 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
113 report with the department. If after 10 working days the inaccuracies cannot be resolved, the

114 court shall make a determination of relevance and accuracy on the record.

115 (b) If a party fails to challenge the accuracy of the presentence investigation report at
116 the time of sentencing, that matter shall be considered to be waived.

117 (7) At the time of sentence, the court shall receive any testimony, evidence, or
118 information the defendant or the prosecuting attorney desires to present concerning the
119 appropriate sentence. This testimony, evidence, or information shall be presented in open court
120 on record and in the presence of the defendant.

121 (8) While on probation, and as a condition of probation, the court may require that a
122 defendant perform any or all of the following:

123 (a) provide for the support of others for whose support the defendant is legally liable;

124 (b) participate in available treatment programs, including any treatment program in
125 which the defendant is currently participating, if the program is acceptable to the court;

126 (c) if on probation for a felony offense, serve a period of time, not to exceed one year,
127 in a county jail designated by the department, after considering any recommendation by the
128 court as to which jail the court finds most appropriate;

129 (d) serve a term of home confinement, which may include the use of electronic
130 monitoring;

131 (e) participate in compensatory service restitution programs, including the
132 compensatory service program provided in Section 76-6-107.1;

133 (f) pay for the costs of investigation, probation, and treatment services;

134 (g) make restitution or reparation to the victim or victims with interest in accordance
135 with [~~Title 77,~~] Chapter 38a, Crime Victims Restitution Act; and

136 (h) comply with other terms and conditions the court considers appropriate to ensure
137 public safety or increase a defendant's likelihood of success on probation.

138 (9) The department shall collect and disburse the accounts receivable as defined by
139 Section 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:

140 (a) the parole period and any extension of that period in accordance with Subsection
141 77-27-6(4); and

142 (b) the probation period in cases for which the court orders supervised probation and
143 any extension of that period by the department in accordance with Subsection (10).

144 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), probation of an individual
145 placed on probation after December 31, 2018:

146 (A) may not exceed the individual's maximum sentence;

147 (B) shall be for a period of time that is in accordance with the supervision length
148 guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the
149 extent the guidelines are consistent with the requirements of the law; and

150 (C) shall be terminated in accordance with the supervision length guidelines
151 established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the
152 guidelines are consistent with the requirements of the law.

153 (ii) Probation of an individual placed on probation after December 31, 2018, whose
154 maximum sentence is one year or less may not exceed 36 months.

155 (iii) Probation of an individual placed on probation on or after October 1, 2015, but
156 before January 1, 2019, may be terminated at any time at the discretion of the court or upon
157 completion without violation of 36 months probation in felony or class A misdemeanor cases,
158 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to
159 Section 64-13-21 regarding earned credits.

160 (b) (i) If, upon expiration or termination of the probation period under Subsection
161 (10)(a), there remains an unpaid balance upon the accounts receivable as defined in Section
162 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench
163 probation for the limited purpose of enforcing the payment of the account receivable. If the
164 court retains jurisdiction for this limited purpose, the court may order the defendant to pay to
165 the court the costs associated with continued probation under this Subsection (10).

166 (ii) In accordance with Section 77-18-6, the court shall record in the registry of civil
167 judgments any unpaid balance not already recorded and immediately transfer responsibility to
168 collect the account to the Office of State Debt Collection.

169 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its

170 own motion, the court may require the defendant to show cause why the defendant's failure to
171 pay should not be treated as contempt of court.

172 (c) (i) The department shall notify the [sentencing] court, the Office of State Debt
173 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
174 supervised probation is being requested by the department or will occur by law.

175 (ii) The notification shall include a probation progress report and complete report of
176 details on outstanding accounts receivable.

177 (11) (a) (i) Any time served by a probationer outside of confinement after having been
178 charged with a probation violation and prior to a hearing to revoke probation does not
179 constitute service of time toward the total probation term unless the probationer is exonerated
180 at a hearing to revoke the probation.

181 (ii) Any time served in confinement awaiting a hearing or decision concerning
182 revocation of probation does not constitute service of time toward the total probation term
183 unless the probationer is exonerated at the hearing.

184 (iii) Any time served in confinement awaiting a hearing or decision concerning
185 revocation of probation constitutes service of time toward a term of incarceration imposed as a
186 result of the revocation of probation or a graduated sanction imposed under Section
187 [63M-7-404](#).

188 (b) The running of the probation period is tolled upon the filing of a violation report
189 with the court alleging a violation of the terms and conditions of probation or upon the issuance
190 of an order to show cause or warrant by the court.

191 (12) (a) (i) Probation may be modified as is consistent with the supervision length
192 guidelines and the graduated sanctions and incentives developed by the Utah Sentencing
193 Commission under Section [63M-7-404](#).

194 (ii) The length of probation may not be extended, except upon waiver of a hearing by
195 the probationer or upon a hearing and a finding in court that the probationer has violated the
196 conditions of probation.

197 (iii) Probation may not be revoked except upon a hearing in court and a finding that the

198 conditions of probation have been violated.

199 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to
200 constitute violation of the conditions of probation, the court [~~that authorized probation~~] shall
201 determine if the affidavit establishes probable cause to believe that revocation, modification, or
202 extension of probation is justified.

203 (ii) If the court determines there is probable cause, it shall cause to be served on the
204 defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show
205 cause why the defendant's probation should not be revoked, modified, or extended.

206 (c) (i) The order to show cause shall specify a time and place for the hearing and shall
207 be served upon the defendant at least five days prior to the hearing.

208 (ii) The defendant shall show good cause for a continuance.

209 (iii) The order to show cause shall inform the defendant of a right to be represented by
210 counsel at the hearing and to have counsel appointed if the defendant is indigent.

211 (iv) The order shall also inform the defendant of a right to present evidence.

212 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

213 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney
214 shall present evidence on the allegations.

215 (iii) The persons who have given adverse information on which the allegations are
216 based shall be presented as witnesses subject to questioning by the defendant unless the court
217 for good cause otherwise orders.

218 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,
219 and present evidence.

220 (e) (i) After the hearing the court shall make findings of fact.

221 (ii) Upon a finding that the defendant violated the conditions of probation, the court
222 may order the probation revoked, modified, continued, or reinstated for all or a portion of the
223 original term of probation.

224 (iii) (A) Except as provided in Subsection (10)(a)(ii), the court may not require a
225 defendant to remain on probation for a period of time that exceeds the length of the defendant's

226 maximum sentence.

227 (B) Except as provided in Subsection (10)(a)(ii), if a defendant's probation is revoked
228 and later reinstated, the total time of all periods of probation the defendant serves, relating to
229 the same sentence, may not exceed the defendant's maximum sentence.

230 (iv) If a period of incarceration is imposed for a violation, the defendant shall be
231 sentenced within the guidelines established by the Utah Sentencing Commission pursuant to
232 Subsection 63M-7-404(4), unless the judge determines that:

233 (A) the defendant needs substance abuse or mental health treatment, as determined by a
234 validated risk and needs screening and assessment, that warrants treatment services that are
235 immediately available in the community; or

236 (B) the sentence previously imposed shall be executed.

237 (v) If the defendant had, prior to the imposition of a term of incarceration or the
238 execution of the previously imposed sentence under this Subsection (12), served time in jail as
239 a condition of probation or due to a violation of probation under Subsection (12)(e)(iv), the
240 time the probationer served in jail constitutes service of time toward the sentence previously
241 imposed.

242 (13) The court may order the defendant to commit the defendant to the custody of the
243 Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a
244 condition of probation or stay of sentence, only after the superintendent of the Utah State
245 Hospital or the superintendent's designee has certified to the court that:

246 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

247 (b) treatment space at the hospital is available for the defendant; and

248 (c) individuals described in Subsection 62A-15-610(2)(g) are receiving priority for
249 treatment over the defendants described in this Subsection (13).

250 (14) Presentence investigation reports are classified protected in accordance with Title
251 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
252 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
253 presentence investigation report. Except for disclosure at the time of sentencing pursuant to

254 this section, the department may disclose the presentence investigation only when:

255 (a) ordered by the court pursuant to Subsection 63G-2-202(7);

256 (b) requested by a law enforcement agency or other agency approved by the department
257 for purposes of supervision, confinement, and treatment of the offender;

258 (c) requested by the Board of Pardons and Parole;

259 (d) requested by the subject of the presentence investigation report or the subject's
260 authorized representative; or

261 (e) requested by the victim of the crime discussed in the presentence investigation
262 report or the victim's authorized representative, provided that the disclosure to the victim shall
263 include only information relating to statements or materials provided by the victim, to the
264 circumstances of the crime including statements by the defendant, or to the impact of the crime
265 on the victim or the victim's household.

266 (15) (a) The court shall consider home confinement as a condition of probation under
267 the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

268 (b) The department shall establish procedures and standards for home confinement,
269 including electronic monitoring, for all individuals referred to the department in accordance
270 with Subsection (16).

271 (16) (a) If the court places the defendant on probation under this section, it may order
272 the defendant to participate in home confinement through the use of electronic monitoring as
273 described in this section until further order of the court.

274 (b) The electronic monitoring shall alert the department and the appropriate law
275 enforcement unit of the defendant's whereabouts.

276 (c) The electronic monitoring device shall be used under conditions which require:

277 (i) the defendant to wear an electronic monitoring device at all times; and

278 (ii) that a device be placed in the home of the defendant, so that the defendant's
279 compliance with the court's order may be monitored.

280 (d) If a court orders a defendant to participate in home confinement through electronic
281 monitoring as a condition of probation under this section, it shall:

- 282 (i) place the defendant on probation under the supervision of the Department of
283 Corrections;
- 284 (ii) order the department to place an electronic monitoring device on the defendant and
285 install electronic monitoring equipment in the residence of the defendant; and
- 286 (iii) order the defendant to pay the costs associated with home confinement to the
287 department or the program provider.
- 288 (e) The department shall pay the costs of home confinement through electronic
289 monitoring only for an individual who is determined to be indigent by the court.
- 290 (f) The department may provide the electronic monitoring described in this section
291 either directly or by contract with a private provider.

292 Section 2. Section 77-30-25 is amended to read:

293 **77-30-25. Individual brought into state on extradition exempt from civil process**
294 **-- Waiver of extradition proceedings -- Nonwaiver by this state.**

295 (1) ~~[A person]~~ An individual brought into this state by or after waiver of extradition
296 based on a criminal charge ~~[shall not be]~~ is not subject to service of personal process in a civil
297 ~~[actions]~~ action arising out of the same facts as the criminal proceedings to answer which ~~[he]~~
298 the individual is being or has been returned until ~~[he]~~ the individual has been convicted in the
299 criminal proceedings, or, if acquitted, until ~~[he]~~ the individual has had reasonable opportunity
300 to return to the state from which ~~[he]~~ the individual was extradited.

301 (2) (a) ~~[Any person]~~ An individual arrested in this state charged with having committed
302 any crime in another state or alleged to have escaped from confinement or broken the terms of
303 ~~[his]~~ the individual's bail, probation, or parole may waive the issuance and service of the
304 warrant provided for in Sections 77-30-7 and 77-30-8, and ~~[all other]~~ a procedure incidental to
305 extradition proceedings, by executing or subscribing in the presence of a judge of any court of
306 record within this state a writing ~~[which]~~ that states that ~~[he]~~ the individual consents to return
307 to the demanding state~~;~~ provided, except that before ~~[such]~~ the waiver ~~[shall be]~~ is executed
308 or subscribed by ~~[such person]~~ the individual, it shall be the duty of ~~[such]~~ the judge to inform
309 ~~[such person of his]~~ the individual of the individual's rights to the issuance and service of a

310 warrant of extradition and to obtain a writ of habeas corpus as provided for in Section
311 77-30-10.

312 (b) ~~[If and when such consent has been duly executed it shall forthwith be forwarded to~~
313 ~~the office of the governor of this state and filed therein.]~~ The judge shall direct the officer
314 having ~~[such person]~~ an individual in custody to deliver forthwith ~~[such person]~~ the individual
315 to the ~~[duly]~~ accredited agent or agents of the demanding state and shall deliver or cause to be
316 delivered to ~~[such]~~ the accredited agent or agents a copy of ~~[such]~~ the consent~~[-provided,]~~
317 except that nothing in this section ~~[shall be deemed]~~ may be considered to limit the rights of
318 the accused ~~[person]~~ individual to return voluntarily and without formality to the demanding
319 state, nor shall this waiver procedure be ~~[deemed]~~ considered to be an exclusive procedure or
320 to limit the powers, rights, or duties of the officers of the demanding state or of this state.

321 (3) Nothing in this chapter ~~[shall be deemed]~~ may be considered to constitute a waiver
322 by this state of its right, power, or privilege to try ~~[such]~~ the demanded ~~[person]~~ individual for a
323 crime committed within this state, or of its right, power, or privilege to regain custody of ~~[such~~
324 ~~person]~~ the individual by extradition proceedings or otherwise for the purpose of trial,
325 sentence, or punishment for any crime committed within this state, nor shall any proceedings
326 had under this chapter, which result in or fail to result in extradition, be ~~[deemed]~~ considered a
327 waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

328 Section 3. Section 78A-3-101 is amended to read:

329 **78A-3-101. Number of justices -- Terms -- Chief justice and associate chief justice**
330 **-- Selection and functions.**

331 (1) The Supreme Court consists of five justices.

332 (2) A justice of the Supreme Court shall be appointed initially to serve until the first
333 general election held more than three years after the effective date of the appointment.
334 Thereafter, the term of office of a justice of the Supreme Court is 10 years and commences on
335 the first Monday in January following the date of election. A justice whose term expires may
336 serve upon request of the Judicial Council until a successor is appointed and qualified.

337 (3) The justices of the Supreme Court shall elect a chief justice from among the

338 members of the court by a majority vote of all justices. The term of the office of chief justice is
339 four years. The chief justice may serve successive terms. The chief justice may resign from
340 the office of chief justice without resigning from the Supreme Court. The chief justice may be
341 removed from the office of chief justice by a majority vote of all justices of the Supreme Court.

342 (4) If the justices are unable to elect a chief justice within 30 days of a vacancy in that
343 office, the associate chief justice shall act as chief justice until a chief justice is elected under
344 this section. If the associate chief justice is unable or unwilling to act as chief justice, the most
345 senior justice shall act as chief justice until a chief justice is elected under this section.

346 (5) In addition to the chief justice's duties as a member of the Supreme Court, the chief
347 justice has duties as provided by law.

348 (6) There is created the office of associate chief justice. The term of office of the
349 associate chief justice is two years. [~~The associate chief justice may serve in that office no~~
350 ~~more than two successive terms.~~] The associate chief justice shall be elected by a majority vote
351 of the members of the Supreme Court and shall be allocated duties as the chief justice
352 determines. If the chief justice is absent or otherwise unable to serve, the associate chief
353 justice shall serve as chief justice. The chief justice may delegate responsibilities to the
354 associate chief justice as consistent with law.

355 Section 4. Section **78A-7-203** is amended to read:

356 **78A-7-203. Term of office for justice court judge -- Retention -- Reduction in**
357 **force.**

358 (1) The term of a justice court judge is six years beginning the first Monday in January
359 following the date of election.

360 (2) Upon the expiration of a justice court judge's term of office, the judge shall be
361 subject to an unopposed retention election in accordance with the procedures set forth in
362 Section [20A-12-201](#):

363 (a) in the county or counties in which the court to which the judge is appointed is
364 located if the judge is a county justice court judge or a municipal justice court judge in a town
365 or city of the fourth or fifth class; or

366 (b) in the municipality in which the court to which the judge is appointed is located if
 367 the judge is a municipal justice court judge and Subsection (2)(a) does not apply.

368 (3) Before each retention election, each justice court judge shall be evaluated in
 369 accordance with the performance evaluation program established in [~~Title 78A,~~] Chapter 12,
 370 Judicial Performance Evaluation Commission Act.

371 [~~(4) Notwithstanding Subsection (3), each justice court judge who is subject to a~~
 372 ~~retention election in 2012, 2014, and 2016, and who is not a full-time justice court judge on~~
 373 ~~July 1, 2012, shall be evaluated by the Judicial Performance Evaluation Commission according~~
 374 ~~to the following performance standards:]~~

375 [~~(a) the justice court judge shall have at least 30 annual hours of continuing legal~~
 376 ~~education for each year of the justice court judge's current term;]~~

377 [~~(b) the justice court judge may not have more than one public reprimand issued by the~~
 378 ~~Judicial Conduct Commission or the Supreme Court during the justice court judge's current~~
 379 ~~term; and]~~

380 [~~(c) the justice court judge may not have had any cases under advisement for more than~~
 381 ~~two months.]~~

382 [~~(5) Political subdivisions in counties]~~ (4) A political subdivision in a county of the
 383 first ~~and~~ or second class that ~~have~~ has more than one justice court judge and the weighted
 384 caseload per judge is lower than 0.60 as determined by the Administrative Office of the Courts
 385 may, at the political subdivision's discretion and at the end of a judge's term of office, initiate a
 386 reduction in force and reduce, lay off, terminate, or eliminate a judge's position pursuant to the
 387 political subdivision's employment policies.

388 [~~(6) Political subdivisions in counties]~~ (5) A political subdivision in a county of the
 389 first ~~and~~ or second class may only add a new justice court judge ~~[positions]~~ position if the
 390 Judicial Council, after considering the caseload of the court, approves creation of the position.

391 Section 5. Section **78A-7-205** is amended to read:

392 **78A-7-205. Required training -- Expenses -- Failure to attend.**

393 (1) [~~AH~~] A justice court ~~[judges]~~ judge shall meet the continuing education

394 requirements of the Judicial Council [~~each calendar year~~].

395 (2) Successful completion of the continuing education requirement includes instruction
396 regarding competency and understanding of constitutional provisions and laws relating to the
397 jurisdiction of the court, rules of evidence, and rules of civil and criminal procedure as
398 indicated by a certificate awarded by the Judicial Council.

399 (3) The Judicial Council shall file a formal complaint with the Judicial Conduct
400 Commission against each justice court judge who does not comply with this section.

401 Section 6. Section **78B-7-106** is amended to read:

402 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
403 **orders -- Service of process -- Duties of the court.**

404 (1) If it appears from a petition for an order for protection or a petition to modify an
405 order for protection that domestic violence or abuse has occurred, that there is a substantial
406 likelihood domestic violence or abuse will occur, or that a modification of an order for
407 protection is required, a court may:

408 (a) without notice, immediately issue an order for protection ex parte or modify an
409 order for protection ex parte as it considers necessary to protect the petitioner and all parties
410 named to be protected in the petition; or

411 (b) upon notice, issue an order for protection or modify an order after a hearing,
412 regardless of whether the respondent appears.

413 (2) A court may grant the following relief without notice in an order for protection or a
414 modification issued ex parte:

415 (a) enjoin the respondent from threatening to commit domestic violence or abuse,
416 committing domestic violence or abuse, or harassing the petitioner or any designated family or
417 household member;

418 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
419 with the petitioner or any designated family or household member, directly or indirectly, with
420 the exception of any parent-time provisions in the ex parte order;

421 (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified

422 distance of the petitioner;

423 (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to
424 stay away from the following places and their premises:

425 (i) the petitioner's residence or any designated family or household member's residence;

426 (ii) the petitioner's school or any designated family or household member's school;

427 (iii) the petitioner's or any designated family or household member's place of
428 employment;

429 (iv) the petitioner's place of worship or any designated family or household member's
430 place of worship; or

431 (v) any specified place frequented by the petitioner or any designated family or
432 household member;

433 (e) if the petitioner or designated family or household member attends the same school
434 as the respondent, is employed at the same place of employment as the respondent, or attends
435 the same place of worship, the court:

436 (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent
437 from the respondent's school, place of employment, or place of worship; and

438 (ii) may enter an order governing the respondent's conduct at the respondent's school,
439 place of employment, or place of worship;

440 (f) upon finding that the respondent's use or possession of a weapon may pose a serious
441 threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a
442 firearm or other weapon specified by the court;

443 (g) order possession and use of an automobile and other essential personal effects, and
444 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
445 the parties to ensure that the petitioner is safely restored to possession of the residence,
446 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
447 removal of personal belongings;

448 (h) order the respondent to maintain an existing wireless telephone contract or account;

449 (i) grant to the petitioner or someone other than the respondent temporary custody of a

450 minor child of the parties;

451 (j) order the appointment of an attorney guardian ad litem under Sections 78A-2-703
452 and 78A-6-902;

453 (k) order any further relief that the court considers necessary to provide for the safety
454 and welfare of the petitioner and any designated family or household member; and

455 (l) if the petition requests child support or spousal support, at the hearing on the
456 petition order both parties to provide verification of current income, including year-to-date pay
457 stubs or employer statements of year-to-date or other period of earnings, as specified by the
458 court, and complete copies of tax returns from at least the most recent year.

459 (3) A court may grant the following relief in an order for protection or a modification
460 of an order after notice and hearing, regardless of whether the respondent appears:

461 (a) grant the relief described in Subsection (2); and

462 (b) specify arrangements for parent-time of any minor child by the respondent and
463 require supervision of that parent-time by a third party or deny parent-time if necessary to
464 protect the safety of the petitioner or child.

465 (4) In addition to the relief granted under Subsection (3), the court may order the
466 transfer of a wireless telephone number in accordance with Section 77-36-5.3.

467 (5) Following the protective order hearing, the court shall:

468 (a) as soon as possible, deliver the order to the county sheriff for service of process;

469 (b) make reasonable efforts to ensure that the order for protection is understood by the
470 petitioner, and the respondent, if present;

471 (c) transmit electronically, by the end of the next business day after the order is issued,
472 a copy of the order for protection to the local law enforcement agency or agencies designated
473 by the petitioner; and

474 (d) transmit a copy of the order to the statewide domestic violence network described
475 in Section 78B-7-113.

476 (6) (a) Each protective order shall include two separate portions, one for provisions, the
477 violation of which are criminal offenses, and one for provisions, the violation of which are civil

478 violations, as follows:

479 (i) criminal offenses are those under Subsections (2)(a) through [~~(e)~~] (g), and under
480 Subsection (3)(a) as it refers to Subsections (2)(a) through [~~(e)~~] (g); and

481 (ii) civil offenses are those under Subsections (2)[~~(f), (h), and (i)~~] (h), (j), (k), and (l),
482 and Subsection (3)(a) as it refers to Subsections (2)[~~(f), (h), and (i)~~] (h), (j), (k), and (l).

483 (b) The criminal provision portion shall include a statement that violation of any
484 criminal provision is a class A misdemeanor.

485 (c) The civil provision portion shall include a notice that violation of or failure to
486 comply with a civil provision is subject to contempt proceedings.

487 (7) The protective order shall include:

488 (a) a designation of a specific date, determined by the court, when the civil portion of
489 the protective order either expires or is scheduled for review by the court, which date may not
490 exceed 150 days after the date the order is issued, unless the court indicates on the record the
491 reason for setting a date beyond 150 days;

492 (b) information the petitioner is able to provide to facilitate identification of the
493 respondent, such as social security number, driver license number, date of birth, address,
494 telephone number, and physical description; and

495 (c) a statement advising the petitioner that:

496 (i) after two years from the date of issuance of the protective order, a hearing may be
497 held to dismiss the criminal portion of the protective order;

498 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
499 advise the court of the petitioner's current address for notice of any hearing; and

500 (iii) the address provided by the petitioner will not be made available to the respondent.

501 (8) Child support and spouse support orders issued as part of a protective order are
502 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
503 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
504 IV-D Cases, except when the protective order is issued ex parte.

505 (9) (a) The county sheriff that receives the order from the court, pursuant to Subsection

506 (6)(a), shall provide expedited service for orders for protection issued in accordance with this
507 chapter, and shall transmit verification of service of process, when the order has been served, to
508 the statewide domestic violence network described in Section 78B-7-113.

509 (b) This section does not prohibit any law enforcement agency from providing service
510 of process if that law enforcement agency:

511 (i) has contact with the respondent and service by that law enforcement agency is
512 possible; or

513 (ii) determines that under the circumstances, providing service of process on the
514 respondent is in the best interests of the petitioner.

515 (10) (a) When an order is served on a respondent in a jail or other holding facility, the
516 law enforcement agency managing the facility shall make a reasonable effort to provide notice
517 to the petitioner at the time the respondent is released from incarceration.

518 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
519 provide notification, including mailing a copy of the notification to the last-known address of
520 the victim.

521 (11) A court may modify or vacate an order of protection or any provisions in the order
522 after notice and hearing, except that the criminal provisions of a protective order may not be
523 vacated within two years of issuance unless the petitioner:

524 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
525 Rules of Civil Procedure, and the petitioner personally appears, in person or through court
526 video conferencing, before the court and gives specific consent to the vacation of the criminal
527 provisions of the protective order; or

528 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
529 provisions of the protective order.

530 (12) A protective order may be modified without a showing of substantial and material
531 change in circumstances.

532 (13) Insofar as the provisions of this chapter are more specific than the Utah Rules of
533 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

