UPAA Resource Manual

Updated April 2024

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Areas for Study for CUPA Exam

(a general knowledge of the following areas)

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Definitions [1]

Acknowledgement	To recognize something as being factual or valid. An acceptance of responsibility. The act of making it known that one has received something. A formal declaration made in the presence of an authorized officer.
Action	A civil or criminal judicial proceeding.
Actionable	Furnishing the legal ground for a lawsuit or other legal action.
Ad Litem	for the purposes of the suit; pending the suit
Adjudication	The legal process of resolving a dispute; the process of judicially deciding a case
Administrative Law	The law governing the organization and operation of administrative agencies and the relations of administrative agencies with the legislature, the executive, the judiciary and the public.
Affidavit	A voluntary declaration of facts written down and sworn to by a declarant before an officer authorized to administer oaths.
Aggrieved	Having legal rights that are adversely affected; having been harmed by an infringement of legal rights.
Agreement	A mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons.
Alibi	A defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time.
Amnesty	A pardon extended by the government to a group or class of persons.
Annotation	A brief summary of the facts and decisions in a case.
Answer	To respond to a question, a pleading or a discovery request.
Appellant	A party who appeals a lower court's decision.
Appellate Court	A court with jurisdiction to review decisions of lower courts or administrative agencies, also termed appeals court, court of appeals, court of review.

[1] Definitions are taken from Black's Law Dictionary, Eleventh Edition.

Appellate Rules	A body of rules governing appeals from lower courts.
Appellee	A party against whom an appeal is taken and whose role is to respond to that appeal.
Arraignment	The initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea
Arrest	A seizure or forcible restraint; taking or keeping of a person in custody by legal authority in response to a criminal charge.
Assault	The threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact; the act of putting another person in reasonable fear or apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery.
Attachment	The seizing of a person‘s property to secure a judgment or to be sold in satisfaction of a judgment.
Attestation	To bear witness; testify to the defendant’s innocence.
Bail	To obtain the release of oneself or another by providing security for future appearance, to release a person after receiving such security, to place in someone else‘s charge or trust.
Bill of Particulars	A formal, detailed statement of the claims or charges brought by a plaintiff or a prosecutor, filed in response to the defendant‘s request for a more specific complaint.
Board of Pardons and Parole	A state agency, of which the governor is a member; authorized to pardon persons convicted or crimes.
Burden of Proof	A party‘s duty to prove a disputed assertion or charge.
Case Law	The law to be found in the collection of reported cases that form all or part of the body of law within a given jurisdiction.
Cause of Action	A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.
Certiorari	An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review.
Circumstantial	An accompanying or accessory fact, event, or condition, such as a piece of evidence that indicates the probability of an event.
Citation	A court issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so, or a reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position.

Civil Law	The body of law imposed by the state, as opposed to moral law, or the law of civil or private rights, as opposed to criminal or administrative law.
Claim	A statement that something yet to be proved is true. The assertion of an existing right; any right to payment or to an equitable remedy.
Code	A complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules or regulations.
Code of Conduct	A written set of rules governing the behavior of specified groups, such as lawyers, government employees, or corporate employees.
Competent	A basic or minimal ability to do something; the mental ability to understand problems and make decisions.
Complaint	The initial pleading that starts a civil action and states the basis for the court‘s jurisdiction, the basis for the plaintiff‘s claim, and the demand for relief.
Concurrent	Operating at the same time; covering the same matters.
Consecutive	Following one another in uninterrupted order; successive.
Consent	A voluntary yielding to what another proposes or desires; agreement, approval, or permission regarding some act or purpose given voluntarily by a competent person.
Contempt	Conduct that defies the authority or dignity of a court or legislature.
Contract	An agreement between two or more parties creating obligations that is enforceable or otherwise recognizable at law.
Corpus Delicti	“Body of the Crime” the simple principle that a crime must be proved to have occurred before anyone can be convicted for having committed it.
Counterclaim	A claim for relief asserted against an opposing party after an original claim has been made.
Criminal	Someone who is involved in illegal activities; one who has committed a criminal offense. Someone who has been convicted or a crime.
Cross Examination	The questioning of a witness at a trial or hearing by the party opposed to the party who called the witness to testify.
Decree	Traditionally, a judicial decision in a court of equity, admiralty, divorce, or probate.
Deed	A written instrument by which land is conveyed, at common law, any written instrument that is signed, sealed, and delivered and that conveyed some interest in property.
Default	The omission or failure to perform a legal or contractual duty.

Defendant	A person sued in a civil proceeding or accused in a criminal proceeding
Demurrer	A pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer.
Deposition	The witness's out-of-court testimony that is reduced to writing for later use in court or for discovery purposes.
Direct Examination	The first questioning of a witness in a trial or other proceeding, conducted by the party who called the witness to testify.
Directed Verdict	A judgment entered on the order of a trial judge who takes over the fact-finding role of the jury because the evidence is so compelling that only one decision can reasonably follow or because it fails to establish a prima facie case.
Discharge	Any method by which a legal duty is extinguished; the payment of a debt or satisfaction of some other obligation.
Discovery	The act or process of finding or learning something that was previously unknown, compulsory disclosure, at a party's request, of information that relates to the litigation, the facts or documents disclosed.
Dismissal **with** Prejudice	A dismissal after an adjudication on the merits, baring the plaintiff from prosecuting any later lawsuit on the same claim.
Dismissal **without** Prejudice	A dismissal that does not bar the plaintiff from refilling the lawsuit within the applicable limitations period.
Documentary Evidence	Evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible.
Double Jeopardy	The fact of being prosecuted twice for substantially the same offense.
Due Process	The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case.
Duress	Strictly, the physical confinement of a person or the detention of a contracting party's property.
Easement	An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.
Eminent Domain	The inherent power of a governmental entity to take privately owned property, and convert it to public use, subject to reasonable compensation for the taking.
Enjoin	To legally prohibit or restrain by injunction, to prescribe, mandate, or strongly encourage.
Equal Protection	The constitutional guarantee under the 14th Amendment that the government must treat a person or class of persons the

	same as it treats other persons or classes in like circumstances.
Estoppel	A legal principle that prevents someone from arguing something or asserting a right that contradicts what they previously said or agreed to by law.
Et al.	Other persons and elsewhere.
Et seq.	And those (pages or sections) that follow.
Evidence	Something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or nonexistence of a fact.
Execution	The act of carrying out or putting into effect, validation of a written instrument, such as a contract or will, by fulfilling the necessary legal requirements, judicial enforcement of a money judgment, a court order directing a sheriff or other officer to enforce a judgment.
Exhibit	A document, record, or other tangible object formally introduced as evidence in court, a document attached to and made part of a pleading, motion, contract, or other instrument.
Ex Parte	Done or made at the instance and for the benefit on one party only.
Ex Parte Communication	A prohibited communication between counsel and the court when opposing counsel is not present
Ex Post Facto	Done or made after the fact; having retroactive force or effect.
Expungement of Record	The removal of a conviction from a person‘s criminal record.
Extradition	The official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged; the return of a fugitive from justice, regardless of consent, by the authorities where the fugitive resides.
False Arrest	An arrest made without proper legal authority.
Felony	A serious crime punishable by imprisonment for more than one year or by death.
Fraud	A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment.
Garnishment	A judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor‘s property held by that third party.
Guardian	One who has the legal authority and duty to care for another‘s person or property because of another‘s infancy, incapacity, or disability.
Guardian Ad Litem	A guardian appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.

Habeas Corpus	A writ employed to bring a person before a court, most frequently to ensure that the party‘s imprisonment or detention is not illegal
Hearing	A judicial session open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying.
Hearsay Evidence	Testimony in court based on what a witness has heard from another person rather than on personal knowledge.
Ibid, Id or Idem	In the same place; used in a legal citation to refer to the authority cited immediately before.
Immunity	Any exemption from a duty, liability, or service of process.
Impeachment	The act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the official‘s alleged misconduct.
Indictment	The formal written accusation of a crime, made by a grand jury against the accused person. The act or process of preparing or bringing forward such a formal written accusation.
Information	A formal criminal charge made on the defendant, by a prosecutor without a grand jury indictment.
Injunction	A court order commanding or preventing an action.
Interlocutory	Interim or temporary, not constituting a final resolution of the whole controversy.
Interrogatory	A written question submitted to an opposing party in a lawsuit as part of discovery.
Irrevocable	Unalterable; committed beyond recall.
Jeopardy	The risk of conviction and punishment that a criminal defendant faces at trial.
Joinder	The uniting of parties or claims in a single lawsuit.
Joint & Several	Of liability, responsibility, apportionable either among two or more parties or to only one of a few select members of the group, at the adversary‘s discretion; together and in separation.
Jurat	”To swear”, a certification added to an affidavit or deposition stating when and before what authority the affidavit or deposition was made.
Jurisdiction	A government‘s general power to exercise authority over all persons and things within its territory, a court‘s power to decide a case or issue a decree.
Jurisprudence	Originally (in the 18th century), the study of the first principles of the law of nature, the civil law, and the law of nations.
Jury	A group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them.

License	A privilege granted by a state or city upon the payment of a fee, the recipient of the privilege then being authorized to do some act or series of acts that would otherwise be impermissible.
Lien	A legal right or interest that a creditor has in another‘s property, lasting until a debt or duty that it secures is satisfied.
Limitation	The act of limiting; the state of being limited, a restriction, a statutory period after which a lawsuit or prosecution cannot be brought in court.
Lis Pendens	A pending lawsuit, the jurisdiction, power, or control acquired by a court over property while a legal action is pending.
Litigation	The process of carrying on a lawsuit.
Magistrate	A judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases.
Malicious Prosecution	The institution of a criminal or civil proceeding for an improper purpose and without probable cause.
Malfeasance	A wrongful, unlawful, or dishonest act.
Misdemeanor	A crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement in a place other than prison (such as a county jail).
Mistrial	A trial that the judge brings to an end, without a determination on the merits, because of a procedural error or serious misconduct occurring during the procedure or a trial that ends inconclusively because the jury cannot agree on a verdict.
Moot	Open to argument; debatable, having no practical significance; hypothetical or academic.
Moral Law	A collection of principles defining right and wrong conduct; a standard to which an action must conform to be right or virtuous.
Motion	A written or oral application requesting a court to make a specified ruling or order, a request made to the court.
Motion in Limine	A pretrial request that certain inadmissible evidence not be referred to or offered at trial.
Negligence	The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of other‘s rights.
Nolo Contendere	”I do not wish to contend”, no contest.
Non-Judicial Agreement	A written agreement between the juvenile, the intake officer and the parent(s).
Notary Public	A person authorized by a state to administer oaths, certify documents, attest to the authenticity of signatures, and

	perform official acts in commercial matters, such as protesting negotiable instruments.
Notice	Legal notification required by law or agreement, or imparted by operation of law as a result of some fact; definite legal cognizance, actual or constructive, of an existing right of title.
Nullify	To make void; to render invalid.
Nunc Pro Tunc	Having a retroactive legal effect through a court‘s inherent power.
Opinion	A court‘s written statement explaining its decision in a given case, including the statement of facts, points of law, rational and dicta.
Order	A command, direction, or instruction delivered by a court or judge.
Ordinance	An authoritative law or decree; a municipal regulation (municipal governments can pass ordinances on matters that the state government allows to be regulated at the local level).
Pardon	The act or an instance of officially nullifying punishment or other legal consequences of a crime.
Parole	The release of a prisoner from imprisonment before the full sentence has been served.
Penal	Of, relating to, or being a penalty or punishment for a crime.
Pending	Remanding undecided; awaiting decision.
Peremptory Challenge	One of a party’s limited number of challenges that need not be supported by any reason, although a party may not use such a challenge in a way that discriminates against a protected minority.
Perjury	The act or an instance of a person‘s deliberately making material false or misleading statements while under oath.
Petition	A formal written request presented to a court or other official body.
Petitioner	A party who presents a petition to a court or other official body, when seeking relief on appeal.
Plaintiff	The party who brings a civil suit in a court of law.
Plea	An accused person‘s formal response of “guilty,” ”not guilty,” or “no contest” to a criminal charge.
Plea Bargain	A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, a more lenient sentence or a dismissal of the other charges.
Plea in Abeyance (PIA)	Criminal charges dismissed by the prosecuting attorney if certain conditions are met.
Pleading	A formal document, in which a party to a legal proceeding sets forth or responds to allegations, claims, denials, or defenses.

Police Power	The inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice.
Power of Attorney	An instrument granting someone in authority to act as agent or attorney-in-fact for the grantor.
Prejudice	Damage or detriment to one‘s legal rights or claims.
Preliminary Hearing	A criminal hearing to determine whether there is sufficient evidence to prosecute an accused person.
Preponderance of Evidence	The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.
Presentence Investigation Report (PSI/PSR)	A probation officer’s detailed account of a convicted defendant‘s educational, criminal, family and social background, conducted at the Court‘s request as an aid in passing sentence.
Presumption	A legal inference or assumption that a fact exists based on the known or proven existence of some other fact or group of facts.
Pre-Trial Conference	An informal meeting at which opposing attorneys confer with the judge, to work toward the disposition of the case by discussing matters of evidence and narrowing the issues that will be tried.
Prima Facie	The establishment of a legally required rebuttable presumption. A party’s production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party’s favor.
Probable Cause	A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.
Probation	A court imposed criminal sentence that releases a convicted person into the community instead of sending them to jail or prison.
Pro Se	For oneself; on one‘s own behalf; without a lawyer.
Punitive	Involving or inflicting punishment.
Quash	To annul or make void; to terminate, to suppress or subdue.
Quit Claim Deed	A deed that conveys a grantor‘s complete interest or claim in certain real property but that neither warrants nor professes that the title is valid.
Rebuttal	In-court contradiction of an adverse party‘s evidence, or the time given to a party to present contradictory evidence or arguments.
Recognizance	A bond or obligation, made in court, by which a person promises to perform some act or observe some condition, such as to appear when called, to pay a debt, or to keep the peace.
Remanded	The act or an instance of sending something (such as a case, claim, or person) back for further action.

Remedy	The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.
Resolution	A main motion that formally expresses the sense, will, or action of a deliberative assembly. An acceptable or satisfactory way of dealing with a problem or difficulty.
Respondent	The party against whom an appeal is taken; Appellee.
Restitution	Return or restoration of some specific thing to its rightful owner or status or compensation for benefits derived from a wrong done to another.
Revocation	An annulment, cancellation, or reversal of an act or power.
Seize	To forcibly take possession (of a person or property), to place (someone) in possession, to be in possession (of property).
Statute	A law passed by a legislative body.
Statute of Limitations	A statue establishing a time limit for suing in a civil case based on the date when the claim accrued.
Stay	The postponement or halting of a proceeding, judgment, or the like, or an order to suspend all or part of a judicial proceeding or a judgment resulting from the proceeding – also termed *stay of execution.*
Stipulation	A voluntary agreement between opposing parties concerning some relevant point.
Subpoena	A writ commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply.
Subpoena Duces Tecum	A subpoena ordering the witness to appear and to bring specified documents or records.
Subrogation	The substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor.
Summary Judgment	A Judgment granted on a claim about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law.
Summons	A writ or process commencing the plaintiff's action and requiring the defendant to appear and answer.
Suppress	To put a stop to, put down, or prohibit; to prevent (something) from being seen, heard, known, or discussed.
Transcript	A handwritten, printed, or typed copy of testimony given orally, the official record of proceedings in a trial or hearing, as taken down by a court reporter.
Trespass	An unlawful act committed against the person or property of another.
Trial De Novo	A new trial on the entire case – that is, on both questions of fact and issues of law – conducted as if there had been no trial in the first instance, **an appeal from justice court is called Trial De Novo.**
Trier of Fact	(Fact Finder) One or more person such as jurors in a trial or administrative law judges in a hearing, who hear testimony and review evidence to rule on a factual issue.

Unlawful Detainer	The unjustifiable retention of the possession of real property by one whose original entry was lawful.
Verdict	A jury‘s finding or decision on the factual issues of a case, in a non-jury trial, a judge‘s resolution of the issues of a case.
Voir Dire	A preliminary examination of a prospective juror by a judge or a lawyer to decide whether the prospect is qualified and suitable to serve on a jury, a preliminary examination to test the competence of a witness or evidence or an oath administered to a witness requiring that witness to answer truthfully in response to questions. ”to speak the truth.”
Waiver	The voluntary relinquishment or abandonment – express or implied – of a legal right or advantage.
Warrant	A writ, signed under oath, directing or authorizing someone to do an act, one directing a law enforcer to make an arrest, a search or a seizure.
Warranty Deed	A deed containing one or more covenants of title, esp., a deed that expressly guarantees the grantor‘s good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims.
Writ	A court‘s written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.

ABBREVIATIONS[2]

AFIS	Automated Fingerprint Identification System
AKA	Also Known As (maiden names, false names, etc.)
AOC	Administrative Office of the Court
AP&P	Adult Probation & Parole
BCI	Utah Bureau of Criminal Identification
CCJJ	Commission on Criminal and Juvenile Justice
CH	Criminal History
CJA	Criminal Justice Agency
CJIS	Criminal Justice Information Services
CORIS	Court Record Information System
CWP	Concealed Weapon Permit
DLD	Driver's License Division
DOB	Date of Birth
DOE	Date of Emancipation (when a juvenile turns 18 or is declared emancipated by a court)
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
GRAMA	Government Records Access and Management Act
III	Interstate Identification Index (FBI Records - also known as the Triple I)
LDA	Legal Defenders Association
LEO	Law Enforcement Online
MVD	Motor Vehicle Division
NCIC	National Crime Information Center
NCMEC	National Center for Missing and Exploited Children
NICS	National Instant Criminal Background Check System
NLETS	The International Justice and Law Enforcement Sharing Network also known as National Law Enforcement Telecommunications System
OLN	Operator License Number (Driver License Number)
ORI	Originating Agency Identifier
OTN	Offense Tracking Number
PIA	Plea in Abeyance
POB	Place of Birth
RAP	Record of Arrested Person
ROA	Right of Access
SID	State Identification Number
SMT	Scars, Marks and Tattoos
SWAP	Statewide Association of Prosecutors
SWW	Utah Statewide Wants & Warrants
TAC	Terminal Agency Coordinator
UBI	Utah Bureau of Investigations
U.C.A.	Utah Code Annotated

[2] https:\\ucjis.utah.gov

UCJIS	Utah Criminal Justice Information Center
UCR	Uniform Crime Reports
VOCA	Victims of Crime Act
BRADY	This is not an Acronym. This is the section at BCI that handles firearm purchases and release of firearms in accordance to the Brady Bill.

Commonly Misspelled (Mispelled, Mispelt) Words

Correct	Incorrect			
accessory	acessory	accesory	acksessory	
acquittal	aquittal	acquital		
adjourn	ajourn	adjern	adjoirn	
adjudication	ajudication	ajudication	addijudication	
affidavit	affidavy	afidavit	afidavit	
arraignment	arragnement	arraginment	arrainment	
attendance	attendence	attendanse	atendance	
attorney	attourney	attorny		
bailiff	ballif	bailliff	baliff	
beneficiary	beneficary	benificarry	benneficiary	
codicil	codisil	codicil	coddicil	
commercial	comercial	commertial	comertial	commersial
condemn	condem	condemm	condenm	
corroborate	corroberate	coorborate		
counsel	council	counsil	councel	
counterfeit	counterfiet	counterfit	counterfeat	
dismissal	dissmisal	dismisal	dismissil	
easement	easment	easemont	essement	
eliminate	elemanate	alimenate	elliminate	
escrow	esscrow	escro	escrough	
estoppel	estopell			
fiduciary	fijuciary	fidjuicary	fijuicary	
guardian	guardian	guardan	guardion	

immunity	imunity	immunity	immunety
indictment	inditement	indictmeant	inditment
initiative	iniative	enitiative	initative
injunction	injuncsion	injuncshion	injuncton
intelligence	inteligence	intellegence	intelegence
interrogation	interogation	interrigation	interrogaton
judgment	judgement	judgemant	judgemont
license	licence	lisence	leicence
lien	leen	lein	lean
litigation	littigation	littigasion	litigashion
ordinance	ordinence	ordinnance	ordinanse
possession	posession	possesion	possesson
prejudice	prejudise	pregudice	prejedice
privilege	prevelege	priviledge	preveledge
receipts	receits	reciepts	receips
reference	referance	referrence	refferense
subpoena	subpena	subpeena	supbeona
tenant	tennat	tennant	tenent
transient	transeint	trancient	transent

Introduction to the Court System and its Jurisdiction

Every form of government, whether a democracy, monarchy or dictatorship, provides a system for resolving disputes which inevitably arise among people. In the United States, there is a dual legal system: one composed of federal courts and the other of state courts. Federal courts are those created by Federal Law. State courts are created by laws of the individual states. Every state in the United States has its own court system. The federal court and the state court systems are strikingly similar. Both derive their heritage from the legal system of England but have developed separately over the last two hundred years. No two states have exactly the same laws or the same procedures in their courts. Furthermore, the federal system is not exactly like that of any of the states. Although the terminology describing the various courts within a given system may vary, the basic functions of these courts are the same.

Each of the systems has a variety of courts. All have courts where a dispute is heard initially. These courts are known as trial courts. Trial courts are the workhorse of the court system. It is where most lawsuits are filed. Trial courts are places where witnesses testify, a Judge presides, and a Judge or Jury will render a verdict.

Every court system is divided into at least two classes of court:

1. Trial Courts.
2. Appellate Courts.

A trial court or court of first instance is the court in which most civil or criminal cases begin. Not all cases are heard in trial courts; some cases may begin in inferior limited jurisdiction bodies such as the case of the jurisdiction of an administrative body that has been created by statute to make some kind of binding determination under the law and where simplified procedural practices may apply similar to arbitration.[3]

In the trial court, evidence is taken and determinations are made, called findings of fact. Under the rules of evidence and applicable procedural law, the court also makes findings of law based upon the applicable law. Findings of fact are determined by the trier of fact (judge or jury) and the findings of law are always determined by the judge or judges. In most common law jurisdictions, the trial court often sits with a jury and one judge; though some cases may be designated ”bench trials,” either by statute, custom, or by agreement of the parties, in which the judge makes both fact and law determinations.[4]

A trial court is distinguished from an appellate court, which reviews cases that have already been heard in the trial court. In appellate review, the record of the trial court must be certified by the clerk of the trial court and transmitted to the appellate body. Most appellate courts do not have the authority to hear testimony or take evidence, but

[3] http://en.wikipedia.org/wiki/Trial_court
[4] http://en.wikipedia.org/wiki/Trial_court

must rely upon the record below[5]. Most trial courts are courts of record. The trial court is the court where the record of the presentation of evidence is created and must be maintained or transmitted to the appellate court.[6]

In appellate courts, the losing party seeks to have the decision of the trial court reviewed and overturned. Appellate courts decide their cases on the basis of stenographic record of the testimony at trial, documents presented at trial, pleadings filed, briefs submitted by the parties pointing out the legal authority for the positions they assert, and oral arguments where the attorneys attempt to clarify and amplify their respective positions. New evidence is not presented to the appellate courts. Appellate courts review the trial proceedings upon request of one of the parties to ensure both parties received a fair trial with respect to the applicable issues and that the decision was supported by evidence (testimony and documents) presented at trial.

Trial courts are "inferior" to appellate courts. Inferior refers to the concept that decisions of the appellate court of a state are deemed binding on the trial court within its jurisdiction. A trial court judge is required to follow the decision of the appellate court even if they disagree. The decision of the highest appellate court is binding on both the intermediate appellate court and the trial court of the same state.

In the United States, the United States district court is the sole trial court of general jurisdiction in the federal judicial system. State court systems refer to their trial courts by a variety of names, including ―district court,‖ ―circuit court,‖ ―superior court,‖ and (in New York) ―Supreme Court.‖[7]

JURISDICTION

Jurisdiction is the power or authority of a court to hear and decide the questions of law and/or facts presented by a lawsuit.

Most courts have **geographical jurisdiction**, meaning that they hear cases that arise within specific geographical boundaries.

Courts also have **personal jurisdiction,** or power over the particular person named in the lawsuit.

Each court has some form of **subject matter jurisdiction**. This jurisdiction is defined by the nature or subject of the lawsuits handled by that court. Examples are juvenile or appellate cases.

[5] Can send for limited additional taking of evidence in a 23B hearing.
[6] http://en.wikipedia.org/wiki/Trial_court
[7] http://en.wikipedia.org/wiki/Trial_court

When a court has **general jurisdiction,** it can hear all types of cases. Most states have trial courts of general jurisdiction where subject matter jurisdiction is assumed unless one party can demonstrate that the court does not have the necessary subject matter jurisdiction.

A court has limited jurisdiction when its authority to hear and decide cases is limited to specific types of cases. A court specifically labeled traffic court can hear only traffic cases.
Limited jurisdiction becomes **exclusive jurisdiction** when a court is the only court permitted to handle a specific type of case.

Frequently the jurisdiction of a court is limited by the amount of money claimed in the lawsuit. This monetary value is referred to as the **jurisdictional amount**.

Venue

A concept related to jurisdiction, yet distinct from it is venue. Venue does not address the question of which court has subject matter or personal jurisdiction: it determines which court should hear a case based on convenience for the parties, location of witnesses and evidence, place where the event in question happened, and fairness. Venue is based on a traditional concept of "neighborhood," and the location of the event that triggered the lawsuit.

Administrative Structure of the Courts

[7]Judicial Council

The Utah Judicial Council is the policy making body for the judiciary. It has the constitutional authority to adopt uniform rules for the administration of all the courts in the state. The Council also sets standards for judicial performance, court facilities, support services, and judicial and non judicial staff levels.

The Council consists of fourteen members. The Chief Justice of the Supreme Court chairs the Council. The other members include: a Supreme Court Justice; a judge of the Court of Appeals; five District Court judges; two Juvenile Court judges; three Justice Court judges; a state bar representative; and the State Court Administrator, who serves as secretariat to the Council. The judges and the State Bar representative serve three year terms.

By rule, the Judicial Council established a Board of Judges for each level of court. Boards of Judges adopt administrative rules in accordance with the guidelines of the Council, advise the council, supervise the implementation of Council policies and serve as liaisons between judges and the Council.

[7] www.utcourts.gov

The Judicial Council holds monthly meetings throughout the state. All the meetings are open and may be attended by interested parties. They provide an opportunity for other branches of government, federal agencies, and citizens to present issues and concerns directly to the judiciary.

State Court Administration

The Court Administrator Act, passed in 1973 and revised in 1986, provides for the appointment of a State Court Administrator, an individual with professional ability and experience in the field of public administration and an understanding of court procedures and services. [8]

The State Court Administrator is assisted by a deputy administrator, district, juvenile and justice court administrators, trial court executives and management personnel in the following areas: human resources, public information, planning and research, finance, information technology, information services, audit and general counsel. The Administrative Office of the Courts serves as staff to the Judicial Council, rules committees, boards of judges, standing and ad hoc committees, and nominating commissions and provides support to clerks of court and trial court executives. [9]

The Administrative Office of the Courts has the responsibility to implement the standards, policies, and rules established by the Judicial Council; to organize and administer all of the non judicial activities of the court; to prepare the state judicial budget, conduct studies and develop procedures to further the administration of the courts.

Board of Judges

By rule the Judicial Council established a Board of Judges for each level of court. The purpose of the Board is to adopt administrative rules in accordance with the standards and guidelines of the Judicial Council; to advise the Council; to supervise the implantation of council policies; to serve as liaison between local judges and the Council; and to develop statewide budget and legislative priorities. The Judicial Council holds monthly meetings throughout the state. All the meetings are open and may be attended by interested parties. They provide an opportunity for other branches of government, federal agencies, and citizens to present issues and concerns directly to the judiciary.

Local Court Administration

Presiding judges are elected in the district, juvenile and circuit courts in each judicial district. The presiding judge, in addition to judicial responsibilities, oversees the activities and operation of the court. The presiding judge is assisted by a court executive, who supervises the work of all non-judicial court staff and serves as the administrative officer.

[8] www.utcourts.gov

Selection, Retention & Performance Evaluations of Utah Judges[9]

Merit Selection of Judges

The office of judge is unique in our society. A judge is a public servant holding an office of high public trust and so should answer to the public. However, the obligation of a judge is to resolve disputes impartially and to base decisions solely upon the facts of the case and the law. A judge, therefore, should be insulated from public pressure.

Merit selection of judges was developed as an alternative to requiring judges to run in contested elections. The Judicial Article of the Utah Constitution, revised effective July 1, 1985, establishes merit selection as the exclusive method of choosing a state court judge. As stated in the Utah Constitution: "*Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration*."

There are four steps in the Utah merit selection plan: nomination, appointment, confirmation and retention election. The Judicial Selection Act governs the process for selecting judges in Utah. The Governor appoints a committee of lawyers and non-lawyers for each judicial district, including the appellate courts. These committees are called Judicial Nominating Commissions. Commission members review the applications for vacant judicial positions and select candidates to interview. After interviews have been conducted, the Commission refers five names (for district and juvenile court judges) or seven names (for appellate court judges) to the Governor. The Governor appoints one of the nominees who must then be confirmed by a majority of the Utah State Senate.

Judicial Retention Elections

Under Article VIII, Section 9 of the Utah Constitution, judges must stand for retention election at the end of each term of office. These terms are defined by Utah Code Section 20A-12-201. The public has the opportunity to vote whether to retain the judge for another term. Before a judge stands for retention election, he or she is evaluated by the Judicial Performance Evaluation Commission, described below.

Judicial Performance Evaluation

The Utah Judicial Performance Evaluation Commission (JPEC) consists of thirteen members: four members appointed by each of the three branches of government and the executive director of the Utah Commission on Criminal and Juvenile Justice. JPEC's role is to evaluate the performance of judges standing for retention election and to recommend to voters whether a judge should be retained.

JPEC administers surveys of attorneys, court staff, jurors, litigants and witnesses, as well as a courtroom observation program to assess judges' performance, demeanor, legal knowledge and temperament. This information is reported in the Voter's Pamphlet to help the public make informed

[9] (Court Organization, Judges, Court Governance)

decisions in judicial retention elections. JPEC has enacted Administrative Rule R597 describing its evaluation procedures.

About the Court System

Trial Courts are the workhorse of the court system. It is where most lawsuits are filed. Trial courts decide questions of law and questions of fact. Questions of fact focus on what happened and may be decided by either the judge or a jury. Questions of law focus on the law or proper procedure to be applied to a particular case (such as was the evidence admissible), and are always decided by the judge. Most cases are resolved in the trial court.

Intermediate Appellate Court is the court that stands between the trial court and the court of final review. Most appeals from the trial courts must go to the intermediate appellate court and are resolved there. Cases of considerable significance are appealed from the intermediate appellate court and are accepted by the Supreme Court or the court of final appeal for review.

The Appellate Court When the losing party feels that questions of law were erroneously decided by the trial court judge, it has the right to appeal the case to an appellate court. The appellate court considers questions of law only and does not retry the facts of the case. Both federal and state court systems have a final court of appeal. In most systems, it is called the Supreme Court. Published opinions of an appellate court become the "rule of law‖ (precedent) in the particular geographical jurisdiction of that court.

THE FEDERAL COURT SYSTEM[10]

The United States Federal Courts are the system of courts organized under the constitution and laws of the federal government of the United States. The federal courts are a branch of the federal government, and include:

1. General jurisdiction courts:
    a. United States District Courts.
    b. United States Court of Appeals.
    c. Supreme Court of the United States.
2. Courts of specific subject matter jurisdiction:
    a. United States Bankruptcy Courts.
    b. United States Tax Court.
    c. United States Court of International Trade.
    d. United States Courts of Federal Claims.
    e. United States Court of Appeals for the Armed Forces.
    f. United States Court of Appeals for the Federal Circuit.

While federal courts are generally created by the U.S. Congress under the constitutional power described in Article III, many of the specialized courts are created under the authority granted in Article I.

Greater power is vested in Article III courts because the greater control that congress is able to exercise over Article I courts would threaten the balance of power between the branches of government.

Article III requires the establishment of a Supreme Court and permits the U.S. Congress to create other federal courts, and place limitations on their jurisdiction. In theory, congress could eliminate the entire federal judiciary except for a single Supreme Court Justice (who would be the Chief Justice by default). However, the first congress immediately established a system of lower federal courts through the Judiciary Act of 1789.

Levels of U.S. Federal Courts[11]

The Federal District Courts are the general federal trial courts, although in many cases congress has passed statutes which divert original jurisdiction to the above-mentioned specialized courts or to administrative law judges (ALJs). In such cases, the district courts have jurisdiction to hear appeals from such lower bodies.

The Federal Court of Appeals is the intermediation appellate courts. They operate under a system of mandatory review, which means they must hear all appeals from the lower courts.
Finally, the United States Supreme Court is the court of last resort. It generally operates under discretionary review, meaning that it can pick and choose cases (through grants of

[10] http://en.wikipedia.org/wiki/United_States_Federal_Courts
[11] http://en.wikipedia.org/wiki/United_States_Federal_Courts

writ of certiorari) and hear only non-frivolous appeals that present truly novel issues. In a few unusual situations (like lawsuits between state governments or some cases between the federal government and a state), it sits as a court of original jurisdiction. Such matters are generally referred to a designated individual (usually a sitting or retired judge or well-respected attorney) to sit as ―Special Master, who reports to the court with recommendations.

Other Federal Trial Courts[12]

There are other federal trial courts that have nationwide jurisdiction over certain types of cases, but the district court also has concurrent jurisdiction over many of those cases, and the district court is the only one with jurisdiction over criminal cases. The Court of International Trade addresses cases involving international trade and customs issues. The United States Court of Federal Claims has exclusive jurisdiction over most claims for money damages against the United States, including disputes over federal contracts, unlawful takings of private property by the federal government, and suits for injury on federal property or by a federal employee. The United States Tax Court has jurisdiction over contested pre-assessment determinations of taxes.

United States District Courts

The 94 United States District Courts are the general trial courts of the United States federal court system. Both civil and criminal cases are filed in the district court, which is a court of both law equity and admiralty.[13] It is the court of original jurisdiction, which refers to the fact that this court has the authority to decide a case when it is first instituted by one of the parties. The district court is also a court of limited jurisdiction, which means that this court has the authority to adjudicate only cases that fall within a particular class of cases. Unless a case falls within the limits set up by congress, the federal courts do not have the authority to decide it.

To invoke the authority of the federal district courts, a plaintiff or party instituting an action must affirmatively demonstrate that the case falls within one of the following, also called **subject matter jurisdiction**:

1. Cases arising under the federal constitution or laws and treaties of the United States (28 U.S.C. § 331).
2. Cases between citizens of different states involving a claim worth $50,000.00 or more. (28 U.S.C. § 1332).
3. Civil cases of admiralty and maritime jurisdiction (28 U.S.C. § 1333).
4. Civil cases brought by and against the United States (28 U.S.C. § 1345 and 1346).
5. Cases proceeding under the copyright and patent laws (23 U.S.C. § 1338).
6. Federal Tort Claims Act cases (28 U.S.C. § 1346(b)).
7. Patents, copyrights and trademark cases (28 U.S.C. § 1338).
8. Civil rights cases (28 U.S.C. § 1343).

[12] http://en.wikipedia.org/wiki/United_States_district_court
[13] http://en.wikipedia.org/wiki/United_States_district_court

United States Court of Appeals[14]

The United States courts of appeals are the intermediate appellate courts of the United States federal judiciary. The courts of appeals are divided into 11 numbered circuits that cover geographic areas of the United States and hear appeals from the U.S. district courts within their borders, the District of Columbia Circuit, which covers only Washington, D.C., and the Federal Circuit, which hears appeals from federal courts across the United States in cases involving certain specialized areas of law. The courts of appeals also hear appeals from some administrative agency decisions and rulemaking, with by far the largest share of these cases heard by the D.C. Circuit. Appeals from decisions of the courts of appeals can be taken to the U.S. Supreme Court.

The United States courts of appeals are considered the most powerful and influential courts in the United States after the Supreme Court. Because of their ability to set legal precedent in regions that cover millions of Americans, the United States courts of appeals have strong policy influence on U.S. law. Moreover, because the Supreme Court chooses to review fewer than 3% of the 7,000 to 8,000 cases filed with it annually, [1] the U.S. courts of appeals serve as the final arbiter on most federal cases.

There are currently 179 judgeships on the U.S. courts of appeals authorized by Congress in 28 U.S.C. § 43 pursuant to Article III of the U.S. Constitution. Like other federal judges, they are nominated by the president of the United States and confirmed by the United States Senate. They have lifetime tenure, earning (as of 2019) an annual salary of $223,700.[2]. The actual number of judges in service varies, both because of vacancies and because senior judges who continue to hear cases are not counted against the number of authorized judgeships.

Decisions of the U.S. courts of appeals have been published by the private company West Publishing in the Federal Reporter series since the courts were established. Only decisions that the courts designate for publication are included. The "unpublished" opinions (of all but the Fifth and Eleventh Circuits) are published separately in West's Federal Appendix, and they are also available in on-line databases like LexisNexis or Westlaw. More recently, court decisions have also been made available electronically on official court websites. However, there are also a few federal court decisions that are classified for national security reasons.

The circuit with the smallest number of appellate judges is the First Circuit, and the one with the largest number of appellate judges is the geographically large and populous Ninth Circuit in the Far West. The number of judges that the U.S. Congress has authorized for each circuit is set forth by law in 28 U.S.C. § 44, while the places where those judges must regularly sit to hear appeals are prescribed in 28 U.S.C. § 48.

Although the courts of appeals are frequently called "circuit courts", they should not be confused with the former United States circuit courts, which were active from 1789 to 1911, during the time when long-distance transportation was much less available, and which were primarily first-level federal trial courts that moved periodically from place to

[14] http://en.wikipedia.org/wiki/United_States_court_of_appeals

place in "circuits" in order to serve the dispersed population in towns and the smaller cities that existed then. The current "courts of appeals" system was established in the Judiciary Act of 1891.

Procedure[15]

Because the courts of appeals possess only appellate jurisdiction, they do not hold trials. Only courts with original jurisdiction hold trials and thus determine punishments (in criminal cases) and remedies (in civil cases). Instead, appeals courts review decisions of trial courts for errors of law. Accordingly, an appeals court considers only the record (that is, the papers the parties filed and the transcripts and any exhibits from any trial) from the trial court, and the legal arguments of the parties. These arguments, which are presented in written form and can range in length from dozens to hundreds of pages, are known as briefs. Sometimes lawyers are permitted to add to their written briefs with oral arguments before the appeals judges. At such hearings, only the parties' lawyers speak to the court.

The rules that govern the procedure in the courts of appeals are the Federal Rules of Appellate Procedure. In a court of appeals, an appeal is almost always heard by a "panel" of three judges who are randomly selected from the available judges (including senior judges and judges temporarily assigned to the circuit). Some cases, however, receive an en banc hearing. Except in the Ninth Circuit Court, the en banc court consists of all of the circuit judges who are on active status, but it does not include the senior or assigned judges (except that under some circumstances, a senior judge may participate in an en banc hearing who participated at an earlier stage of the same case).[4] Because of the large number of Appellate Judges in the Ninth Circuit Court of Appeals (29), only ten judges, chosen at random, and the Chief Judge hear en banc cases.[5]

Many decades ago, certain classes of federal court cases held the right of an automatic appeal to the Supreme Court of the United States. That is, one of the parties in the case could appeal a decision of a court of appeals to the Supreme Court, and it had to accept the case. The right of automatic appeal for most types of decisions of a court of appeals was ended by an Act of Congress, the Judiciary Act of 1925, which also reorganized many other things in the federal court system. Passage of this law was urged by Chief Justice William Howard Taft.

The current procedure is that a party in a case may apply to the Supreme Court to review a ruling of the circuit court. This is called petitioning for a writ of certiorari, and the Supreme Court may choose, in its sole discretion, to review any lower court ruling. In extremely rare cases, the Supreme Court may grant the writ of certiorari before the judgment is rendered by the court of appeals, thereby reviewing the lower court's ruling directly. Certiorari before judgment was granted in the Watergate scandal-related case, United States v. Nixon, [6] and in the 2005 decision involving the Federal Sentencing Guidelines, United States v. Booker. [7]

[15] http://en.wikipedia.org/wiki/United_States_court_of_appeals

A court of appeals may also pose questions to the Supreme Court for a ruling in the midst of reviewing a case. This procedure was formerly used somewhat commonly, but now it is quite rare. For example, while between 1937 and 1946 twenty 'certificate' cases were accepted, since 1947 the Supreme Court has accepted only four. [8] The Second Circuit, sitting en banc, attempted to use this procedure in the case United States v. Penaranda, 375 F.3d 238 (2d Cir. 2004),[9] as a result of the Supreme Court's decision in Blakely v. Washington,[10] but the Supreme Court dismissed the question. See United States v. Penaranda, 543 U.S. 1117 (2005).[11] The last instance of the Supreme Court accepting a set of questions and answering them was in 1982's City of Mesquite v. Aladdin's Castle, Inc., 455 US 283 (1982).[12]

A court of appeals may convene a Bankruptcy Appellate Panel to hear appeals in bankruptcy cases directly from the bankruptcy court of its circuit. As of 2008, only the First, Sixth, Eighth, Ninth, and Tenth Circuits have established a Bankruptcy Appellate Panel. Those circuits that do not have a Bankruptcy Appellate Panel have their bankruptcy appeals heard by the district court. [13]

Courts of appeals decisions, unlike those of the lower federal courts, establish binding precedents. Other federal courts in that circuit must, from that point forward, follow the appeals court's guidance in similar cases, regardless of whether the trial judge thinks that the case should be decided differently.

Federal and state laws can and do change from time to time, depending on the actions of Congress and the state legislatures. Therefore, the law that exists at the time of the appeal might be different from the law that existed at the time of the events that are in controversy under civil or criminal law in the case at hand. A court of appeals applies the law as it exists at the time of the appeal; otherwise, it would be handing down decisions that would be instantly obsolete, and this would be a waste of time and resources, since such decisions could not be cited as precedent. "[A] court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice, or there is statutory direction or some legislative history to the contrary."[14]

However, the above rule cannot apply in criminal cases if the effect of applying the newer law would be to create an ex post facto law to the detriment of the defendant.

Decisions made by the circuit courts only apply to the states within the court's oversight, though other courts may use the guidance issued by the circuit court in their own judgments. While a single case can only be heard by one circuit court, a core legal principle may be tried through multiple cases in separate circuit courts, creating an inconsistency between different parts of the United States. This creates a split decision among the circuit courts. Often, if there is a split decision between two or more circuits, and a related case is petitioned to the Supreme Court, the Supreme Court will take that case as to resolve the split.

Attorneys[16]

In order to serve as counsel in a case appealed to a circuit court, the attorney must first be admitted to the bar of that circuit. Admission to the bar of a circuit court is granted as a matter of course to any attorney who is admitted to practice law in any state of the United States. The attorney submits an application, pays a fee, and takes the oath of admission. Local practice varies as to whether the oath is given in writing or in open court before a judge of the circuit, and most courts of appeals allow the applicant attorney to choose which method he or she prefers.

The United States Supreme Court

The Supreme Court of United States is the highest judicial body in the United States and only part of the judicial branch of the United States federal government explicitly specified in the United States Constitution. It is assigned the highest appellate authority among the courts that congress is authorized to create.[17] It hears appeals from the U. S. Courts of Appeals and from the supreme or highest court for any state in cases involving rights under the U.S. Constitution, treaties, or statutes.

The court consists of nine justices: The Chief Justice of the United States and eight Associate Justices. The Justices are nominated by the President and confirmed with the ―advice and consent‖ of the senate. They are appointed to serve ―during a term of good behavior, (which almost always means for life), and leave office only upon death, retirement, resignation, or impeachment and subsequent conviction.[18]

Most appeals reach the Supreme Court on a writ of certiorari. This is a discretionary procedure that allows the court to take only the cases that, in its opinion, have sufficient national significance to warrant its attention. The U.S. Supreme Court will also hear cases where there is a serious conflict in the decisions of the various circuits of the court of appeals. Besides discretionary review, the Supreme Court must hear appeals regarding specific types of constitutional issues.
There are several specialized courts in the federal system that been created to handle certain unique types of cases. The United States Claims Court has trial jurisdiction over claims against the United States arising from federal law or involving contracts with the United States arising from federal law or involving contracts with the United States. The Court of International Trade has exclusive jurisdiction over actions concerning foreign imports and trade. The United States Court of Appeals for the Federal Circuit hears appeals from the Court of International Trade, the U.S. Claims Court, and the Office of Commissioner of Patents. The United States Tax Court has original (trial) jurisdiction over cases involving federal income, death, or gift taxes. The Court of Military Appeals consists of three civilian judges who sit on the court of review over court martial convictions in all the services.

The Supreme Court meets in Washington, D.C., in the United States Supreme Court building. The Court is sometimes unofficially referred to by the abbreviations **SCOTUS**

[16] http://en.wikipedia.org/wiki/United_States_court_of_appeals
[17] http://en.wikipedia.org/wiki/United_States_Supreme_Court
[18] http://en.wikipedia.org/wiki/United_States_Supreme_Court

(Supreme Court of the United States) and **USSC** (United States Supreme Court). The Court's yearly terms usually start on the first Monday in October and technically continue for a full year, although in practice the Court usually does not convene between late June and late September. Each term consists of alternating two-week intervals. During the first interval, the Court is in session ('sitting') and hears cases, and during the second interval, Court hearings are recessed to consider and write opinions on cases they have heard.[19]

Jurisdiction

Judicial Power shall extend to all cases, in law and equity, arising under the U.S. Constitution, the laws of the U.S. and Treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls to all cases of admiralty and maritime jurisdiction to controversies between two or more states between a state and citizens of another state between citizens of different states between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In cases affecting ambassadors, etc., and those in which a state shall be a party, the court has original jurisdiction. In all other cases, the court shall have appellate jurisdiction.

Congress has from time to time conferred upon the court power to prescribe rules of procedure to be followed by the lower courts of the U.S. Such rules include civil and criminal cases in the district courts, bankruptcy proceedings, admiralty cases, copyright cases, appellate proceedings, and criminal minor offense proceedings before U.S. magistrate.

Federal Court Jurisdiction: Constitutional and Statutory Provisions, United States Constitution. Article Ill. Section 2:
The judicial power shall extend (1) to all cases . . . arising under this Constitution, The laws of the United States, and all treaties made . . . under their authority; (2) to all cases affecting Ambassadors, other public ministers and all cases affecting Ambassadors, other public ministers and Consuls; (3) to all cases of admiralty and maritime jurisdiction; (4) to controversies to which the United Sates shall be a party; (5) to controversies between two or more states; (6) between a state and citizens of another state; (7) between citizens of different states; (8) between citizens of the same state claiming lands under grants of different states: (9) between a state, or the citizens thereof, and foreign states, citizens or subjects.

Title 28, U.S. Code, § 1331 (a) (Federal Question Jurisdiction):
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States[20]

Title 28, U.S. Code, § 1332(a) (Diversity of Citizenship Jurisdiction):

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[19] http://en.wikipedia.org/wiki/United_States_Supreme_Court
[20] Judiciary and Judicial Procedures Title 28, Section 1331

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $$75,000.00, exclusive of interest and costs, and is between –

1. citizens of different states;
2. citizens of a state and citizens or subjects of a foreign state, expect that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who ae lawfully admitted for permanent residence in the United States and are domiciled in the same State.
3. citizens of different states and in which foreign states or citizens or subjects thereof are additional parties; and
4. a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a Sate or of different states.[21]

[21] Judiciary and Judicial Procedures Title 28, Section 1332

Parties in Court Proceedings

1. Judge

The Judge is responsible for the conduct of the proceedings. Although the judge's rulings are subject to exception and appeal to a higher tribunal, they may not be actively questioned while the trial proceeds. As the evidence is presented, the judge rules on objections and makes certain limited instructions to the jury. After the evidence is completed, the judge instructs the jury about the law. If a trial is without a jury (a bench trial), the judge is also the finder of facts as well as the determiner of the law.

2. Jury

The jury's function is to listen to the evidence, make determinations of fact when testimony conflicts, and apply the law to those determinations as instructed by the judge.

3. Court Reporter[22]

The Court Reporter records verbatim every word spoken in the courtroom. Even conferences at the bench between the judge and attorneys are often recorded by the court reporter at the judge's request or at the request of the attorneys. A video or audio recording system shall maintain the verbatim record of all court proceedings, or if requested by the court, a certified court reporter licensed in Utah shall; (1) maintain a verbatim record in all trial court proceedings in capital felonies, (2) a party may arrange for a certified court reporter, or (3) if an audio or video recording system is unavailable.

4. Clerk of Court

The Clerk of the Court is responsible for scheduling the trials and seeing that all matters in the court run smoothly. He or she is the administrative officer of the court. Each Judge also has an "in court Clerk" and a support Clerk. The in court clerk reads the indictment at the beginning of the trial but may have no other spoken function during the trial.

5. Bailiff

The bailiff is responsible for preserving order in the court, under the direction of the court.

6. Attorneys

All attorneys are officers of the court. An attorney is responsible for presenting the evidence in the most favorable light for his or her client. The attorney must abide by the rules of the court and defer to the ruling of the judge whether or not he or she agrees with it at the time

County Prosecutor

The county attorney, or deputy county attorney, shall appear and prosecute for the state in the district court of the county in all criminal prosecutions, may appear and prosecute in all civil cases in which the state may be interested, and

[22] https://www.utcourts.gov/rules/view.php?type=ucja&rule=4-201

shall render assistance and cooperation as required by the attorney general, §17-18-1.

City Prosecutor

In cities with a city attorney, the city attorney may prosecute violations of city ordinances, may prosecute, under state law, infractions and misdemeanors occurring within the boundaries of the municipality, and has the same powers in respect to violations as are exercised by a county attorney or district attorney, § 10-3-928.

Defense Attorney

A lawyer who represents a defendant in a civil or criminal case.

Civil Attorney

A civil attorney in a county or city attorney's office gives legal advice to the county commission or city council, and to public officials. The civil attorney shall defend all actions brought against the county, prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the county, give, when required, an opinion in writing to county, district, and precinct officers on matters relating to the duties of their respective offices. A civil attorney may also be a private attorney retained in civil lawsuits.

7. Probation Officer

Probation officers investigate and supervise defendants during court ordered probation and, often, make recommendations in sentencing hearings in courts of law. Probation Officers also obtain reports to prepare Pre-Sentence Investigation Reports per the Court's order.

8. Victim's Advocate

A victim advocate provides direct advocacy support to victims in prosecution cases, inform them of their rights found in the Utah Constitution, and navigate the criminal justice system. They assist with referrals to resources, safety planning, obtaining CVR (Crime Victim Reparations) claims, victim impact statements, protective orders, restitution, acts as a liaison with prosecution, and assists victims with Board of Pardons and Parole hearings.

Table of Jurisdiction

Court	Original Jurisdiction	Appellate Jurisdiction
Supreme Court	1. Questions from Federal Court 2. Extraordinary Writs	1. Certiorari to Court Appeals 2. Lawyer Discipline 3. Judicial Conduct 4. First Degree or Capital Felony 5. PSC, Tax Commission, State Engr., Board of State Lands and Board of Oil, Gas & Mining. 6. Statutes held to be unconstitutional
Court of Appeals	1. Extraordinary Writs	1. Administrative Agencies 2. Circuit Court 3. Juvenile Court 4. Criminal except: First Degree or Capital Felony 5. Domestic Relations 6. Transfers from Supreme Court
District Court	1. Class "A" Misdemeanors 2. All Criminal Felonies 3. All Civil Actions above $2,500 4. Extraordinary Writs	1. Administrative Agencies
Justice	1. Class "B & C" Misdemeanors 2. Infractions 3. Small Claims – Civil cases under $2,500	
Juvenile	Most juvenile offense for those under 18 years of age. Or for persons under 21 whose offense was committed before age 18	

***For municipalities not having a Justice Court, misdemeanors are heard in District Court.**

Counties with Districts[23]

1st Judicial District
Box Elder County
Cache County
Rich County

2nd Judicial District
Davis County
Morgan County
Weber County

3rd Judicial District
Salt Lake County
Summit County
Tooele County

4th Judicial District
Juab County
Millard County
Utah County
Wasatch County

5th Judicial District
Beaver County
Iron County
Washington County

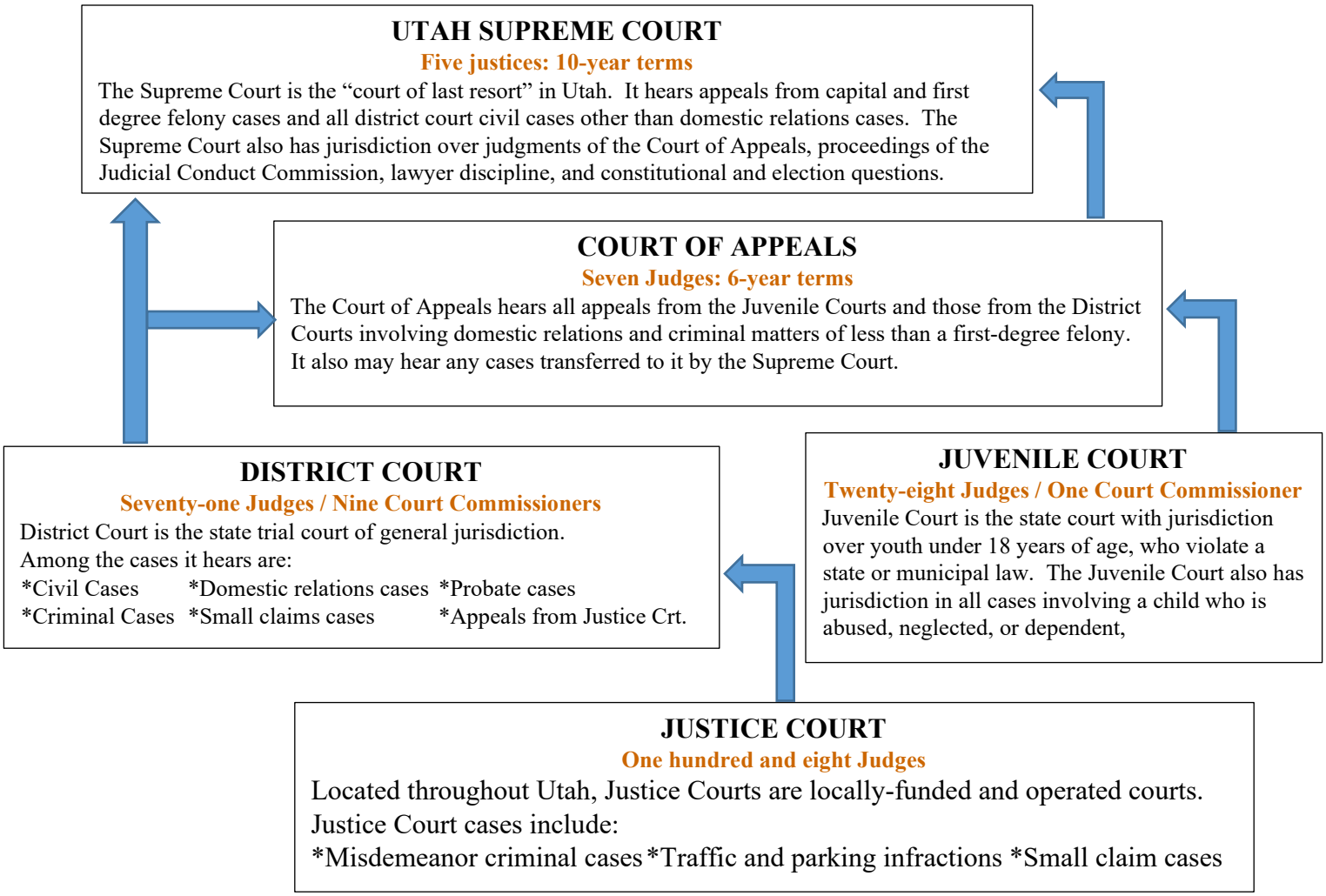
6th Judicial District
Garfield County
Kane County
Piute County
Sanpete County
Sevier County
Wayne County

7th Judicial District
Carbon County
Emery County
Grand County
San Juan County

8th Judicial District
Daggett County
Duchesne County
Uintah County

[23] www.utcourts.gov
(Map of Courts & Judicial Districts)

[24]Navigating the Court System



[24] https://www.utcourts.gov/courts/dist/

State of Utah Court Organization[25]

The Utah State Court System is comprised of two appellate courts: the Supreme Court and the Court of Appeals; trial courts including the District, Juvenile, and Justice Courts; and two administrative bodies the Judicial Council and the Administrative Office of the Court. District, Juvenile, and Justice Courts are located in each of the state's eight judicial districts.

Supreme Court

The Supreme Court is the "court of last resort" in Utah. The court consists of five justices who serve ten-year renewable terms. The justices elect a chief justice by majority vote to serve for four years, and an associate chief justice to serve for two years.

The Supreme Court has original jurisdiction to answer questions of state law certified from Federal Courts and to issue extraordinary writs. The Court has appellate jurisdiction to hear first degree and capital felony convictions from the District Court and civil judgments other than domestic cases. It also reviews formal administrative proceedings of the Public Service Commission, Tax Commission, School and Institutional Trust Lands Board of Trustees, Board of Oil, Gas, and Mining, and the State Engineer. The Supreme Court also has jurisdiction over judgments of the Court of Appeals by writ of certiorari, proceedings of the Judicial Conduct Commission, and both constitutional and election questions.

The Supreme Court conducts sessions regularly at the Matheson Courthouse in Salt Lake City, but the Court may sit in other locations occasionally. The Court generally sits the first and third Mondays of each month to decide procedural and substantive matters presented on a law and motion calendar. Following presentation of oral arguments by attorneys, the justices hold a conference and vote to either grant or deny the motions. Three of the five justices sit on the law and motion panel, allowing two justices to devote more time to writing opinions.

In the first week of every month, the Court schedules oral arguments. After attorneys argue their cases before the Court, the justices hold a conference, and one justice is assigned to write an opinion. Writing assignments are rotated to distribute the caseload as equally as possible. The justices may also elect to write separate concurring or dissenting opinions.

The justices are assisted by law clerks, staff attorneys, a Clerk of the Court, and a staff of legal secretaries and front office clerks. Law clerks are recent law school graduates who do legal research on issues before the court. The staff attorneys screen the cases to be heard by the court and the Clerk of Court is responsible for processing legal matters filed with the court.

The Supreme Court also adopts rules of civil and criminal procedure and rules of evidence for use in the state courts and manages the appellate process. The Court also

[25] www.utcourts.gov

governs the practice of law, including admission to practice law and the conduct and discipline of lawyers.

Court of Appeals

The Utah Court of Appeals, created in 1987, consists of seven judges who serve six-year renewable terms. A presiding judge is elected by majority vote to serve for two years. The jurisdiction of the Court of Appeals is complementary to that of the Supreme Court. The Court of Appeals hears all appeals from the Juvenile and District Courts, except those from the small claims department of a District Court. It also determines appeals from District Court involving domestic relations cases, including divorce, annulment, property division, child custody, support, visitation, adoption and paternity, and criminal matters of less than a first degree or capital felony. The Court also reviews appeals of administrative proceedings by state agencies including the Utah Industrial Commission and the Department of Employment Security Career Service Review Board. It also has jurisdiction to hear cases transferred to it by the Supreme Court.

Court of Appeals sessions usually are conducted in Salt Lake City, but the Court travels several times per year, holding court in different geographical regions of the state. The Court sits and renders judgment in rotating panels of three judges. It is prohibited by statute from sitting en banc (all seven members at once). The panels hear oral arguments in cases during the third and fourth week of the month. After hearing arguments, the judge‘s conference to discuss the issues raised in the case. One of the judges on the panel is assigned to write the opinion of the court. In addition to its oral argument panels, the court designates three judges to sit on the law and motion panel. This panel determines procedural and substantive motions and hears cases on one day per month. The judges are assisted by the Clerk of the Court, central staff attorneys, law clerks, legal secretaries, and deputy clerks.

District Court

The District Court is the state trial court of general jurisdiction. There are 71 full time district judges serving in the state's eight judicial districts.
The District Court has original jurisdiction to try all civil cases and all criminal felonies, such as homicides, assaults, sex and drug offenses, forgery, arson, robbery, and misdemeanors in certain circumstances. An important part of the District Court caseload is domestic relations cases, such as divorce, child custody and support, adoption, and probate. District judges also have the power to issue extraordinary writs. In addition, the Court serves as an appellate court to review informal adjudicative proceedings from administrative agencies. [26]

Criminal appeals from the district court are heard in the court of appeals, except those involving a criminal conviction of a first degree or capital felony.

[26] https://www.utcourts.gov/courts/dist/overview.htm

Justice Court[27]

Utah Justice Courts are trials courts established by counties and municipalities in Utah. Justice Courts have the authority to deal with class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial jurisdiction. Justice court jurisdictions are determined by the boundaries of local government entities such as cities or counties, which hire the judges.

There are two types of justice court judges: county judges who are initially appointed by a county commission and then stand for retention election every six years, and municipal judges who are appointed by city officials for a 6-year term. Some are both county and municipal judges. Some judges hear cases daily, and others have limited court hours each week. Justice court judges need not be attorneys, although they receive extensive and continuing legal training. All justice court judges must attend 30 hours of continuing judicial education each year to remain certified. Currently there are 81 Justice Court judges who serve in 115 county and municipal courts.

The justice courts also share jurisdiction with the juvenile court over minors 16 or 17 years old, who are charged with traffic offenses, except for automobile homicide, alcohol or drug related traffic offenses, reckless driving, fleeing from an officer, and driving on a suspended driver‘s license.

City attorneys prosecute cases involving municipal ordinance violations and state law in municipal courts. County attorneys prosecute cases involving violations of county ordinances and state law in the county courts, except Salt Lake County where the District Attorney‘s office prosecutes the cases. Litigants and defendants often act without an attorney (pro se) in justice courts.

Any person not satisfied with a judgment rendered in justice court is entitled to a ***trial de novo*** (new trial). District courts hear all trial de novo arising from justice court judgments, conducted in the district court. Any justice court judge may be appointed by the presiding district judge to conduct preliminary examinations for felony cases under some circumstances. Justice courts also may, if certified by the Judicial Council, create a Small Claims Department, which has jurisdiction over claims under $5,000.

Juvenile Court[28]

An Overview of the Utah Juvenile Courts: It includes 31 full-time judges and 1.5 commissioners. The Juvenile Court is of equal status with the District Court
The Juvenile Court has **exclusive original jurisdiction** over youths, under 18 years of age, who violate any federal, state or municipal law, and any child who is abused, neglected, or dependent. The court has the power to determine child custody, support and visitation in some circumstances; to permanently terminate parental rights; and to authorize or require treatment for mentally ill or children with disabilities. The court may also place children under the supervision of the court‘s probation department; place children in the custody or care of foster homes, group homes, special treatment centers,

[27] https://www.utcourts.gov/courts/just/overview.htm
[28] https://www.utcourts.gov/courts/juv/overview.htm

or secure institutions. The Court works closely with the Office of Guardian ad Litem on cases involving abuse, neglect or dependency. The Court may also require children to pay fines or make restitution for damage or loss resulting from their delinquent acts. It also has jurisdiction over habitual truants, runaways and ungovernable youth if efforts by other social service agencies are not successful.

In addition, the court has **exclusive jurisdiction** in traffic offenses involving minors related to automobile homicide, driving under the influence of alcohol or drugs, reckless driving, joy riding, and fleeing a police officer. It has concurrent jurisdiction with the District and Justice Courts over adults contributing to the delinquency and neglect of a minor.

Utah is served by 31 judges and 1.5 commissioner in its 8 judicial districts. The 10 judges in the 3rd District which includes Salt Lake, Summit and Tooele Counties, are assisted by a commissioner, who is trained as an attorney. The four judges in the 4th District, which includes Juab, Millard, Utah, and Wasatch Counties, are assisted by a commissioner whose time is divided equally between juvenile and district court

The Juvenile Court, unlike other state courts of record, administers a probation department. Probation officers prepare dispositional reports, supervise youth who have been placed on probation by the Court, conduct evaluations, and submit reports on the progress of each juvenile. A clerical division prepares the legal documents and maintains the official court record.

As a member of the Interstate Compact on Juveniles, the Court accepts supervision of juveniles who move to Utah from another state (who were under court supervision before moving). In turn, the court often requests another state to supervise juveniles who move while still under court supervision in Utah.

All appeals from the Juvenile Court are heard in the Court of Appeals.

Why a Juvenile Court?[29]

Unlike adult criminal courts which are criminal in nature, the juvenile courts are civil courts. The reason for this difference is because juvenile court, rather than simply punishing kids, exists to protect the community while rehabilitating young people charged with breaking the law.

- So, just how different is juvenile court from adult court? Many hearings are closed to the public in order to protect the youth‘s privacy.
  For example, special care is taken to shield the child from publicity.
- Juveniles do not have the right to request jury trials
- Juveniles cannot post bail to leave detention.
- Intake and probation officers who handle juveniles are court employees under the judicial branch.

[29] https://www.utcourts.gov/courts/juv/intro/

What Exactly Happens in Juvenile Court?[30]

The juvenile court oversees two types of cases:

1. **Delinquency Cases – When Kids Get In Trouble**
    - Class A Misdemeanors and Felonies
    - Class B or Class C Misdemeanors and Infractions
    - Violations of Tobacco and Alcohol Laws
    - Other Infractions or Misdemeanors Identified by the General Order of the Board of Juvenile Court Judges
    - Violations of Curfew Laws
    - Class B Misdemeanor or Lesser Traffic Violation (For children under the age of 16)
    - Violation of Boating Laws
    - Violations of Fish & Game Laws

2. **Dependency Cases – When Parents Get In Trouble**
    - Dependency cases involve children who have been neglected, abused, and who are dependent.

The Rights of a Juvenile in Juvenile Court[31]

1. The right to appear in person to defend him/her own self.
2. The right to know the state's accusations against the juvenile.
3. The right against self-incrimination.
4. The right to a speedy trail and for time to prepare a defense. The court has to tell you about any court hearings that involve you.
5. The right for the juvenile and any witness to tell their side of the story.
6. The right to ask questions of the people accusing the juvenile.
7. The right to an appeal – to ask a higher court to decide whether or not your judge was right if he or she found the juvenile guilty.

Juvenile Justice System Process Description[27]

1. A juvenile enters the system when he or she commits an offense and is arrested by police.
2. The police may take the youth to a Receiving Center, make a referral, or take the youth's name and give them a warning. If the youth is taken to a Receiving Center, the youth may be released home, referred to Youth Services for counseling or a time out, or referred to other services for additional help (intervention). Youth may be required by the Court to meet with an intake probation officer about their offense. The probation officer decides if the youth must see a judge, a commissioner, or whether the meeting addresses the offense (non-judicial closure).

[30] https://www.utcourts.gov/courts/juv/intro/
[31] https://www.utcourts.gov/courts/juv/intro/

3. If the youth is arrested for a bookable offense, the youth may enter either Locked or Home Detention (if a judge orders Home Detention at a hearing). The youth receives a Detention Hearing within 48 hours. The Detention Hearing decides whether the youth will remain in Locked Detention, Home Detention, return home, or to a less restrictive placement until the youth has a Juvenile Court Hearing.
4. The Juvenile Court Hearing decides guilt or innocence, and the sanctions (punishment) for the offense. The judge may order the youth to JJS Custody or order other sanctions (e.g., levy a fine, order payment of restitution to victims, place the offender on probation, order the youth to more detention or a work camp). Serious juvenile offenders may be transferred to adult court.
5. Youth who are ordered to JJS custody receive a Case Manager.
6. The Juvenile Court Judge may order the youth to Juvenile Justice Services for community placement, Observation and Assessment, or Secure Care.
7. A youth ordered to Observation and Assessment spends 45 days in the program, and then returns to Juvenile Court for final sanctions. The judge reviews the assessments and decides where the youth will be placed. Youth are then reviewed every 90 days until they are released.
8. Youth in community programs are reviewed by a Juvenile Court judge who determines whether the youth is prepared to leave JJS custody or requires further program participation.
9. All youth sent to Secure Care are under the jurisdiction of the Youth Parole Authority. They participate in a Parole Authority Review to receive a guideline for how long their stay may be. Youth may participate in a Transition Program in the community to learn skills to live in the community and have additional Parole Authority Reviews as needed. The Parole Authority decides whether the youth is prepared to leave JJS custody.

Non-Judicial Agreement

A Non-Judicial Agreement is a written agreement between the juvenile, the intake officer and the parent(s). Once the juvenile completes the requirements of the agreement, no petition will be filed with the court. Some of the conditions a juvenile could face if he/she signs a non-judicial agreement are:

1. Paying a fine.
2. Paying the victim back for any damage caused to him or her (restitution).
3. Community service hours.
4. Counseling.
5. Drug or Alcohol Assessment.
6. House arrest or probation.
7. Other reasonable actions in the interest of the minor/community.

Utah Youth Court Association (UYCA)[32]

The Utah Youth Court Diversion Act established throughout the state of Utah what is now referred to as the Utah Youth Court Advisory Board. The Advisory Board helps youth courts in the State of Utah and creates a certification process for individual courts. In order to be certified, a court must meet certain requirements and show that they follow the Diversion Act.

The Utah Youth Court Association was developed later as a tool to help the Advisory Board complete their objectives. Courts can become members of the UYCA by applying and paying membership dues. The UYCA also serves as a tool to help unify the individual youth courts in the state and give them a voice. Furthermore, the association organizes events to help both youth and court advisors perform their jobs to the best of their ability. The UYCA currently includes more than 20 courts throughout the state and is run by the sitting members of the Executive Board, which is overseen by the UYCA Advisory Board.

The purpose of a youth court is to provide an alternative to juvenile court for first-time minor offenders. The youth court system follows the restorative model of justice, which emphasizes the beliefs of repairing harm done to victims as well as providing youth with the resources to make better decisions in the future.

Mission

The mission of the UYCA is to form a strong network of people and organizations affiliated with or interested in youth courts to help promote the highest possible program quality for all member courts through the sharing of information, support, training, and guidance between and among all.

Member Courts

American Fork Youth Court, Canyon District Peer Court, Draper City Peer Court, East Millard Youth Court, Gunnison Youth Court, Heber Valley Peer Court, Herriman City Peer Court, Kaysville Youth Court, Layton Youth Court, Lindon Youth Court, Magna/Kearns Youth Court, Nephi City Youth Court, North Sevier Youth Court, Ogden School District, Payson City Youth Court, Pleasant Grove Youth Court, Provo City Youth Court, Richfield City Youth Court, Riverton Youth Court, Roy Youth Court, Salt Lake Peer Court, Sandy Youth Court, San Pete Youth Court, South Box Elder Youth Court, South Sevier Youth Court, Springville Youth Court, Syracuse Youth Court, Tooele Youth Court, Tri-City Youth Court, West Millard Youth Court.

Heber Valley Peer Court

Heber City Peer Court provides an alternative approach to juvenile justice in which youth referred for minor offenses are sentenced by a jury of their peers. Using a restorative justice-based approach, Heber City Peer Court provides early intervention for a variety of offenses, such as truancy, fighting, tobacco/alcohol, theft, bullying, trespassing, assault

[32] https://www.utahyouthcourts.com/about-us.html

and disorderly conduct; holds the referred youth accountable for their actions; provides educational experiences to assist them in building the skills necessary to change their problem behaviors; and helps them strengthen their ties to school, community, and positive peer role models. Referred youth must admit guilt and must voluntarily agree to attend the program. At least one parent/guardian must accompany the referred youth.

Peer Court is an alternative to juvenile court, giving first-time minor offenders a second chance. After completing Peer Court and the assigned consequences, charges against the offender are dropped, so the offender's permanent record is not affected. Peer Court offers a different route rather than the school to prison pipeline for troubled youths.

Peer court is made up of five local youths: three judges, a bailiff, and a clerk. The court also has as an adult advisor; however, the peer court makes the final decisions. Members are selected by invitation only. Schools select nominees, and the police department chooses which of those nominees will serve on the court. Currently, there are forty members of Peer Court. Judges are the same age as those appearing in court, ensuring that it truly is a court made up of peers.

For more information see Utah Youth Court Diversion Act 78A-6-1201.

Children in Adult Courts

When a minor has committed a serious offense, they may be tried as an adult. There are three ways a minor can be certified and tried as an adult offender:

1. Direct File
2. Serious Youth Offender Procedure
3. A Certification Hearing

Direct File §78A-6-701

The District Court has exclusive original jurisdiction over all persons 16 years of age or older charged with:

a. an offense which would be murder or aggravated murder if committed by an adult; or
b. an offense which would be a felony if committed by an adult if the minor has been previously committed to a security facility.

When the district court has jurisdiction over a minor under this section, it also has jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a please to, or is found guilty of, a lesser or joined offense. When the district court has been given jurisdiction by direct file, any subsequent offenses, felony, misdemeanor or infraction, committed by the minor will be tried in the district court or justice court.

If the qualifying charge results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

Serious Youth Offender – Procedure §78A-6-702

If a minor 16 years of age or older commits a qualifying offense, an information rather than a petition is filed in juvenile court. If the court finds probable cause that the minor committed the qualifying offense, and the court does not find any of the retention factors, the minor is bound over for trial in district court. Some of the qualifying offenses are:

a. aggravated arson;
b. aggravated assault, involving intentionally causing serious bodily injury to another;
c. aggravated kidnapping;
d. aggravated burglary;
e. aggravated robbery;
f. aggravated sexual assault;
g. attempted aggravated murder; or
h. attempted murder; or
i. an offense other than those listed involving the use of a dangerous weapon which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted by an offense involving the use of a dangerous weapon which also would have been a felony if committed by an adult.

If the information alleges the violation of a felony listed above, the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed has been committed and that the defendant committed it. The state shall have the additional burden of proving by a preponderance of evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

If the juvenile court judge finds the state has met its burden, the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult, unless the juvenile court judge finds that all of the following conditions exist:

a. the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;
b. that if the offense was committed with one or more persons, the minor appears to have a lesser degree of culpability than the co-defendants; and
c. that the minor‘s role in the offense was not committed in a violent, aggressive, or premeditated manner.

Once the state has met its burden as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions. If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings, order the defendant be held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge and the juvenile court shall set bail. If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of

probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed.

When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor. A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court. If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing. The juvenile court and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Certification Hearing to Stand Trial as an Adult – UCA §78A-6-703

The Juvenile Court will conduct a preliminary hearing to determine whether to waive jurisdiction and certify a minor to stand trial as an adult if the act would constitute a felony if committed by an adult. At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

1. Probable cause to believe that a crime was committed and that the defendant committed it; and
2. By a preponderance of the evidence, that it would be contrary to the best interests of them minor or of the public for the juvenile court to retain jurisdiction.

In considering whether or not it would be contrary to the best interest of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

a. The seriousness of the offense and whether protection of the community requires isolation of the minor beyond that afforded by juvenile facilities.

b. Whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties if the minor was an adult and the offense was committed:
    a. in concert with two or more persons;
    b. for the benefit of, at the direction of, or in association with any criminal street gang; or
    c. to gain recognition, acceptance, membership, or increased status with a criminal street gang;
c. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
d. Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;
e. The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;
f. The record and previous history of the minor;
g. The likelihood of rehabilitating the minor using facilities available to the juvenile court;
h. The desirability or trial and disposition of the entire offense in one court when the minor‘s associates in the alleged offense are adults and will be charged with a crime in the district court;
i. Whether the minor used a firearm in the commission of an offense; and
j. Whether the minor possessed a dangerous weapon on or about school premises.

The amount of weight to be given to each of the factors listed above is discretionary with the court. Written reports and other materials relating to the minor‘s mental, physical, education, and social history may be considered by the court. If requested by the minor, the minor‘s parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

At the conclusion of the state‘s case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3). If the court finds the state has met its burden, the court may enter an order:

a. certifying that finding; and
b. directing that the minor be held for criminal proceedings in the district court.

A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court. A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge.

When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the

minor. If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offenses arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing. The juvenile court and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Access to Juvenile Court Proceedings §78A-6-114

Hearings in minor's cases shall be held before the court without a jury and may be conducted in an informal manner. In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Section **78A-6-322**, unless the court makes a finding upon the record that the person's presence at the hearing would:

a. be detrimental to the best interest of a child who is a party to the proceeding;
b. impair the fact-finding process; or
c. be otherwise contrary to the interests of justice.

The court may exclude a person from a hearing on its own motion or by motion of a party to the proceeding. In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

a. the minor has been charged with an offense which would be a felony if committed by an adult; or
b. the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult. The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act. The notice provisions in Section **77-38-3** do not apply to important juvenile justice hearings as defined in Section **77-38-2**. A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:
    a. the scheduling of any court hearings on the petition;
    b. any findings made by the court; and
    c. any sentence or decree imposed by the court.

Minor's cases shall be heard separately from adult cases. The minor, the parents, or custodian of a minor may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order. When more than one child is involved in a home situation which may be found to

constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

BAIL ISSUES

UCA § 77-20-201. Right to bail[33] **(1)** An individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:

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

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

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

(d) a felony when the court finds there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual violated a material condition of release while previously on bail;

(e) a domestic violence offense if the court finds:

(i) that there is substantial evidence to support the charge; and

(ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail;

(f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:

(i) the offense results in death or serious bodily injury to an individual; and

(ii) the court finds:

(A) that there is substantial evidence to support the charge; and

(B) by clear and convincing evidence, that the person would constitute a substantial danger to the community if released on bail; or

(g) a felony violation of ***Section 76-9-101*** if there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual is not likely to appear for a subsequent court appearance.

(2) Notwithstanding any other provision of this section, there is a rebuttable presumption that an individual is a substantial danger to the community under Subsection (1)(f)(ii)(B):

(a) as long as the individual has a blood or breath alcohol concentration of .05 grams or greater if the individual is arrested for, or charged with, the offense of driving under the influence and the offense resulted in death or serious bodily injury to an individual; or

[33] U.C.A. 77-20-201. Right to bail

(b) if the individual has a measurable amount of controlled substance in the individual's body, the individual is arrested for, or charged with, the offense of driving with a measurable controlled substance in the body and the offense resulted in death or serious bodily injury to an individual.

(3) For purposes of Subsection (1)(a), any arrest or charge for a violation of *Section 76-5-202*, aggravated murder, is a capital felony unless:

(a) the prosecuting attorney files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.

Accordingly, pursuant to the Utah Constitution and the Utah Code, bail may only be denied in a limited number of situations involving felony cases. All other persons charged with a crime have a right to bail.

Bail Must Be Set

It is constitutionally mandated that bail must not be excessive. Article I, Section 9 of the Utah Constitution states that ―excessive bail shall not be required.‖[34] The purpose of bail is outlined in UCA § 77-20-1(2), it states that bail is meant to ensure:

1. The defendants' appearance in court.
2. The integrity of the court process.
3. That witnesses or victims are not harassed.
4. The safety of the public.

In virtually all state and federal cases, bail amounts that are higher than what is reasonably calculated to ensure the accuseds presence at further proceedings are considered excessive. Bail that is calculated or intended to punish the accused or deny pretrial release is a violation of due process. A reasonable bail amount will ensure the defendants appearance in court and protect the public, but does not constitute intent to punish the defendant or prevent his release.

Bail must be set immediately. Bail must be set at the time the arrest warrant is issued or, on a warrantless arrest, as soon as feasible, but no later than 48 hours after the arrest. Any person arrested must have a probable cause determination and bail must be set within 48 hours after being arrested. Persons arrested by warrant should already have a bail amount or a no-bail determination in the warrant. If not, 48 hour rule should apply. Justice Court Judges and Bail Commissioners must be available on a daily basis to set bail and make probable cause determination.

When the Sheriff's Personnel Can Set Bail

Utah law allows for some members of a county sheriff's department to act as bail commissioners when properly appointed. These bail commissioners may set bail in cases

[34] The full text of Article I, Section 9 is, ―Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishment be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.‖

which are **misdemeanors or violations of county ordinances**. These commissioners must be bonded, are not given any additional compensation for this duty, and must follow correct procedure.

When the jail has set bail, if the detained person has not promptly bailed out, the process of having a probable cause determination by a proper magistrate should be started sooner rather than later.

The 48 hour rule is not a recommended procedure, but rather a boundary which if crossed is presumed to be a violation of the person's constitutional rights. A probable cause determination must occur as soon as is reasonably feasible, which may usually be much sooner than 48 hours. However, if a person does not promptly bail out, a judge must still make a prompt probable cause determination on a warrantless arrest. Under the current court setup, the bulk of these determinations and bail settings will be the responsibility of the Justice Court Judges.

When Justice Court Judges Can Set Bail

U.C.A. 77-20-205 grants to a justice court judge the same authority as a magistrate to make probable cause determinations and set bail with two distinctions. First, a justice court judge may not act in a capital felony case. Second, a justice court judge may not deny bail in any case. It logically follows that a justice court judge cannot issue a no-bail warrant.

Therefore, any time an officer believes that a person should be held without bail, a district court judge must be contacted to sign a no-bail warrant or to make the probable cause determination and bail determination.

BAIL CHART

Who May Set Bail

	MISDEMEANOR OR COUNTY ORDINANCE	FIRST, SECOND OR THIRD DEGREE FELONY	CAPITAL FELONY	DENY BAIL
BAIL COMMISSIONER	YES	NO	NO	NO
JUSTICE COURT JUDGE	YES	YES	NO	NO
DISTRICT COURT JUDGE	YES	YES	YES	YES

When Must Bail Be Set

Persons arrested without a warrant must be given a probable cause determination and bail setting within 48 hours of the arrest.

Persons arrested by warrant should already have a bail amount or a non-bail determination in the warrant. If not, 48 hour rule should apply.

SPECIALITY COURT PROGRAMS

Recovery/Drug Court[35]

Drug court is a program designed to help those charged with felony controlled substance offenses that have a prior drug related convictions on their record and no history of violent offenses. Drug court participation is a minimum of one year up to three years. It requires frequent visits to court, and treatment with the substance abuse counselors through the county. Violations to drug court agreement may include dirty urinalysis, association with parolees or other drug users, not attending classes, etc. A drug court team determines sanctions to be given to each participant in the event that they violate their drug court agreement. Defendants that successfully complete the drug court program may have their charges dismissed or reduced.

Drug Diversion/Plea in Abeyance

Drug Diversion is a program designed for those defendants charged with controlled substance offenses that have no prior conviction for drug related offenses and no felony convictions. It is generally preferred that treatment be provided by the local substance abuse agency of the county in which the defendant resides, but may be through a private provider. Treatment lasts for a minimum of six months for a misdemeanor charge and minimum of one year for a felony charge. Upon successful completion of this program, defendants will have their charges dismissed or reduced.

Felony DUI Court [36]

Felony DUI Court is a court that has been specifically designed and staffed to supervise non-violent alcohol dependent defendants who have been referred to a comprehensive and judicially-monitored program of alcohol treatment and rehabilitation services.

It is an effective treatment program that mirrors the Drug Court offenders program, but addresses those who are addicted to alcohol.

Those admitted to felony DUI Court must meet the eligibility standards which are:

1. The defendant has been arrested and charged with a felony DUI (minimum third DUI within a 10 year period).
2. No distribution or possession with intent convictions in the last 10 years.
3. No aggravated felony convictions.
4. No child sex abuse felony convictions.
5. No prior drug court participation.

The defendant is required to enter a guilty plea to the third degree felony charge. That plea **IS NOT** held in abeyance. The defendant is sentenced according to the statute which includes mandatory jail, fine, DNA testing, and interlock device conditions. If the

[35] The information on Drug Court and Drug Diversion/Plea In Abeyance was provided by the Weber County Attorney‘s Office.

[36] Depending on jurisdiction eligibility, requirements may vary. The information on Felony DUI Court was provided by the Davis County Attorney‘s Office.

defendant successfully completes the program, the felony conviction will be reduced under a 402 to a class A misdemeanor.

Mental Health Court[37]

The Mental Health Court is a jail diversion program assisting mentally ill individuals, who act out criminally, to engage in an appropriate treatment regimen by establishing a strong accountability to the judicial system while partnering with treatment intervention programs.

Specifically, the goals of the Mental Health Court (MHC) are to:

1. Divert participants from the Criminal Justice System.
2. Keep the community safe.
3. Avoid revolving door at inpatient and jail facilities.
4. Enhance the MHC participant's quality of life.
5. Use limited available funds in the most effective way.
6. Increase treatment compliance with difficult to treat clients who act out criminally.

In order to participate, MHC participants must be:

1. Legally competent.
2. Volunteer to participate in MHC rather than in traditional criminal justice system.
3. Criminal secondary to mental illness.
4. Diagnosed with a suitable diagnosis (bipolar, psychotic disorder, etc.). Not overridden by Axis II Disorder.

Prospective MHC participants are referred from any of the allied agencies (courts, prosecutors, defenders, AP&P, etc.). Individuals are screened by a mental health professional to determine appropriateness for participation. Once accepted, participants enter a voluntary 1-year plea in abeyance. Participants are expected to appear in MHC on a weekly basis and to participate in all treatment interventions recommended by the treatment team. Participants' progress and compliance is reviewed weekly by the court and mental health team.

The progression through the MHC is divided into four overlapping, yet distinct, phases:

1. Screening: competence, suitability, diagnosis and orientation.
2. Entry into court: meet team and arrange for mental health services.
3. Stabilization: weekly progress report in court and with court accountability.
4. Maintenance: compliance monitored, decreased court appearances.

After participation in the MHC, participants continue in mental health related services as needed on a voluntary basis.

[37] The information on Mental Health Court was provided by Juergen Korbanka, Ph.D., Wasatch Mental Health, Adult Services, Provo, UT.

Veterans Court

Veterans Treatment Courts are a cooperative effort between the Veterans Administration, local government and community organizations. Veterans Treatment Courts provide veterans charged or convicted of crimes with an alternative to incarceration—in a structured environment requiring the veteran's accountability for his or her decisions and actions. The Veterans Treatment Court provides substance abuse treatment, behavioral health treatment, transitional housing opportunities, peer-to-peer/vet-to-vet mentoring, vocational training, and educational opportunities. The court also offers veteran participants an opportunity to change their behavior and thinking, rebuild their lives, reconnect with their communities, and rebuild bonds with their families.

The goals of the Veterans Court are to:

- Protect the public
- Reduce veteran contacts with the criminal justice system
- Reduce costs associated with criminal case processing and re-arrest
- Work with veterans to create an individualized treatment plan for long term stabilization and success in the community.
- Introduce veterans to an ongoing process of recovery designed to help them become stable, employed, and substance free while continuing mental health care through the Veterans Health Administration and community/peer counseling groups

This will be achieved through the diversion of qualifying offenders to a program of comprehensive treatment and education, offender accountability, and intensive court supervision designed to help veterans gain control of their lives.

EXPUNGEMENTS

"Expunge" means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.[38]

Petition for Expungement – Prosecutorial Responsibility – §77-40-107

The petitioner (defendant) shall file a petition for expungement and except as provided in Subsection 77-40-103(5), the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the certificate is filed electronically, the petition or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

Upon receipt of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

The notice shall include a copy of the petition, certificate of eligibility, statutes and rules applicable to the petition, state that the victim has a right to object to the expungement, and provide instructions for registering an objection with the court. **The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 35 days after receipt of the petition.**

The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections. If requested, the response prepared by Adult Probation and Parole shall include:

1. the reasons probation was terminated; and
2. certification that the petitioner has completed all requirements of sentencing and probation or parole.

A copy of the response shall be provided to the petitioner and the prosecuting attorney. **The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by Adult Probation and Parole within 14 days after receipt.** If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition. If no objection is received within 60 days from the date

[38] Utah Code Annotated 7-40a-101(10)

the petition for expungement was filed with the court, the expungement may be granted without a hearing. The court shall issue an order of expungement if it finds by clear and convincing evidence that:

1. the petition and certificate of eligibility are sufficient;
2. the statutory requirements have been met; and
3. if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-140-105(7) for a record of conviction related to cannabis possession, see section 26-61a-102
4. if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used for enhancement, there is good cause for the court to grant the expungement; and
5. it is not contrary to the interests of the public to grant the expungement.

If the court denies a petition described because the prosecutor intends to refile charges, the person seeking expungement may again apply for a certificate of eligibility if charges are not refiled within 180 days of the day on which the court denies the petition. A prosecutor who opposes an expungement of a case dismissed without prejudice or without condition shall have a good faith basis for the intention to refile the case. A court shall consider the number of times that good faith basis of intention to refile by the prosecutor is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (8) (c). If the court grants a petition described in Subsection (8)(e), the court shall make the court's findings in a written order. A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued.

Expungement Orders

Orders of expungement must include:

1. Defendant's name and date of birth
2. Date of arrest
3. Charges and class
4. Court name
5. Court disposition and date
6. Court case number
7. Judge's signature and seal

LEGAL CITATIONS

The Pacific Reporter, Pacific Reporter Second and Pacific Reporter Third are United States regional case law reporters containing published appellate court case decisions for the following states:

1. Alaska
2. Arizona
3. California
4. Colorado
5. Hawaii
6. Idaho
7. Kansas
8. Montana
9. Nevada
10. New Mexico
11. Oklahoma
12. Oregon
13. **Utah**
14. Washington
15. Wyoming

When cited, the Pacific Reporter, Pacific Reporter Second and Pacific Reporter Third are abbreviated "P", "P.2d" and "P.3d" respectively.

Other regional reporters covering other states are: North Eastern Reporter, Atlantic Reporter, South Eastern Reporter, South Western Reporter, and North Western Reporter.

[39]Case citation is the system used in many counties to identify the decisions in past court cases, either in special series of books called reporters or law reports, or in a 'neutral' form which will identify a decision wherever it was reported. Although case citations are formatted differently in different jurisdictions, they generally contain the same key information.

Where cases are published in bound volumes the citation will contain:

1. The title of the reports;
2. The volume number;
3. 3. Page number; and
4. Year of decision.

[40]Law reports or reporters are series of books which contain judicial opinions from a selection of cases decided by the courts. When a particular judicial opinion is referenced, the law report series in which the opinion is printed will determine the case citation format. In common law countries, court opinions are legally binding under the rule of

[39] http://en.wikipedia.org/wiki/Case_citation
[40] http://en.wikipedia.org/wiki/Law_report

stare decisis.[41] That rule requires a court to apply a legal principle that was set forth earlier by a court of the same jurisdiction dealing with a similar set of facts. Thus, the regular publication of such opinions is important so that everyone—lawyers, judges, and laymen—can find out what the law is, as declared by judges.

The standard case citation format in the [42]Utah Reporter is:

State v. Warden, 813 P.2d 1146, 1155 (Utah 1991)

1. *State v. Warden* – is the name of the case. When citing the case use italics or underline the case.
2. 813 – is the volume number of the reporter in which the court's written opinion in *State v Warden* is published.
3. P.2d is the abbreviation of the reporter; "P.2d" stands for Pacific Reporter Second series.
4. 1146 is the page number (in volume 813 of Pacific Reporter) where the opinion begins.
5. 1155 is the page number where a quote comes from within the case being cited.
6. "Utah" designates the court that decided the case. Utah represents the Utah Supreme Court. Utah App. represents the Utah Court of Appeals.
7. 1991 is the year in which the court rendered its decision.

These numbers are used to find a particular case, both when looking up a case in a reporter and when accessing it electronically on the Internet or through LexisNexis or Westlaw. This format also allows different cases with the same parties to be easily differentiated. For example, looking for the U.S. Supreme Court case of *Miller v. California* would yield four cases, some involving different people named Miller, and each involving different issues.

[41] Wikipedia Encyclopedia, Stare decisis: ―to stand by things decided;‖ more fully, ―stare decis et non quieta movere‖ is a Latin legal term, used in common law to express the notion that prior court decisions must be recognized as precedents, according to case law.

[42] Utah Reporter

GRAND JURY

[43]Grand Jury

A grand jury is a type of jury, made up of citizens, in the common law legal system, which determines if there is enough evidence for a trial. Grand juries carry out this role by examining evidence presented to them by a prosecutor and issuing indictments, or by investigating alleged crimes and issuing presentments. A grand jury has more jurors than a trial jury, sometimes called petit jury. A grand jury is usually comprised of 16 to 23 citizens. Jurors typically are drawn from the same pool of citizens as a petit jury, and participate for a specific time period.

A grand jury is part of the system of checks and balances, preventing a case from going to trial on a prosecutor's bare word. A prosecutor must convince the grand jury, an impartial panel of ordinary citizens, that there exists reasonable suspicion, probable cause, or a prima facie (legally sufficient) case that a crime has been committed. The grand jury can compel witnesses to testify before them. Unlike the trial proceedings, the grand jury's proceedings are secret; the defendant and his or her counsel are generally not present for other witnesses' testimony. A judge is not present either. The grand jury's decision is either a "true bill," meaning (that there is not case to answer), or a "no true bill."

Jurisdiction

The grand jury is an agency of a court which has general jurisdiction over crimes supposed or alleged to have been committed. Jurisdiction of a grand jury is extended equally with the jurisdiction of the court of which it is a part.

Grand Jury – Evidence

The grand jury receives only legal evidence and evidence that is given by witnesses under oath, documentary evidence, or the deposition of a witness taken as provided by law.

Powers and Duties of Grand Jury

One of the duties of a grand jury is to inquire into any willful and corrupt misconduct in offices of public officers and malfeasance in office. The proceedings are kept secret, and no grand juror may disclose that an indictment has been returned or an accusation has been filed until the accused is in custody, admitted to bail, or served with a summons.

The grand jury may ask the advice of the court, but the judge may not be present during its sessions except to give the advice requested by the grand jury.

A subsequent grand jury has the power to inquire into and to indict on a charge which was previously considered by another grand jury even though the other grand jury failed to return an indictment. A grand jury is a body of citizens assembled to receive complaints and accusations in criminal cases to hear evidence, and to determine whether probable cause exists that a crime has been committed and whether an indictment (true

[43] http://en.wikipedia.org/wiki/Grand_jury

bill) should be returned against a person for such a crime. If probable cause does not exist, the grand jury returns a "no true bill."

CRIMINAL PROCEDURES

A crime is usually defined as an act that violates the laws of a community, state, or country and for which a specific punishment is prescribed.
The government is always the plaintiff in a criminal action. No state legislature can enforce a law in conflict with the United States Constitution or the constitution of that particular state.
Common law rules are made by judges, and these rules spring basically from usages and custom.
Administrative rules are made by bureaus of the government called administrative agencies.
Substantive criminal law is the law which defines what conduct is criminal and prescribes the type of punishment to be imposed for such conduct.

Two major classes of crimes:

1. **Felony**
2. **Misdemeanor**

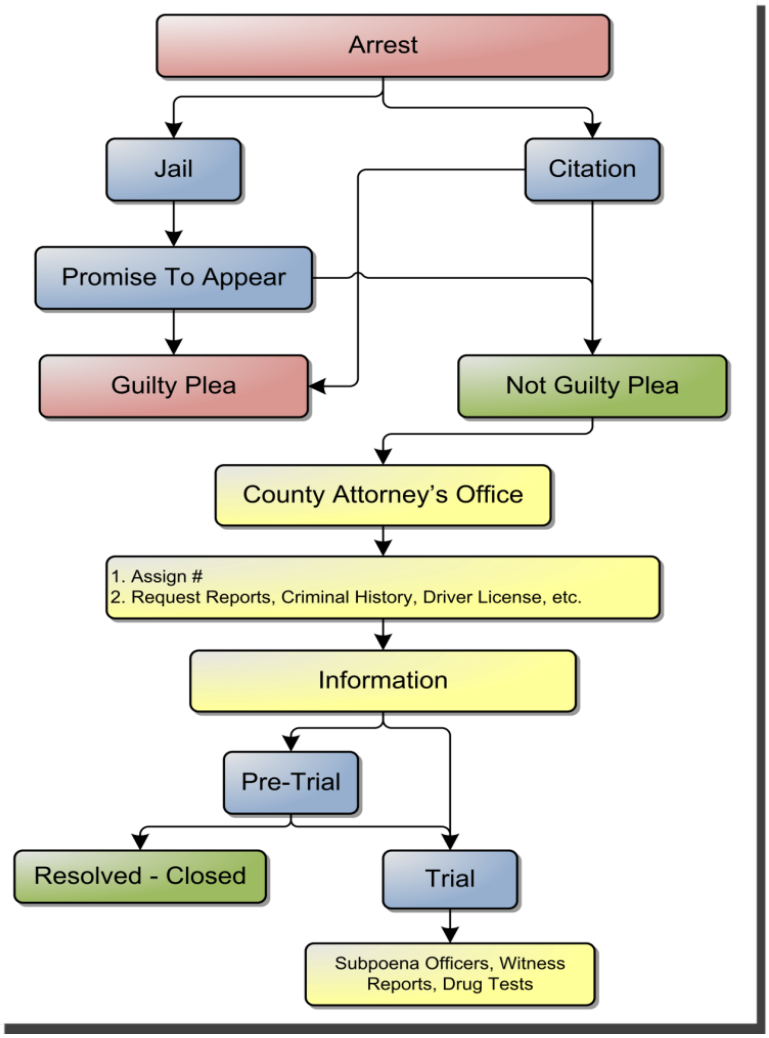
Felony

A felony is a crime such as murder, grand larceny, arson, and rape for which the penalty can be a fine, imprisonment in a state or federal prison, both a fine and prison term, or the death penalty.
The term felony is used for very serious crimes, whereas misdemeanors are considered to be less serious offenses. It means a crime against the government. It is principally used in criminal law in the United States legal system.
The distinction between a felony and misdemeanor has been abolished by some common law jurisdictions (e.g. Crimes Act 1958 (Vic., Australia) s. 332B(1), Crimes Act 1900 (NSW., Australia) s. 580E(1)); other jurisdictions maintain the distinction, notably those of the United States. Those jurisdictions which have abolished the distinction generally adopt some other classification, e.g. in Canada, Australia, the Republic of Ireland and the United Kingdom. The crimes are divided into summary offences and indictable offences.
A felon is a person responsible for committing a felony, which is generally a social stigma.
In the United States, a felony is one of the highest types of offenses, and may be punishable with death or imprisonment. It is a crime punishable by one or more years of imprisonment, and regarded as more serious than a misdemeanor.
Crimes commonly considered to be felonies include, but are not limited to: aggravated assault and/or battery, arson, burglary, drug possession, embezzlement, treason, espionage, racketeering, murder, and rape. A third offense for drinking and driving is also a felony in most states. Originally, felonies were crimes for which the punishment was either death or forfeiture of property. In modern times, felons can receive punishments which range in severity from probation, to imprisonment, to execution. In the United States felons often receive additional punishments such as the loss of voting rights,

exclusion from certain lines of work, prohibition from obtaining certain licenses, exclusion from purchase/possession of firearms or ammunition, and ineligibility to run for or be elected to public office. In addition, some states consider a felony conviction to be grounds for an uncontested divorce. These, among other losses of privileges not included explicitly in sentencing, are known as collateral consequences of criminal charges.

Steps in a Felony and Class A Misdemeanor Cases:

1. Arrest
2. Initial appearance.
3. Preliminary hearing: if the judge finds probable cause to believe that the crime charged has been committed and that the defendant has committed it, the defendant is bound over for trial.
4. Formal Arraignment.
5. Pre-Trial.
6. Trial.



Misdemeanor

A crime of lesser importance than a felony, such as petty larceny, drunkenness, disorderly conduct, and vagrancy, for which the penalty is a fine, imprisonment in jail, or both a fine and jail.

Steps in a Misdemeanor Case:

1. Arraignment - first appearance.
2. Plead either guilty or not guilty.
3. If not guilty, a pre-trial date is set with the prosecutor. At that point if the case cannot be resolved, then it is set for trial. If it is resolved, then the defendant is sentenced.
4. Class A misdemeanors can now be set for a preliminary hearing.
5. If set for trial, the case is heard by the judge, unless a jury trial is requested. After hearing the evidence the judge decides whether the defendant is guilty or not guilty. If he is guilty he is sentenced at that point.

Criminal proceedings are usually started by a criminal (information or indictment) which is sworn to by a person who believes an offense has been committed. A complaint or information is an accusation, in writing, charging a person with a public offense. Indictment is an accusation, in writing, presented by a grand jury, charging a person with a public offense.

An arrest is an actual restraint of the person arrested for submission to custody.

Bail is security given for the release of a jailed person which guarantees his attendance at all required court appearances. Own recognizance means the person is released from jail without posting bail, signing a promise to appear document.

A commercial surety is an insurance company which posts a bond for a premium. Individual sureties are persons who collectively own real or personal property within the state with a net worth of at least the amount set in order for bail.

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

1. Capital felony, when the court finds there is substantial evidence to support the charge;
2. Felony committed while on probation or parole, or while free on bail waiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;
3. Felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or
4. Felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

An arraignment is conducted in open court where the judge reads the criminal charges to the defendant or states to him the substance of the charge and gives him a copy of the complaint or information before he calls on him to plead.

The preliminary hearing is a hearing by the court to ascertain whether there is probable (reasonable) cause to show that a crime was committed and the defendant may have committed it. If the court believes there is, the defendant is bound over (transferred) to the appropriate trial court of general jurisdiction for arraignment. A preliminary hearing is not held if the defendant is indicted by a grand jury.

At the preliminary hearing the state has the burden of proof to prove all elements of the crime **beyond a reasonable doubt** and is required to proceed first with its case.

After a defendant is bound over to district court, an arraignment is held the same as in lower court. At arraignment a defendant may enter pleas of: guilty, no contest, or not guilty. If the defendant pleads guilty, the court sets a date for sentencing. If the defendant pleads no contest, the court may refuse to accept that plea until the court has made the following findings:

1. If the defendant is not represented by counsel, he has knowingly waived his right to counsel and does not desire counsel.
2. The plea is voluntarily made.
3. The defendant knows he has rights to a jury trial, and to confront and cross-examine in open court the witnesses against him, and that by entering the plea he waives all of those rights.
4. The defendant understands the nature and elements of the offense to which he is entering the plea.
5. The defendant knows the minimum and maximum sentences that may be imposed upon him.
6. Whether the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached.

The defendant may file a written motion for a bill of particulars asking for details concerning the nature and cause of the offense charged when these details are not set out in the information or indictment.

The defendant may file a motion to dismiss based upon failure to have a speedy trial, lack of jurisdiction, or other areas of objection.

If the defendant feels he cannot receive a fair and impartial trial in the county where the crime was committed, he may request a change of venue (change in the location of the trial.)
If the attorney feels there was not probable cause for the arrest of the defendant or that the evidence was illegally seized, he files a motion to quash search warrant and suppress evidence illegally seized.

A plea agreement means that if there are numerous charges filed against the defendant, several may be dismissed with the acceptance of a plea of guilty to one of the charges. Sometimes the charge is reduced to a lesser offense if there is only one charge filed against him.

There are six kinds of pleas to an indictment or information:

1. Not guilty.
2. Guilty.
3. No contest.
4. Not guilty by reason of insanity.
5. Guilty and mentally ill at the time of the offense.
6. Plea in Abeyance

Every plea shall be entered upon the record of the court and shall have the following effect:

1. A plea of not guilty is a denial of the guilt of the accused and puts in issue every material allegation of the information or indictment.
2. A plea of guilty is an acknowledgement that the accused is guilty of the offense charged.
3. A plea of no contest indicates the accused does not challenge the charges in the information or indictment and if accepted by the courts shall have the same effect as a plea of guilty and imposition of sentence may be rendered in the same manner as if a plea of guilty had been entered.

A plea of no contest may be entered by the accused only upon approval of the court and only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

All pleas in felony cases shall be entered by the defendant in open court and the proceedings recorded.

A plea of not guilty may be withdrawn at any time prior to conviction. A plea of guilty or no contest may be withdrawn only upon leave of the court and showing that it was not knowingly and voluntarily made, and if the motion was made within 30 days of pleading guilty or no contest.

All felony cases are tried by jury unless the defendant waives his/her right to a jury.

In capital cases where the sentence of death has been imposed, the case is automatically reviewed by the supreme court of the state.
The court may grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect on the rights of a party.

If a new trial is granted, the party is in the same position as if no trial had been held, and the former verdict cannot be used or mentioned either in evidence or in argument.

77-17-13 Expert Testimony Generally – Notice Requirements [44]

If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than **30** days before trial or **10** days before the hearing.

Notice shall include the name and address of the expert, the expert‘s curriculum vitae (a curriculum vitae is an expert‘s resume detailing education and experience), and one of the following:

1. A copy of the expert‘s report, if one exists; or
2. A written explanation of the expert‘s proposed testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony; and
3. A notice that the expert is available to cooperatively consult with the opposing party on a reasonable notice.

The party intending to call the expert is responsible for any fees charged by the expert for the consultation.

If an expert‘s anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request. As soon as practicable after receipt of the expert‘s report or the information concerning the expert‘s proposed testimony, the party receiving information concerning the expert‘s proposed testimony, the party receiving notice shall provide to the other party notice of witnesses whom the party anticipates calling to rebut the expert‘s testimony, including the information required above.

If the defendant or the prosecution fails to substantially comply with the requirements of this section, the opposing party shall, if necessary to prevent substantial prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony. If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy of exclusion of the expert‘s testimony will only apply if the court finds that a party deliberately violated the provisions of this section.

Testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert‘s qualifications, and a report of the expert‘s proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing. Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert‘s curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.

[44] Utah Code Annotated, Title 77.

This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on a reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.

Proceedings in criminal cases are commenced by the filing of a complaint, information, or an indictment by the prosecutors, which is sworn to by a person who believes a crime has been committed. In most jurisdictions misdemeanor proceedings are based on a complaint. Generally, information‘s and indictments apply to felonies although this differs among various jurisdictions. An indictment is used only as the result of a grand jury's action. A warrant of arrest or a summons is issued for the appearance of the accused. When a warrant of arrest is issued, the amount of bail is usually stated on the warrant.

Discovery

The prosecuting attorney must release to the defense upon request certain information or material if he has knowledge of the requested information. The prosecutor has a continuing duty to make disclosure.

Defense counsel is generally provided the contents of the prosecutor‘s file **with the exception of research and personal notes**. Typically county attorney offices have open file policies in regard to discovery, but occasionally there are unusual requests that should be reviewed by the prosecutor before providing it to defense counsel.

The defense must disclose to the prosecutor as required by statute such information which relates to notice of alibi or insanity. Most defense evidence is considered to be privileged.

Determination of the Court for a Protective Order[45]

A defendant who has been arrested for an offense involving domestic violence shall appear in person before the court of a magistrate within one judicial day after the arrest. A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.

At the time of an appearance the court shall determine the necessity of imposing a protective order or other condition of pretrial release including, but not limited to, participating in an electronic monitoring program, and shall state its findings and determination in writing. Appearances are required and mandatory and may not be waived.

[45] Utah Code Annotated, § 77-36-2.4

Enforcement of Protective Orders [46]

Each law enforcement agency in this state shall enforce all orders of the court issued pursuant to the requirements and procedures described in the Utah Code Annotated § 77-36-2.4, and shall enforce: all protective orders and ex parte protective orders issued pursuant to Title 30, Chapter 6, Cohabitant Abuse Act; and all foreign protection orders enforceable under Title 30, Chapter 6a, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

The requirements of §76-36 apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

Violation of Protective Orders – Mandatory Arrest[47]

A law enforcement officer shall without warrant arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order or protective order. Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with § 77-5-108 and is a domestic violence offense, pursuant to § 77-36-1.

Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with § 77-36-1.1. An ―ex parte protective order‖ or ―protective order‖ includes:

1. Any protective order or ex parte protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act or Title 77, Chapter 36, Cohabitant Abuse Procedures Act;
2. Any child protective order or ex parte child protective order issued under Title 78, Chapter 3h, Child Protective Orders; or
3. A foreign protection order enforceable under Title 30, Chapter 6a, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Requirements of the Accused:

1. Appear in a lineup.
2. Speak for identification.
3. Submit to fingerprinting.
4. Pose for photographs not involving re-enactment of the crime.
5. Try on articles of clothing or other items of disguise.
6. Permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion.
7. Provide specimens of handwriting.
8. Submit to reasonable physical or medical inspection of his body.
9. Cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

[46] Utah Code Annotated, § 77-36-6

[47] Utah Code Annotated, § 77-36-2.4.

Trial by Jury

A trial jury consists of:

1. Twelve (12) persons in a capital case.
2. Eight (8) persons in felony cases.
3. Six (6) persons for class A misdemeanors.
4. Four (4) persons for class B and C misdemeanors generally heard in Justice Courts.
5. The defendant is not entitled to a jury trial on infractions; only a bench trial.
6. Eight (8) persons in a civil case at law except that the jury shall be four (4) persons in a civil case for damages of less than $20,000, exclusive of costs, interest, and attorney fees.

In the trial of a capital felony, the parties may stipulate upon the record to a jury of lesser number than the twelve (12) established by Utah Code.

If a defendant specifically requests a jury trial it must be done 10 days in advance of the trial. In some jurisdictions trial by jury is deemed to be waived in misdemeanor cases unless the defendant makes written demand for a jury trial.

The verdict in a criminal case shall be unanimous. The verdict in a civil case shall be by not less than three-fourths of the jurors. There is no jury in the trial of small claims cases. There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

A person is competent to serve as a juror if the person is:

1. A citizen of the United States.
2. Eighteen (18) years of age or older.
3. A resident of the county.
4. Able to read, speak, and understand the English language.

A person who has been convicted of a felony that has not been expunged is not eligible to serve as a juror.

The court, on its own initiative or when requested by a prospective juror, shall determine whether the prospective juror is disqualified from jury service. The court shall base its decision on the information provided on the juror qualification form, or by interview with the prospective juror or other competent evidence. The clerk shall enter the court‘s determination in the records of the court.

POST TRIAL PROCEEDINGS

Motion for New Trial

Upon motion of a defendant or upon its own initiative, a court may grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect upon the rights of a defendant. In federal cases a judge has no power to order a new trial on his own initiative. Such motion must be made only by a defendant within seven days after verdict or finding of guilty or within such further time as the court may fix

unless the motion is based upon the ground of newly discovered evidence; in such case, the motion may be made within two years after final judgment.

Correction or Reduction of Sentence

The federal court may correct either an illegal sentence at any time or a sentence imposed in an illegal manner within the time provided for a reduction of sentence. A sentence may be reduced within 120 days after imposition of sentence, after the court receives a mandate from the court of appeals affirming the judgment or dismissing the appeal or after entry of a denial of a petition for certiorari or appeal to the Supreme Court.

Appeals – Procedure

An appeal is a request to a higher court to review a decision of a lower court. When the appellant files a notice of appeal, he must file a designation of the record describing the parts of the trial record or transcript of the proceedings to be sent to the appellate court. The appellant may be required to file a bond on appeal. A docketing statement describing the issues to be raised on appeal is to be filed in the appeal court after filing the notice of appeal. The next thing required is each party files briefs.

Extradition

Extradition is the surrender by one state (arresting state) to another (demanding state) of an individual accused or convicted of an offense committed outside of the arresting state but within the territorial jurisdiction of the demanding state which demands the surrender of the accused. The defendant may challenge the extradition in a habeas corpus proceeding.

A person arrested on a fugitive warrant may waive extradition proceedings by executing in the presence of a judge in any court of record in the arresting state a writing which states that he knowingly and voluntarily consents to return to the demanding state. The judge may also require that the demanding state return the defendant within a specified period of time. The Uniform Criminal Extradition Act is to make uniform the extradition procedures in all states which have adopted the act.

Habeas Corpus

The writ of habeas corpus is one of the basic guarantees of personal freedom in English and American law which prevents the unjust or wrongful imprisonment or detention of a person by legal authorities.
A state defendant who intentionally bypasses a state remedy may not seek federal jurisdiction.

A person seeking relief from federal custody files a motion to vacate, set aside, or correct sentence rather than a petition for habeas corpus.

Probation and Parole

Probation is an act by the court suspending the imposition or execution of a sentence, generally under the supervision of a probation officer. This system is based on the effort to rehabilitate and encourage good behavior in a convicted criminal by releasing him on the condition that he leads a lawful and an orderly life for a stated period. Probation may not be revoked except upon a hearing in court and a finding that one or more conditions of probation have been violated.

Parole is the release of a prisoner from imprisonment on certain prescribed conditions, which if satisfactorily performed, entitle him to a termination of his sentence. A pardon releases the offender from the punishment prescribed for the offense and usually removes the finding of guilt; while by a parole, a convict is merely released before the expiration of his term and remains subject to supervision by the public authority during the remainder of his term.

An appointed body of residents of a state serves as a parole board. This board determines whether parole, pardon, commutation (change from a greater to a lesser punishment), or termination of sentence will be granted in individual cases. The board is empowered to revoke the parole of any person who is found to have violated the conditions of his parole.

Expungement means to destroy or obliterate, to blot out, or to strike out wholly. Any person who has been convicted of a crime may petition the convicting court for a judicial pardon and for sealing of his record in that court.

Guarantees of Justice for the Accused

Article I, Section 9 provides the right to a writ of habeas corpus. Article I, Sections 9 and 10 prohibit both Congress and state legislatures from passing ex post facto laws (laws declaring acts which were committed before the laws were passed to be crimes). Article I, Sections 9 and 10 also prohibit both Congress and state legislatures from passing bills of attainder (legislative acts which inflict punishment without benefit of a trial). Article III, Section 2 guarantees the right to a trial by jury. Article III, Section 3 provides protection against being convicted of treason without the testimony of two witnesses to the act or on confession in open court.

Escobedo v. Illinois established that when police questioning begins to focus on the accused as a suspect rather than for general investigation purposes, the accused must be permitted to consult with counsel.
Miranda v. Arizona established that prior to any custodial interrogation, the police must warn the accused (1) that he has the right to remain silent; (2) that any statement he does make may be used as evidence against him; (3) that he has the right to have his attorney present during questioning; and (4) that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so wishes.

CRIMINAL PENATIES[48]

After a person has been convicted of a crime, a judge considers many factors before imposing a sentence. A judge can impose a sentence that includes a jail or prison term, probation, a fine, community service, restitution, or a combination of these penalties. One of the factors a judge considers when deciding what penalties to impose is the type of crime that was committed.

Classification of Criminal Offenses

Crimes are classified into three categories: felonies, misdemeanors and infractions. To determine what category a crime falls into, look at the law in the Utah Code (if state law), or the appropriate city or county code. Most criminal statutes will say how the crime is classified.

Felonies

A felony is a major crime that can be punished with imprisonment, a fine, or both. There are four categories of felonies.

Degree	Possible Prison Term	Possible Fine
Capital	Life in Prison, life without parole or Death Penalty	N/A
First Degree Felony	Five years to life in prison	Up to $10,000
Second Degree Felony	One to 15 years in Prison	Up to $10,000
Third Degree Felony	Zero to 5 years in prison	Up to 5,000

Misdemeanors

A misdemeanor is an offense lower than a felony, which can be punished with a county jail term of up to 364 days, a fine, or both. Many city and county ordinances and some state laws are misdemeanors. There are three categories of misdemeanors.

Class	Possible Jail Term	Possible Fine
Class A Misdemeanor	Up to 364 days in county jail	Up to $2,500
Class B Misdemeanor	Up to six months in county jail	Up to $1,000 or compensatory service
Class C Misdemeanor	Up to 90 days in county jail	Up to $750 or compensatory service

[48] https://www.utcourts.gov/en/self-help/case-categories/criminal-justice/penalties.html

Infractions

An infraction is punishable by a fine up to $750, compensatory service, forfeiture, disqualification, or a combination of those punishments.

Compensatory Service[49]

It may be possible to perform service or unpaid work instead of paying a criminal fine. This is called "compensatory service." Each hour of compensatory service is worth $10.00. Compensatory service can be performed for:

- a state or local government agency;
- a nonprofit organization; or
- any other entity or organization if prior approval is obtained from the court.

How a Sentence is Determined

The judge determines the sentence of a person convicted of a crime using the Utah Sentence and Release Guidelines. These are available on the Utah Sentencing Commission's website.

The Guidelines also provide aggravating and mitigating factors that can be considered in sentencing.

Aggravating factors

These are facts of the case that can make the punishment more severe, including:

- whether the victim suffered substantial bodily injury;
- whether the offense was extremely cruel or depraved;
- whether the offender was in a position of authority over the victim;
- whether the victim was unusually vulnerable.
- whether the victim was selected because of a personal attribute. Utah Code 76-3-23.14.

A penalty can also be more severe if:

- the person committed the crime with two or more other people;
- the person used a dangerous weapon on or near a school;
- the person committed the crime in the presence of a child;
- the person is determined to have committed a hate crime;
- the person is determined to be a habitual offender;
- the offense was committed while in prison.

Mitigating factors

These are facts of the case that can make the punishment less severe, including:

- whether the offender was exceptionally cooperative with law enforcement;
- is a good candidate for treatment;
- has developmental disabilities.

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[49] Utah Code 76-3-301.7.

The Sentencing Process

How the sentencing process works depends on the type of case. There are two types of cases: non-capital cases, where the possible punishment does not include the death penalty and capital cases, where a defendant could be sentenced to death.

Non-Capital Cases

A person convicted of a crime has the right to be sentenced in no fewer than two and no more than 45 days after conviction or entry of a plea. The defendant can waive that time frame and be sentenced on the day of conviction or plea. The defendant may also choose to be sentenced after 45 days if they need more time to prepare for sentencing.
In felony cases, the judge often orders the Department of Corrections' Division of Adult Probation and Parole (AP&P) to prepare a pre-sentence report. This confidential report for the judge includes:

- the police report;
- the defendant's prior adult and juvenile record;
- the defendant's statement;
- drug and alcohol history;
- family history;
- probation history;
- impact of the crime on the victim;
- a sentencing recommendation for the judge's consideration.

Victims and the defendant have the right to speak at the sentencing hearing. A judge making a sentencing decision considers their remarks along with the pre-sentence report and other evidence.

Capital Cases

A sentencing hearing is held at which defense counsel introduces evidence to show mitigating circumstances, and the state may introduce evidence to show aggravating circumstances. The jury or judge then deliberates to determine whether the person should be given the death penalty or a life sentence.

ENHANCEMENTS [50]

1. Driving Under the Influence.
2. Controlled Substance Penalties.
3. Two or More Persons.
4. Weapon on School Premises.
5. Habitual Violent Offender.
6. Certain Offenses Committed by Prisoners.
7. Increase of Sentence for Violent Felony if Body Armor was used.
8. Dangerous Weapon Used.
9. Restrictions on Possession, Purchase, Transfer, and Ownership of Dangerous Weapons by Certain Persons.
10. Possession of a Dangerous Weapon by a Minor.
11. Prohibition of Possession of Certain Weapons by Minors.
12. Providing Certain Weapons to a Minor.
13. Parent or Guardian Providing Firearm to Violent Minor.
14. Theft.
15. Repeat & Habitual Sex Offenders – Additional Prison Term.
16. Repeat & Habitual Sex Offenders – Life Imprisonment.
17. Subsequent Domestic Violence Offenses.
18. Stalking.
19. Automobile Homicide.
20. Prostitution.
21. Aiding Prostitution.
22. HIV Positive Offender.
23. Providing Cigars, Cigarettes, or Tobacco to Minors.
24. Requirement of Direct, Face-to-Face Sale of Tobacco Products.
25. Unlawful Dealing of a Property by a Fiduciary.
26. Obtaining Encoded Information on a Financial Transaction Card with the Intent to Defraud the Issuer, Holder, or Merchant.
27. Cruelty to Animals Enhanced Penalties.

[50] Utah Code Annotated, Titles 41, 58, 76, and 77.

Driving Under the Influence – 41-6a-503

A person convicted a first or second time of Driving Under the Influence is guilty of a class B misdemeanor. It becomes a class A misdemeanor if the person has:

1. Also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;
2. Had a passenger under 16 years of age in the vehicle at the time of the offense; or
3. Was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense.

A person convicted of Driving Under the Influence is guilty of a third degree felony if:

1. Within the past ten years, the person has had two or more prior convictions;
2. The person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;
3. The person has previously been convicted of automobile homicide after July 1, 2001.

Controlled Substances Penalties – 58-37-8

It is unlawful for any person to knowingly and intentionally:

1. Produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;
2. Distribute a controlled or counterfeit substance, or to agree, consent, offer or arrange to distribute a controlled or counterfeit substance; or
3. Possess a controlled or counterfeit substance with intent to distribute;

Any person convicted of a substance classified in Schedule I or II, a controlled substance analog or gammahydroxybutyric acid as listed in Schedule III, is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony.

Any person convicted of a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony.

Any person convicted of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

Any person who possesses less than one ounce of marijuana is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third degree felony.

Any person convicted of possessing a controlled substance while inside the exterior boundaries of property occupied by any correctional facility or any public jail or other place of confinement shall be sentenced to a penalty one degree greater.

It is unlawful:

1. For any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice;
2. For any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or
3. For any persons knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

Any person convicted of violation of the above is:

1. On a first conviction, guilty of a class B misdemeanor;
2. On a second conviction, guilty of a class A misdemeanor; and 3. On a third or subsequent conviction, guilty of a third degree felony.

Two or More Persons Enhancement – 76-3-203.1

The level of offense is enhanced one degree if the person acted in concert with two or more persons. ―In concert with two or more persons‖ means the defendant was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons was:

1. Physically present; or
2. Participated as a party of any offense.

The enhanced penalty for a:

a. Class B misdemeanor is a class A misdemeanor;
b. Class A misdemeanor is a third degree felony;
c. Third degree felony is a second degree felony;
d. Second degree felony is a first degree felony; and
e. First degree felony is an indeterminate prison term of not less than nine years and which may be for life.

Weapon on School Premises – 76-3-203.2

The use of a dangerous weapon in offenses committed on or about school premises. Any person who commits any offense and uses or threatens to use a dangerous weapon, in the commission of the offense is subject to an enhanced degree of offense.
Any person who commits an offense against an educator when the educator is acting within the course of employment is subject to an enhanced degree of offense.
If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits any offense and in the commission of the offense uses or threatens to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of his employment, the enhanced penalty is:

1. Class B misdemeanor is a class A misdemeanor;

2. Class A misdemeanor is a third degree felony;
3. Third degree felony is a second degree felony;
4. Second degree felony is a first degree felony.

Habitual Violent Offender – 76-3-203.5

If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact (judge or jury) determines beyond a reasonable doubt that the person is a habitual violent offender, the penalty for a:

1. Third degree felony is as if the conviction were for a first degree felony;
2. Second degree felony as if the conviction were for a first degree felony ; or 3. First degree felony remains the penalty for a first degree penalty except:
    a. The convicted person is not eligible for probation; and
    b. The Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor to determine the length of incarceration.

Enhanced Penalty for Certain Offenses Committed by Prisoner – 76-3203.6

As used in this section, ―serving a sentence‖ means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

1. Has not been paroled; or
2. Is in custody after arrest for a parole violation.

If the trier of fact (judge or jury) finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits certain offenses, the court shall sentence the defendant to life in prison without parole.

However, the court may sentence the defendant to an indeterminate prison term of not less than 20 years and which may be for life if the court finds that the interest of justice would best be served and states that specific circumstances justify the disposition on the record.

Increase of Sentence for Violent Felony if Body Armor used – 76-3203.7

A person convicted of a violent felony may be sentenced to imprisonment for an indeterminate term, but if the trier of fact finds beyond a reasonable doubt that the defendant used, carried, or possessed a dangerous weapon and also used or wore body armor, with the intent to facilitate the commission of the violent felony, and the violent felony is:

1. A first degree felony, the court shall sentence the person convicted for a term of not less than six years, and which may be for life;
2. A second degree felony, the court shall sentence the person convicted for a term of not less than two years nor more than 15 years, and the court may sentence the person convicted for a term of not less than two years nor more than 20 years; and
3. A third degree felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years, and the court may sentence the person convicted for a term of not less than one year nor more than ten years.

Increase of Sentence if Dangerous Weapon used – 76-3-203.8

If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission of furtherance of a felony, the court:

1. Shall increase by one-year the minimum term of the sentence applicable by law; and
2. If the minimum term applicable by law is zero shall set the minimum term as one year; and
3. May increase by five years the maximum sentence applicable by law in the case of a felony of the second or third degree.
4. If the trier of fact finds beyond a reasonable doubt that a person has been sentenced to a term of imprisonment for a felony in which a dangerous weapon was used in the commission of or furtherance of the felony and that person is subsequently convicted of another felony in which a dangerous weapon was used in the commission of or furtherance of the felony, the court shall, in addition to any other sentence imposed, impose an indeterminate prison term to be not less than five nor more than ten years to run consecutively and not concurrently.

Restrictions on Possession, Purchase, Transfer, and Ownership of Dangerous Weapons by Certain Persons – 76-10-503

A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under his custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under his custody or control:

1. Any firearm is guilty of a second degree felony; or
2. Any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

A Category II restricted person who purchases, transfers, possesses, uses, or has under his custody or control:

1. Any firearm is guilty of a third degree felony; or
2. Any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

A person may be subject to the restrictions of both categories at the same time.

Possession of a Dangerous Weapon by a Minor – 76-10-509

A minor under 18 years of age may not possess a dangerous weapon unless he has the permission of his parent or guardian to have the weapon, or is accompanied by a parent or guardian while he has the weapon in his possession.

Any minor under 14 years of age in possession of a dangerous weapon shall be accompanied by a responsible adult. Any person who violates this section is guilty of:

1. A class B misdemeanor upon the first offense; and
2. A class A misdemeanor for each subsequent offense.

Prohibition of Possession of Certain Weapons by Minors – 76-10-509.4

A minor under 18 years of age may not possess a handgun, except as provided by federal law; a minor under 18 years of age may not possess the following: 1. A sawed-off rifle or sawed-off shotgun; or

2. A fully automatic weapon.

Any person who violates this is guilty of a class B misdemeanor upon the first offense, and a class A misdemeanor for each subsequent offense.

Providing Certain Weapons to a Minor – 76-10-509.5

Any person who provides a handgun to a minor when the possession of the handgun by a minor is prohibited, is guilty of:

1. A class B misdemeanor upon the first offense, and
2. A class A misdemeanor for each subsequent offense.

Parent or Guardian Providing Firearm to Violent Minor – 76-10-509.6

A parent or guardian may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any minor who has been convicted of a violent felony or any minor who has been adjudicated in juvenile court for an offense which would constitute a violent felony if the minor were an adult. Any person who violates this section is guilty of:

a) A class A misdemeanor upon the first offense; and
b) A third degree felony for each subsequent offense.

Theft – Classification of Offenses – Action for Treble Damages – 76-6412

Theft of property and services shall be punishable as a third degree felony if the actor has been twice before convicted of theft, any robbery, or any burglary with intent to commit theft.

Repeat & Habitual Sex Offenders – Additional Prison Term for Prior Felony Convictions – 76-3-407

If the new offense is the commission of or the attempt to commit a first or second degree felony, the court shall impose, in addition to and consecutive to any other prison term, an additional five-year term for each prior conviction for a felony sexual offense in Utah or an offense in any other state or federal jurisdiction which constitutes or would constitute a crime or an attempted crime which, if committed in Utah, is punishable under Title 76, Chapter 5, Part 4 Sexual Offenses, if the trier of fact finds the prior felony conviction was entered before the commission of the new offense.

Repeat & Habitual Sex Offenders – Life Imprisonment without Parole on Third Conviction – 76-3-408

A person who has been convicted in two or more separate prosecutions of any sexual offense which, if committed in Utah or any other state or federal jurisdiction, would contain elements sufficient to constitute any of the offenses described in § 76-5-402, § 76-5-402.1, § 76-5-402.2, § 76-5-402.3, § 76-5-403, § 76-5-403.1, § 76-5-404, § 76-

5404.1, and § 76-5-405, shall, upon a conviction of any offense set forth in this section, be sentenced to a term of imprisonment for life without the possibility of parole if the existence of the prior felony convictions has been charged and admitted or found true in the action for the new offense and if the prior felony convictions were entered before the commission of the new offense. A prior felony conviction can be alleged for purposes of this section only if it was entered before the actual commission of the crime which constitutes the basis for the next felony conviction, subsequently entered against the accused, which is also alleged under this section.

Enhancement for Subsequent Domestic Violence Offenses

A person who is convicted of a domestic violence offense for the first time is guilty of a class B misdemeanor. Subsequent offenses may be enhanced by one degree above the offense charged as long as the prior conviction has been committed within five years of the new offense. For purposes of this section, a plea in abeyance is considered a conviction.

Stalking Enhancement

Stalking is a class A misdemeanor upon the offender‘s first violation. It becomes a third degree felony with one prior conviction, and a second degree felony if the offender has been previously convicted two or more times of the offense.

Automobile Homicide – 76-5-207

Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

1. Has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood alcohol concentration of .08 grams or greater at the time of the test;
2. Is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or
3. Has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

This charge can be a second degree felony if the person operates a motor vehicle in a criminally negligent manner causing the death of another and has been previously convicted of:

1. Driving under the influence;
2. Any alcohol, drug or a combination of both, related reckless driving; or
3. Driving with any measurable controlled substance that is taken illegally in the body.

A plea of guilty or no contest to the above violations which is held in abeyance is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of enhancements.

Prostitution – 76-10-1302

Prostitution is a class B misdemeanor for the first offense. Any person who is convicted a second time, and on all subsequent convictions is guilty of a class A misdemeanor, except as provided in § 76-10-1309.

HIV Positive Offender – 76-10-1309

A person who is an HIV positive individual and has actual knowledge of that fact and has received written personal notice of the positive test results from a law enforcement agency and is convicted of:

1. Prostitution shall be guilty of a third degree felony;
2. Patronizing a prostitute shall be guilty of a third degree felony; or 3. Sexual solicitation shall be guilty of a third degree felony.

Aiding Prostitution – 76-10-1304

Aiding prostitution is a class B misdemeanor. However, a person who is convicted a second time, and on all subsequent convictions, is guilty of a class A misdemeanor.

Providing Cigars, Cigarettes, or Tobacco to Minors – Penalties – 76-10104

Any person who knowingly, intentionally, recklessly, or with criminal negligence provides any cigar, cigarette, or tobacco in any form, to any person under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

Requirement of Direct, Face-to-Face Sale of Tobacco Products – 76-10105.1

A parent or legal guardian who accompanies a person younger than 19 years of age into an area described as: vending machines, including vending machines that sell packaged, single cigarettes, and self-service displays that are located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian, and permits the person younger than 19 years of age to purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of providing tobacco.
The first violation of this offense is a Class C misdemeanor, a class B misdemeanor on the second offense, and a class A misdemeanor on the third and all subsequent offenses.

Unlawful Dealing of Property by a Fiduciary – 76-6-513

A person acting as a fiduciary is guilty of a violation if, without permission of the owner of the property or some other person with authority to give permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

A class A misdemeanor if the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by fiduciary.

Obtaining Encoded Information on a Financial Transaction Card with the Intent to Defraud the Issuer, Holder, or Merchant – 76-6-506.7 Any person who has been convicted previously of an offense listed below is guilty of a third degree felony:

1. A scanning device to access, read, obtain, memorize, or store temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card without the permission of the card holder and with intent to defraud the card holder, the issuer, or a merchant; or
2. A Reencoder to place information encoded on the magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the card holder, the issuer, or a merchant.

The person is guilty of a second degree felony upon a second conviction and any subsequent convictions for the offense.

Cruelty to Animals Enhanced Penalties – 76-9-301.7

A person who has been convicted of cruelty to animals shall be subject to an enhanced penalty. The enhanced degrees of offense for cruelty to animals are:

a) If the offense is a class C misdemeanor, it is a class B misdemeanor; and
b) If the offense is a class B misdemeanor, it is a class A misdemeanor.

VICTIM'S RIGHTS[51]

The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In the Utah Code Annotated, Chapter 37, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in Chapter 37 to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children‘s participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

Bill of Rights

The bill of rights for victims and witnesses is:

1. Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them. It's a crime for anyone to threaten or hurt a victim or witness because of their testimony.
2. Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice process. All criminal justice agencies have the duty to provide this information and assistance.
3. Victims and witnesses have a right to clear explanation regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.
4. Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.
5. Victims are entitled to restitution or reparations, including medical costs. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Utah Crime Victims ‘Reparations Board and to inform victims of these procedures.
6. Victims and witnesses have a right to have any personal property returned. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court, law enforcement or prosecution purposes.
7. Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees ‘loss of pay and other benefits resulting from their participation in the criminal justice

[51] Utah Code Annotated, Title 77, Chapter 37.

process. Officers of the court shall provide these services and shall consider victims 'and witnesses 'schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided the victim may request that the responsible agency intercede with employers or other parties.

8. Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.
9. Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.
10. Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in U.C.A. § 76-5503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in U.C.A. § 76-5-502. The law enforcement office where the sexual offense is reported shall have the responsibility to inform victims of this right.

Additional Rights for Children

In addition to all rights afforded to victims and witnesses under Chapter 37 of the Utah Code Annotated, child victims and witnesses shall be afforded these rights:

1. Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.
2. Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interest of the child in this regard.
3. Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.
4. Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure the child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

Information rights of the victim under Chapter 37 of the Utah Code Annotated are based upon the victim providing his current address and telephone number to the criminal justice agencies involved in the case.

UTAH RIGHTS OF CRIME VICTIMS ACT[52]

§77-38-2 – Notification to Victims

Initial notice, election to receive subsequent notices-form of notice-protected victim information-pretrial criminal no contact order of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges except as otherwise provided in Chapter 38 of the Utah Code Annotated.

The initial notice of the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings which include:

1. Any preliminary hearing to determine probable cause;
2. Any court arraignment where practicable;
3. Any court proceeding involving the disposition of charges against a defendant or minor or the delay of a previously scheduled trial date but not including any unanticipated proceedings to take an admission or a plea of guilty as charged to all charges previously filed or any plea taken at an initial appearance;
4. Any court proceeding to determine whether to release a defendant or minor and, if so, under what conditions release may occur, excluding any such release determination made at an initial appearance;
5. Any criminal or delinquency trial, excluding any actions at the trial that a court might take in camera, in chambers, or a sidebar conference;
6. Any court proceeding to determine the disposition of a minor or sentence, fine, or restitution of a defendant or to modify any disposition of a minor or sentence, fine, or restitution of a defendant.

The prosecuting agency shall provide notice to a victim of a crime for the above important criminal justice hearings, which the victim has requested. The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

In the event of an unforeseen important criminal justice hearing for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceedings.

In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice that it has received from a victim to the Board of Pardons and Parole.

A victim‘s address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, Division of Youth

[52] Utah Code Annotated, Title 77, Chapter 38.

Corrections, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected.
The victim‘s address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

1. A law enforcement agency, including the prosecuting agency.
2. A victim‘s rights committee as provided in the U.C.A. § 77-37-5.
3. A governmentally sponsored victim or witness program.
4. The Department of Corrections.
5. Office of Crime Victims ‘Reparations.
6. Commission on Criminal and Juvenile Justice.
7. The Board of Pardons and Parole.

§ 77-38-4 – Victims’ Right to be Present & Heard

(1) The victim of a crime, the representative of the victim, or both shall have the right:

(a) to be present at the important criminal or juvenile justice hearings provided in Subsection 77-38-2(5);

(b) to be heard at the important criminal or juvenile justice hearings provided in Subsections 77-38-2(5)(b), (c), (d), (f), (g), and (h);

(c) to submit a written statement in any action on appeal related to that crime; and

(d) upon request to the judge hearing the matter, to be present and heard at the initial appearance of the person suspected of committing the conduct or criminal offense against the victim on issues relating to whether to release a defendant or minor and, if so, under what conditions release may occur.

(2) This chapter shall not confer any right to the victim of a crime to be heard:

(a) at any criminal trial, including the sentencing phase of a capital trial under Section 76-3-207 or at any preliminary hearing, unless called as a witness; and

(b) at any delinquency trial or at any preliminary hearing in a minor's case, unless called as a witness.

(3) The right of a victim or representative of a victim to be present at trial is subject to Rule 615 of the Utah Rules of Evidence.

(4) Nothing in this chapter shall deprive the court of the right to prevent or punish disruptive conduct nor give the victim of a crime the right to engage in disruptive conduct.

(5) The court shall have the right to limit any victim's statement to matters that are relevant to the proceeding.

(6) In all cases where the number of victims exceeds five, the court may limit the in-court oral statements it receives from victims in its discretion to a few representative statements.

(7) Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report.

(8) If the victim of a crime is a person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment, the right to be heard under this chapter shall be exercised by submitting a written statement to the court.

(9) The court may exclude any oral statement from a victim on the grounds of the victim's incompetency as provided in Rule 601(a) of Utah Rules of Evidence.

(10) Except in juvenile court cases, the Constitution may not be construed as limiting the existing rights of the prosecution to introduce evidence in support of a capital sentence.

§ 77-38-6 – Victims' Right to Privacy

The victim of a crime has the right, at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim‘s address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that on compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.

A defendant may not compel any witness to a crime, at any court proceeding including any juvenile court proceeding, to testify regarding the witness‘s address, telephone number, place of employment, or other locating information unless the witness specifically consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on whether to order disclosure shall be in camera.

§ 77-38-7 – Victims' Right to a Speedy Trial

In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant‘s or minor‘s right to a speedy trial.

The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor, and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusions of all collateral attacks on dispositions or criminal judgments.

In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interest of the victim of a crime to a speedy disposition of the case.

If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

§77-38-8 – Age Appropriate Language at Judicial Proceedings

In a criminal proceeding or juvenile court proceeding regarding or involving a child, examination and cross-examination of a victim or witness 13 years of age or younger shall be conducted in age-appropriate language.

The court may appoint an advisor to assist a witness 13 years of age or younger in understanding questions asked by counsel. The advisor is not required to be an attorney.

§77-38-9 – Representative of Victim

A victim of a crime may designate, with the approval of the court, a representative who may exercise the same rights that the victim is entitled to exercise under this chapter, including pursuing restitution. The victim may revoke the designation at any time. In cases where the designation is in question, the court may require that the designation of the representative be made in writing by the victim.

In cases in which the victim is deceased or incapacitated, upon request from the victim's spouse, parent, child, or close friend, the court shall designate a representative or representatives of the victim to exercise the rights of a victim under this chapter on behalf of the victim. The responsible prosecuting agency may request a designation to the court.

If the victim is a minor, the court in its discretion may allow the minor to exercise the rights of a victim under this chapter or may allow the victim's parent or other immediate family member to act as a representative of the victim. The court may also, in its discretion, designate a person who is not a member of the immediate family to represent the interests of the minor.

The representative of a victim of a crime shall not be: (a) the accused or a person who appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct, a related crime or conduct, or a crime or act arising from the same conduct, criminal episode, or plan as the crime or conduct is defined under the laws of this state; (b) a person in the custody of or under detention of federal, state, or local authorities; or (c) a person whom the court in its discretion considers to be otherwise inappropriate.

Any notices that are to be provided to a victim pursuant to this chapter shall be sent to the victim or the victim's lawful representative. On behalf of the victim, the prosecutor may assert any right to which the victim is entitled under this chapter, unless the victim requests otherwise or exercises his own rights. In any homicide prosecution, the prosecution may introduce a photograph of the victim taken before the homicide to establish that the victim was a human being, the identity of the victim, and for other relevant purposes.

§77-38-10 – Victim's Discretion

The victim may exercise any rights under this chapter at his discretion to be present and to be heard at a court proceeding, including a juvenile delinquency proceeding. The absence of the victim at the court proceeding does not preclude the court from conducting

the proceeding. A victim shall not refuse to comply with an otherwise lawful subpoena under this chapter. A victim shall not prevent the prosecution from complying with requests for information within a prosecutor's possession and control under this chapter.

§ 77-38-12 – Severability Clause – No right to set aside convictions, adjudication, admission, or plea.

All of the provisions contained in U.C. A., Chapter 38 Rights of Crime Victims Act, shall be construed to assist the victims of crime. This chapter may not be construed as creating a basis for dismissing any criminal charge or delinquency petition, vacating any adjudication or conviction, admission or pleas of guilty or no contest, or for a defendant to obtain appellate, habeas corpus, or other relief from a judgment in any criminal or delinquency case. This chapter may not be construed any right of a victim to appointed counsel at state expense. All of the rights contained in this chapter shall be construed to conform to the Constitution of the United States. In the event that any portion of this chapter is found to violate the Constitution of the United States, the remaining provisions of this chapter shall continue to operate in full force and effect. In the event that a particular application of any portion of this chapter is found to violate the Constitution of the United States, all other applications shall continue to operate in full force and effect. The enumeration of certain rights for crime victims in this chapter shall not be construed to deny or disparage other rights granted by the Utah Constitution or the Legislature or retained by victims of crimes.

§ 77-38-14 – Notice of Expungement Petition – Victim's right to object

The Department of Corrections or the Juvenile Probation Department shall prepare a document explaining the right of a victim or a victim‘s representative to object to a petition for Expungement under U.C.A. § 77-40a-30 or § 80-6-1004 and the procedures for obtaining notice of any such petition. The department or division shall also provide each trial court a copy of the document which jurisdiction over delinquencies or criminal offenses subject to Expungement.

The prosecuting attorney in any case leading to a conviction or an adjudication subject to Expungement shall provide a copy of the document to each person who would be entitled to notice of a petition for Expungement under U.C. A. § 77-40a-30 and § 80-6-1004.

CIVIL PROCEDURES

RIGHT OF ACCESS TO COURT RECORDS

Rule of thumb: generally speaking, any document in a court file is a matter of public record unless it is sealed by the court or is classified as confidential or private by statute or by judicial council rule.
RULE 4-202 of the Code of Judicial Administration governs access to court records. Currently, court records are classified into four categories: PUBLIC, PRIVATE, CONFIDENTIAL, AND SEALED.

PUBLIC means data on individuals collected and maintained by the courts which is not classified as private or confidential under Rule 4-202 and is open to the public, unless otherwise exempted or restricted from disclosure by law.

PRIVATE means data on individuals collected and maintained by the courts which is available only to the courts, to others by the express consent of the individuals, and to the individuals themselves or next-of-kin when needed to acquire the benefits due a deceased person.

CONFIDENTIAL means data on individuals collected and maintained by the courts which is available only to the courts, but not to the individual who is the subject of the data or any other individual except upon order of the court.

SEALED means data which has been ordered sealed by the court pursuant to statute or court rule.

SUNSHINE LAWS

Sunshine laws require specific business and government agencies to maintain transparency and disclose their activities to the public. The primary objective of these laws is to prevent fraud, corruption, inequality, and to maintain high ethical standards within such business and agencies.
Utah has laws providing for both open records and open meetings which date back to before statehood. In 1992, the Legislature adopted a comprehensive law regarding open records which is referred to as the Government Records Access and Management Act (GRAMA) (§ G63-2-101, et seq.) and which compiles a variety of earlier statutes and case law into one comprehensive package. The Legislature adopted the Open Meetings Act (§ 52-4-1, et seq.) in 1977 to set certain requirements and procedures regarding public attendance at government meetings. Both these laws are designed to insure that government activities, meetings and records are "kept" in the sunshine.‖

GRAMA [53]

(Government Records Access and Management Act)

63G-2-102. Legislative intent.

(1) In enacting this act, the Legislature recognizes two constitutional rights:

(a) the public's right of access to information concerning the conduct of the public's business; and

(b) the right of privacy in relation to personal data gathered by governmental entities.

(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.

(3) It is the intent of the Legislature to:

(a) promote the public's right of easy and reasonable access to unrestricted public records;

(b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;

(c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;

(d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;

(e) favor public access when, in the application of this act, countervailing interests are of equal weight; and

(f) establish fair and reasonable records management practices.

63G-2-105. Confidentiality agreements.

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

63G-2-106. Records of security

(1) The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter.

(2) The records described in Subsection (1) include:

(a) security plans, including a plan:

(i) to prepare for or mitigate terrorist activity; or

(ii) for emergency and disaster response and recovery;

(b) security codes and combinations, and passwords;

[53] Utah Code Annotated 63G-2-101 Government Records Access and Management Act

(c) passes and keys;

(d) security procedures;

(e) except as provided in Subsection (3), results of, or data collected from, a public entity's risk assessment or security audit; and

(f) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

(3) The records described in Subsection (1) do not include a certification that a community water system has conducted a risk and resilience assessment under 42 U.S.C. Sec. 300i-2.

63G-2-107. Disclosure of records subject to federal law.

(1) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) Except as provided in Subsection (2), this chapter applies to records described in Subsection (1)(a) to the extent that this chapter is not inconsistent with the statute, rule, or regulation.

(2) Except as provided in Subsection (3), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:

(a) controlled or maintained by a governmental entity; and

(b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

(c) The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(3) This section does not exempt any record or record series from the provisions of Subsection 63G-2-601(1).

63G-2-108. Certification of records officer.

Each records officer of a governmental entity or political subdivision shall, on an annual basis, successfully complete online training and obtain certification from state archives in accordance with Section 63A-12-110.

63G-2-201. Provisions relating to records -- Public records -- Private, controlled, protected, and other restricted records -- Disclosure and nondisclosure of records -- Certified copy of record -- Limits on obligation to respond to record request.

(1) (a) Except as provided in Subsection (1)(b), a person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

(b) A right under Subsection (1)(a) does not apply with respect to a record:

(i) a copy of which the governmental entity has already provided to the person;

(ii) that is the subject of a records request that the governmental entity is not required to fill under Subsection (8)(e); or

(iii) (A) that is accessible only by a computer or other electronic device owned or controlled by the governmental entity;

(B) that is part of an electronic file that also contains a record that is private, controlled, or protected; and

(C) that the governmental entity cannot readily segregate from the part of the electronic file that contains a private, controlled, or protected record.

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

(b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

(6) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(7) (a) In response to a request, a governmental entity is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;

(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person;

(v) fill a person's records request if:

(A) the record requested is:

(I) publicly accessible online; or

(II) included in a public publication or product produced by the governmental entity receiving the request; and

(B) the governmental entity:

(I) specifies to the person requesting the record where the record is accessible online; or

(II) provides the person requesting the record with the public publication or product and specifies where the record can be found in the public publication or product; or

(vi) fulfill a person's records request if:

(A) the person has been determined under Section 63G-2-209 to be a vexatious requester;

(B) the State Records Committee order determining the person to be a vexatious requester provides that the governmental entity is not required to fulfill a request from the person for a period of time; and

(C) the period of time described in Subsection (7)(a)(vi)(B) has not expired.

(b) A governmental entity shall conduct a reasonable search for a requested record.

(8) (a) Although not required to do so, a governmental entity may, upon request from the person who submitted the records request, compile, format, manipulate, package, summarize, or tailor information or provide a record in a format, medium, or program not currently maintained by the governmental entity.

(b) In determining whether to fulfill a request described in Subsection (8)(a), a governmental entity may consider whether the governmental entity is able to fulfill the request without unreasonably interfering with the governmental entity's duties and responsibilities.

(c) A governmental entity may require a person who makes a request under Subsection (8)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the information or record as requested.

(9) (a) Notwithstanding any other provision of this chapter, and subject to Subsection (9)(b), a governmental entity is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an individual who is confined in a jail or other correctional facility following the individual's conviction.

(b) Subsection (9)(a) does not apply to:

(i) the first five record requests submitted to the governmental entity by or in behalf of an individual described in Subsection (9)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or

(ii) a record request that is submitted by an attorney of an individual described in Subsection (9)(a).

(10) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) If the requirements of Subsection (10)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(11) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(12) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

(13) Subject to the requirements of Subsection (7), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

(a) the person making the request requests or states a preference for an electronic copy;

(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and

(c) the electronic copy of the record:

(i) does not disclose other records that are exempt from disclosure; or

(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

(14) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:

(a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and

(b) any public interests served by disclosure.

63G-2-202. Access to private, controlled, and protected documents.

(1) Except as provided in Subsection (11)(a), a governmental entity:

(a) shall, upon request, disclose a private record to:

(i) the subject of the record;

(ii) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(iii) the legal guardian of a legally incapacitated individual who is the subject of the record;

(iv) any other individual who:

(A) has a power of attorney from the subject of the record;

(B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

(C) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(v) any person to whom the record must be provided pursuant to:

(A) court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; and

(b) may disclose a private record described in Subsections 63G-2-302(1)(j) through (m), without complying with Section 63G-2-206, to another governmental entity for a purpose related to:

(i) voter registration; or

(ii) the administration of an election.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, physician assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (11)(b), a governmental entity shall disclose a protected record to:

(a) the person that submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

(B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

(B) using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(w).

(9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

(i) private under Section 63G-2-302; or

(ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the State Records Committee may require the disclosure to persons other than those specified in this section of records that are:

(i) private under Section 63G-2-302;

(ii) controlled under Section 63G-2-304; or

(iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(a)(v).

(b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 26B-6-212.

(11) (a) A private, protected, or controlled record described in Section 26B-1-506 shall be disclosed as required under:

(i) Subsections 26B-1-506(1)(b), (2), and (4)(c); and

(ii) Subsections 26B-1-507(1) and (6).

(b) A record disclosed under Subsection (11)(a) shall retain its character as private, protected, or controlled.

63G-2-203. Fees.

(1) (a) Subject to Subsection (5), a governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record.

(b) fee under Subsection (1)(a) shall be approved by the governmental entity's executive officer.

(2) (a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:

(i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

(ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and

(iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).

(b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.

(3) (a) Fees shall be established as provided in this Subsection (3).

(b) A governmental entity with fees established by the Legislature:

(i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and

(ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.

(c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.

(d) The judiciary shall establish fees by rules of the judicial council.

(4) A governmental entity may fulfill a record request without charge and is encouraged to do so if it determines that:

(a) releasing the record primarily benefits the public rather than a person;

(b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or

(c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

(5) (a) As used in this Subsection (5), "media representative":

(i) means a person who requests a record to obtain information for a story or report for publication or broadcast to the general public; and

(ii) does not include a person who requests a record to obtain information for a blog, podcast, social media account, or other means of mass communication generally available to a member of the public.

(b) A governmental entity may not charge a fee for:

(i) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii);

(ii) inspecting a record; or

(iii) the first quarter hour of staff time spent in responding to a request under Section 63G-2-204.

(c) Notwithstanding Subsection (5)(b)(iii), a governmental entity is not prevented from charging a fee for the first quarter hour of staff time spent in responding to a request under Section 63G-2-204 if the person who submits the request:

(i) is not a Utah media representative; and

(ii) previously submitted a separate request within the 10-day period immediately before the date of the request to which the governmental entity is responding.

(6) (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.

(b) The adjudicative body hearing the appeal:

(i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and

(ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

(7) (a) All fees received under this section by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.
(b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

(8) (a) A governmental entity may require payment of past fees and future estimated f ees before beginning to process a request if:
(i) fees are expected to exceed $50; or
(ii) the requester has not paid fees from previous requests.
(b) Any prepaid amount in excess of fees due shall be returned to the requester.

(9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

(10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10).
(b) The lieutenant governor shall:
(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and
(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

63G-2-204. Record Request - - Response - - Time for responding.

(1) (a) A person making a request for a record shall submit to the governmental entity that retains the record a written request containing:
(i) the person's:
(A) name;
(B) mailing address;
(C) email address, if the person has an email address and is willing to accept communications by email relating to the person's records request; and
(D) daytime telephone number; and
(ii) a description of the record requested that identifies the record with reasonable specificity.
(b)
(i) A single record request may not be submitted to multiple governmental entities.
(ii) Subsection (1)(b)(i) may not be construed to prevent a person from submitting a separate record request to each of multiple governmental

entities, even if each of the separate requests seeks access to the same record.

(2) (a) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record.

(b) If a governmental entity is prohibited from providing a record under Subsection (2)(a), the governmental entity shall:

(i) deny the records request; and

(ii) inform the person making the request of the identity of the governmental entity from which the shared record was received.

(3) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(4) After receiving a request for a record, a governmental entity shall:

(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and

(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:

(i) approve the request and provide a copy of the record;

(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;

(iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (6), it cannot immediately approve or deny the request, and include with the notice:

(A) a description of the circumstances that constitute the extraordinary circumstances; and

(B) the date when the records will be available, consistent with the requirements of Subsection (7).

(5) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(6) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (7) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (4):

(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;

(c)

(i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or

(ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(7) If one of the extraordinary circumstances listed in Subsection (6) precludes approval or denial within the time specified in Subsection (4), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (6)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (6)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (6)(c), (d), and (e), the governmental entity shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (4), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(10); or

(B) treat a request for multiple records as separate record requests, and respond sequentially to each request;

(d) for claims under Subsection (6)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (6)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (6)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(8) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (3), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the request is received by the office specified by rule.

(9) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

63G-2-205, Denials

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and

(d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.

(3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

63G-2-401 Appeal to chief administrative officer – Notice of the decision of the appeal.

(1) (a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

(i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or

(ii) the record request is considered denied under Subsection 63G-2-204(9), if that subsection applies.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(4), and, if the requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204(9).

(2) A notice of appeal shall contain:

(a) the name, mailing address, and daytime telephone number of the requester or interested party; and

(b) the relief sought.

(3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:

(i) send notice of the appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the appeal.

(b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a decision on the appeal within:

(i)

(A) 10 business days after the chief administrative officer's receipt of the notice of appeal; or

(B) five business days after the chief administrative officer's receipt of the notice of appeal, if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party; or

(ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.

(b)

(i) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.

(ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date specified when the records will be available.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

(7) (a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.

(b) If the chief administrative officer's decision is to affirm the access denial in whole or in part, the notice under Subsection (7)(a) shall include:

(i) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:

(A) the State Records Committee or district court; or

(B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;

(ii) the time limits for filing an appeal; and

(iii) the name and business address of:

(A) the executive secretary of the State Records Committee; and

(B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a non-requester

is the only appellant, the procedures provided in this section shall apply, except that the decision on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

63G-2-402. Appealing a decision of a chief administrative officer.

(1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:

(a)

(i) appeal the decision to the State Records Committee, as provided in Section 63G-2-403; or

(ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404; or

(b) appeal the decision to the local appeals board if:

(i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and

(ii) the political subdivision has established a local appeals board.

(2) A requester who appeals a chief administrative officer's decision to the State Records Committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the State Records Committee or local appeals board.

(3) As provided in Section 63G-2-403, an interested party may appeal to the State Records Committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

63G-2-403. Appeals to the State Records Committee

(1) (a) A records committee appellant appeals to the State Records Committee by filing a notice of appeal with the executive secretary of the State Records Committee no later than 30 days after the date of issuance of the decision being appealed.

(b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the State Records Committee no later than 45 days after the day on which the record request is made if:

(i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

(ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

(2) The notice of appeal shall:

(a) contain the name, mailing address, and daytime telephone number of the records committee appellant;

(b) be accompanied by a copy of the decision being appealed; and

(c) state the relief sought.

(3) The records committee appellant:

(a) shall, on the day on which the notice of appeal is filed with the State Records Committee, serve a copy of the notice of appeal on:

(i) the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or

(ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the committee, if the records committee appellant is a political subdivision; and

(b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in Subsections (4)(b) and (c), no later than seven business days after receiving a notice of appeal, the executive secretary of the State Records Committee shall:

(i) schedule a hearing for the State Records Committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 16 days after the date the notice of appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed except that the committee may schedule an expedited hearing upon application of the records committee appellant and good cause shown;

(ii) send a copy of the notice of hearing to the records committee appellant; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the State Records Committee;

(B) the records officer and the chief administrative officer of the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party;

(C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.

(b)

(i) The executive secretary of the State Records Committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected.

(ii)

(A) If the executive secretary of the State Records Committee declines to schedule a hearing, the executive secretary shall send a notice to the records committee appellant indicating that the request for hearing has been denied and the reason for the denial.

(B) The State Records Committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) The executive secretary of the State Records Committee may schedule a hearing on an appeal to the State Records Committee at a regularly scheduled State Records Committee meeting that is later than the period described in Subsection (4)(a)(i) if that committee meeting is the first regularly scheduled State Records Committee meeting at which there are fewer than 10 appeals scheduled to be heard.

(5) (a) No later than five business days before the hearing, a governmental entity shall submit to the executive secretary of the State Records Committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position.

(b) The governmental entity shall send a copy of the written statement by first class mail, postage prepaid, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the State Records Committee.

(6) (a) No later than 10 business days after the day on which the executive secretary sends the notice of appeal, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention with the State Records Committee.

(b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.

(c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the State Records Committee.

(7) The State Records Committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the State Records Committee shall allow the parties to testify, present evidence, and comment on the issues. The committee may allow other interested persons to comment on the issues.

(9) (a)

(i) The State Records Committee:

(A) may review the disputed records; and

(B) shall review the disputed records, if the committee is weighing the various interests under Subsection (11).

(ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

(b) Members of the State Records Committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the State Records Committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a State Records Committee subpoena disobeys or fails to comply with the subpoena, the committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c)

(i) The State Records Committee's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:

(A) issued under Section 63G-2-401; or

(B) issued by a chief administrative officer of a political subdivision that has not established a local appeals board.

(ii) For an appeal from a decision of a local appeals board, the State Records Committee shall review and consider the decision of the local appeals board.

(11) (a) No later than seven business days after the hearing, the State Records Committee shall issue a signed order:

(i) granting the relief sought, in whole or in part; or

(ii) upholding the governmental entity's access denial, in whole or in part.

(b) Except as provided in Section 63G-2-406, the State Records Committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the State Records Committee shall consider and, where appropriate, limit the requester's or interested party's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of a private or controlled record;

(ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records.

(12) The order of the State Records Committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, if the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(c) a statement that any party to the proceeding before the State Records Committee may appeal the committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the State Records Committee fails to issue a decision within 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A records committee appellant shall notify the State Records Committee in writing if the records committee appellant considers the appeal denied.

(14) A party to a proceeding before the State Records Committee may seek judicial review in district court of a State Records Committee order by filing a petition for review of the order as provided in Section 63G-2-404.

(15) (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the State Records Committee.

(b) If a party disagrees with the order of the State Records Committee, that party may file a notice of intent to appeal the order.

(c) If the State Records Committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:

(i) produce the record; and

(ii) file a notice of compliance with the committee.

(d)

(i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the State Records Committee may do either or both of the following:

(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or

(B) send written notice of the governmental entity's noncompliance to the governor.

(ii) In imposing a civil penalty, the State Records Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

63G-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose;

(d) is one that collects information for presentence, probationary, or parole purposes; or

(e)

(i) is:

(A) the Legislature;

(B) a legislative committee;

(C) a member of the Legislature; or

(D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and

(ii) requests the record in relation to the Legislature's duties including:

(A) the preparation or review of a legislative proposal or legislation;

(B) appropriations; or

(C) an investigation or review conducted by the Legislature or a legislative committee.

(2) (a) A governmental entity may provide a private, controlled, or protected record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(iii) that the use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series.

(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).

(3) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

(b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).

(4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) A contractor or a private provider may receive information under this section only if:

(i) the contractor or private provider's use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series;

(ii) the record or record series it requests:

(A) is necessary for the performance of a contract with a governmental entity;

(B) will only be used for the performance of the contract with the governmental entity;

(C) will not be disclosed to any other person; and

(D) will not be used for advertising or solicitation purposes; and

(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

(c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(8) (a) The following records may not be shared under this section:

(i) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;

(ii) except as provided in Subsection (8)(b), records of publicly funded libraries as described in Subsection 63G-2-302(1)(c); and

(iii) a record described in Section 63G-12-210.

(b) A publicly funded library may share a record that is a private record under Subsection 63G-2-302(1)(c) with a law enforcement agency, as defined in Section 53-1-102, if:

(i) the record is a video surveillance recording of the library premises; and

(ii) the law enforcement agency certifies in writing that:

(A) the law enforcement agency believes that the record will provide important information for a pending investigation into criminal or potentially criminal behavior; and

(B) the law enforcement agency's receipt of the record will assist the agency to prevent imminent harm to an individual or imminent and substantial damage to property.

(9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

63G-2-207. Subpoenas - - Court ordered disclosure for discovery.

(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63G-2-204.

(2) (a)

(i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63G-2-202(7) before ordering disclosure.

(ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63G-2-202(7), in order to protect the privacy interests recognized in this chapter.

(c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:

(i) records through the procedures set forth in this chapter; or

(ii) medical records discoverable under state or federal court rules as authorized by Subsection 63G-2-302(3).

63G-2-301. Public records.

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(d) "Correctional facility" means the same as that term is defined in Section 77-16b-102.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsection 63G-2-305(17) or (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data;

(l) voter registration records, including an individual's voting history, except for a voter registration record or those parts of a voter registration record that are classified as private under Subsections 63G-2-302(1)(j) through (m) or withheld under Subsection 20A-2-104(7);

(m) for an elected official, as defined in Section 11-47-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 47, Access to Elected Officials;

(n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53G-7-1203;

(o) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111; and

(p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as defined in Section 20A-7-101, after the packet is submitted to a county clerk.

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make non-substantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses;

(t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline; and

(u)

(i) records that disclose a standard, regulation, policy, guideline, or rule regarding the operation of a correctional facility or the care and control of inmates committed to the custody of a correctional facility; and

(ii) records that disclose the results of an audit or other inspection assessing a correctional facility's compliance with a standard, regulation, policy, guideline, or rule described in Subsection (3)(u)(i).

(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

63G-2-302. Private records

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
(c) records of publicly funded libraries that when examined alone or with other records identify a patron;
(d) records received by or generated by or for:
(i) the Independent Legislative Ethics Commission, except for:
(A) the commission's summary data report that is required under legislative rule; and
(B) any other document that is classified as public under legislative rule; or
(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;
(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
(i) if, prior to the meeting, the chair of the committee determines release of the records:
(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
(ii) after the meeting, if the meeting was closed to the public;
(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;
(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;
(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
(j) that part of a voter registration record identifying a voter's:
(i) driver license or identification card number;
(ii) social security number, or last four digits of the social security number;
(iii) email address;
(iv) date of birth; or
(v) phone number;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or 20A-2-204(4)(b);

(l) a voter registration record that is withheld under Subsection 20A-2-104(7);

(m) a withholding request form described in Subsections 20A-2-104(7) and (8) and any verification submitted in support of the form;

(n) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(o) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(3)(a);

(ii) Subsection 31A-23a-302(4); or

(iii) Subsection 31A-26-210(4);

(p) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(q) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);

(r) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(s) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(t) an email address provided by a military or overseas voter under Section 20A-16-501;

(u) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

(v) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, except for:

(i) the commission's summary data report that is required in Section 63A-15-202; and

(ii) any other document that is classified as public in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission;

(w) a record described in Section 53G-9-604 that verifies that a parent was notified of an incident or threat;

(x) a criminal background check or credit history report conducted in accordance with Section 63A-3-201;

(y) a record described in Subsection 53-5a-104(7);

(z) on a record maintained by a county for the purpose of administering property taxes, an individual's:

(i) email address;

(ii) phone number; or

(iii) personal financial information related to a person's payment method;

(aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an exemption, deferral, abatement, or relief under:

(i) Title 59, Chapter 2, Part 11, Exemptions, Deferrals, and Abatements;

(ii) Title 59, Chapter 2, Part 12, Property Tax Relief;

(iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or

(iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;

(bb) a record provided by the State Tax Commission in response to a request under Subsection 59-1-403(4)(y)(iii);

(cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual child welfare case, as described in Subsection 36-33-103(3); and

(dd) a record relating to drug or alcohol testing of a state employee under Section 63A-17-1004.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as

private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

63G-2-303. Private information concerning certain government employees.

(1) As used in this section:

a) "At-risk government employee" means a current or former:

(i) peace officer as specified in Section 53-13-102;

(ii) state or federal judge of an appellate, district, justice, or juvenile court, or court commissioner;

(iii) judge authorized by Title 39A, Chapter 5, Utah Code of Military Justice;

(iv) judge authorized by Armed Forces, Title 10, United States Code;

(v) federal prosecutor;

(vi) prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

(vii) law enforcement official as defined in Section 53-5-711;

(viii) prosecutor authorized by Title 39A, Chapter 5, Utah Code of Military Justice; or

(ix) state or local government employee who, because of the unique nature of the employee's regular work assignments or because of one or more recent credible threats directed to or against the employee, would be at immediate and substantial risk of physical harm if the employee's personal information is disclosed.

(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.

(c) "Personal information" means the employee's or the employee's family member's home address, home telephone number, personal mobile telephone number, personal pager number, personal email address, social security number, insurance coverage, marital status, or payroll deductions.

(2) (a) Pursuant to Subsection 63G-2-302(1)(h), an at-risk government employee may file a written application that:

(i) gives notice of the employee's status as an at-risk government employee to each agency of a government entity holding a record or a part of a record that would disclose the employee's personal information; and

(ii) requests that the government agency classify those records or parts of records as private.

(b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing personal information.

(c) Each government agency shall develop a form that:

(i) requires the at-risk government employee to designate each specific record or part of a record containing the employee's personal information that the applicant desires to be classified as private;

(ii) affirmatively requests that the government entity holding those records classify them as private;

(iii) informs the employee that by submitting a completed form the employee may not receive official announcements affecting the employee's property, including notices about proposed municipal annexations, incorporations, or zoning modifications; and

(iv) contains a place for the signature required under Subsection (2)(d).

(d) A form submitted by an employee under Subsection (2)(c) shall be signed by the highest ranking elected or appointed official in the employee's chain of command certifying that the employee submitting the form is an at-risk government employee.

(3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:

(a) providing a method for the assessment roll and index and the tax roll and index that will block public access to the home address, home telephone number, situs address, and Social Security number; and

(b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.

(4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:

(a) the employee or former employee gives written consent;

(b) a court orders release of the records; or

(c) the government agency receives a certified death certificate for the employee or former employee.

(5) (a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:

(i) authorize release of the record; or

(ii) within 10 days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.

(b) The government agency shall comply with the subpoena if the government agency has:

(i) received permission from the at-risk government employee or former employee to comply with the subpoena;

(ii) not received a copy of a motion to quash within 10 days of the date that the copy of the subpoena was mailed; or

(iii) received a court order requiring release of the records.

(6) (a) Except as provided in Subsection (6)(b), a form submitted under this section remains in effect until the earlier of:

(i) four years after the date the employee signs the form, whether or not the employee's employment terminates before the end of the four-year period; and

(ii) one year after the government agency receives official notice of the death of the employee.

(b) A form submitted under this section may be rescinded at any time by:

(i) the at-risk government employee who submitted the form; or

(ii) if the at-risk government employee is deceased, a member of the employee's immediate family.

63G-2-304. Controlled records.

A record is controlled if:

(1) the record contains medical, psychiatric, or psychological data about an individual;

(2) the governmental entity reasonably believes that:

(a) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or

(b) releasing the information would constitute a violation of normal professional practice and medical ethics; and

(3) the governmental entity has properly classified the record.

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

(i) an invitation for bids;

(ii) a request for proposals;

(iii) a request for quotes;

(iv) a grant; or

(v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b)

(i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a)

(i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b)

(i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;
(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;
(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;
(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;
(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;
(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;
(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;
(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:
(a) the donor requests anonymity in writing;
(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and
(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;
(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered,

disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child Welfare Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote, in relation to whether a judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(61) information provided to the Department of Health or the Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

(62) a record described in Section 63G-12-210;

(63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;

(64) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

(65) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

(66) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;

(67) an audio recording that is:

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

(68) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(?”) work papers as defined in Section 31A-2-204;

(70) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;
(71) a record submitted to the Insurance Department in accordance with Section 31A-37-201;
(72) a record described in Section 31A-37-503;
(73) any record created by the Division of Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);
(74) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;
(75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:
(a) Title 10, Utah Municipal Code;
(b) Title 17, Counties;
(c) Title 17B, Limited Purpose Local Government Entities - Local Districts;
(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
(e) Title 20A, Election Code;
(76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;
(77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;
(78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;
(79) a record submitted to the Insurance Department under Section 31A-48-103;
(80) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;
(81) an image taken of an individual during the process of booking the individual into jail, unless:
(a) the individual is convicted of a criminal offense based upon the conduct for which the individual was incarcerated at the time the image was taken;
(b) a law enforcement agency releases or disseminates the image:
(i) after determining that the individual is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or
(ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal investigation or criminal proceeding for the purpose of identifying or locating an individual in connection with the criminal investigation or criminal proceeding; or
(c) a judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest;

(82) a record:

(a) concerning an interstate claim to the use of waters in the Colorado River system;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;

(83) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (83) may not be used to restrict access to a record evidencing a final contract or approval decision;

(84) the following records of a drinking water or wastewater facility:

(a) an engineering or architectural drawing of the drinking water or wastewater facility; and

(b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (84)(a); and

(85) a statement that an employee of a governmental entity provides to the governmental entity as part of the governmental entity's personnel or administrative investigation into potential misconduct involving the employee if the governmental entity:

(a) requires the statement under threat of employment disciplinary action, including possible termination of employment, for the employee's refusal to provide the statement; and

(b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding.

63G-2-801. Criminal penalties.

(1) (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law

involving government corruption, abuse of office, or misappropriation of public funds or property.

(c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

(d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.

(2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which the person is not legally entitled is guilty of a class B misdemeanor.

(b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3) (a) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.

(c) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by a final unappealed order from a government entity, the State Records Committee, or a court is guilty of a class B misdemeanor.

OPEN MEETINGS ACT

1. Declaration of Policy.
2. Application of the Act to Certain Groups.
3. Notice Requirements.
4. Closed Meetings.
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1. Declaration of Policy

Like GRAMA, the public policy behind the Open Meetings Act suggests that all government meetings are open to the public with only certain listed exceptions. The Act specifically states that it is the Legislature‘s intent that government agencies and political subdivisions conduct their activities and deliberations openly. § 52-4-1.

2. Application of the Act to Certain Groups

Not all group meetings of government employees are covered by the Open Meetings Act; rather, the Act's application has certain limits. The law applies to meetings conducted by any administrative, advisory, executive or legislative body – in state or local government – which is supported by tax revenues and is vested with authority to make decisions regarding public business. The law, therefore, applies generally to groups and bodies which are created by statute or ordinance and empowered, by that statute or ordinance, with the authority to make official decisions. The Act does not apply to meetings among elected officials generally, nor to department or staff meetings; it does not apply to groups which exercise both executive and legislative authority (such as a county commission) when convened to discuss administrative or executive activities; it does not apply to chance meetings or social affairs; and it does not apply to a meeting between two elected officials if no action is taken by them. The law does apply to any meeting which is called by a person who has the legal authority to call the meeting and which is convened with a quorum present for the purpose of discussing or acting upon a subject within that group's legal authority. § 52-4-2.

3. Notice Requirements

Any board or group which is covered by the Open Meetings Act is required to publish notice of its meetings. If the group conducts meetings on a regular basis all year long (such as the second and fourth Tuesday of each month), then it is required to publish an annual notice of the regular meeting schedule. This notice must include the date, time and place of regularly scheduled meetings. In addition to an annual notice, every individual meeting of the group must be preceded by a 24-hour individual notice which includes date, time and place of the meeting and also includes all agenda items to be discussed. This notice must be posted at the public body's office or at its regular meeting place and a copy of the notice given to local media representatives. There are provisions for conducting emergency meetings without 24-hour notice. § 52-4-6.

4. Closed Requirements

a. Subject Matter

As mentioned, almost all meetings of a government body must be open and available to the public. Meetings which discuss certain subjects may, however, be closed to the public. A meeting can be closed only for the following limited purposes:

1. discuss the health, character or competence of an individual (that is a person, not a corporation);
2. strategy sessions discussing collective bargaining, pending or reasonably imminent litigation, or real estate purchases;
3. deployment of security personnel or devices; or
4. discussions regarding criminal investigations. § 52-4-5.

b. Procedures

In order to conduct a closed meeting, the group needs to start with an open meeting in which the appropriate 24-hour notice has been published. A meeting can be closed only if there is an affirmative vote of two-thirds of the members present; no ordinance, rule, contract, or appointments can be made in a closed meeting; and meeting minutes must be taken as explained below. § 52-4-4.

5. Minutes

a. Open Meetings

Minutes must be taken at all meetings covered by the Act. Open meeting minutes must include the date, time and place of the meeting; the members of the body present and absent; the matters discussed and votes taken thereon; the names of citizens appearing and a summary of their statements; and other information which is requested to be included in the minutes. Minutes must be made available within a reasonable time after the close of the meeting and are considered public records under GRAMA. § 52-4-7.

b. Closed Meetings

Minutes must also be taken during closed meetings. These minutes must include the date, time and place of the meeting; members present and absent; the names of other persons present, unless to do so would reveal the nature of the closed meeting; the reason for closing the meeting and the vote for and against closure, by members 'names; and matters discussed. If the matters discussed include the character, competence or health of an individual, or the deployment of security personnel or devices, then detailed minutes need not be kept and the presiding officer must sign an affidavit affirming the purpose of the closed meeting. If the meeting is closed to discuss any other matter, then detailed written minutes or a tape recording must be kept. The minutes of a closed meeting are considered protected documents under GRAMA. § 52-4-7.5.

6. Electronic Meetings

A public body may conduct meetings electronically, such as by telephone, video conferencing, or computer. Public notice is required and the body must put in place procedures which govern the conduct of the meeting and make available facilities for citizens to participate in or monitor the open portions of an electronic meeting. § 52-4-7.8.

7. Citizen Participation

Private Citizens and representatives of the news media may attend any public portion of meetings governed by the Act. Participation may be limited solely to listening – citizen comment or input is not required by the Act, though in some cases a statute may require a ―public hearing‖ in which citizen input and comments are provided. The group may direct the removal of persons who significantly disrupt a meeting.

Persons attending may record the meeting, provided that the recording process does not disrupt the meeting. § 52-4-5(3).

8. Enforcement and Remedies

Violations of the Open Meetings Act may be remedied and enforcement undertaken by the Attorney General, a county attorney, or any private individual denied rights under the Act. A lawsuit must be commenced within 90 days (or 30 days for matters regarding the issuance of bonds). Remedies include an injunction against violating the Act, a declaration voiding any actions taken in violation of the Act, and attorneys 'fees. § 52-4-8 & 9.

ORDINANCES, RESOLUTIONS, AND OTHER [54]MUNICIPAL OR LOCAL LEGISLATION

Requirements for the enactment or promulgation of an ordinance or resolution may be set by a state's constitution provision requiring that, on the final vote on any ordinance or resolution, the name of each member voting and how that member voted shall be recorded. Furthermore, the general rule is that when a state legislature has prescribed the manner in which a local government may pass an ordinance, or a resolution, the local government must follow those procedures. If the local government fails to observe the mandatory prerequisites, the ordinance or resolution will be considered void and set aside. In addition, a statue requiring that an action be taken by ordinance cannot be accomplished by a mere resolution. A municipal charter may also include provisions specifying procedures for the enactment of ordinances. At the same time though, where a municipal government is not constrained by particular procedural requirements regarding specific matters, they may use their own discretion in reaching decisions.

Rules may include requirements such as the reading of a proposed ordinance, deliberations required before the passage of an ordinance, a 2/3 majority vote requirement for the enactment of an ordinance, the recording and retention of a record of the voters of individual members, or the minutes of the council meeting. Once a new law is enacted, the voters in some jurisdictions have the right to reject it through a referendum. In such jurisdictions, the referendum power extends only to matters legislative in character and not to mere administrative acts.

ORDINANCES

A local ordinance is a municipal legislative enactment. While an ordinance does not have the dignity of a state legislative enactment, it does have the force and effect of law within the limits of statutory and applicable organic limitations. Furthermore, it is something

[54] American Jurisprudence 2d Section IX Ordinances, Resolutions, and Other Municipal or Local Legislation, Sections 295 through 301, 304, 305, and 307.

more than a mere verbal motion or resolution, and it must be invested, not necessarily literally, but substantially, with specific formalities, solemnities, and characteristics.

An ordinance is the equivalent of a municipal statute, passed by the city or county council, or equivalent body, such as commissions or legislative bodies, and it governs matters not already covered by federal or state law.

An ordinance is distinctively a legislative act and, being the equivalent of a statute, is superior to city departmental regulations.

Documents such as agreements or contracts may be adopted and enacted as ordinances where the documents adopted are sufficiently identified and made part of the public record so there is no uncertainty about them.

An ordinance provides a permanent rule of government or conduct designed to affect matters arising subsequent to its adoption that operates as any other law, absent conflict with a state statute, and relates to the corporate affairs of the municipality within the enacting authority‘s corporate limits, until it is repealed. Indeed, it has been stated that all legislation that creates liability or that affects people of municipality in an important or material way should be enacted by an ordinance. In some jurisdictions, legislation of charter townships must be by ordinance.

RESOLUTION

A “resolution,” in effect, encompasses all actions of a municipal body other than ordinances. In this connection, it may be observed that a resolution deals with matters of a special or temporary character that does not create a new expense or status of a constant and continuing nature, while an ordinance prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed. Thus, an ordinance is distinctively a legislative act, while a resolution may be simply an expression of opinion or mind concerning some particular item of business coming within the legislative body‘s official cognizance, ordinarily ministering in character and relating to the administrative business of the municipality. While the legislative body of a municipal corporation may act by resolution, or by ordinance, unless a particular mode of action is required by constitution, statute, city charter or another city ordinance, a resolution is customarily passed without the forms and delays that constitutions and municipal charters generally require for the enactment of valid laws or ordinances. Nevertheless, actions by resolution are subject generally to the same restraints as actions by ordinance.

A resolution is ordinarily sufficient for council action on ministerial, administrative, or executive matters, but it does not rise to the dignity of an ordinance.

Depending on the exact circumstances and enabling laws involved, resolutions have been used to deal with matters such as:

1. Administrative decisions of a city council.
2. Rate increases for extending city water mains.

3. Non-legislative powers.
4. Establishing educational requirements for employee promotion.
5. Authorizing the taking of an appeal in a civil action.
6. Amending the master plan of a municipal planning commission.

Generally

Requirements for the enactment or promulgation of an ordinance or resolution may be set by a state‘s constitution. Thus, one court has held that all ordinances are subject to a state constitution provision requiring that, on the final vote of any ordnance or resolution, the name of each member voting and how that member voted shall be recorded. Furthermore, the general rule is that when a state legislature has prescribed the manner in which a local government may pass an ordinance, or a resolution, the local government must follow those procedures. If the local government fails to observe the mandatory prerequisites, the ordinance or resolution will be considered void and set aside. In addition, a statute requiring that an action be taken by ordinance cannot be accomplished by a mere resolution. A municipal charter may also include provisions specifying procedures for the enactment of ordinances. At the same time though, where a municipal government is not constrained by particular procedural requirements regarding specific matters, they may use their own discretion in reaching decisions.

Such rules may include requirements such as the reading of a proposed ordinance, deliberations required before the passage of an ordinance, a 2/3 majority vote requirement for the enactment of an ordinance, the recording and retention of a record of the votes of individual members, or the minutes of the council meeting. Once a new law is enacted, the voters in some jurisdictions have the right to reject it through a referendum. In such jurisdictions, the referendum power extends only to matters legislative in character and not to mere administrative acts.

Form and Contents, Generally

In a number of jurisdictions, requirements as to the contents and title of municipal ordinances similar to those relating to the contents and title of legislative acts are made applicable to municipal legislation by specific constitutional provisions, general state statutes, or provisions of the municipal charters. However, such provisions generally are not strictly construed. In the absence of an express provision, a resolution need not be in any set form.

Title

The title is a part of an ordinance, just as it is of a statute. The title satisfies a charter or constitutional requirement of describing an ordinance if it fairly advises the city council and the public of the real nature and subject matter of the legislation sought to be enacted. At the same time, though, if the language of an ordinance is plain, a title cannot restrict its meaning. To determine the true character of a legislative enactment it is necessary to look beyond the title.

Conformity of the subject matter of an ordinance to its title is not necessary unless required by statute. In at least one jurisdiction the title of an ordinance does not control

its meaning unless the title must be read to clear up an ambiguity in the body and, in any event, the title is not to be interpreted in a way that would enlarge the scope of the ordinance to include a subject not expressed in its body.

Preamble

The preamble is a part of an ordinance, just as it is of a statute. A preamble to an ordinance is a prefatory statement, an explanation, or a finding of facts, by the municipal legislative body, purporting to state the purpose, reason, or occasion for enacting the ordinance to which it is affixed. Ordinarily, the contents of a preamble are not given substantive effect, particularly where the enacting portion of an ordinance is expressed in clear and unambiguous terms. Rather, its office is only to expound powers conferred.

Requirement that Ordinance Contain One Subject

It is the rule in some jurisdictions that a municipal ordinance must contain only a single subject. The term ―subject‖ as used in provisions is given a broad and extended meaning, to allow the legislative municipal body full scope to include in one act all matters having a logical or natural connection. If all parts of an act are related directly or indirectly to the general subject of the act, it is not open to the objection of plurality. Furthermore, it has been held that an ordinance violates this proscription only when it contains subjects which are so dissimilar as to have no legitimate connection.

Publication

The purpose of the publication of an ordinance is to give the public notice of the provisions of the ordinance, and some courts have held that an ordinance is unenforceable until the public has received it's statutorily –required notice. The mode of publication may vary. The usual method of publication is to set forth the ordinance in some newspaper within the municipality. One city charter permits publication either in full or by title only, with a reference to the place where the full ordinance is available for public inspection. Where a statute provides two or more ways in which a municipal ordinance may be published to become effective, and does not require the specific mode of its publication to be stated in the ordinance, it has been held that a publication in any method authorized by statute is a proper publication of the ordinance. Furthermore, in at least one jurisdiction, even an ordinance adopted with an emergency clause attached may not be effective and enforced until it has been published.
However, publication may not be required in a variety of situations. For instances, publication is not required where—

1. An ordinance, which expired by its own terms and applied to only a small area was not a "general or permanent ordinance" and did not fall within the purview of a city charter requiring publication of all ordinances of a general, public or permanent nature.
2. A water—rate ordinance, though technically noncompliant with statutory dictates in its publication and recordation, was upheld where the ordinance had been recognized by the community and given effect by the local government for over 20 years.

3. A city ordinance providing for the payment of charges for electrical utility services furnished by the city, and giving rise to a lien for unpaid charges against the real property upon which services were furnished did not come within the purview of the statute requiring that an ordinance pertaining to tax and tax-like measures be published in two publications.

Where a statute granting municipalities the power to adopt, by reference, the terms of an existing code and requiring the municipalities, when doing so, to file a copy of the code so adopted in the office of the city auditor for public use and examination, did not apply to a self-contained ordinance which did not adopt an existing code by reference, and thus the city was not required to file a copy of that ordinance in the office of the city auditor.

A municipal ordinance may be published at any time when the time of publication is not fixed by statute.

Time of Taking Effect

The effective date of an ordinance is often set by statue or other rule. Where no statutory provision has been enacted or there is no specific provision covering the time of passage, it rests within the power of the legislative body passing an ordinance to fix the time of its taking effect.

It is the general rule that an ordinance is not effective until published as required by law. When the statute provides that an ordinance shall go into effect within a specified time after it is published, if it is never properly published it never goes into effect, but when the statute merely provides that it shall be published a certain number of times within a specified time after its enactment, it goes into effect at once, subject to defeasance if it is not properly published.

Emergency Measures

The passage of an emergency ordinance is a proper exercise of legislative discretion under both state law and appropriate city charter provisions. Under some provisions, a statement of facts indicating the necessity for immediate effectiveness of the ordinance must be given. If the emergency statement is not given, the ordinance may still take effect in the same manner as a regular ordinance if no proceedings to institute a referendum or other challenge to it is made. However, the factual basis for an emergency need not be stated when the charter is silent on the requirements of a factual determination.

STATUTES[55]

A "statute" is an act of the legislature as an organized body; it is the written will of the legislature, expressed according to the form necessary to constitute it a law of the state and rendered authentic by certain prescribed forms and solemnities.

[55] American Jurisprudence 2d, Section 1.

In the strict sense of the term an administrative regulation is not actually a "statute," but an offspring of a statute. A regulation may be deemed to come within the term "statute," and have the same force and effect as a statute, although there is also authority for the view that rules are less than the equivalent of statutory law.

An amendment has been defined as a legislative act designed to change some prior and existing law by adding to or taking from it some particular provision. Amendments to a statute either clarify the law or change it. In this regard, it has been said that whether an act is amendatory of an existing law is determined not by the title alone or by declarations in the new act that it purports to amend an existing law, but rather by an examination and comparison of its provisions with the existing law. If the act's aim is to clarify or correct uncertainties which arose from the enforcement of the existing law, or to reach situations which were not covered by the original statute, the act is amendatory, even though, in its working, it does not purport to amend the language of the prior act.

A statute designed to improve an existing statute by adding something thereto without changing the original text has been regarded as a supplemental act. The functions of a statute declared to be supplementary to a previous statute are to supply deficiencies in the previous statute, and to add to, complete or extend that statute without changing or modifying it.

REGULATIONS

Regulations are adopted by government agencies when a state or federal statute authorizes them to do so. Examples of some regulations are:

1. Department of Health.
2. Americans with Disabilities Act Rules.
3. Occupational and Professional Licensing.
4. ADA Compliance Procedures.
5. School Emergency Response Plans.
6. Child Nutrition Programs.
7. Gas Processing and Waste Crude Oil Treatment.
8. Wildlife Resources Maps and Rules.
9. Aquaculture and Fish Stocking.
10. Building Codes.

ETHICS

Support staff in a prosecutor's office is held to the same ethical standards regarding confidentiality as are prosecutors. The support staff cannot be disciplined by the Utah State Bar; however, their bosses can be disciplined for standards or rules they break.

"Support Staff" may include receptionist, office specialist, file clerk, legal secretary, legal assistant or paralegal.

[56]As a general guide intended to aid paralegals and attorneys, the Paralegal Division and the Board of Bar Commissioners of the Utah State Bar have approved the following Canons of Ethics for paralegals:

Canon 1 – Support staff shall not perform any of the duties that attorneys only may perform nor take any actions that attorneys may not take.

Canon 2 – Support staff shall not:

a. Establish an attorney-client relationship;
b. Establish the amount of a fee to be charged for legal services;
c. Give legal opinions or advice;
d. Represent a client before a court or agency unless so authorized by that court or agency;
e. Engage in, encourage, or contribute to any act which would constitute the unauthorized practice of law; and
f. Engage in any conduct or take any action, which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.

Canon 3 – Support staff may perform any task which is properly delegated and supervised by an attorney provided the attorney maintains responsibility for the work product, maintains a direct relationship with the client, and maintains responsibility to the client.

Canon 4 – Support staff shall take reasonable measures to ensure that his or her status as a paralegal is established at the outset of any professional relationship with a client, court or administrative agency, a member of the general public or other lawyers.

Canon 5 – Support staff shall ensure that all client confidences are preserved.

Canon 6 – Support staff shall take reasonable measures to prevent conflict of interest resulting from his or her employment affiliates, or outside interests

Canon 7 – Support staff must strive to maintain integrity and a high degree of competency through education and training with respect to professional responsibility, local rules and practice, and through continuing education in substantive areas of law to better assist the legal profession in fulfilling its duty to provide legal services.

Canon 8 – Support staff shall abide by all court rules, agency rules and statutes, as well as the Utah State Bar's Rules of Professional Conduct.

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[56] Adapted from the Utah State Bar Paralegal Division; https://www.utahbar.org/wp-content/uploads/2017/08/Canons

GRAMMAR[57]

It is important to **no/know** the difference between words **who's/whose** meanings **seam/seem** similar **oar/or** that look or sound the same but mean different things. The list below has **sum/some** of the **pears/pairs** of words that can **bee/be** tricky **too/to** keep **strait/straight**.

Commonly Confused Words			
Affect/Effect	Good/Well	Lead/Lead/Led	Two/Too/To
Are/Our	Have / Of	Loose / Lose	Weather / Whether
Conscious/Conscience	Hear/Here	Peak/Peek/Pique	Who's/Whose
Complement/Compliment	Imply/Infer	Quiet/Quit/Quite	Wear/Were/Where
Desert/Dessert	It's/Its	Than/Then	You're/Your
Air/Heir	Aisle/Isle	Ante/Anti	Eye/I
Bare/Bear	Be/Bee	Brake/Break	Buy/By
Cell/Sell	Cent/Scent	Cereal/Serial	Coarse/Course
Dam/Damn	Dear/Deer	Die/Dye	Fair/Fare
Fir/Fur	Flour/Flower	For/Four	Hair/Hare
Heal/Heel	Hear/Here	Him/Hymn	Hole/Whole
Hour/Our	Idle/Idol	In/Inn	Knight/Night
Knot/Not	Know/No	Made/Maid	Mail/Male
Meat/Meet	Morning/Mourning	None/Nun	Oar/Or
One/Won	Pair/Pear	Peace/Piece	Plain/Plane
Poor/Pour	Pray/Prey	Principal/Principle	Profit/Prophet
Real/Reel	Right/Write	Root/Route	Sail/Sale
Sea/See	Seam/Seem	Sight/Site	Sew/So
Shore/Sure	Sole/Soul	Some/Sum	Son/Sun
Stair/Stare	Stationary/Stationery	Steal/Steel	Suite/Sweet
Tail/Tale	Their/There	To/Too/Two	Toe/Tow
Waist/Waste	Wait/Weight	Way/Weigh	Weak/Week
Wear/Where			

Introduction

No one is born a speller. We do not automatically know how to spell cat. Spelling is arbitrary. The meaning of words are assigned by society and are not automatically built into them. Certain sounds will have specific meanings, and we will spell these sounds with a particular lettering system so that we can all communicate.

[57] https://www.weber.edu/wsuimages

Importance of Spelling

Why do we need to know the differences between commonly confused words and hot to spell property?

1. Effective Communication.
2. Professionalism (resume errors).
3. Word spell does not always catch mistakes. Example: Instead of: "Dear Sir and Madam" the letter said "Dear Sir and Madman."

Memorization Strategies

Several memory strategies work very well for remembering word spellings.

1. Process of Elimination
    a. **WHERE**: has the word here in it—refers to a place, **WEAR**: has the word ear in it—you wear earrings, and by process of elimination we can reason that **WERE** is the past tense of the verb to be.

2. Rhymes
    a. One of the most common is to remember them by making up a rhyme. Who remembers the nursery rhyme Humpty Dumpty? It's easy to remember because of the rhyme.
    b. You can use this strategy to help us remember how to spell certain words. EXAMPLE: Two commonly confused words are **THEN** and **THAN**. **THEN** rhymes with **WHEN** and tells when something happened. Since we know that **THEN** is **WHEN**, we know by the process of elimination that the word **THAN** makes a comparison. The rhyme helps you to know one, and elimination leads me to the other.

3. Visual Associations
    a. Create visual associations between a word and its meaning to memorize it. EXAMPLE: **ARE** and **OUR** are often confused. Remember that **OUR** means that something belongs to us because the "O" is like a big circle that brings people in. It is our school, our city, etc. Then we know that **ARE** means "to be."

4. Examples
    a. THERE: has the word Here in it—refers to place
    b. THEIR: has an I in it that can be drawn to look like a stick figure which connects to possession, it also has the word HEIR in it—heir to the throne
    c. THEY'RE: they are—should be spelled out in academic writing anyway
    d. ACCEPT: the c's are encompassing—it brings something
    e. EXCEPT: the X excludes something—it repels
    f. WEATHER: has the word eat in it (when the weather is nice you can eat outside) vs. WHETHER
    g. PIECE: has the word pie in it (you can have a piece of pie) vs. PEACE
    h. PRINCIPAL: has the word pal in it (your principal is your pal) but it also means main or primary versus PRINCIPLE (rule of conduct)
    i. AFFECT: is an action and means influence
    j. EFFECT: if you can put a the in front of its use effect, means result

k. COURSE: has a U in it (you take courses at the University which also has a U vs. COARSE
l. TOO: extra O (toooooo many O's) means also and very
m. TWO: number
n. TO: for all other meanings
o. COMPLIMENT: has an I in it and I like compliments
p. COMPLEMENT: means to complete—and all the E's match and complete each other
q. DESERT versus DESSERT: two "s's" are twice as sweet or you'd rather have two servings of dessert and there are two "s's"

5. CONCLUSION:
Develop memory strategies that work for you and don't always rely on Word.

11 Grammar Rules for Error-Free Writing[58]

It seems like English grammar has about a million rules to learn. Between subject-verb agreement, Oxford commas, and active vs. passive voice, it's easy to get lost in the grammar shuffle. But there aren't actually a million grammar rules — in fact, if you master just these few, you can avoid common grammar mistakes.

1. **Write in Complete Sentences**
    a. Every sentence needs two parts to be complete
        i. a **subject** (**Katie** plays the violin.)
        ii. a **verb** (Katie **plays** the violin.)
    b. Depending on the verb, a complete sentence—also known as an independent clause—might also have a **direct object** (Katie plays **the violin**). If your sentence is missing a subject or a verb, it's a sentence fragment.

2. **Make Sure Your Subjects and Verbs Agree**
    a. You may not expect to find disagreement in a sentence about kittens, but the sentence "My kittens wants food" is definitely having an argument with itself. The subject (kittens) is plural, but the verb (wants) is singular.
    b. For **subject-verb agreement**, match singular subjects to singular verbs and plural subjects to plural verbs.
        i. My **kitten** wants food. (singular subject, singular verb)
        ii. My **kittens** want food. (plural subject, plural verb)

3. **Link Ideas With a Conjunction or Semicolon**
    a. Although writing in simple sentences is grammatically correct, it's not very interesting. Combine your simple sentences with **coordinating conjunctions** (for, and, nor, but, or, yet, so) to make **compound sentences**.
        i. Delia found a cat, **and** she named it Purdy.
        ii. Our team won the championship, **so** we got a trophy.

[58] https://grammar.yourdictionary.com/grammar-rules-and-tips/11-rules-of-grammar.html

b. You can also mix it up by using a **semicolon** instead of a conjunction.
    i. Delia found a cat; she named it Purdy.
    ii. Our team won the championship; we got a trophy.

4. Use Commas Correctly

a. While you can use a comma with a coordinating conjunction, you can't use a **comma** alone to combine independent clauses. That's an error known as a **comma splice**, and it creates **run-on sentences**. Use a comma only if you're also using a coordinating conjunction.
    i. Delia found a cat, she named it Purdy. (**Incorrect - comma splice**)
    ii. Our team won the championship, and we got a trophy. **(Correct - with coordinating conjunction)**

5. Use a Serial Comma When Necessary

a. When listing items in a sentence, you separate them with commas. The last comma in the series is called the **Oxford comma**, and not everyone likes it.
    i. We bought some goats, cows, and horses for our farm. **(Oxford comma)**
    ii. We bought some goats, cows and horses for our farm. **(No Oxford comma)**
b. Whether you regularly use an Oxford comma is up to you and your style guide. However, you should always use an Oxford comma when the sentence could be confusing without it.
    i. The farmer saw the goats, Gil, and Pierre. (Oxford comma clarifies that there are goats and two people named Gil and Pierre)
    ii. The farmer saw the goats, Gil and Pierre. (No Oxford comma makes it sound like the goats are named Gil and Pierre)

6. Use Active Voice

a. Sentences in **active voice** put the subject before the verb. For example, in the active sentence "The duck ate the bread," the duck is the subject. It performs the action in the verb (ate) to the **object** in the sentence (the bread).
    In these examples, the subjects are bold, the verbs are underlined, and the objects are italicized.
    i. **Shelby** dried the dishes. (Active — Shelby is the subject)
    ii. **Mary** walked the dog. (Active — Mary is the subject)
b. **Passive voice** sentences place the subject after the verb — or they leave the subject out completely. "The bread was eaten by the duck" is a passive sentence because the subject (the duck) comes after the verb (was eaten). The object of the sentence (the bread) somehow ends up at the beginning of the sentence, which makes it confusing to read.
    i. The dishes were dried by **Shelby**. (Passive — the subject is after the verb)
    ii. The dog was walked by **Mary**. (Passive - the subject is missing)

c. Writing in passive voice makes your sentences confusing and your meaning unclear. Luckily, it's easy to **turn passive voice into active voice.**

7. Use the Correct Verb Tense

a. Using a **verb tense** that doesn't match your time period is like stepping into a broken time machine. When did the action happen — today, tomorrow, or one hundred years ago? Is it still happening?
Make sure that you've got the correct tense for the time period you're describing.
   i. **Present tense** - something that happens all the time, or is happening right now (Mary and I **eat** lunch every Tuesday.)
   ii. **Past tense** - something that happened before now (Mary and I **ate** lunch.)
   iii. **Future tense** - something that will happen in the future (Mary and I **will eat** lunch.)

b. When talking about a continuous action, you can use present, past, or future **progressive tense** (with -ing verb endings). If you're talking about something that happened across a span of time, use **perfect verb tenses** (with the **modal verb** have or had).

8. Keep Your Verb Tense Consistent

a. Another part of using the correct verb tense concerns consistency. If you start your sentence (or paragraph, or page, or book) in one tense, you need to make sure the rest of your writing is also in that tense. You can go back and forth if you're talking about different time periods, but be careful not to mix them up.
   i. **Incorrect** - Stuart **lost** his wallet. He **goes** to the bank and **gets** some cash, then he **went** to the restaurant. (The tense goes from past to present, back to past again)
   ii. **Correct** - Stuart **lost** his wallet. He **went** to the bank and **got** some cash, then he **went** to the restaurant. (Tense stays in the past)
   iii. **Correct** - Stuart **loses** his wallet. He **goes** to the bank and **gets** some cash, then he **goes** to the restaurant. (Tense stays in the present)

9. Only Use Apostrophes for Possessive Nouns and Contractions

a. Many people use apostrophes in plural nouns because — well, we're not sure why. Apostrophes note when letters are missing in a contraction and they indicate a singular or plural noun's possession. Those are the only jobs of an apostrophe.
   i. **Correct** - Xander can't wait until summer vacation. (*can't* is a contraction of cannot)
   ii. **Correct** - Did you borrow the neighbor's car? (*neighbor's* is a possessive noun)
   iii. **Correct** - This is the writers' room. (*writers'* is a plural possessive noun)

iv. **Incorrect** - Merry Christmas from the Henderson's! (*Hendersons* is plural, not possessive)

b. The rare time you'd use an apostrophe to show plurals is for plural lowercase letters (as in "Mind your p's and q's"). Otherwise, keep them away from your plural nouns.

10. Keep Your Homophones Straight

a. Using too when you mean to is a common — and avoidable — mistake. Make sure you know the difference between common **homophones** to keep your meaning clear.
   i. two vs. to vs too
   ii. your vs. you're
   iii. there vs. their vs. they're
   iv. except vs. accept
   v. then vs. than

b. These aren't the only commonly confused words in English. Find the ones that confuse you the most and learn how to tell them apart.

11. Use End Punctuation Correctly

a. All good things must come to an end, and that includes your sentence. Be sure that you're using the correct end punctuation mark for your sentence for the tone you want.
   i. **Period** - Paul asked Sadie to the dance. (Serious or neutral tone)
   ii. **Question mark** - Paul asked Sadie to the dance? (Confused tone)
   iii. **Exclamation point** - Paul asked Sadie to the dance! (Excited tone)

b. If your sentence ends in a quote or dialogue, put your end punctuation (also called *terminal punctuation*) **inside the quotation marks** as well.

GENERAL OFFICE KNOWLEDGE

[59]Business letters need to follow a certain format, no matter which type they are. Often business letters are the first contact one makes with a prospective client or an employer; hence, it becomes critical that you get the tone and message of the letter right to make a good impression. Though a simple enough document to produce, writing effective business letters can be quite a challenge.

Here is a short review list to know when writing business letters.

- Keep it short and simple. Use simple and succinct words instead of long-winded ones. Business letters need to be pithy; this can be achieved by making use of clear and concise words, short sentences, and crisp paragraphs.
- Be direct: Your reader is a busy professional, so come straight to the point in your letter without beating around the bush.

[59] https://www.universalclass.com/articles/writing/business-writing/formats-for-different-business-letters.htm

- The best way to begin a letter is by stating the purpose in the very beginning. This is called the direct approach, and it sets the tone for what is to follow in the letter body. It grabs the reader's interest.
- If your letter delivers bad news, a direct approach is not advisable. Instead, use an indirect approach in which you state the bad news in the second or third paragraph of the letter.
- Always keep the readers' benefits before yours. Instead of saying what you expect them to do for you, mention what you can offer them.
- Be careful to get the name and title of the recipient correct.
- Make your tone conversational yet professional; do not be overtly formal.
- Stay away from jargon unless you are absolutely sure that the reader will understand it.
- Use active voice and personal pronouns in a letter.
- Always end the letter with a request for action.
- Be careful about the tone you use in the letter; do not come across as overconfident, arrogant, or boastful.

Standard formatting of a business letters includes:

1. **Letterhead**: Most companies have a specific letterhead that you will need to type letters on. This may make it necessary to adjust the margins so that words are not printed onto the letterhead area.
2. **Name and address**: Always try to have the name of someone that the letter should go to, even if you have to call to find it out.
3. **Date**: This is the date that the letter was written. It should be written out, such as January 15, 2022.
4. **Reference**: This gives a short description of what the purpose of the letter is. For example, one might write "lost invoice" or "account number 23654" or something like that.
5. **Salutation**: If you do not know the person, use a more formal one, such as Dr. Brian Lowden.
6. **Subject matter/body**: Single-space and left justify for modified block and block style letters. Have one blank line between paragraphs. The first paragraph should have a friendly opening and state the purpose of the letter. The subsequent paragraphs should support the purpose you stated in the first paragraph.
7. **Closing**: This should be "thank you," "sincerely," or something similar.
8. **Signature**: This is the actual signature of the person the letter is from, which may be different from the person who wrote the letter.
9. **Typist initials**: These are the initials of the person who typed the letter. These are not the initials of the person who it is from. If they are both the same person, then this line is not necessary. Usually the first initials would be that of the writer, and the second initials are of the typist and are in lowercase. For example: JW/sc.
10. **Enclosures**: List here anything else you may be sending, such as a brochure, samples, etc.

[60]Indentation formats

Business letters conform to generally one of six indentation formats: standard, open, block, semi-block, modified block, and modified semi-block. Put simply, "semi-" means that the first lines of paragraphs are indented; "modified" means that the sender's address, date, and closing are significantly indented.

1. **Standard**: Most business letters must include a return address (letterhead or your name and address), date, an inside address (receiver's name and address), a salutation, body paragraphs, and a closing[61].
2. **Open**: The open-format letter does not use punctuation after the salutation and no punctuation after the complimentary closing.
3. **Block**: In a block-format letter, all text is left aligned and paragraphs are not indented. In block format the entire letter is single spaced except for a double space between paragraphs.[62]
4. **Modified block**: Another widely utilized format is known as modified block format. In this type, the body of the letter and the sender's and recipient's addresses are left justified and single-spaced. However, for the date and closing, tab to the center point and begin to type.[63]
5. **Semi-block**: Semi-block format is similar to the Modified block format, except that the first line of each paragraph is indented.
6. **Modified semi-block**: In a modified semi-block format letter, all text is left aligned (except the author's address, date, and closing), paragraphs are indented, and the author's address, date, and closing are usually indented in the same position.

[64] Margins – Filing Standards

All motions, pleadings, applications, briefs, memoranda of law, or other documents in civil and criminal cases except those listed under Conventional Filing Section F, shall be efiled in PDF (Portable Document Format) form on the ECF System with a page setup of 8 1/2 x 11 inches, portrait format, on white background, with a top margin of not less than 1 1/2 inch, all other margins of not less than 1 inch, designed for printing only on one side of the paper. Subject to order of the court or of a judge in a specific case, the documents listed under Conventional Filing Section F shall not be presented for filing in electronic format, but shall be submitted in paper.

[65]Adjusting the Length of a Letter

1. **When You Need More Space for the Letter**. If you have more text than fits on a single page, you can tighten up the margins slightly rather than writing a two-page letter. Keep the margins consistent, so your letter is balanced on the page. For

[60] https://en.wikipedia.org/wiki/Business_letter#Open
[61] https://www.gallaudet.edu
[62] https://owl.purdue.edu/
[63] https://owl.purdue.edu/
[64] https://www.utd.uscourts.gov/sites/utd/files/utahadminproc.pdf
[65] https://www.thebalancecareers.com/cover-letter-paragraph-guidelines-2062303

example, if you adjust your margins to .70 inches, it will give you more lines and space for the letter content.

Another option is to reduce the left and right margin to .70 inches and leave the top at 1 inch. Try several options to see which looks best.

2. When You Need Less Space for the Letter. If your letter is short, you can make the margins larger, so the letter looks balanced on the page without too much white space. In that case, try 1.5 inches for each of the margins.

[66]Punctuation Rules for Business Letters

While business letters can often be compelling and even fun to read, they should also showcase proper punctuation. Punctuation rules for business letters are straightforward, but you can mess them up as early as the salutation.

1. **Salutation and Closing**
   Business letters can feature one of two types of punctuation based on the punctuation marks you use after your salutation and closing. Mixed punctuation uses a comma after the salutation and a comma after the closing:
   Dear Mr. Robert Edmunds,
   Sincerely,

   Open punctuation omits any type of punctuation after the salutation and closing:
   Dear Mr. Robert Edmunds
   Sincerely

2. **Body of Letter**
   The body of the letter follows standard punctuation guidelines, which it never hurts to review. A big change over the years has been the use of one space, instead of two, after a period. Semicolons are used when you are combining two independent clauses. Example:
   - *It was a pleasure meeting you on Friday; we look forward to working with you.*

   Commas have a reputation for being tricky, but two main rules can help you use them properly in business correspondence. The first is to use a comma before a short conjunction when you are combining two independent clauses. Example:
   - *It was a pleasure meeting you on Friday, and we look forward to working with you.*

   The second comma rule is not as strongly set in stone, and it involves the use of the comma when listing three or more items. The rule depends on whom you ask, with the AP Stylebook omitting the comma before the conjunction. Example:
   - *We are ready to set up our website, launch our product and begin our first marketing campaign.*

[66] https://www.paperdirect.com/blog/2014/02/punctuation-rules-for-business-letters/

Your other option is to include a comma before the conjunction. Example:

- *We are ready to set up our website, launch our product, and begin our first marketing campaign.*

Both options are technically correct, and the latter can be helpful if omitting the comma changes the meaning of the sentence. Example:

- *Our company picnic will feature hot dogs, macaroni and cheese.*
- *Our company picnic will feature hot dogs, macaroni, and cheese.*

3. [67]Quotation Marks

Quotation marks must be placed after commas and periods. Place quotation marks after question marks and exclamation points only if the question or exclamation is part of the quoted text.

- Question is part of quoted text: *The new employee asked, "When is lunch?"*
- Question is not part of quoted text: *Did you hear her say you were "the next Picasso"?*
- Exclamation is part of quoted text: *My supervisor beamed, "Thanks for all of your hard work!"*
- Exclamation is not part of quoted text: *He said I "single-handedly saved the company thousands of dollars"!*

[68]Typically, a quotation is introduced with a comma or other punctuation mark when beginning in the middle of a sentence:

- The wizard said, *"Magic is a gift for the wise and a curse for the foolhardy."*

Quotation marks and other punctuation:

1. Commas

   Unless it is used to end a sentence, a quotation typically ends with a comma and not a period. In this case, the comma goes inside the quotation marks. For example,

   "Go to your room," said the angry dad.

   When a quotation is used somewhere besides the beginning of a sentence, it might be introduced with a transitional phrase that ends with a comma. In this case, the comma comes before and outside of the quotation marks:

   - *The grouchy girl said, "I hate snow."*

   If a quote is interrupted, commas are typically used to end the initial part of the quote and to introduce the final part of the quote. Additionally, both parts of the quote are contained within quotation marks. The placement of the commas is the same as before. For example,

   - *"The only thing we have to fear," said President Kennedy, "is fear itself."*

[67] https://courses.lumenlearning.com/englishforbusiness/chapter/2-4-quotes
[68] https://www.thesaurus.com/e/grammar/use-quotation-marks/

If a quote is very short or flows naturally in a sentence, a writer may choose not to use a comma to introduce or end that quote. For example,

- *The judge said the prosecutor was "alarmingly unprofessional."*
- *"Money can't buy happiness" is a statement that not everybody agrees with.*

2. Period
   If a quote is used to end a sentence, it uses a period. The period is placed within the quotation marks:
   - *The sign says, "No parking."*

   If a sentence ends with a quote-within-a-quote, the period is typically placed inside all of the quotation marks:
   - *Jessica said, "Bill announced 'No dogs allowed.'"*
3. Question mark and exclamation point
   If a quotation that is a question or exclamation is used in the middle of a sentence, it does not also need a comma. For example,
   - *"Yay!" shouted the crowd.*

   If a quotation that is a question or exclamation is used in a sentence that is itself a question or an exclamation, the question mark or exclamation point is typically placed inside the quotation marks.
   - *Question: Who asked "Why?"*
   - *Exclamation: We shouted "Hooray!"*

   If a quotation is not a question or exclamation, but the larger sentence is, the question mark or exclamation point is typically placed outside the quotation marks:
   - *Question: How many times are you going to say "Yes"?*
   - *Exclamation: The pale woman smiled evilly and calmly whispered "I am a ghost"!*
4. Colon and semicolon
   Colons and semicolons are typically placed outside of quotation marks, regardless of whether they come before or after a quotation. You would only put a semicolon or colon inside quotation marks if the original quote used them.
   - *Colon: If I have said it once, I have said it a thousand times: "Don't pet skunks."*
   - *Semicolon: The teacher said, "Don't panic"; we panicked anyway.*

[69]Spacing

With a computer, use only one space following periods, commas, semicolons, colons, exclamation points, question marks, and quotation marks. The space needed after these punctuation marks is proportioned automatically.[70]

Type all letters single spaced. Leave 1 blank line between paragraphs. Legal documents should always be double spaced. When you are offered a choice of one or two spaces following a mark of punctuation at the end of a sentence choose one space as a rule

[69] The Gregg Reference Manual, 10th Edition, 2005

[70] https://www.grammarbook.com/punctuation/spacing.asp

unless two spaces are needed to create an adequate visual break between sentences. The following guidelines provide a handy summary of the number of spaces to be left before and after marks of punctuation:

Punctuation

1. **Period –** As you likely know, the period is the punctuation mark used to end Declarative sentences. Unless you are writing a question or an exclamation, chances are you need a period at the end. But how many spaces come after that period? It seems that question has been answered: **One. Just one.**

According to research, the preference for two spaces after a period falls along generational lines. Studies have shown that, beginning with millennials, younger generations widely prefer the single space after a period. On the flip side, Gen X and older generations usually prefer the double space.[71]

[72]Rule 1. Use a period at the end of a complete sentence that is a statement.

- *Example: I know him well.*

Rule 2. If the last item in the sentence is an abbreviation that ends in a period, do not follow it with another period.

- *Incorrect: This is Alice Smith, M.D..*
- *Correct: This is Alice Smith, M.D.*
- *Correct: Please shop, cook, etc. We will do the laundry.*

Rule 3. Question marks and exclamation points replace and eliminate periods at the end of a sentence.

2. [73]**Comma**

Commas and periods are the most frequently used punctuation marks. Commas customarily indicate a brief pause; they're not as final as periods.

Rule 1. Use commas to separate words and word groups in a simple series of three or more items.

- *Example: My estate goes to my husband, son, daughter-in-law, and nephew.*

Rule 2. Use a comma to separate two adjectives when the order of the adjectives is interchangeable.

- *Example: He is a strong, healthy man.*

3. [74]**Semicolon**

It's no accident that a semicolon (;) is a period atop a comma. Like commas, semicolons indicate an audible pause—slightly longer than a comma's, but short of a period's full stop.

Semicolons have other functions, too. But first, a caveat: avoid the common mistake of using a semicolon to replace a colon

- *Incorrect: I have one goal; to find her.*
- *Correct: I have one goal: to find her.*

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[71] [71] https://www.thesaurus.com/e/writing/is-there-1-space-or-2-after-a-period/
[72] https://www.grammarbook.com/punctuation/periods.asp
[73] https://www.grammarbook.com/punctuation/commas.asp
[74] https://www.grammarbook.com/punctuation/semicolons.asp

4. **[75]Colon**

A colon means "that is to say" or "here's what I mean." Colons and semicolons should never be used interchangeably.

5. **Quotation Marks**

   Rule 1. Use a question mark only after a direct question.

   - *Correct: Will you go with me?*
   - *Incorrect: I'm asking if you will go with me?*

[76]Envelopes

We all know the basics of what to write on an envelope and you have probably addressed hundreds of envelopes. However, unless you have read through the US Postal Service requirements meticulously, it's very likely you've been missing some little-known facts about addressing envelopes. Unknown too many, the US Postal Service has very detailed requirements for how they want their mail addressed. To help you learn what to write on an envelope and fulfill those requirements, we have listed the most commonly missed

1. Addresses cannot be written in pencil. An address should be in ink – either written in pen or typed.
2. **Everything should be in capital letters**. Whatever is written on the face of the envelope should be written in all capitals. While most mail is sent and carried without capitalized letters, it's preferred for every line of the address to be capitalized.
3. **There should be no punctuation**. When you were taught what to write on an envelope, chances are you learned to write "Mr. and Mrs." or "New York City, NY." By USPS standards, this is incorrect. Regardless of numbers, titles, or abbreviations, there shouldn't technically be any form of punctuation on your envelope.
4. Only list the recipient's full legal name. The USPS prefers no other form of name, whether it be a nickname or initials, listed on the face of the envelope.
5. Abbreviations should be used for streets, apartments, states, etc. For the full list of abbreviations acceptable to the USPS.

Don't worry! Just because these are the technical requirements of the postal service doesn't mean you can't make your address more exciting. Your mail will still be processed and delivered even if it doesn't match this formatting.

[77]Capitalization in Legal Documents

As with punctuation, the rule writer should not overuse capitalization. Standards were developed to minimize the use of capitalization because historically capitalization was more expensive to print. Although expense is no longer an issue, traditional capitalization

[75] https://www.grammarbook.com/punctuation/colons.asp
[76] https://www.bluesummitsupplies.com/blogs/envelopes/how-to-address-an-envelope
[77] https://rules.utah.gov/agencyresources/manual-rw/ch01s03.html

principles are familiar and easier to read. To avoid the poor appearance of no uniform capitalization, the rule writer should use the following capitalization standards.

1. **When to Capitalize**

   The following **should** be capitalized:

   - the first word in a sentence;
   - months and days of the week;
   - the word or phrase "Utah," or "United States," and words used in conjunction with them such as "United States Government";
   - names of institutions such as "Utah State Prison," "Utah State Training School," "Utah State Hospital," "Utah Museum of Natural History," and "University of Utah";
   - full and official names of associations and organizations such as "American Dental Association" or "Utah State Bar";
   - full names of courts and other government departments, divisions, offices, committees, and boards;
   - the word "Legislature" only when referring specifically to the Utah Legislature;
   - the terms "Senate," "House," "House of Representatives," and "Congress" only when used to indicate either the Utah Legislature or the United States Congress;
   - names, proper derivatives of proper names, places, historic events, and holidays, as in "Indian," "Utah Lake," "World War II," and "Easter";
   - official short titles and popular names of acts, bills, codes, and statutes;
   - the word "Title," "Chapter," "Rule," "Part," "Section," "Subsection," or other major subdivision designations of the administrative and statutory codes, when accompanied by the number of that subdivision, as in "Subsection 63-46a-3(3)," and when used in conjunction with the name of another code compilation, as in "Section 14 of the Federal Social Security Act" —capitalization is not necessary when used without a specific number, as in "as provided in this rule";
   - the names of programs such as "Medicare," "Medicaid," and "Social Security";
   - specific references to the state constitution or the codes such as "Utah Constitution," "Utah Code," "Utah Code Annotated," or "Utah Administrative Code," but not when general references are used such as "this code" or "this constitution";
   - proper names of amendments should also be capitalized such as "Fourteenth Amendment" or "Gateway Amendment," but the word "amendment" used in general references such as "the equal protection amendment" or "this amendment" should not be capitalized;
   - specific funds or accounts such as the "General Fund" or "Mineral Lease Account"; and
   - references to "Social Security number."

2. **When not to Capitalize**

   The following **should not** be capitalized:
   - generic political subdivisions, as in "state" or "county," except when the terms follow the names of the subdivisions, as in "Salt Lake County";
   - titles of federal, state, local, and judicial officials, as in "governor," "president," "commissioner," "representative," "director," "attorney general," "judge," "justice," "chief justice," or "treasurer," unless used to refer to a particular person as in "Governor Huntsman";
   - the words "federal," "state," or "court" when not part of a proper name except when "Supreme Court" refers to the Utah Supreme Court;
   - words merely indicating geographic location such as "northern Utah"; and
   - "general session" unless it is used in conjunction with a specific year "2005 General Session."

10 Telephone Etiquette Tips Needed for Success in 2022[78]

Phone calls were once the be-all and end-all when it came to remote communication in the business world. Once upon a time, when salespeople weren't at meetings, they'd spend all day on the phone.

But as communication mediums have diversified – from email, Skype and virtual calls to texting and social media – is the humble phone call still important?

According to recent research, the answer is yes. In 2019, the length of calls to businesses increased by 22%, and the number of calls from consumers in the purchase phase of the buying cycle is increasing.

But as we talk on the phone less in our personal lives – with many people favoring text or messaging services – phone etiquette runs the risk of slipping, especially among younger employees.

With this in mind, here are our top telephone etiquette tips that are still very much needed for success in 2022.

1. **Answer Quickly**

   Customers want to know you care about them, and leaving the phone ringing conveys a lack of urgency. It may even cause prospects to believe that customer service isn't a priority at your organization.

   59% of customers prefer to call because they want a quick answer. If you fail to deliver that, you may end up losing a sale.

   Picking up the phone after ring number three is a good rule of thumb – you don't want to pick up after one and startle your caller. And you don't want to be flustered and start the call on the back foot, either.

2. **Introduce Yourself**

   In this era of social media, it can be easy to assume that business contacts have checked you out on LinkedIn and already have some idea of who you are. But the rules are different over the phone.

[78] https://www.zoomshift.com/blog/telephone-etiquette/

Unless you've spoken to a prospect before, take the time to explain who you are, what your role is within the organization, and how exactly you can help them and vice versa.

If this is a relationship you want to build, you can always follow up the call with an email including your digital contact details.

3. **Set out the Purpose of the Call Early on**

   Every single call should have a goal, and in order to meet that goal, both parties need to be on the same page from the start.

   There's no awkwardness in stating the point of the call early on – as long as it's done right. Be clear and concise, but friendly. Professionals are more time-poor now than ever before. They'll thank you for providing this direction.

4. **Speak Clearly**

   This might sound obvious, but we're not as used to speaking on the phone as we used to be.

   When your voice is your only mode of communication – without facial expressions or body language – it's vital that you speak clearly and at an appropriate volume. While this can take a little bit of effort, mumbling will betray a lack of knowledge or confidence.

   Remember, no one can lip read on a voice call. Make an effort to practice speaking on the phone to ensure you come across the way you intend to.

5. **Master Brand Tone of Voice**

   You know that tone-of-voice branding your marketing team has been pushing on you? When the phone rings, it's time to use it. The most successful brands these days have a cohesive tone of voice across all platforms – including on external calls.

   If someone calls up a brand that presents itself as friendly and caring only to be met with a cold response, it will be jarring. Similarly, if the caller expects a professional, corporate tone, and discovers an overly casual voice on the other end of the phone, the brand will feel less authentic.

   Look at your organization's tone-of-voice document and work out – with the help of the marketing team – what you can do during phone calls to ensure you're upholding it. This could be the language you use, the content of the call, or simply how formal or informal you are. Most likely, it will be a mix of all three.

6. **Give Your Full Attention**

   Just because you're hidden behind a phone doesn't mean you can slack off. They might not be able to see you, but the person you're speaking to will know if your attention isn't fully on them.

   Asking questions and taking notes – and letting them know you're writing down what they say – will help to make them aware that they're receiving the level of attention they deserve. Repeat some of the details of what they say back to them to prove you're listening – this sales trick is as old as time, but it works.

7. **Ask Before Putting Someone on Hold or Transferring**

   This is a simple courtesy that's all too often overlooked. Asking the person on the other end of the phone before you transfer them or put them on hold will go a long way to easing their user journey with you.

Simply pressing the button with no warning will come across as rude, and – with no timeline in mind – the caller may simply hang up. Think about how you like to be treated on a phone call, and extend the same courtesy to your callers.

8. **Stay Positive**
   Perhaps the trickiest one on the list, staying positive is vital for those representing their company over the phone, even when dealing with complaints.
   If you feel you can't handle a complaint or difficult customer, stay positive and tell the caller you'll get back to them as soon as possible. This buys you time to collaborate with colleagues on how best to move forward.
9. **Remain Polite**
   As the old saying goes: "Manners cost nothing."
   Regardless of your brand tone of voice or the situation on the phone, there's absolutely no excuse for deviating from being polite. Staying respectful and professional, even in trying situations, will go a long way toward gaining the mutual respect required to achieve the goals of your call.
10. **Don't be Afraid to Switch Mediums**
    Look, the reality is that it's 2022 and many people hate speaking on the phone.
    In some workplace situations, speaking on the phone is completely unavoidable. But when trying to build a strong relationship with a new contact, consider asking them for their medium of choice.
    Being the one salesperson or account manager who is willing to communicate with them via Skype or text, for example, will help you win major points with the phone-phobic among us.
    Do you have any tricks of the trade when it comes to speaking on the phone? Share your wisdom in the comments below.

[79] Proper Etiquette for Putting a Caller on Hold

- Explain the reason you need to put the caller on hold.
- Ask for the person's phone number, in case the conversation is cut off.
- Promise to return in a minute—or your best estimate of how long the hold will last. If you think the delay will be longer than a couple of minutes, ask for a number and a time when you can call back.
- If, despite your best efforts, the delay is taking longer than anticipated, check-in with the caller, so that he doesn't feel abandoned. Again, offer to call them back, rather than keeping them holding.
- When you return to the phone, apologize for the inconvenience and thank the caller for their patience.
- Use the caller's name frequently to add a sense of connection.

[79] https://www.thebalancesmb.com/how-to-professionally-put-a-caller-on-hold

[80]Things to Avoid when Putting a Client on Hold

- Don't interrupt a caller in mid-sentence to put her on hold. Wait for a pause in the conversation.
- Never put someone on hold without announcing you'll be doing so. Ask her if you may put her on hold, rather than just telling her.
- Don't put a person on hold multiple times in one call.
- Don't leave the caller holding for more than two minutes without checking in.
- Never make him/her call you back; you should always offer to return the call.
- Never be rude, no matter how mad a caller may get.

[81]Screening Calls

As a receptionist at your business's front desk, one thing you'll have to become well-versed in is call screening. Screening calls is a delicate art—you have to let the right people through without blocking someone important, and you don't want to waste your boss's or other departments' time.

Here are five receptionist call screening tips to make your life easier

1. **Don't Make It Obvious**
   The first of our receptionist call screening tips is to avoid making it obvious that you are screening callers. Don't make it clear to the caller that you're evaluating whether or not to put them through to their desired party; no one likes to feel that they're being blocked. Simply ask the caller for their intention and craft the conversation naturally from there.
2. **Be Pleasant and Patient**
   Phone etiquette rules still apply when you're screening calls for your department or boss. That's why remaining pleasant and patient is another important piece of advice on our list of receptionist call screening tips! By being short, intrusive, or unpleasant over the phone, you won't make a good impression for your business as a whole. Plus, the caller may get angry and could even complain about you once they've reached their desired party.
3. **Get All of the Information You Can**
   Getting all of the information that you can out of the caller is another essential bullet point in receptionist call screening tips. Otherwise, you won't be able to make a sound decision on whether to refer the caller to another department, put them through to your boss, or take a message. Do all that you can to find out who the caller is and what they need?
4. **Ignore Robo-calls and Beware of Scams**
   Hang up on robo-calls, and be careful when you come across a human salesperson or telemarketer. Once your business has been scammed, it's too late! Of all our receptionist call screening tips, this is the most pertinent when it comes to your fellow employees.

[80] https://www.thebalancesmb.com/how-to-professionally-put-a-caller-on-hold
[81] https://blog.upbook.com/top-5-receptionist-call-screening-tips

5. **Use Your Best Judgment**
   Our final entry in the list of receptionist call screening tips is this: use your best judgment. Ultimately, your own human intuition is the greatest tool you have when it comes to effectively screening calls. Trusting your gut instinct is the best way to know whether or not you should put a caller through, take a message, or end the call entirely.

   By following these basic receptionist call screening tips, your entire front desk will be able to screen calls in an appropriate, effective way. That means legitimate callers will get to the necessary place, and you won't be wasting anyone's time!

[82]Taking an Accurate Phone Message

All messages should include the name of the caller, the name of the business, a phone number to return the call, and brief message stating the purpose of the call. You can start by asking for the person's name, their call back number, and the name of the business.

Once you have all that information, ask for the specific message. Say something like, "If you'd like Chris to call you back, you'll need to provide a brief message." Repeat all the information (including the short message) back to the caller to make sure it's correct. Double check the spelling of names if necessary.

Common Phone Message Pitfalls

So what do you do if the caller is unwilling to provide all of the requested information? Here's how to handle the 3 most common situations:

- **"He's already got my number."** Respond by saying "I'd like to write it down for him because sometimes he doesn't have access to his contact info and this makes it much more efficient for him." It turns out that when you make a request and you include the word "because" you are more likely to get compliance with the request.
- **"He knows what this is about."** If the person responds to your request for a message by saying, "He knows what this is about." Then I suggest asking one more time. "The reason I ask is because Chris asked me to include a short purpose for every call so he can efficiently respond to your message. Would you help Chris by leaving a very brief message?" Then pause. And wait. Pausing should cause the other person to speak. In addition, again, you've used the magic word "because" and you've also used one more powerful trigger: you asked for the callers help. It's unlikely you will still get resistance from a legitimate caller. If you still get resistance even after this second request, you can say the following, "Of course, I'll pass your information along. Oh, and just to let you know, without a message, he may not call you back."
- **"This is a private matter."** Occasionally, there are messages that can't be left with someone else. In this case, you should say, "If this is a private matter, you

[82] https://www.quickanddirtytips.com/business-career/communication/how-to-take-a-good-phone-message

may want to use the alternative contact information he provided you or perhaps just leave a very, very brief, message with me that only he would understand."

Closing the Conversation

Here are a few tips and phrases to help you politely and professionally end phone conversations.

1. **Close the door.** When it's time to end the conversation, be sure you are not inviting the other person to continue talking. Avoid saying "Is there anything else you need before I let you go?" Instead, try "I'm going to wrap up now. If there's anything else you need, you have my number."
2. **Use breaks in conversation.** Wait for a natural pause and jump in immediately with a transition sentence and a call-ending statement. "Thanks again for calling. It was great catching up."
3. **Interrupt politely.** "I'm very sorry to interrupt, but I want to make sure I understand everything before it's time to hang up." "I know I'm interrupting you, but can we please go back to . . ."
4. **Offer future calls.** If the issue can't be resolved in one conversation, set a follow-up action, along with a date and time that you'll be back in touch. "Let me make some phone calls on this and get back to you. Can I call you Wednesday?" "My computer is running slowly right now. Can I finish researching this and get back to you?"
[83]

Rules for Using Cell Phones at Work[84]

Etiquette Tips for Using Your Phone on the Job

Who doesn't love the convenience of a cell phone? Your family and friends can reach you at any time, for any reason, no matter where you are...even at work. While that accessibility may be a great way to stay in touch with your loved ones during the day, fixating on your phone will distract you from doing your job, and it may annoy your boss or coworkers. Assuming your employer doesn't have a rule forbidding cell phone use at work, here are some rules to follow

1. **Put Your Phone Away**
   Excessive cell phone use at work can interfere with productivity. Even if your employer doesn't ban their use, it's a good idea to limit yourself. Avoid temptation by keeping your phone in a desk drawer and checking it only occasionally to make sure you haven't missed any critical calls.
2. **Turn Off Your Ringer**
   Silence your ringer. If family members often have to get in touch during the workday, set your phone on vibrate and put it in your pocket. You will know when someone is calling or texting and can discretely take the call or answer a text privately. Your coworkers won't be bothered every time your phone rings

[83] https://www.prdaily.com/how-to-shut-down-a-never-ending-phone-call/

[84] https://www.thebalancecareers.com/rules-for-using-cell-phones-at-work, i[dated 09/17/2020

or dings and, most importantly, your boss won't find out how many calls you get at work.

Alternatively, buy a smartwatch and have it alert you to incoming calls and messages. Some activity trackers can be set to work with cell phones too.

3. **Use Your Cell Phone for Important Calls Only**

   Should you chitchat with your friend, mom, or significant other while at work? Save those casual conversations for your drive home (hands-free, of course) or your break. There are very few calls that can't wait.

   If the school nurse is calling to say your child is ill, it is okay to deal with that as soon as possible. Almost any boss would be understanding about answering a call when there is a family emergency. However, if your BFF wants to talk about weekend plans, do it from home.

   Inform anyone who is likely to call about every little thing, that you won't be able to answer the phone. So if your dog has an accident on the rug, whoever is home with her can deal with it instead of letting you know immediately. When your cousin Tilly gets engaged, your mom can share the happy news after the workday is over.

4. **Let Voicemail Pick Up Your Calls**

   Instead of answering calls immediately, set up your phone to have them all go to voicemail. Check your messages regularly and respond to them based on their urgency.

   It is important to note that this system is not ideal when someone is counting on you to respond to emergencies immediately, for example, if you are their primary caregiver. However, it is an effective way to deal with non-urgent calls that don't require your immediate attention.

5. **Find a Private Place to Make Cell Phone Calls**

   Although making personal calls during a break is fine, find a private place to do it. Find a spot where others—those who are working or also on break—won't be disturbed. Make sure no one can overhear your conversation, especially if you are discussing personal things.

6. **Don’t Bring Your Cell Phone Into the Restroom**

   Whether at work or anywhere else for that matter, this is an essential rule of cell phone etiquette. Why? Well, if you must ask—it is rude to both the person on the other end of the phone and anyone using the bathroom. Sounds travel and out of respect for your coworkers, allow them to maintain their privacy. As for the person with whom you are speaking, they don't need to feel like they are in the bathroom with you.

7. **Don’t Look at Your Phone During Meetings Unless…**

   In addition to using cell phones to talk or text, they have become an essential work tool. With that in mind, this rule should read "Don't Use Your Phone at Meetings Unless It is for Something Related to the Meeting" Use your apps as needed—for example, to add things to your calendar or take notes.

   However, while you are sitting at a meeting, do not text, check your social media news feeds, post your status, or play games. Don't bury your nose in your phone. Keep your eyes up and stay engaged. Doing anything else will be a clear signal to your boss that your mind isn't completely on the business at hand.

Title 46 Notarization & Authentication of Documents, Electronic Signatures, and Legal Material

Chapter 1 Notaries Public Reform Act

§ 46-1-2. Definitions. [85]

1. ”Acknowledgment” means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the presence of the notary, to voluntarily signing a document for the document's stated purpose.
2. “Before me” means that an individual appears in the presence of the notary.
3. ”Commission” – means:
   (a) to empower to perform notarial acts; and
   (b) the written authority to perform those acts.
4. “Copy certification" means a notarial act in which a notary certifies that a photocopy is an accurate copy of a document that is neither a public record nor publicly recorded.
5. “Electronic recording” means the audio and video recording, described in Subsection 46-1-3.6(3), of a remote notarization.
6. “Electronic seal” means an electronic version of the seal described in Section 46-1-16, that conforms with rules made under Subsection 46-1-3.7(1)(d), that a remote notary may attach to a notarial certificate to complete a remote notarization.
7. "Electronic signature" means the same as that term is defined in Section 46-4-102, 46-4-102 “Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
8. “In the presence of the notary” means that an individual:
   (a) is physically present with the notary in close enough proximity to see and hear the notary; or
   (b) communicates with a remote notary by means of an electronic device or process that;
      i allows the individual and remote notary to communicate with one another simultaneously by sight and sound; and
      ii complies with rules made under Section 46-1-3.7
9. "Jurat" means a notarial act in which a notary certifies:
   (a) the identify of a signer who:
      i Is personally known to the notary; or
      ii Provides the notary satisfactory evidence of the signer’s identity;
   (b) that the signer affirms or swears an oath attesting to the truthfulness of a document; and
   (c) that the signer voluntarily signs the document in the presence of the notary.

[85] Utah Code 46-1-2 – Amended by Chapter 192, 2019 General Session

10. "Notarial act" or "notarization" means an act that a notary is authorized to perform under Section 46-1-6.
11. "Notarial certificate" means the affidavit described in Section 46-1-6.5 that is:
    (a) a part of or attached to a notarized document; and
    (b) completed by the notary and bears the notary's signature and official seal.
12. "Notary"
    (a) means an individual commissioned to perform notarial acts under this chapter.
    (b) "Notary includes a remote notary
13. "Oath" or "affirmation" means a notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary on penalty of perjury.
14. "Official misconduct" means a notary's performance of any act prohibited or failure to perform any act mandated by this chapter or by any other law in connection with a notarial act.
15. "Official seal"
    (a) means the seal described in Section 46-1-16 that a notary may attach to a notarial certificate to complete a notarization.
    (b) "Official seal" includes an electronic seal.
16. "Personal known" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
17. "Remote notarization" means a notarial act performed by a remote notary in accordance with this chapter for an individual who is not in the physical presence of the remote notary at the time the remote notary performs the notarial act.
18. "Remote notary" means a notary that holds an active remote notary certification under section 46-1-3.5.
19. "Satisfactory evidence of identity"
    (a) means
        i for both an in-person and remote notarization, identification of an individual based on:
            1 subject to Subsection (19)(b), valid personal identification with the individual's photograph, signature, and physical description that the United States government, any state within the United States, or a foreign government issues;
            2 subject to Subsection (19)(b), a valid passport that any nation issues; or
            3 the oath or affirmation of a credible person which is personally known to the notary and who personally knows the individual; and
        ii for a remote notarization only, a third party's affirmation of an individual's identify in accordance with rules made under Section 46-1-3.7 by means of:

1 dynamic knowledge-based authentication, which may include requiring the individual to answer questions about the individual's personal information obtained from public or proprietary data sources; or

2 analysis of the individual's biometric data, which may include facial recognition, voiceprint analysis, or fingerprint analysis.

(b) "Satisfactory evidence of identity", for a remote notarization, requires the identification described in Subsection (19)(a)(i)(A) or passport described in Subsection (19)(a)(i)(B) to be verified through public or proprietary data sources in accordance with rules made under Section 46-1-3.7.

(c) "Satisfactory evidence of identify" does not include

i a driving privilege card under Subsection 53-3-207(10); or

ii another document that is not considered valid for identification.

20. "Satisfactory witnessing" means a notarial act in which an individual:

(a) appears in the presence of the notary and presents a document;

(b) provides the notary satisfactory evidence of the individual identify, or is personally known to the notary; and

(c) signs the documents in the presence of the notary.

§ 46-1-3. Qualifications Application for notarial commission required - Term[86]

(1) Except as provided in Subsection (4), and subject to Section 46-1-3.5, the lieutenant governor shall commission as a notary any qualified individual who submits an application in accordance with this chapter.

(2) To qualify for a notarial commission an individual shall:

(a) be at least 18 years old;

(b) lawfully reside in the state or be employed in the state for at least 30 days immediately before the individual applies for a notarial commission;

(c) be able to read, write, and understand English;

(d) submit an application to the lieutenant governor containing no significant misstatement or omission of fact that includes:

(i) the individual's:

(A) name as it will appear on the commission;

(B) residential address;

(C) business address;

(D) daytime telephone number; and

(E) date of birth;

(ii) an affirmation that the individual meets the requirements of this section;

(iii) an indication of any criminal convictions the individual has received, including a plea of admission or no contest;

[86] Utah Code 46-1-3 Amended by Chapter 167 & 344, 2021 General Session

(iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission or other professional license involving the applicant in this or any other state;

(v) an indication that the individual has passed the examination described in Subsection (6); and

(vi) payment of an application fee that the lieutenant governor establishes in accordance with Section 63J-1-504;

(e) (i) be a United States citizen; or

(ii) have permanent resident status under Section 245 of the Immigration and Nationality Act; and

(f) submit to a background check described in Subsection (3).

(3) (a) The lieutenant governor shall:

(i) request the Division of Human Resource Management to perform a criminal background check under Subsection 53-10-108(16) on each individual who submits an application under this section;

(ii) require an individual who submits an application under this section to provide a signed waiver on a form provided by the lieutenant governor that complies with Subsection 53-10-108(4); and

(iii) provide the Division of Human Resource Management the personal identifying information of each individual who submits an application under this section.

(b) The Division of Human Resource Management shall:

(i) perform a criminal background check under Subsection 53-10-108(16) on each individual described in Subsection (3)(a)(i); and

(ii) provide to the lieutenant governor all information that pertains to the individual described in Subsection (3)(a)(i) that the department identifies or receives as a result of the background check.

(4) The lieutenant governor may deny an application based on:

(a) the applicant's conviction for a crime involving dishonesty or moral turpitude;

(b) any revocation, suspension, or restriction of a notarial commission or professional license issued to the applicant by this or any other state;

(c) the applicant's official misconduct while acting in the capacity of a notary; or

(d) the applicant's failure to pass the examination described in Subsection (6).

(5) (a) An individual whom the lieutenant governor commissions as a notary:

(i) may perform notarial acts in any part of the state for a term of four years, unless the individual resigns or the commission is revoked or suspended under Section 46-1-19; and

(ii) except through a remote notarization performed in accordance with this chapter, may not perform a notarial act for another individual who is outside of the state.

(b) (i) After an individual's commission expires, the individual may not perform a notarial act until the individual obtains a new commission.

(ii) An individual whose commission expires and who wishes to obtain a new commission shall submit a new application, showing compliance with the requirements of this section.

(6) (a) Each applicant for a notarial commission shall take an examination that the lieutenant governor approves and submit the examination to a testing center that the lieutenant governor designates for purposes of scoring the examination.

(b) The testing center that the lieutenant governor designates shall issue a written acknowledgment to the applicant indicating whether the applicant passed or failed the examination.

(7) (a) A notary shall maintain permanent residency or employment in the state during the term of the notary's notarial commission.

(b) A notary who does not maintain permanent residency or employment under Subsection (7)(a) shall resign the notary's notarial commission in accordance with Section 46-1-21.

§ 46-1-3.5. Remote notary qualifications – Application - Authority[87]

(1) An individual commissioned as a notary, or an individual applying to be commissioned as a notary, under Section 46-1-3 may apply to the lieutenant governor for a remote notary certification under this section.

(2) The lieutenant governor shall certify an individual to perform remote notarizations as a remote notary if the individual:

(a) complies with Section 46-1-3 to become a commissioned notary;

(b) submits to the lieutenant governor, on a form created by the lieutenant governor, a correctly completed application for a remote notary certification; and

(c) pays to the lieutenant governor the application fee described in Subsection (4).

(3) The lieutenant governor shall ensure that the application described in Subsection (2)(b) requires an applicant to:

(a) list the applicant's name as it appears or will appear on the applicant's notarial commission;

(b) agree to comply with the provisions of this chapter, and rules made under Section 46-1-3.7, that relate to a remote notarization; and

(c) provide the applicant's email address.

(4) The lieutenant governor may establish and charge a fee in accordance with Section 63J-1-504 to an individual who seeks to obtain remote notary certification under this section.

§ 46-1-3.6. Remote notarization procedures[88]

(1) A remote notary who receives a remote notary certification under Section 46-1-3.5 may perform a remote notarization if the remote notary is physically located in this state.

(2) A remote notary that performs a remote notarization for an individual that is not personally known to the remote notary shall, at the time the remote notary performs the remote notarization, establish satisfactory evidence of identity for the individual by:

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[87] Utah Code 46-1-3.5 Enacted by Chapter 192, 2019 General Session

[88] Utah Code 46-1-3.6 Enacted by Chapter 192, 2019 General Session

(a) communicating with the individual using an electronic device or process that:

(i) allows the individual and remote notary to communicate with one another simultaneously by sight and sound; and

(ii) complies with rules made under Section 46-1-3.7; and

(b) requiring the individual to transmit to the remote notary an image of a form of identification described in Subsection 46-1-2(19)(a)(i)(A) or passport described in Subsection 46-1-2(19)(a)(i)(B) that is of sufficient quality for the remote notary to establish satisfactory evidence of identity.

(3) (a) A remote notary shall create an audio and video recording of the performance of each remote notarization and store the recording in accordance with Sections 46-1-14 and 46-1-15.

(b) A remote notary shall take reasonable steps, consistent with industry standards, to ensure that any non-public data transmitted or stored in connection with a remote notarization performed by the remote notary is secure from unauthorized interception or disclosure.

(4) Notwithstanding any other provision of law, a remote notarization lawfully performed under this chapter satisfies any provision of state law that requires an individual to personally appear before, or be in the presence of, a notary at the time the notary performs a notarial act.

§ 46-1-3.7. Rulemaking authority for remote notarization[89]

(1) The director of elections in the Office of the Lieutenant Governor may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding standards for and types of:

(a) electronic software and hardware that a remote notary may use to:

(i) perform a remote notarization; and

(ii) keep an electronic journal under Section 46-1-13;

(b) public and proprietary data sources that a remote notary may use to establish satisfactory evidence of identity under Subsection 46-1-2(19)(b);

(c) dynamic knowledge-based authentication or biometric data analysis that a remote notary may use to establish satisfactory evidence of identity under Subsection 46-1-2(19)(a)(ii); and

(d) electronic seals a remote notary may use to complete an electronic notarial certificate.

(2) When making a rule under this section, the director of elections in the Office of the Lieutenant Governor shall review and consider standards recommended by one or more national organizations that address the governance or operation of notaries.

§ 46-1-4. Bond[90]

(1) A notarial commission is not effective until:

(a) the notary named in the commission takes a constitutional oath of office and files a $5,000 bond with the lieutenant governor that:

[89] Utah Code 46-1-3.7 Enacted by Chapter 192, 2019 General Session

[90] Utah Code 46-1-4 Amended by Chapter 192, 2019 General Session

(i) a licensed surety executes for a term of four years beginning on the commission's effective date and ending on the commission's expiration date; and

(ii) conditions payment of bond funds to any person upon the notary's misconduct while acting in the scope of the notary's commission; and

(b) the lieutenant governor approves the oath and bond described in Subsection (1)(a).

(2) In addition to the requirements described in Subsection (1), a remote notary certification described in Section 46-1-3.5 is not effective until:

(a) the notary named in the remote notary certification files with the lieutenant governor evidence that the notary has obtained $5,000 of bond coverage, in addition to the bond coverage described in Subsection (1)(a), that:

(i) a licensed surety executes for a term that begins on the certification's effective date and ends on the remote notary's commission's expiration date; and

(ii) conditions payment of bond funds to any person upon the remote notary's misconduct while acting in the scope of the remote notary's commission; and

(b) the lieutenant governor approves the additional bond coverage described in Subsection (2)(a).

§ 46-1-6. Powers and Limitations. [91]

(1) A notary may perform the following acts:

(a) a jurat;

(b) an acknowledgment;

(c) a signature witnessing;

(d) a copy certification; and

(e) an oath or affirmation.

(2) A notary may not:

(a) perform an act as a notary that is not described in Subsection (1); or

(b) perform an act described in Subsection (1) if the individual for whom the notary performs the notarial act is not in the presence of the notary at the time the notary performs the act.

§ 46-1-6.5. Form of notarial certificate for document notarizations. [92]

(1) A correctly completed affidavit in substantially the form described in this section, that is included in or attached to a document, is sufficient for the completion of a notarization under this Title 46, Chapter 1, Notaries Public Reform Act.

(2) (a) A notary shall ensure that a signer takes the following oath or makes the following affirmation before the notary witnesses the signature for a jurat:

"Do you swear or affirm under penalty of perjury that the statements in your document are true?"

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[91] Utah Code 46-1-6 Amended by Chapter 192, 2019 General Session

[92] Utah Code 46-1-6.5 Amended by Chapter 192, 2019 General Session

(b) An affidavit for a jurat that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

Subscribed and sworn to before me (notary public name), on this (date) day of (month), in the year (year), by (name of document signer).

(Notary's Official Seal) _____

Notary Signature".

(3) An affidavit for an acknowledgment that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

On this (date) day of (month), in the year (year), before me (name of notary public), a notary public, personally appeared (name of document signer), proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to in this document, and acknowledged (he/she/they) executed the same. (Notary's Official Seal) _____

Notary Signature".

(4) An affidavit for a copy certification that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

On this (date) day of (month), in the year (year), I certify that the preceding or attached document is a true, exact, and unaltered photocopy of (description of document), and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recorded document.

(Notary’s Official Seal) _____

Notary Signature".

(5) An affidavit for a signature witnessing that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

On this (date) day of (month), in the year (year), before me, (name of notary public), personally appeared (name of document signer), proved to me through satisfactory evidence of identification, which was (form of identification), to be the person whose name is signed on the preceding or attached document in my presence. (Notary’s Official Seal) _____

Notary Signature".

(6) A remote notary shall ensure that the notarial certificate described in this section that is used for a remote notarization includes a statement that the remote notary performed the notarization remotely.

§46-1-7. Disqualifications.[93]

A notary may not perform a notarial act if the notary:

(1) is a signer of the document that is to be notarized, except for:
  (a) a self-proved will as provided in Section 75-2-504; or
  (b) a self-proved electronic will as provided in Section 75-2-1408;
(2) is named in the document that is to be notarized except for:
  (a) a self-proved will as provided in Section 75-2-504;
  (b) a self-proved electronic will as provided in Section 75-2-1408;
  (c) a licensed attorney that is listed in the document only as representing a signer or another person named in the document; or
  (d) a licensed escrow agent, as defined in Section 31A-1-301, that:
    (i) acts as the title insurance producer in signing closing documents; and
    (ii) is not named individually in the closing documents as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, vendor, vendee, lessor, lessee, buyer, or seller;
(3) will receive direct compensation from a transaction connected with a financial transaction in which the notary is named individually as a principal; or
(4) will receive direct compensation from a real property transaction in which the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, lessee, buyer, or seller.

§46-1-8. Impartiality.[94]

(1) A notary may not influence a person to enter into or to refuse to enter into a lawful transaction involving a notarial act by the notary.
(2) A notary shall perform notarial acts in lawful transactions for any requesting person who tenders the appropriate fee specified in Section 46-1-12.

§46-1-9. False or incomplete certificate.[95]

A notary may not:
(1) execute a certificate containing a statement known by the notary to be false or materially incomplete; or
(2) perform any notarial act with intent to deceive or defraud.

[93] Utah Code 46-1-7 Amended by Chapter 1, 2020 Special Session 6
[94] Utah Code 46-1-8 repealed and Re-enacted by Chapter 287, 1998 General Session
[95] Utah Code 46-1-9 repealed and Re-enacted by Chapter 287, 1998 General Session

§46-1-10. Testimonials prohibited.[96]

A notary may not use the notary's title or official seal to endorse or promote any product, service, contest, or other offering.

§46-1-11. Prohibited acts – Advertising.[97]

(1) A non-attorney notary may not provide advice or counsel to another person concerning legal documents or legal proceedings, including immigration matters.

(2) (a) (i) A non-attorney notary who advertises notarial services in any language other than English shall include in the advertisement a notice that the notary public is not an attorney.

(ii) The notice under Subsection (2)(a)(i) must include the fees that a notary may charge pursuant to Section 46-1-12 and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN UTAH AND MAY NOT GIVE LEGAL ADVICE ABOUT IMMIGRATION OR ANY OTHER LEGAL MATTER OR ACCEPT FEES FOR LEGAL ADVICE."

(b) (i) The notice required by Subsection (2)(a) shall be in English and in the language of the advertisement and in letters of a conspicuous size.

(ii) If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message.

(c) (i) Literal translation of the phrase "Notary Public" into any language other than English is prohibited if the literal translation implies that the notary is a licensed attorney.

(ii) In this Subsection (2)(c), "literal translation" means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

§46-1-12. Fees and notice.[98]

(1) (a) Except as provided in Subsection (1)(b), the maximum fees a notary may charge for notarial acts are:

(i) for an acknowledgment, $10 per signature;

(ii) for a certified copy, $10 per page certified;

(iii) for a jurat, $10 per signature;

(iv) for an oath or affirmation without a signature, $10 per person; and

(v) for each signature witnessing, $10.

(b) The maximum fee a remote notary may charge for an item described in Subsection (1)(a) that the remote notary performs as a part of a remote notarization is $25.

(2) A notary may charge a travel fee, not to exceed the approved federal mileage rate, when traveling to perform a notarial act if:

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[96] Utah Code 46-1-10 Amended by Chapter 192, 2019 General Session
[97] Utah Code 46-1-11 Amended by Chapter 95, 2007 General Session
[98] Utah Code 46-1-12 Amended by Chapter 192, 2019 General Session

(a) the notary explains to the person requesting the notarial act that the travel fee is separate from the notarial fee in Subsection (1) and is neither specified nor mandated by law; and

(b) the notary and the person requesting the notarial act agree upon the travel fee in advance.

(3) A notary shall display an English-language schedule of fees for notarial acts and may display a non-English-language schedule of fees.

(4) (a) A notary may not charge a fee of more than $10 per individual for each set of forms relating to a change of that individual's immigration status.

(b) The fee limitation described in Subsection (4)(a) applies regardless of whether the notary is acting as a notary but does not apply to a licensed attorney, who is also a notary rendering professional services regarding immigration matters.

§46-1-13. Notary journal.[99]

(1) A notary may keep, maintain, and protect as a public record, and provide for lawful inspection a chronological, permanently bound official journal of notarial acts, containing numbered pages.

(2) A remote notary shall keep a secure electronic journal of each remote notarization the notary performs.

§46-1-14. Entries in Journal – Required information.[100]

(1) A notary may, for each notarial act the notary performs, and a remote notary shall, for each notarial act the remote notary performs remotely, record the following information in the journal described in Section 46-1-13 at the time of notarization:

(a) the date and time of day of the notarial act;

(b) the type of notarial act;

(c) the type title, or a description of the document, electronic record, or proceeding that is the subject of the notarial act;

(d) the signature and printed name and address of each individual for whom a notarial act is performed;

(e) the evidence of identity of each individual for whom a notarial act is performed, in the form of:

(i) a statement that the person is personally known to the notary;

(ii) a description of the identification document and the identification document's issuing agency, serial or identification number, and date of issuance or expiration;

(iii) the signature and printed name and address of a credible witness swearing or affirming to the person's identity; or

(iv) if used for a remote notarization, a description of the dynamic knowledge-based authentication or biometric data analysis that was used to provide satisfactory evidence of identity under Subsection 46-1-2(19)(a)(ii); and

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[99] Utah Code 46-1-13 Amended by Chapter 192, 2019 General Session

[100] Utah Code 46-1-14 Amended by Chapter 192, 2019 General Session

(f) the fee, if any, the notary charged for the notarial act.

(2) A notary may record in the journal a description of the circumstances under which the notary refused to perform or complete a notarial act.

(3) (a) A remote notary shall include with the journal a copy of the electronic recording of the remote notarization.

(b) The electronic recording is not a public record and is not a part of the notary's journal.

(4) A remote notary shall maintain, or ensure that a person that the notary designates as a custodian under Subsection 46-1-15(2)(b)(i) maintains, for a period of five years, the information described in Subsections (1) and (3) for each remote notarization the notary performs.

§46-1-15. Inspection of journal – Safekeeping and custody of journal.[101]

(1) Except as provided in Subsection (2)(b), if a notary maintains a journal, the notary shall:

(a) keep the journal in the notary's exclusive custody; and

(b) ensure that the journal is not used by any other person for any purpose.

(2) (a) A remote notary shall:

(i) ensure that the electronic journal and electronic recording described in Section 46-1-14 that is maintained by the remote notary is a secure and authentic record of the remote notarizations that the notary performs;

(ii) maintain a backup electronic journal and electronic recording; and

(iii) protect the backup electronic journal and electronic recording described in Subsection (2)(a)(ii) from unauthorized access or use.

(b) (i) A remote notary may designate as a custodian of the remote notary's electronic journal and electronic recording described in Section 46-1-14:

(A) subject to Subsection (3), the remote notary's employer that employs the remote notary to perform notarizations; or

(B) except as provided in Subsection (2)(b)(iii), an electronic repository that grants the remote notary sole access to the electronic journal and electronic recording and does not allow the person who operates the electronic repository or any other person to access the journal, information in the journal, or the electronic recording for any purpose.

(ii) A remote notary that designates a custodian under Subsection (2)(b)(i) shall execute an agreement with the custodian that requires the custodian to comply with the safety and security requirements of this chapter with regard to the electronic journal, the information in the electronic journal, and the electronic recording.

(iii) An electronic repository described in Subsection (2)(b)(i)(B) may access an electronic journal, information contained in an electronic journal, and the electronic recording:

[101] Utah Code 46-1-15 Amended by Chapter 192, 2019 General Session

(A) for a purpose solely related to completing, in accordance with this chapter, the notarization for which the journal or information in the journal is accessed;

(B) for a purpose solely related to complying with the requirements to retain and store records under this chapter; or

(C) if required under a court order.

(3) The notary's employer may not require the notary to surrender the journal or the electronic recording upon termination of the notary's employment.

§46-1-16. Official Signature – Official Seal – Destruction of seal – Unlawful use of seal – Criminal penalties.[102]

(1) In completing a notarial act, a notary shall sign on the notarial certificate exactly and only the name indicated on the notary's commission.

(2) (a) Except as provided in Subsection (2)(d), a notary shall keep an official seal, and a remote notary shall keep an electronic seal and electronic signature, that is the exclusive property of the notary.

(b) Except as provided in Subsection (2)(d), a notary's official seal, electronic seal, or electronic signature may not be used by any other person.

(c) (i) Each official seal used for an in-person notarization shall be in purple ink.

(ii) Each official seal used for a remote notarization shall be rendered in black.

(d) (i) A remote notary may allow a person that provides an electronic seal to the remote notary under Section 46-1-17 to act as guardian over the electronic seal.

(ii) Except as provided in Subsection (2)(d)(iii), a guardian described in Subsection (2)(d)(i) shall store the seal in a secure manner that prevents any person from:

(A) accessing the seal, other than the guardian and the remote notary named on the seal; or

(B) using the seal to perform a notarization, other than the remote notary named on the seal.

(iii) A guardian that a notary designates under Subsection (2)(d)(i) may access and use the seal of the notary:

(A) for a purpose solely related to completing, in accordance with this chapter, the notarization, by the notary, for which the seal is accessed or used;

(B) for a purpose solely related to complying with the requirements to obtain, store, and protect the seal under this chapter; or

(C) if required under a court order.

(3) (a) A notary shall obtain a new official seal:

(i) when the notary receives a new commission; or

[102] Utah Code 46-1-16 Amended by Chapter 192, 2019 General Session

(ii) if the notary changes the notary's name of record at any time during the notary's commission.

(b) Subject to Subsection (3)(c), a notary shall affix the official seal near the notary's official signature on a notarial certificate and shall include a sharp, legible, and photographically reproducible rendering of the official seal that consists of:

(i) the notary public's name exactly as indicated on the notary's commission;

(ii) the words "notary public," "state of Utah," and "my commission expires on (commission expiration date)";

(iii) the notary's commission number, exactly as indicated on the notary's commission;

(iv) a facsimile of the great seal of the state; and

(v) a rectangular border no larger than one inch by two and one-half inches surrounding the required words and official seal.

(c) When performing a remote notarization, a remote notary shall attach the remote notary's electronic signature and electronic seal under Subsection (3)(b) to an electronic notarial certificate in a manner that makes evident any subsequent change or modification to:

(i) the notarial certificate; or

(ii) any electronic record, that is a part of the notarization, to which the notarial certificate is attached.

(4) A notary may use an embossed seal impression that is not photographically reproducible in addition to, but not in place of, the photographically reproducible official seal required in this section.

(5) A notary shall affix the official seal in a manner that does not obscure or render illegible any information or signatures contained in the document or in the notarial certificate.

(6) A notary may not use an official seal independent of a notarial certificate.

(7) Except for a notarial certificate that is completed as a part of a remote notarization, a notarial certificate on an annexation, subdivision, or other map or plat is considered complete without the imprint of the notary's official seal if:

(a) the notary signs the notarial certificate in permanent ink; and

(b) the following appear below or immediately adjacent to the notary's signature:

(i) the notary's name and commission number appears exactly as indicated on the notary's commission;

(ii) the words "A notary public commissioned in Utah"; and

(iii) the expiration date of the notary's commission.

(8) A notarial certificate on an electronic message or document is considered complete without the notary's official seal if the following information appears electronically within the message or document:

(a) the notary's name and commission number appearing exactly as indicated on the notary's commission; and

(b) the words "notary public," "state of Utah," and "my commission expires on_____ (date)".

(9) (a) When a notary resigns or the notary's commission expires or is revoked, the notary shall:

(i) destroy the notary's official seal and certificate; and

(ii) if the notary is a remote notary, destroy any coding, disk, certificate, card, software, or password that enables the remote notary to affix the remote notary's electronic signature or electronic seal to a notarial certificate.

(b) A former remote notary shall certify to the lieutenant governor in writing that the former remote notary has complied with Subsection (9)(a)(ii) within 10 days after the day on which the notary resigns or the notary's commission expires or is revoked.

(10) (a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling a remote notary to affix an official electronic signature or electronic seal to an electronic record is guilty of a class B misdemeanor.

(b) A remote notary shall immediately notify the lieutenant governor if the notary becomes aware that the notary's electronic signature, electronic seal, electronic journal, or information from the journal has been lost, stolen, or used unlawfully.

§46-1-18. Liability.[103]

(1) A notary may be liable to any person for any damage to that person proximately caused by the notary's misconduct in performing a notarization.

(2) (a) A surety for a notary's bond may be liable to any person for damages proximately caused to that person by the notary's misconduct in performing a notarization, but the surety's liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants.

(b) Regardless of the number of claimants under Subsection (2)(a), a surety's total liability may not exceed the penalty of the bond.

(c) An employer of a notary public is also liable for damages proximately caused by the notary's misconduct in performing a notarization if:

(i) the notary public was acting within the course and scope of the notary public's employment; and

(ii) the employer had knowledge of, consented to, or permitted the misconduct.

(3) It is a class B misdemeanor, if not otherwise a criminal offense under this code, for:

(a) a notary to violate a provision of this chapter; or

(b) a notary's employer to solicit the notary to violate a provision of this chapter.

§46-1-19. Revocation or suspension.[104]

The lieutenant governor may revoke or suspend a notarial commission on any ground for which an application for a notarial commission may be denied under Section 46-1-3.

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[103] Utah Code 46-1-18 Amended by Chapter 192, 313, 2019 General Session

[104] Utah Code 46-1-19 Amended by Chapter 139, 2003 General Session

§46-1-20. Change of name or address – Bond policy rider.[105]

(1) Within 30 days after the day on which a notary changes the notary's name, the notary shall provide to the lieutenant governor:

(a) the notary's new name, including official documentation of the name change; and

(b) a bond policy rider that a notary obtains in accordance with Subsection (2).

(2) To obtain a bond policy rider, the notary shall:

(a) notify the surety for the notary's bond;

(b) obtain a bond policy rider reflecting both the old and new name of the notary;

(c) return the bond policy rider;

(d) destroy the original commission; and

(e) destroy the old official seal.

(3) A notary is not required to change the notary's name by adopting the surname of the notary's spouse.

(4) Within 30 days of the day on which a notary's residential or business address changes, the notary shall provide the notary's new residential or business address to the lieutenant governor.

§46-1-21. Resignation.[106]

(1) A notary who resigns a notarial commission shall provide to the lieutenant governor a notice indicating the effective date of resignation.

(2) A notary who ceases to reside in this state, who ceases to be employed in the state, or who becomes unable to read and write as provided in Section 46-1-3 shall resign the commission.

(3) A notary who resigns shall destroy the official seal and certificate in accordance with Subsection 46-1-16(9).

§46-1-22. Notice not invalidated.[107]

If a notarial act is performed contrary to or in violation of this chapter, that fact does not of itself invalidate notice to third parties of the contents of the document notarized.

[105] Utah Code 46-1-20 Amended by Chapter 259, 2017 General Session
[106] Utah Code 46-1-21 Amended by Chapter 167, 2021 General Session
[107] Utah Code 46-1-22 Enacted by Chapter 287, 1998 General Session