

**Senator Todd Weiler** proposes the following substitute bill:

**JUDICIARY RELATED AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to the judiciary.

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **20A-12-201**, as last amended by Laws of Utah 2014, Chapter 207

30 **78A-12-203**, as last amended by Laws of Utah 2013, Chapter 209

31 **78A-12-204**, as last amended by Laws of Utah 2011, Chapter 80

32 **78A-12-205**, as last amended by Laws of Utah 2011, Chapter 80

33 **78A-12-207**, as enacted by Laws of Utah 2014, Chapter 152



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

36 Section 1. Section **20A-12-201** is amended to read:

37 **20A-12-201. Judicial appointees -- Retention elections.**

38 (1) (a) Each judicial appointee to a court is subject to an unopposed retention election  
39 at the first general election held more than three years after the judge or justice was appointed.

40 (b) After the first retention election:

41 (i) each Supreme Court justice shall be on the regular general election ballot for an  
42 unopposed retention election every tenth year; and

43 (ii) each judge of other courts shall be on the regular general election ballot for an  
44 unopposed retention election every sixth year.

45 (2) (a) Each justice or judge of a court of record who wishes to retain office shall, in  
46 the year the justice or judge is subject to a retention election:

47 (i) file a declaration of candidacy with the lieutenant governor, or with the county clerk  
48 in the candidate's county of residence, within the period beginning on [~~April~~] July 1 and ending  
49 at 5 p.m. on [~~April~~] July 15 in the year of a regular general election; and

50 (ii) pay a filing fee of \$50.

51 (b) (i) Each justice court judge who wishes to retain office shall, in the year the justice  
52 court judge is subject to a retention election:

53 (A) file a declaration of candidacy with the lieutenant governor, or with the county  
54 clerk in the candidate's county of residence, within the period beginning on [~~April~~] July 1 and  
55 ending at 5 p.m. on [~~April~~] July 15 in the year of a regular general election; and

56 (B) pay a filing fee of \$25 for each judicial office.

57 (ii) If a justice court judge is appointed or elected to more than one judicial office, the  
58 declaration of candidacy shall identify all of the courts included in the same general election.

59 (iii) If a justice court judge is appointed or elected to more than one judicial office,  
60 filing a declaration of candidacy in one county in which one of those courts is located is valid  
61 for the courts in any other county.

62 (3) (a) The lieutenant governor shall, no later than August 31 of each regular general  
63 election year:

64 (i) transmit a certified list containing the names of the justices of the Supreme Court  
65 and judges of the Court of Appeals declaring their candidacy to the county clerk of each  
66 county; and

67 (ii) transmit a certified list containing the names of judges of other courts declaring  
68 their candidacy to the county clerk of each county in the geographic division in which the judge  
69 filing the declaration holds office.

70 (b) Each county clerk shall place the names of justices and judges standing for  
71 retention election in the nonpartisan section of the ballot.

72 (4) (a) At the general election, the ballots shall contain, as to each justice or judge of  
73 any court to be voted on in the county, the following question:

74 "Shall \_\_\_\_\_ (name of justice or judge) be retained in the  
75 office of \_\_\_\_\_? (name of office, such as "Justice of the Supreme  
76 Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the  
77 Third Judicial District"; "Judge of the Juvenile Court of the Fourth Juvenile Court District";  
78 "Justice Court Judge of (name of county) County or (name of municipality)")

79 Yes ()

80 No ()."

81 (b) If a justice court exists by means of an interlocal agreement under Section  
82 78A-7-102, the ballot question for the judge shall include the name of that court.

83 (5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge  
84 is retained for the term of office provided by law.

85 (b) If the justice or judge does not receive more yes votes than no votes, the justice or  
86 judge is not retained, and a vacancy exists in the office on the first Monday in January after the  
87 regular general election.

88 (6) A justice or judge not retained is ineligible for appointment to the office for which  
89 the justice or judge was defeated until after the expiration of that term of office.

90 (7) If a justice court judge is standing for retention for more than one office, the county  
91 clerk shall place the judge's name on the ballot separately for each office. If the justice court  
92 judge receives more no votes than yes votes in one office, but more yes votes than no votes in  
93 the other, the justice court judge shall be retained only in the office for which the judge  
94 received more yes votes than no votes.

95 Section 2. Section 78A-12-203 is amended to read:

96 **78A-12-203. Judicial performance evaluations.**

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

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

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

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

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

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

109 (c) courtroom observation;

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

111 (e) public comment solicited by the commission;

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

113 and

114 (g) any other factor that the commission:

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

117 (ii) establishes by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

165 (i) the date of the reconsideration;

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

168 (iii) a brief statement explaining the reconsideration.

169 (e) The commission shall submit revisions to the judge's evaluation report to the  
170 lieutenant governor by no later than August 31 of a regular general election year for publication  
171 in the voter information pamphlet, and publish the revisions on the commission's website, and  
172 through any other means the commission considers appropriate and within budgetary  
173 constraints.

174 [~~(6)~~] (7) (a) The commission shall compile a midterm report of [~~its~~] the commission's  
175 judicial performance evaluation of a judge.

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

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

181 the evaluated judge serves.

182 ~~[(7)]~~ (8) The commission may make rules in accordance with Title 63G, Chapter 3,  
183 Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by  
184 this section.

185 Section 3. Section **78A-12-204** is amended to read:

186 **78A-12-204. Judicial performance survey.**

187 (1) ~~[The]~~ A third party under contract to the commission shall conduct, on an ongoing  
188 basis during the judge's term in office, the judicial performance survey required by Section  
189 78A-12-203 concerning a judge who is subject to a retention election ~~[shall be conducted on an~~  
190 ~~ongoing basis during the judge's term in office by a third party under contract to the~~  
191 ~~commission].~~

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

- 194 (a) attorneys who have appeared before the judge as counsel;  
195 (b) jurors who have served in a case before the judge; and  
196 (c) court staff who have worked with the judge.

197 (3) The commission may include an additional classification of respondents if the  
198 commission:

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

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

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

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

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

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

- 212 (a) legal ability, including the following:
- 213 (i) demonstration of understanding of the substantive law and any relevant rules of  
214 procedure and evidence;
- 215 (ii) attentiveness to factual and legal issues before the court;
- 216 (iii) adherence to precedent and ability to clearly explain departures from precedent;
- 217 (iv) grasp of the practical impact on the parties of the judge's rulings, including the  
218 effect of delay and increased litigation expense;
- 219 (v) ability to write clear judicial opinions; and
- 220 (vi) ability to clearly explain the legal basis for judicial opinions;
- 221 (b) judicial temperament and integrity, including the following:
- 222 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's  
223 court;
- 224 (ii) maintenance of decorum in the courtroom;
- 225 (iii) demonstration of judicial demeanor and personal attributes that promote public  
226 trust and confidence in the judicial system;
- 227 (iv) preparedness for oral argument;
- 228 (v) avoidance of impropriety or the appearance of impropriety;
- 229 (vi) display of fairness and impartiality toward all parties; and
- 230 (vii) ability to clearly communicate, including the ability to explain the basis for  
231 written rulings, court procedures, and decisions; and
- 232 (c) administrative performance, including the following:
- 233 (i) management of workload;
- 234 (ii) sharing proportionally the workload within the court or district; and
- 235 (iii) issuance of opinions and orders without unnecessary delay.
- 236 (8) If the commission determines that a certain survey question or category of  
237 questions is not appropriate for a respondent group, the commission may omit that question or  
238 category of questions from the survey provided to that respondent group.
- 239 (9) (a) The survey shall allow respondents to indicate responses in a manner  
240 determined by the commission, which shall be:
- 241 (i) on a numerical scale from one to five~~[-with one representing inadequate~~  
242 ~~performance and five representing outstanding performance]~~; or



243 (ii) in the affirmative or negative, with an option to indicate the respondent's inability  
244 to respond in the affirmative or negative.

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

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

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

251 Section 4. Section **78A-12-205** is amended to read:

252 **78A-12-205. Minimum performance standards.**

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

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

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

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

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

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

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

267 (b) adopts the standard.

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

270 Section 5. Section **78A-12-207** is amended to read:

271 **78A-12-207. Evaluation of justice court judges.**

272 (1) The Judicial Performance Evaluation Commission shall:

273 (a) conduct a performance evaluation for each justice court judge in the third and fifth

274 year of the justice court judge's term;

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

276 (i) full evaluation;

277 (ii) midlevel evaluation; or

278 (iii) basic evaluation; and

279 (c) establish evaluation criteria for each of the three categories.

280 (2) A full evaluation justice court judge shall be subject to the requirements of [~~the~~  
281 ~~Judicial Performance Evaluation Commission Act~~] this chapter.

282 (3) A midlevel evaluation justice court judge shall be governed by [~~the Judicial~~  
283 ~~Performance Evaluation Commission Act~~] this chapter, except as provided below:

284 (a) the commission shall administer an [electronic] intercept survey [shall be  
285 administered by the commission] periodically outside the courtroom of the evaluated justice  
286 court judge in lieu of the survey specified in Section [78A-12-204](#); and

287 (b) courtroom observation may not be conducted for midlevel evaluation justice court  
288 judges.

289 (4) A basic evaluation justice court judge shall be governed by [~~the Judicial~~  
290 ~~Performance Evaluation Commission Act~~] this chapter, except as provided below:

291 (a) basic evaluation justice court judges shall comply with minimum performance  
292 standards for judicial education, judicial conduct, cases under advisement, and any other  
293 standards the commission may promulgate by administrative rule; and

294 (b) courtroom observation and surveys may not be conducted for basic evaluation  
295 justice court judges.