

**JUDICIAL PERFORMANCE EVALUATION COMMISSION****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 Judicial Performance Evaluation Commission.

**Highlighted Provisions:**

This bill:

- ▶ 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;
- ▶ 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:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) courtroom observation;

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

(e) public comment solicited by the commission;

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

(g) any other factor that the commission:

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

(ii) establishes by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the date of the reconsideration;

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

(iii) a brief statement explaining the reconsideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) legal ability, including the following:

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

152 procedure and evidence;

153 (ii) attentiveness to factual and legal issues before the court;

154 (iii) adherence to precedent and ability to clearly explain departures from precedent;

155 (iv) grasp of the practical impact on the parties of the judge's rulings, including the

156 effect of delay and increased litigation expense;

157 (v) ability to write clear judicial opinions; and

158 (vi) ability to clearly explain the legal basis for judicial opinions;

159 (b) judicial temperament and integrity, including the following:

160 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's

161 court;

162 (ii) maintenance of decorum in the courtroom;

163 (iii) demonstration of judicial demeanor and personal attributes that promote public

164 trust and confidence in the judicial system;

165 (iv) preparedness for oral argument;

166 (v) avoidance of impropriety or the appearance of impropriety;

167 (vi) display of fairness and impartiality toward all parties; and

168 (vii) ability to clearly communicate, including the ability to explain the basis for

169 written rulings, court procedures, and decisions; and

170 (c) administrative performance, including the following:

171 (i) management of workload;

172 (ii) sharing proportionally the workload within the court or district; and

173 (iii) issuance of opinions and orders without unnecessary delay.

174 (8) If the commission determines that a certain survey question or category of

175 questions is not appropriate for a respondent group, the commission may omit that question or

176 category of questions from the survey provided to that respondent group.

177 (9) (a) The survey shall allow respondents to indicate responses in a manner

178 determined by the commission, which shall be:

179 (i) on a numerical scale from one to five, with one representing inadequate

180 performance and five representing outstanding performance; or

181 (ii) in the affirmative or negative, with an option to indicate the respondent's inability

182 to respond in the affirmative or negative.

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

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

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

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

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

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

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

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

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

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

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

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

(b) adopts the standard.

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

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

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

(1) The Judicial Performance Evaluation Commission shall:

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

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

(i) full evaluation;

(ii) midlevel evaluation; or

(iii) basic evaluation; and

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

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

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

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

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

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

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

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

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**