

SHARED PARENTING

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides that temporary custody orders and temporary parent-time orders provide substantial equal parenting-time.

Highlighted Provisions:

This bill:

▶ provides substantially equal parent-time when a court makes a temporary custody or parent-time order, unless substantially equal parent-time is not in the best interest of the child;

▶ provides that if the court denies substantially equal parent-time, the court shall state in writing the reason for its denial; and

▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-10, as last amended by Laws of Utah 2010, Chapter 237

30-3-10.4, as last amended by Laws of Utah 2010, Chapter 228

78A-6-104, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

Section 1. Section **30-3-10** is amended to read:

30-3-10. Custody of children in case of separation or divorce -- Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, including temporary orders of custody or parent-time, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

- (i) the past conduct and demonstrated moral standards of each of the parties;
- (ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent;
- (iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child; and
- (iv) those factors outlined in Section 30-3-10.2.

(b) The court shall, in every case, consider joint custody but may award any form of custody which is determined to be in the best interest of the child.

(c) The court shall, in every case a temporary order of custody or parent-time is issued, provide substantially equal parent-time for both parties, unless substantially equal parent-time is not in the best interest of the child. If substantially equal parent-time is denied, the court shall state on the record in writing its reasons for the denial.

~~(e)~~ (2) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

~~(d)~~ (a) The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. The desires of a child 16 years of age or older shall be given added weight, but is not the single controlling factor.

59 ~~[(e)]~~ (b) If interviews with the children are conducted by the court pursuant to
60 Subsection ~~[(1)(d)]~~ (2)(a), they shall be conducted by the judge in camera. The prior consent of
61 the parties may be obtained but is not necessary if the court finds that an interview with the
62 children is the only method to ascertain the child's desires regarding custody.

63 ~~[(2)]~~ (3) In awarding custody, the court shall consider, among other factors the court
64 finds relevant, which parent is most likely to act in the best interests of the child, including
65 allowing the child frequent and continuing contact with the noncustodial parent as the court
66 finds appropriate.

67 ~~[(3)]~~ (4) If the court finds that one parent does not desire custody of the child, the court
68 shall take that evidence into consideration in determining whether to award custody to the other
69 parent.

70 ~~[(4)]~~ (5) (a) Except as provided in Subsection ~~[(4)]~~ (5)(b), a court may not discriminate
71 against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or
72 determining whether a substantial change has occurred for the purpose of modifying an award
73 of custody.

74 (b) If a court takes a parent's disability into account in awarding custody or determining
75 whether a substantial change has occurred for the purpose of modifying an award of custody,
76 the parent with a disability may rebut any evidence, presumption, or inference arising from the
77 disability by showing that:

78 (i) the disability does not significantly or substantially inhibit the parent's ability to
79 provide for the physical and emotional needs of the child at issue; or

80 (ii) the parent with a disability has sufficient human, monetary, or other resources
81 available to supplement the parent's ability to provide for the physical and emotional needs of
82 the child at issue.

83 (c) Nothing in this section may be construed to apply to adoption proceedings under
84 Title 78B, Chapter 6, Part 1, Utah Adoption Act.

85 ~~[(5)]~~ (6) This section establishes neither a preference nor a presumption for or against
86 joint legal custody, joint physical custody or sole custody, but allows the court and the family
87 the widest discretion to choose a parenting plan that is in the best interest of the child.

88 Section 2. Section **30-3-10.4** is amended to read:

89 **30-3-10.4. Modification or termination of order.**

90 (1) On the petition of one or both of the parents, or the joint legal or physical
91 custodians if they are not the parents, the court may, after a hearing, modify or terminate an
92 order that established joint legal or physical custody if:

93 (a) the verified petition or accompanying affidavit initially alleges that admissible
94 evidence will show that the circumstances of the child or one or both parents or joint legal or
95 physical custodians have materially and substantially changed since the entry of the order to be
96 modified;

97 (b) a modification of the terms and conditions of the order would be an improvement
98 for and in the best interest of the child; and

99 (c) (i) both parents have complied in good faith with the dispute resolution procedure
100 in accordance with Subsection 30-3-10.3(7); or

101 (ii) if no dispute resolution procedure is contained in the order that established joint
102 legal or physical custody, the court orders the parents to participate in a dispute resolution
103 procedure in accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good
104 faith, they have utilized a dispute resolution procedure to resolve their dispute.

105 (2) (a) In determining whether the best interest of a child will be served by either
106 modifying or terminating the joint legal or physical custody order, the court shall, in addition to
107 other factors the court considers relevant, consider the factors outlined in Section 30-3-10 and
108 Subsection 30-3-10.2(2).

109 (b) The court shall make specific written findings on each of the factors relied upon
110 stating:

111 (i) a material and substantial change of circumstance has occurred; and

112 (ii) a modification of the terms and conditions of the order would be an improvement
113 for and in the best interest of the child.

114 (c) The court shall give substantial weight to the existing joint legal or physical custody
115 order when the child is thriving, happy, and well-adjusted.

116 (3) The court shall, in every case regarding a petition for termination of a joint legal or
117 physical custody order, consider reasonable alternatives to preserve the existing order in
118 accordance with Subsection 30-3-10(1)(b). The court may modify the terms and conditions of
119 the existing order in accordance with ~~Subsection~~ Section 30-3-10~~(5)~~ and may order the
120 parents to file a parenting plan in accordance with this chapter.

121 (4) A parent requesting a modification from sole custody to joint legal custody or joint
122 physical custody or both, or any other type of shared parenting arrangement, shall file and serve
123 a proposed parenting plan with the petition to modify in accordance with Section 30-3-10.8.

124 (5) If the court finds that an action under this section is filed or answered frivolously
125 and in a manner designed to harass the other party, the court shall assess attorney fees as costs
126 against the offending party.

127 Section 3. Section **78A-6-104** is amended to read:

128 **78A-6-104. Concurrent jurisdiction -- District court and juvenile court.**

129 (1) The district court or other court has concurrent jurisdiction with the juvenile court
130 as follows:

131 (a) when a person who is 18 years of age or older and who is under the continuing
132 jurisdiction of the juvenile court under Section 78A-6-117 violates any federal, state, or local
133 law or municipal ordinance; and

134 (b) in establishing paternity and ordering testing for the purposes of establishing
135 paternity, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, with regard
136 to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5,
137 Termination of Parental Rights Act.

138 (2) The juvenile court has jurisdiction over petitions to modify a minor's birth
139 certificate if the court otherwise has jurisdiction over the minor.

140 (3) This section does not deprive the district court of jurisdiction to appoint a guardian
141 for a child, or to determine the support, custody, and parent-time of a child upon writ of habeas
142 corpus or when the question of support, custody, and parent-time is incidental to the
143 determination of a cause in the district court.

144 (4) (a) Where a support, custody, or parent-time award has been made by a district
145 court in a divorce action or other proceeding, and the jurisdiction of the district court in the
146 case is continuing, the juvenile court may acquire jurisdiction in a case involving the same
147 child if the child is dependent, abused, neglected, or otherwise comes within the jurisdiction of
148 the juvenile court under Section 78A-6-103.

149 (b) The juvenile court may, by order, change the custody, subject to Subsection
150 30-3-10[(4)](5), support, parent-time, and visitation rights previously ordered in the district
151 court as necessary to implement the order of the juvenile court for the safety and welfare of the

152 child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court
153 continues.

154 (c) When a copy of the findings and order of the juvenile court has been filed with the
155 district court, the findings and order of the juvenile court are binding on the parties to the
156 divorce action as though entered in the district court.

157 (5) The juvenile court has jurisdiction over questions of custody, support, and
158 parent-time, of a minor who comes within the court's jurisdiction under this section or Section
159 78A-6-103.

Legislative Review Note
as of 2-8-12 10:21 AM

Office of Legislative Research and General Counsel