

**CUSTODY AND VISITATION RIGHTS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kyle R. Andersen**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to custody and visitation rights of a person other than a parent.

**Highlighted Provisions:**

This bill:

- ▶ amends the factors a court considers in granting visitation rights to grandparents;
- ▶ amends provisions regarding when a court may inquire of and take into account a grandchild's desires regarding visitation;
- ▶ amends provisions regarding custody and visitation rights for a person other than a parent; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-5-2**, as last amended by Laws of Utah 2005, Chapter 129

**30-5a-103**, as and further amended by Revisor Instructions, Laws of Utah 2018, Chapter 446



28

29 *Be it enacted by the Legislature of the state of Utah:*30 Section 1. Section **30-5-2** is amended to read:31 **30-5-2. Visitation rights of grandparents.**32 (1) (a) Grandparents have standing to bring an action in district court by petition,  
33 requesting visitation in accordance with the provisions and requirements of this section.34 (b) Grandparents may also file a petition for visitation rights in a pending divorce  
35 proceeding or other proceeding involving custody and visitation issues.36 [~~(2) There is a rebuttable presumption that a parent's decision with regard to~~  
37 ~~grandparent visitation is in the grandchild's best interests. However, the court may override the~~  
38 ~~parent's decision and grant the petitioner reasonable rights of visitation if the court finds that~~  
39 ~~the petitioner has rebutted the presumption based upon factors which the court considers to be~~  
40 ~~relevant, such as whether:]~~41 (2) (a) Parents retain the fundamental right and duty to exercise primary control over  
42 the care, supervision, upbringing, and education of their children.43 (b) There is a rebuttable presumption that a parent's decision with regard to  
44 grandparent visitation is in the grandchild's best interest.45 (c) A court may find the presumption in Subsection (2)(b) rebutted and grant a  
46 petitioner described in Subsection (1) reasonable rights of visitation if the court finds that the  
47 petitioner, by clear and convincing evidence, establishes:48 ~~[(a)]~~ (i) (A) the petitioner is a fit and proper person to have visitation with the  
49 grandchild;50 ~~[(b) visitation with the grandchild has been denied or unreasonably limited;]~~51 ~~[(c) the parent is unfit or incompetent;]~~52 ~~[(d)]~~ (B) the petitioner has substantially acted as the grandchild's custodian or  
53 caregiver, or [otherwise has had a substantial relationship with the grandchild, and] has had a  
54 substantial custodian or caregiver-like relationship with the grandchild;55 (C) the loss or cessation of [that] the relationship described in Subsection (2)(c)(i)(B)  
56 is likely to cause substantial harm to the grandchild; and57 ~~[(e) the petitioner's child, who is a parent of the grandchild, has died, or has become a~~  
58 ~~noncustodial parent through divorce or legal separation;]~~

59 ~~[(f) the petitioner's child, who is a parent of the grandchild, has been missing for an~~  
60 ~~extended period of time; or]~~

61 ~~[(g)]~~ (D) visitation is in the best interest of the grandchild~~[-]; or~~

62 (ii) (A) the petitioner is a fit and proper person to have visitation with the grandchild;

63 and

64 (B) both parents are unfit or incompetent.

65 (3) The adoption of a grandchild by the grandchild's stepparent does not diminish or  
66 alter visitation rights previously ordered under this section.

67 (4) Subject to the provisions of Subsections (2) and (3) and if the grandchild is 14 years  
68 of age or older, the court may inquire of the grandchild and take into account the grandchild's  
69 desires regarding visitation.

70 (5) On the petition of a grandparent or the legal custodian of a grandchild the court  
71 may, after a hearing, modify an order regarding grandparent visitation if:

72 (a) the circumstances of the grandchild, the grandparent, or the custodian have  
73 materially and substantially changed since the entry of the order to be modified, or the order  
74 has become unworkable or inappropriate under existing circumstances; and

75 (b) the court determines that a modification is appropriate based upon the factors set  
76 forth in Subsection (2).

77 (6) Grandparents may petition the court to remedy a parent's wrongful noncompliance  
78 with a visitation order.

79 Section 2. Section **30-5a-103** is amended to read:

80 **30-5a-103. Custody and visitation for persons other than a parent.**

81 (1) (a) In accordance with Section [62A-4a-201](#), it is the public policy of this state that  
82 parents retain the fundamental right and duty to exercise primary control over the care,  
83 supervision, upbringing, and education of their children.

84 (b) There is a rebuttable presumption that a parent's decisions are in the child's best  
85 interests.

86 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or  
87 visitation rights to a person other than a parent who, by clear and convincing evidence, has  
88 established all of the following:

89 (a) the person has intentionally assumed the role and obligations of a parent;

90 (b) the person and the child have formed [~~an~~] a substantial emotional bond and created  
91 a parent-child type relationship;

92 (c) the person substantially contributed emotionally [~~or~~] and financially to the child's  
93 well being;

94 (d) assumption of the parental role is not the result of a financially compensated  
95 surrogate care arrangement;

96 (e) continuation of the relationship between the person and the child would be in the  
97 child's best interests;

98 (f) loss or cessation of the relationship between the person and the child would [~~be~~  
99 ~~detrimental to~~] substantially harm the child; and

100 [~~(g) the parent:~~]

101 (g) both parents:

102 (i) [~~is~~] are absent; or

103 (ii) (A) [is] are found by a court to have abused or neglected the child[-]; and

104 (B) have had their parental rights terminated.

105 (3) A proceeding under this chapter may be commenced by filing a verified petition, or  
106 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district  
107 court in the county in which the child:

108 (a) currently resides; or

109 (b) lived with a parent or a person other than a parent who acted as a parent within six  
110 months before the commencement of the action.

111 (4) A proceeding under this chapter may be filed in a pending divorce, parentage  
112 action, or other proceeding, including a proceeding in the juvenile court, involving custody of  
113 or visitation with a child.

114 (5) The petition shall include detailed facts supporting the petitioner's right to file the  
115 petition including the criteria set forth in Subsection (2) and residency information as set forth  
116 in Section [78B-13-209](#).

117 (6) A proceeding under this chapter may not be filed against a parent who is actively  
118 serving outside the state in any branch of the military.

119 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with  
120 the rules of civil procedure on all of the following:

- 121 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;
- 122 (b) any person who has court-ordered custody or visitation rights;
- 123 (c) the child's guardian;
- 124 (d) the guardian ad litem, if one has been appointed;
- 125 (e) a person or agency that has physical custody of the child or that claims to have
- 126 custody or visitation rights; and
- 127 (f) any other person or agency that has previously appeared in any action regarding
- 128 custody of or visitation with the child.
- 129 (8) The court may order a custody evaluation to be conducted in any action brought
- 130 under this chapter.
- 131 (9) The court may enter temporary orders in an action brought under this chapter
- 132 pending the entry of final orders.
- 133 (10) Except as provided in Subsection (11), a court may not grant custody of a child
- 134 under this section to an individual who is not the biological or adoptive parent of the child and
- 135 who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a
- 136 felony or attempted felony involving conduct that constitutes any of the following:
- 137 (a) child abuse, as described in Section [76-5-109](#);
- 138 (b) child abuse homicide, as described in Section [76-5-208](#);
- 139 (c) child kidnapping, as described in Section [76-5-301.1](#);
- 140 (d) human trafficking of a child, as described in Section [76-5-308.5](#);
- 141 (e) sexual abuse of a minor, as described in Section [76-5-401.1](#);
- 142 (f) rape of a child, as described in Section [76-5-402.1](#);
- 143 (g) object rape of a child, as described in Section [76-5-402.3](#);
- 144 (h) sodomy on a child, as described in Section [76-5-403.1](#);
- 145 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
- 146 Section [76-5-404.1](#);
- 147 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); or
- 148 (k) an offense in another state that, if committed in this state, would constitute an
- 149 offense described in this Subsection (10).
- 150 (11) (a) For purpose of this Subsection (11), "disqualifying offense" means an offense
- 151 listed in Subsection (10) that prevents a court from granting custody except as provided in this

152 Subsection (11).

153 (b) A person described in Subsection (10) may only be considered for custody of a  
154 child if the following criteria are met by clear and convincing evidence:

155 (i) the person is a relative, as defined in Section 78A-6-307, of the child;

156 (ii) at least 10 years have elapsed from the day on which the person is successfully  
157 released from prison, jail, parole, or probation related to a disqualifying offense;

158 (iii) during the 10 years before the day on which the person files a petition with the  
159 court seeking custody the person has not been convicted, plead guilty, or plead no contest to an  
160 offense greater than an infraction or traffic violation that would likely impact the health, safety,  
161 or well-being of the child;

162 (iv) the person can provide evidence of successful treatment or rehabilitation directly  
163 related to the disqualifying offense;

164 (v) the court determines that the risk related to the disqualifying offense is unlikely to  
165 cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any  
166 time in the future when considering all of the following:

167 (A) the child's age;

168 (B) the child's gender;

169 (C) the child's development;

170 (D) the nature and seriousness of the disqualifying offense;

171 (E) the preferences of a child 12 years of age or older;

172 (F) any available assessments, including custody evaluations, parenting assessments,  
173 psychological or mental health assessments, and bonding assessments; and

174 (G) any other relevant information;

175 (vi) the person can provide evidence of the following:

176 (A) the relationship with the child is of long duration;

177 (B) that an emotional bond exists with the child; and

178 (C) that custody by the person who has committed the disqualifying offense ensures the  
179 best interests of the child are met;

180 (vii) (A) there is no other responsible relative known to the court who has or likely  
181 could develop an emotional bond with the child and does not have a disqualifying offense; or

182 (B) if there is a responsible relative known to the court that does not have a

183 disqualifying offense, Subsection (11)(d) applies; and

184 (viii) that the continuation of the relationship between the person with the disqualifying  
185 offense and the child could not be sufficiently maintained through any type of visitation if  
186 custody were given to the relative with no disqualifying offense described in Subsection  
187 (11)(d).

188 (c) The person with the disqualifying offense bears the burden of proof regarding why  
189 placement with that person is in the best interest of the child over another responsible relative  
190 or equally situated person who does not have a disqualifying offense.

191 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known  
192 to the court who does not have a disqualifying offense:

193 (i) preference for custody is given to a relative who does not have a disqualifying  
194 offense; and

195 (ii) before the court may place custody with the person who has the disqualifying  
196 offense over another responsible, willing, and able relative:

197 (A) an impartial custody evaluation shall be completed; and

198 (B) a guardian ad litem shall be assigned.

199 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017 for which a  
200 final decision on custody has not been made and to a case filed on or after March 25, 2017.