

1 PARENT-TIME SCHEDULE AMENDMENTS

2 2015 GENERAL SESSION

3 STATE OF UTAH

4

5 LONG TITLE

6 General Description:

7 This bill creates an optional parent-time schedule that may result in joint physical
8 custody.

9 Highlighted Provisions:

10 This bill:

- 11 ▶ creates an optional parent-time schedule that may result in joint physical custody;
- 12 ▶ provides a schedule of 145 nights;
- 13 ▶ sets holiday schedules; and
- 14 ▶ provides for specific elections by the noncustodial parent.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 None

19 Utah Code Sections Affected:

20 AMENDS:

21 30-3-34, as last amended by Laws of Utah 2008, Chapter 146

22 ENACTS:

23 30-3-35.1, Utah Code Annotated 1953

24

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

26 Section 1. Section 30-3-34 is amended to read:

27 **30-3-34. Best interests -- Rebuttable presumption.**

28 (1) If the parties are unable to agree on a parent-time schedule, the court may establish
29 a parent-time schedule consistent with the best interests of the child.

30 (2) The advisory guidelines as provided in Section 30-3-33 and the parent-time
31 schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be presumed to be in the best
32 interests of the child unless the court determines that Section 30-3-35.1 should apply. The

33 parent-time schedule shall be considered the minimum parent-time to which the noncustodial
34 parent and the child shall be entitled unless a parent can establish otherwise by a preponderance
35 of the evidence that more or less parent-time should be awarded based upon any of the
36 following criteria:

37 (a) parent-time would endanger the child's physical health or significantly impair the
38 child's emotional development;

39 (b) the distance between the residency of the child and the noncustodial parent;

40 (c) a substantiated or unfounded allegation of child abuse has been made;

41 (d) the lack of demonstrated parenting skills without safeguards to ensure the child's
42 well-being during parent-time;

43 (e) the financial inability of the noncustodial parent to provide adequate food and
44 shelter for the child during periods of parent-time;

45 (f) the preference of the child if the court determines the child to be of sufficient
46 maturity;

47 (g) the incarceration of the noncustodial parent in a county jail, secure youth
48 corrections facility, or an adult corrections facility;

49 (h) shared interests between the child and the noncustodial parent;

50 (i) the involvement or lack of involvement of the noncustodial parent in the school,
51 community, religious, or other related activities of the child;

52 (j) the availability of the noncustodial parent to care for the child when the custodial
53 parent is unavailable to do so because of work or other circumstances;

54 (k) a substantial and chronic pattern of missing, canceling, or denying regularly
55 scheduled parent-time;

56 (l) the minimal duration of and lack of significant bonding in the parents' relationship
57 prior to the conception of the child;

58 (m) the parent-time schedule of siblings;

59 (n) the lack of reasonable alternatives to the needs of a nursing child; and

60 (o) any other criteria the court determines relevant to the best interests of the child.

61 (3) The court shall enter the reasons underlying its order for parent-time that:

62 (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or

63 (b) provides more or less parent-time than a parent-time schedule provided in Section

64 30-3-35 or 30-3-35.5.

65 (4) Once the parent-time schedule has been established, the parties may not alter the
66 schedule except by mutual consent of the parties or a court order.

67 Section 2. Section **30-3-35.1** is enacted to read:

68 **30-3-35.1. Optional schedule for parent-time for children 5 to 18 years of age.**

69 (1) The optional parent-time schedule in this section applies to children 5 to 18 years of
70 age. This schedule is 145 overnights, which may result in joint physical custody.

71 (2) The parents and the court may consider the following increased parent-time
72 schedule as a minimum when the parties agree or the noncustodial parent can demonstrate the
73 following:

74 (a) the noncustodial parent has been actively involved in the child's life;

75 (b) the parties are able to communicate effectively regarding the child, or the
76 noncustodial parent has a plan to accomplish effective communications regarding the child;

77 (c) the noncustodial parent has the ability to facilitate the increased parent-time;

78 (d) the increased parent-time would be in the best interest of the child; and

79 (e) any other factor the court considers relevant.

80 (3) In determining whether a noncustodial parent has been actively involved in the
81 child's life, the court shall consider:

82 (a) demonstrated responsibility in caring for the child;

83 (b) involvement in day care;

84 (c) presence or volunteer efforts in the child's school and at extra curricular activities;

85 (d) assistance with the child's homework;

86 (e) involvement in preparation of meals, bath time, and bed time for the child;

87 (f) bonding with the child; and

88 (g) any other factor the court considers relevant.

89 (4) In determining whether a noncustodial parent has the ability to facilitate the
90 increased parent-time, the court shall consider:

91 (a) the geographic distance between the residences of the parents and the distance
92 between the parents' residences and the child's school;

93 (b) the noncustodial parent's ability to assist with after school care;

94 (c) the health of the child and the noncustodial parent, consistent with Subsection

95 30-3-10(4);

96 (d) flexibility of employment or other schedule of the parents;

97 (e) ability to provide appropriate play time with the child;

98 (f) history and ability of parents to implement a flexible schedule for the child;

99 (g) physical facilities of the noncustodial parent's residence; and

100 (h) any other factor the court considers relevant.

101 (5) Any elections required to be made in accordance with this section by either parent

102 concerning parent-time shall be made a part of the decree and made a part of the parent-time

103 order. Elections may only be changed by mutual agreement, court order, or by the noncustodial

104 parent in the event of a change in the child's schedule.

105 (6) If the parties agree or the court enters an order for the optional parent-time schedule

106 as set forth in this section, which may result in joint physical custody, a parenting plan in

107 compliance with Sections 30-1-10.7 through 30-3-10.10 shall be filed with any order

108 incorporating the following optional parent-time schedule.

109 (a) One weekday, to be specified by the noncustodial parent or the court, or on

110 Wednesday, if not specified, from 5:30 p.m. until the following day when delivering the child

111 to school, or until 8 a.m., if there is no school the following day. Once the election of the

112 weekday is made, it may only be changed in accordance with Subsection (5). At the election of

113 the noncustodial parent:

114 (i) one weekday parent-time may commence at the time the child's school is regularly

115 dismissed; and

116 (ii) if school is not in session, and the parent is available to be with the child, weekday

117 parent-time may commence at approximately 8 a.m., accommodating the custodial parent's

118 work schedule.

119 (b) Alternating weekends beginning on the first weekend after the entry of the decree

120 from 6 p.m. on Friday until Monday when delivering the child to school, or until 8 a.m. if there

121 is no school on Monday. At the election of the noncustodial parent, parent-time may

122 commence:

123 (i) from the time the child's school is regularly dismissed on Friday; or

124 (ii) if school is not in session, and if the noncustodial parent is available to be with the

125 child, at approximately 8 a.m. Friday, accommodating the custodial parent's work schedule.

126 (c) The provisions of Subsections 30-3-35(2)(f) through (o) shall be incorporated here
127 and constitute the parent-time schedule with the exception that all instances that require the
128 noncustodial parent to return the child at any time after 6 p.m. be changed so that the
129 noncustodial parent is required to return the child to school the next morning or at 8 a.m., if
130 there is no school.

131 (7) A stepparent, grandparent, or other responsible adult designated by the noncustodial
132 parent may pick up the child if the custodial parent is aware of the identity of the individual,
133 and if the noncustodial parent will be with the child by 7 p.m.

134 (8) Weekends include any "snow" days, teacher development days, or other days when
135 school is not scheduled and that are contiguous to the weekend period.

136 (9) Holidays include any "snow" days, teacher development days after the children
137 begins the school year, or other days when school is not scheduled, contiguous to the holiday
138 period, and take precedence over weekend parent-time. Changes may not be made to the
139 regular rotation of the alternating weekend parent-time schedule.

140 (a) If a holiday falls on a school day, the noncustodial parent shall be responsible for
141 the child's attendance at school for that school day.

142 (b) If a holiday falls on a weekend or on a Friday or Monday and the total holiday
143 period extends beyond that time so that the child is free from school and the parent is free from
144 work, the noncustodial parent shall be entitled to this lengthier holiday period.

145 (c) At the election of the noncustodial parent, parent-time over a scheduled holiday
146 weekend may begin from the time the child's school is dismissed at the beginning of the
147 holiday weekend or, if school is not in session, and if the noncustodial parent is available to be
148 with the child, parent-time over a scheduled holiday weekend may begin at approximately 8
149 a.m., accommodating the custodial parent's work schedule, unless the court directs the
150 application of Subsection (6)(a).

151 (10) Birthdays take precedence over holidays and extended parent-time, except
152 Mother's Day and Father's Day. Birthdays do not take precedence over uninterrupted
153 parent-time if the parent exercising uninterrupted time is out of town for the uninterrupted
154 extended parent-time. At the discretion of the noncustodial parent, other siblings may be taken
155 along for birthdays.

156 (11) Notwithstanding Subsection (9)(b), the Halloween holiday may not be extended

157 beyond the hours designated in Subsection 30-3-35(2)(g)(vi).