

COURT INTERVIEWS OF CHILDREN

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

AN ACT RELATING TO HUSBAND AND WIFE; PROVIDING FOR CHILDREN IN DIVORCE CASES TO BE PRIVATELY INTERVIEWED BY THE JUDGE WITH THE CONSENT OF THE PARTIES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

30-3-10, as last amended by Chapter 43, Laws of Utah 1997

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. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties.

The court may inquire of the children and take into consideration the children's desires regarding ~~the~~ future custody or visitation schedules, but the expressed desires are not controlling and the court may determine the children's custody **h OR VISITATION h** otherwise. Interviews with the children may be

conducted by the judge in camera h ONLY h with the h PRIOR h consent of the parties.

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

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in

28 determining whether to award custody to the other parent.

29 (4) (a) A court may not discriminate against a parent due to a disability, as defined in
30 Section 57-21-2, in awarding custody or determining whether a substantial change has occurred
31 for the purpose of modifying an award of custody.

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

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

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

41 (c) Nothing in this section may be construed to apply to:

42 (i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and
43 Family Services, or Title 78, Chapter 3a, Juvenile Courts; or

44 (ii) adoption proceedings under Title 78, Chapter 30, Adoption.

Legislative Review Note
as of 11-4-98 2:28 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Judiciary Interim Committee recommended this bill.