

1 **DIVORCE LAW - CUSTODY AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Terry R. Spencer**

5 AN ACT RELATING TO HUSBAND AND WIFE; REQUIRING THAT THE COURT MAKE
6 SPECIFIC DETERMINATIONS AND FINDINGS REGARDING JOINT CUSTODY IN
7 DIVORCE ACTIONS.

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

9 AMENDS:

10 **30-3-10.2**, as last amended by Chapter 174, Laws of Utah 1997

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

12 Section 1. Section **30-3-10.2** is amended to read:

13 **30-3-10.2. Joint legal and physical custody order -- Factors for court determination**
14 **-- Public assistance.**

15 (1) The court may order joint legal custody if it determines that joint legal custody is in
16 the best interest of the child and:

17 (a) both parents agree to an order of joint legal custody; or

18 (b) both parents appear to be physically and emotionally capable of implementing joint
19 legal and physical custody, and it is requested by one of the parents.

20 (2) The burden is on the party opposing joint legal and physical custody to prove the
21 parents are not capable of implementing joint legal and physical custody.

22 [~~(2)~~] (3) In determining whether the best interest of a child will be served by ordering joint
23 legal and physical custody, the court shall consider the following factors:

24 (a) whether the physical, psychological, and emotional needs and development of the child
25 will benefit from joint legal custody;

26 (b) the ability of the parents to give first priority to the welfare of the child and reach
27 shared decisions in the child's best interest;

28 (c) whether each parent is capable of encouraging and accepting a positive relationship
29 between the child and the other parent;

30 (d) whether both parents participated in raising the child before the divorce;

31 (e) the geographical proximity of the homes of the parents;

32 (f) the preference of the child if the child is of sufficient age and capacity to reason so as
33 to form an intelligent preference as to joint [legal] custody;

34 (g) the maturity of the parents and their willingness and ability to protect the child from
35 conflict that may arise between the parents; and

36 (h) any other factors the court finds relevant.

37 [(3)] (4) The determination of the best interest of the child shall be by a preponderance of
38 the evidence.

39 [(4)] (5) The court shall inform both parties that:

40 (a) an order for joint legal custody may preclude eligibility for cash assistance provided
41 under Title 35A, Chapter 3, Employment Support Act; and

42 (b) if cash assistance is required for the support of children of the parties at any time
43 subsequent to an order of joint legal custody, the order may be terminated under Section 30-3-10.4.

44 [(5)] (6) The court may order that where possible the parties attempt to settle future
45 disputes by a dispute resolution method before seeking enforcement or modification of the terms
46 and conditions of the order of joint legal custody through litigation, except in emergency situations
47 requiring ex parte orders to protect the child.

48 (7) The court shall in all custody cases determine and make specific findings concerning
49 whether joint physical custody can be implemented by the parties, given the physical location of
50 the residence of the parties. If the parties are capable of implementing joint physical custody, the
51 court shall order joint legal and physical custody unless the court, supported by specific findings,
52 finds the interests of the children will not be served by joint legal and physical custody.

Legislative Review Note

as of 2-3-99 4:15 PM

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

Office of Legislative Research and General Counsel