

**PARENT-TIME AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: James A. Ferrin**

**This act modifies provisions relating to divorce and parent-time. It prohibits courts from considering gender when determining custody in a divorce and specifies considerations for the court in determining parent-time. In addition, this act revises the parent-time sanctions found in the Judicial Code.**

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

AMENDS:

**30-3-10**, as last amended by Chapter 302, Laws of Utah 2002

REPEALS AND REENACTS:

**78-32-12.2**, as last amended by Chapter 255, Laws of Utah 2001

*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 custody, the court shall consider the best interests of the child [~~and the past conduct and demonstrated moral standards of each of the parties~~].

(b) 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.

(c) 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



28 controlling and the court may determine the children's custody or parent-time otherwise. The  
29 desires of a child 16 years of age or older shall be given added weight, but is not the single  
30 controlling factor.

31 (d) Interviews with the children may be conducted by the judge in camera only with the  
32 prior consent of the parties.

33 (2) In determining and awarding custody, the court shall consider~~[, among other factors~~  
34 ~~the court finds relevant,];~~

35 (a) which parent is most likely to act in the best interests of the child, including  
36 allowing the child frequent and continuing contact with the noncustodial parent [~~as the court~~  
37 ~~finds appropriate.];~~

38 (b) the past conduct and demonstrated moral standards of each of the parties;

39 (c) the financial stability of the parties;

40 (d) past criminal convictions of either party;

41 (e) past drug or alcohol abuse of either party; and

42 (f) any other factors the court finds relevant.

43 (3) The court may not consider the gender of the parties in determining custody.

44 [~~3~~] (4) If the court finds that one parent does not desire custody of the child, or has  
45 attempted to permanently relinquish custody to a third party, it shall take that evidence into  
46 consideration in determining whether to award custody to the other parent.

47 [~~4~~] (5) (a) A court may not discriminate against a parent due to a disability, as defined  
48 in Section 57-21-2, in awarding custody or determining whether a substantial change has  
49 occurred for the purpose of modifying an award of custody.

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

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

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

59 (c) Nothing in this section may be construed to apply to:  
60 (i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and  
61 Family Services, or Title 78, Chapter 3a, Juvenile Court Act of 1996; or

62 (ii) adoption proceedings under Title 78, Chapter 30, Adoption.  
63 Section 2. Section **78-32-12.2** is repealed and reenacted to read:

64 **78-32-12.2. Definitions -- Sanctions.**

65 (1) For purposes of this section:

66 (a) "Make up parent-time" means parent-time which is:

67 (i) of the same type and duration of parent-time as that which was denied, including  
68 parent-time during weekdays, weekends, holidays, and during extended parent-time periods;

69 (ii) to be made up within one year after the court has entered its order of make up  
70 parent-time; and

71 (iii) in the manner chosen by the aggrieved parent if it is in the best interest of the  
72 child.

73 (b) "Parent-time enforcement order" means an order to enforce compliance with a  
74 parent-time order through the use of sanctions.

75 (c) "Substantial noncompliance" means:

76 (i) conduct which significantly interferes with a court-ordered parent-time schedule;

77 (ii) conduct which interferes with parent's right to frequent, meaningful, and continuing  
78 access with his child and which significantly impairs the parent-child relationship; or

79 (iii) a conviction under Section 76-5-303.

80 (2) Either parent may petition the court for an order enforcing a parent-time order.

81 (3) Upon receipt of an initial petition, the court shall hold a hearing to determine by a  
82 preponderance of the evidence whether there has been a substantial noncompliance with the  
83 parent-time order.

84 (4) Upon a finding of substantial noncompliance, the court shall order:

85 (a) actual costs including actual attorney fees and court costs to the prevailing party;

86 (b) make up parent-time for the aggrieved parent and child;

87 (c) a minimum of ten hours of compensatory service as provided in Subsection

88 78-32-12.1(1)(a); and

89 (d) a permanent injunction enjoining the noncompliance with the court's parent-time

90 order.

91 (5) Upon a finding of substantial noncompliance, the court may order:

92 (a) mediation with the requirement to report back to the court on the results of  
93 mediation within 30 days;

94 (b) participation in workshops, classes, or individual counseling to educate the parent  
95 about the importance of providing the child with a continuing relationship with both parents as  
96 provided in Subsection 78-32-12.1(1)(b); or

97 (c) a temporary change of custody for a duration to be determined by the court if it is in  
98 the best interests of the child.

99 (6) If the court found substantial noncompliance in the first petition and a second  
100 petition is filed within five years of the initial petition against the same party the initial petition  
101 was filed against, the court may order increased sanctions that include:

102 (a) up to 20 hours of compensatory service as provided in Subsection 78-32-12.1(1)(a);

103 (b) make up parent-time for the aggrieved party and child at twice the amount of time  
104 previously wrongfully denied and under the same conditions as provided in Subsection  
105 78-32-12.2(1)(a);

106 (c) a permanent change of custody if it is in the best interests of the child;

107 (d) jail time or incarceration for up to ten days; or

108 (e) any other orders the court determines necessary to enforce a parent-time order.

109 (7) If the court found substantial noncompliance in the first and second petition and a  
110 third petition is brought against the same party within five years of the second petition and the  
111 court declines to issue an order with increased sanctions although the petitioner has met the  
112 burden of proof, the court shall provide findings on the record explaining why increased  
113 sanctions were not imposed.

114 (8) The noncustodial parent shall give the court and the custodial parent written notice  
115 of his intention to exercise the make up parent-time at least seven days before the proposed  
116 visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is  
117 to be on a holiday or an extended parent-time period.

118 (9) The court shall suspend any proceedings under Section 78-32-12.2 if substantial  
119 allegations against the petitioner of child abuse or child sexual abuse are under investigation or  
120 a case is pending in the courts on the allegations.

121           (10) The filing of any petition under this section which is found to be without merit  
122           and not asserted or defended against in good faith shall be subject to sanctions as determined  
123           by the court, including payment of attorneys' fees and court costs.

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**Legislative Review Note**  
as of 10-24-02 9:50 AM

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

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
as of 12-12-02 10:44 AM

The Judiciary Interim Committee recommended this bill.

**State Impact**

Provisions of this bill require an ongoing General Fund appropriation to the Courts of \$93,500. Revenue to the General Fund would also be generated from filing fees of additional cases. This is estimated to be approximately \$17,000 to the General Fund. Over the long-term, this bill may eventually produce financial savings in the Court system.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$93,500	\$93,500	\$17,000	\$17,000
<b>TOTAL</b>	<b>\$93,500</b>	<b>\$93,500</b>	<b>\$17,000</b>	<b>\$17,000</b>

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**Individual and Business Impact**

No fiscal impact.

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