

JOINT CUSTODY AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: David L. Thomas

LONG TITLE

General Description:

This bill modifies joint custody options.

Highlighted Provisions:

This bill:

- ▶ changes the reference of "decree" to "order";
- ▶ allows the court to order joint legal custody or joint physical custody if one or both of the parents have filed a parenting plan in accordance with Section 30-3-10.8; and
- ▶ requires a parent seeking to modify any type of shared parenting plan to submit a proposed parenting plan with the petition.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-10.2, as last amended by Chapters 176 and 269, Laws of Utah 2003

30-3-10.4, as last amended by Chapter 255, Laws of Utah 2001

30-3-10.7, as enacted by Chapter 126, Laws of Utah 2001

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

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

30-3-10.2. Joint custody order -- Factors for court determination -- Public

assistance.

(1) The court may order joint legal custody or joint physical custody or both if ~~[the]~~ one or both parents have filed a parenting plan in accordance with Section 30-3-10.8 and it determines that joint legal custody or joint physical custody or both is in the best interest of the child.

(2) In determining whether the best interest of a child will be served by ordering joint legal or physical custody, the court shall consider the following factors:

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

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

(c) whether each parent is capable of encouraging and accepting a positive relationship between the child and the other parent, including the sharing of love, affection, and contact between the child and the other parent;

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

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

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

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

(h) the past and present ability of the parents to cooperate with each other and make decisions jointly;

(i) any history of, or potential for, child abuse, spouse abuse, or kidnaping; and

(j) any other factors the court finds relevant.

(3) The determination of the best interest of the child shall be by a preponderance of the evidence.

(4) The court shall inform both parties that an order for joint physical custody may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment

Support Act.

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

Section 2. Section **30-3-10.4** is amended to read:

30-3-10.4. Modification or termination of order.

(1) On the motion of one or both of the parents, or the joint legal custodians if they are not the parents, the court may, after a hearing, modify an order that established [joint legal] custody if:

(a) the circumstances of the child or one or both custodians have materially and substantially changed since the entry of the order to be modified~~[, or the order has become unworkable or inappropriate under existing circumstances]~~; and

(b) a modification of the terms and conditions of the [~~decree~~] order would be an improvement for and in the best interest of the child.

(2) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 30-3-10.8.

~~[(2)]~~ (3) The order of joint legal custody [~~shall~~] may be terminated by order of the court if one or both parents file a motion for termination and the court determines that the joint legal custody order is unworkable or inappropriate under existing circumstances. At the time of entry of an order terminating joint legal custody, the court shall enter an order of sole legal custody under Section 30-3-10. All related issues, including parent-time and child support, shall also be determined and ordered by the court.

~~[(3)]~~ (4) If the court finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, the court shall assess attorney's fees as costs against the offending party.

Section 3. Section **30-3-10.7** is amended to read:

30-3-10.7. Parenting plan -- Definitions.

(1) "Parenting plan" means a plan for parenting a child, including allocation of parenting functions, which is incorporated in any final decree or decree of modification [~~it~~] including an action for dissolution of marriage, annulment, legal separation, or paternity.

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

- (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;
- (b) attending to the daily needs of the child, such as feeding, clothing, physical care, grooming, supervision, health care, day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
- (c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;
- (d) assisting the child in developing and maintaining appropriate interpersonal relationships;
- (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and family social and economic circumstances; and
- (f) providing for the financial support of the child.