

CHILD CUSTODY DETERMINATIONS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill provides a definition for bonding as used in custody and parent-time determinations.

Highlighted Provisions:

This bill:

- ▶ creates a definition of "bonding."

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-10, as last amended by Chapter 356, Laws of Utah 2004

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 any form of custody, the court shall consider the best interests of the

30 child and, among other factors the court finds relevant, the following:

- 31 (i) the past conduct and demonstrated moral standards of each of the parties;
- 32 (ii) which parent is most likely to act in the best interest of the child, including
- 33 allowing the child frequent and continuing contact with the noncustodial parent; [~~and~~]
- 34 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
- 35 and nature of the relationship between a parent and child; and
- 36 [~~(iii)~~] (iv) those factors outlined in Section 30-3-10.2.

37 (b) The court shall, in every case, consider joint custody but may award any form of

38 custody which is determined to be in the best interest of the child.

39 (c) The children may not be required by either party to testify unless the trier of fact

40 determines that extenuating circumstances exist that would necessitate the testimony of the

41 children be heard and there is no other reasonable method to present their testimony.

42 (d) The court may inquire of the children and take into consideration the children's

43 desires regarding future custody or parent-time schedules, but the expressed desires are not

44 controlling and the court may determine the children's custody or parent-time otherwise. The

45 desires of a child 16 years of age or older shall be given added weight, but is not the single

46 controlling factor.

47 (e) If interviews with the children are conducted by the court pursuant to Subsection

48 (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be

49 obtained but is not necessary if the court finds that an interview with the children is the only

50 method to ascertain the child's desires regarding custody.

51 (2) In awarding custody, the court shall consider, among other factors the court finds

52 relevant, which parent is most likely to act in the best interests of the child, including allowing

53 the child frequent and continuing contact with the noncustodial parent as the court finds

54 appropriate.

55 (3) If the court finds that one parent does not desire custody of the child, or has

56 attempted to permanently relinquish custody to a third party, it shall take that evidence into

57 consideration in determining whether to award custody to the other parent.

58 (4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a
59 parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining
60 whether a substantial change has occurred for the purpose of modifying an award of custody.

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

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

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

70 (c) Nothing in this section may be construed to apply to adoption proceedings under
71 Title 78, Chapter 30, Adoption.

72 (5) This section establishes neither a preference nor a presumption for or against joint
73 legal custody, joint physical custody, or sole custody, but allows the court and the family the
74 widest discretion to choose a parenting plan that is in the best interest of the child.