

HB0413S01 compared with HB0413

~~{Omitted text}~~ shows text that was in HB0413 but was omitted in HB0413S01

inserted text shows text that was not in HB0413 but was inserted into HB0413S01

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Child Custody Proceedings Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael L. Kohler

Senate Sponsor:

2

3 LONG TITLE

4 General Description:

5 This bill addresses situations related to child custody.

6 Highlighted Provisions:

7 This bill:

8 ▶ defines terms;

9 ▶ provides that a peace officer or child welfare caseworker may not take specific actions related to the custody of a child based on certain actions of the child's parent;

11 ▶ provides that in a proceeding where custody and parent-time of a minor child are at issue, the court may not ~~{discriminate}~~ apply a negative inference against a parent based on certain actions of the parent; and

13 ▶ makes technical and conforming changes.

15 Money Appropriated in this Bill:

16 None

17 Other Special Clauses:

18 None

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20 AMENDS:

21 **80-2a-101** , as enacted by Laws of Utah 2022, Chapter 334 and last amended by Coordination
Clause, Laws of Utah 2022, Chapter 334 , as enacted by Laws of Utah 2022, Chapter 334 and last
amended by Coordination Clause, Laws of Utah 2022, Chapter 334

23 **80-2a-202** , as last amended by Laws of Utah 2024, Chapter 281 , as last amended by Laws of Utah
2024, Chapter 281

24 **81-9-101** , as renumbered and amended by Laws of Utah 2024, Chapter 366 , as renumbered and
amended by Laws of Utah 2024, Chapter 366

25 **81-9-204** , as renumbered and amended by Laws of Utah 2024, Chapter 366 , as renumbered and
amended by Laws of Utah 2024, Chapter 366

26

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

28 Section 1. Section **80-2a-101** is amended to read:

29 **80-2a-101. Definitions.**

29 [(1)] As used in this chapter:

30 (1) "Biological sex at birth" means the same as that term is defined in Section 58-1-603.

31 (2) "Custody" means the same as that term is defined in Section 80-2-102.

32 [(2)] (3) "Division" means the Division of Child and Family Services created in Section 80-2-201.

34 [(3)] (4) "Friend" means an adult who:

35 (a) has an established relationship with the child or a family member of the child; and

36 (b) is not the natural parent of the child.

37 [(4)] (5) "Hormonal transgender treatment" means the same as that term is defined in Section 58-1-603.

39 (6) "Nonrelative" means an individual who is not a noncustodial parent or relative.

40 (7) "Primary sex characteristic surgical procedure" means the same as that term is defined in Section
58-67-102.

42 [(5)] (8) "Relative" means an adult who:

43 (a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law,
sister-in-law, stepparent, first cousin, stepsibling, or sibling;

45 (b) is the first cousin of the child's parent;

46 (c) is a permanent guardian or natural parent of the child's sibling; or

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(d) in the case of a child who is an Indian child, is an extended family member as defined in the Indian Child Welfare Act, 25 U.S.C. Sec. 1903.

49 [(6)] (9) "Secondary sex characteristic surgical procedure" means the same as that term is defined in
Section 58-67-102.

51 (10) "Sibling" means the same as that term is defined in Section 80-2-102.

52 [(7)] (11) "Temporary custody" means the same as that term is defined in Section 80-2-102.

54 Section 2. Section **80-2a-202** is amended to read:

55 **80-2a-202. Removal of a child by a peace officer or child welfare caseworker -- Search
warrants -- Protective custody and temporary care of a child.**

56 (1) A peace officer or child welfare caseworker may remove a child or take a child into protective
custody, temporary custody, or custody in accordance with this section.

58 (2)

(a) Except as provided in Subsection (2)(b), a peace officer or a child welfare caseworker may not enter
the home of a child whose case is not under the jurisdiction of the juvenile court, remove a child
from the child's home or school, or take a child into protective custody unless:

62 (i) there exist exigent circumstances sufficient to relieve the peace officer or the child welfare
caseworker of the requirement to obtain a search warrant under Subsection (3);

65 (ii) the peace officer or child welfare caseworker obtains a search warrant under Subsection (3);

67 (iii) the peace officer or child welfare caseworker obtains a court order after the child's parent or
guardian is given notice and an opportunity to be heard; or

69 (iv) the peace officer or child welfare caseworker obtains the consent of the child's parent or
guardian.

71 (b) A peace officer or a child welfare caseworker may not take action under Subsection (2)(a) solely on
the basis of:

73 (i) educational neglect, truancy, or failure to comply with a court order to attend school;

75 (ii) the possession or use, in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research
and Medical Cannabis, of cannabis in a medicinal dosage form, a cannabis product in a medicinal
dosage form, or a medical cannabis device, as those terms are defined in Section 26B-4-201; or

79 (iii) a parent's agreement or disagreement with a minor child of the couple's:

80 (A) assertion that the child's gender identity is different from the child's biological sex; or

82 (B) practice of having or expressing a different gender identity than the child's biological sex.

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- 84 (c) A peace officer or a child welfare caseworker may not take action under Subsection (2)(a) on the
sole or partial basis that, with regard to a parent's minor child, a parent:
- 86 (i) asserts that the gender or gender identity of the minor child is the same as the minor child's
biological sex at birth; or
- 88 (ii) does not allow, authorize, accommodate, or support:
- 89 (A) hormonal transgender treatment for the minor child; or
- 90 (B) a primary sex characteristic surgical procedure or secondary sex characteristic surgical procedure
for the minor child.
- 92 ~~(3)~~
- ~~(a)~~ Subject to Subsection (2)(c), the bases described in Subsection (2)(c) may be included in an
affidavit or verified petition submitted to the court for the purpose of identifying a potential
underlying factor leading to the alleged abuse, neglect, or dependency, or for purposes of
dispositional orders.
- 97 (3)
- (a) The juvenile court may issue a warrant authorizing a peace officer or a child welfare caseworker to
search for a child and take the child into protective custody if it appears to the juvenile court upon
a verified petition, recorded sworn testimony or an affidavit sworn to by a peace officer or another
individual, and upon the examination of other witnesses if required by the juvenile court, that there
is probable cause to believe that:
- 98 (i) there is a threat of substantial harm to the child's health or safety;
- 99 (ii) it is necessary to take the child into protective custody to avoid the harm described in
Subsection (3)(a)(i); and
- 101 (iii) it is likely that the child will suffer substantial harm if the child's parent or guardian is given
notice and an opportunity to be heard before the child is taken into protective custody.
- 104 (b) In accordance with Section 77-23-210, a peace officer making the search under Subsection (3)(a)
may enter a house or premises by force, if necessary, in order to remove the child.
- 107 (4)
- (a) A child welfare caseworker may take action under Subsection (2) accompanied by a peace officer or
without a peace officer if a peace officer is not reasonably available.
- 109 (b)

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- (i) Before taking a child into protective custody, and if possible and consistent with the child's safety and welfare, a child welfare caseworker shall determine whether there are services available that, if provided to a parent or guardian of the child, would eliminate the need to remove the child from the custody of the child's parent or guardian.
- 114 (ii) In determining whether the services described in Subsection (4)(b)(i) are reasonably available, the child welfare caseworker shall consider the child's health, safety, and welfare as the paramount concern.
- 117 (iii) If the child welfare caseworker determines the services described in Subsection (4)(b)(i) are reasonably available, the services shall be utilized.
- 119 (5)
- (a) If a peace officer or a child welfare caseworker takes a child into protective custody under Subsection (2), the peace officer or child welfare caseworker shall:
- 121 (i) notify the child's parent or guardian in accordance with Section 80-2a-203; and
- 122 (ii) release the child to the care of the child's parent or guardian or another responsible adult, unless:
- 124 (A) the child's immediate welfare requires the child remain in protective custody; or
- 126 (B) the protection of the community requires the child's detention in accordance with Chapter 6, Part 2, Custody and Detention.
- 128 (b)
- (i) If a peace officer or child welfare caseworker is executing a warrant under Subsection (3), the peace officer or child welfare caseworker shall take the child to:
- 131 (A) a shelter facility; or
- 132 (B) if the division makes an emergency placement under Section 80-2a-301, the emergency placement.
- 134 (ii) If a peace officer or a child welfare caseworker takes a child to a shelter facility under Subsection (5)(b)(i), the peace officer or the child welfare caseworker shall promptly file a written report that includes the child's information, on a form provided by the division, with the shelter facility.
- 138 (c) A child removed or taken into protective custody under this section may not be placed or kept in detention pending court proceedings, unless the child may be held in detention under Chapter 6, Part 2, Custody and Detention.
- 141 (6)

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- (a) The juvenile court shall issue a warrant authorizing a peace officer or a child welfare worker to search for a child who is missing, has been abducted, or has run away, and take the child into physical custody if the juvenile court determines that the child is missing, has been abducted, or has run away from the protective custody, temporary custody, or custody of the division.
- 146 (b) If the juvenile court issues a warrant under Subsection (6)(a):
- 147 (i) the division shall notify the child's parent or guardian who has a right to parent-time with the child in accordance with Subsection 80-2a-203(5)(a);
- 149 (ii) the court shall order:
- 150 (A) the law enforcement agency that has jurisdiction over the location from which the child ran away to enter a record of the warrant into the National Crime Information Center database within 24 hours after the time in which the law enforcement agency receives a copy of the warrant; and
- 154 (B) the division to notify the law enforcement agency described in Subsection (6)(b)(ii)(A) of the order described in Subsection (6)(b)(ii)(A); and
- 156 (c) the court shall specify the location to which the peace officer or the child welfare caseworker shall transport the child.
- 163 Section 3. Section **81-9-101** is amended to read:
- 164 **81-9-101. Definitions for chapter.**
- As used in this chapter:
- 161 (1) "Abuse" means the same as that term is defined in Section 80-1-102.
- 162 (2) "Biological sex at birth" means the same as that term is defined in Section 58-1-603.
- 163 [~~2~~] (3)
- (a) "Custodial responsibility" means all powers and duties relating to caretaking authority and decision-making authority for a minor child.
- 165 (b) "Custodial responsibility" includes physical custody, legal custody, parenting time, right to access, parent-time, and authority to grant limited contact with a minor child.
- 167 [~~3~~] (4) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 168 (5) "Hormonal transgender treatment" means the same as that term is defined in Section 58-1-603.
- 170 [~~4~~] (6) "Joint legal custody" means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified.
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[~~(5)~~] (7) "Joint physical custody" means the minor child stays with each parent overnight for more than 30% of the year and both parents contribute to the expenses of the minor child in addition to paying child support.

175 [~~(6)~~] (8)

(a) "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 minor child.

178 (b) "Parenting functions" include:

179 (i) maintaining a loving, stable, consistent, and nurturing relationship with the minor child;

181 (ii) attending to the daily needs of the minor 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 minor child and that are within the social and economic circumstances of the particular family;

185 (iii) attending to adequate education for the minor child, including remedial or other education essential to the best interest of the minor child;

187 (iv) assisting the minor child in developing and maintaining appropriate interpersonal relationships;

189 (v) exercising appropriate judgment regarding the minor child's welfare, consistent with the minor child's developmental level and family social and economic circumstances; and

192 (vi) providing for the financial support of the minor child.

193 [~~(7)~~] (9)

(a) "Parenting plan" means a plan for parenting a minor child.

194 (b) "Parenting plan" includes the allocation of parenting functions that are incorporated in any final decree or decree of modification including an action for dissolution of marriage, annulment, legal separation, or paternity.

197 (10) "Primary sex characteristic surgical procedure" means the same as that term is defined in Section 58-67-102.

199 [~~(8)~~] (11) "Protective order" means:

200 (a) a civil protective order, as that term is defined in Section 78B-7-102;

201 (b) an ex parte civil protective order, as that term is defined in Section 78B-7-102; or

202 (c) a foreign protection order, as that term is defined in Section 78B-7-302.

203 [~~(9)~~] (12) "Psychological maltreatment" means a repeated pattern or extreme incident of caretaker behavior that:

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- 205 (a) intentionally thwarts a minor child's basic psychological needs, including physical and
psychological safety, cognitive stimulation, and respect;
- 207 (b) conveys that a minor child is worthless, defective, or expendable; and
- 208 (c) may terrorize a minor child.
- 209 (13) "Secondary sex characteristic surgical procedure" means the same as that term is defined in Section
58-67-102.
- 211 ~~[(10)]~~ (14) "[~~Service member~~" means a member of a uniformed service.
- 212 ~~[(11)]~~ (15) "Sexual abuse" means the same as that term is defined in Section 80-1-102.
- 213 ~~[(12)]~~ (16) "Supervised parent-time" means parent-time that requires the noncustodial parent to be
accompanied during parent-time by an individual approved by the court.
- 215 ~~[(13)]~~ (17) "Surrogate care" means care by any individual other than the parent of the minor child.
- 217 ~~[(14)]~~ (18) "Uniformed service" means:
- 218 (a) active and reserve components of the United States Armed Forces;
- 219 (b) the United States Merchant Marine;
- 220 (c) the commissioned corps of the United States Public Health Service;
- 221 (d) the commissioned corps of the National Oceanic and Atmospheric Administration of the United
States; or
- 223 (e) the National Guard of a state.
- 224 ~~[(15)]~~ (19) "Uninterrupted time" means parent-time exercised by one parent without interruption at any
time by the presence of the other parent.
- 226 ~~[(16)]~~ (20) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant
messaging, video conferencing, and other wired or wireless technologies over the Internet or other
communication media, to supplement in-person visits between a noncustodial parent and a minor
child or between a minor child and the custodial parent when the minor child is staying with the
noncustodial parent.
- 236 Section 4. Section **81-9-204** is amended to read:
- 237 **81-9-204. Custody and parent-time of a minor child -- Custody factors -- Preferences.**
- 234 (1) In a proceeding between parents in which the custody and parent-time of a minor child is at issue,
the court shall consider the best interests of the minor child in determining any form of custody and
parent-time.

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- (2) The court shall determine whether an order for custody or parent-time is in the best interests of the minor child by a preponderance of the evidence.
- 239 (3) In determining any form of custody and parent-time under Subsection (1), the court shall consider:
- 241 (a) for each parent, and in accordance with Section 81-9-104, evidence of domestic violence, physical abuse, or sexual abuse involving the minor child, the parent, or a household member of the parent;
- 244 (b) whether the parent has intentionally exposed the minor child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201; and
- 247 (c) whether custody and parent-time would endanger the minor child's health or physical or psychological safety.
- 249 (4) In determining the form of custody and parent-time that is in the best interests of the minor child, the court may consider, among other factors the court finds relevant, the following for each parent:
- 252 (a) evidence of psychological maltreatment;
- 253 (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the minor child, including the minor child's:
- 255 (i) physical needs;
- 256 (ii) emotional needs;
- 257 (iii) educational needs;
- 258 (iv) medical needs; and
- 259 (v) any special needs;
- 260 (c) the parent's capacity and willingness to function as a parent, including:
- 261 (i) parenting skills;
- 262 (ii) co-parenting skills, including:
- 263 (A) ability to appropriately communicate with the other parent;
- 264 (B) ability to encourage the sharing of love and affection; and
- 265 (C) willingness to allow frequent and continuous contact between the minor child and the other parent, except that, if the court determines that the parent is acting to protect the minor child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and
- 269 (iii) ability to provide personal care rather than surrogate care;
- 270 (d) the past conduct and demonstrated moral character of the parent as described in Subsection (9);
- 272 (e) the emotional stability of the parent;
- 273

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- (f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;
- 275 (g) the parent's reason for having relinquished custody or parent-time in the past;
- 276 (h) duration and depth of desire for custody or parent-time;
- 277 (i) the parent's religious compatibility with the minor child;
- 278 (j) the parent's financial responsibility;
- 279 (k) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the minor child's best interests;
- 281 (l) who has been the primary caretaker of the minor child;
- 282 (m) previous parenting arrangements in which the minor child has been happy and well-adjusted in the home, school, and community;
- 284 (n) the relative benefit of keeping siblings together;
- 285 (o) the stated wishes and concerns of the minor child, taking into consideration the minor child's cognitive ability and emotional maturity;
- 287 (p) the relative strength of the minor child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the minor child; and
- 289 (q) any other factor the court finds relevant.
- 290 (5)
- (a) A minor child 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 minor child be heard and there is no other reasonable method to present the minor child's testimony.
- 294 (b)
- (i) The court may inquire and take into consideration the minor child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the minor child's custody or parent-time otherwise.
- 298 (ii) The desires of a minor child who is 14 years old or older shall be given added weight, but is not the single controlling factor.
- 300 (c)
- (i) If an interview with a minor child is conducted by the court in accordance with Subsection (5)(b), the interview shall be conducted by the court in camera.

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- (ii) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a minor child is the only method to ascertain the minor child's desires regarding custody.
- 305 (6)
- (a) Except as provided in Subsection (6)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.
- 309 (b) The court may not consider the disability of a parent as a factor in awarding custody or modifying an award of custody based on a determination of a substantial change in circumstances, unless the court makes specific findings that:
- 312 (i) the disability significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the minor child at issue; and
- 314 (ii) the parent with a disability lacks sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the minor child at issue.
- 317 (c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.
- 319 (7) This section does not establish:
- 320 (a) a preference for either parent solely because of the gender of the parent; or
- 321 (b) a preference for or against joint physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the minor child.
- 324 (8) When an issue before the court involves custodial responsibility in the event of a deployment of a parent who is a service member and the service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.
- 328 (9) In considering the past conduct and demonstrated moral standards of each party under Subsection (4)(d) or any other factor a court finds relevant, the court may not:
- 330 (a)
- (i) consider or treat a parent's lawful possession or use of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, Title 26B, Chapter 4, Part

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2, Cannabinoid Research and Medical Cannabis, or Subsection 58-37-3.7(2) or (3) any differently than the court would consider or treat the lawful possession or use of any prescribed controlled substance; or

- 337 (ii) discriminate apply any negative inference against a parent because of the parent's status as a:
- 338 (A) cannabis production establishment agent, as that term is defined in Section 4-41a-102;
- 340 (B) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;
- 341 (C) medical cannabis courier agent, as that term is defined in Section ~~[26B-4-201]~~ 4-41a-102; or
- 343 (D) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis;~~[-or]~~
- 345 (b) discriminate apply any negative inference against a parent based upon the parent's agreement or disagreement with a minor child of the couple's:
- 347 (i) assertion that the minor child's gender identity is different from the minor child's biological sex; or
- 349 (ii) practice of having or expressing a different gender identity than the minor child's biological sex[-] ;
- or
- 351 (c) ~~{discriminate}~~ apply any negative inference against a parent on the sole or partial basis that, with regard to a parent's minor child, a parent:
- 353 (i) asserts that the minor child's gender identity is the same as the minor child's biological sex; or
- 355 (ii) does not allow, authorize, accommodate, or support:
- 356 (A) hormonal transgender treatment for the minor child; or
- 357 (B) a primary sex characteristic surgical procedure or secondary sex characteristic surgical procedure for the minor child.
- 359 (10)
- (a) The court shall consider evidence of domestic violence if evidence of domestic violence is presented.
- 361 (b) The court shall consider as primary, the safety and well-being of the minor child and the parent who experiences domestic violence.
- 363 (c) A court shall consider an order issued by a court in accordance with Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, as evidence of real harm or substantiated potential harm to the minor child.
- 366 (d) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section 81-9-209.

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- 369 (11) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to
the minor child:
- 371 (a) it is in the best interest of the minor child to have frequent, meaningful, and continuing access to
each parent following separation or divorce;
- 373 (b) each parent is entitled to and responsible for frequent, meaningful, and continuing access with the
parent's minor child consistent with the minor child's best interests; and
- 376 (c) it is in the best interest of the minor child to have both parents actively involved in parenting the
minor child.
- 378 (12) Notwithstanding any other provision of this chapter, the court may not grant custody or parent-
time of a minor child to a parent convicted of a sexual offense, as defined in Section 77-37-2, that
resulted in the conception of the minor child unless:
- 381 (a) the nonconvicted biological parent, or the legal guardian of the minor child, consents to custody or
parent-time and the court determines it is in the best interest of the minor child to award custody or
parent-time to the convicted parent; or
- 384 (b) after the date of the conviction, the convicted parent and the nonconvicted parent cohabit and
establish a mutual custodial environment for the minor child.
- 386 (13) A denial of custody or parent-time under Subsection (12) does not:
- 387 (a) terminate the parental rights of the parent denied parent-time or custody; or
- 388 (b) affect the obligation of the convicted parent to financially support the minor child.

395 Section 5. **Effective date.**

This bill takes effect on May 7, 2025.

2-21-25 12:42 PM