

Michael L. Kohler proposes the following substitute bill:

**Child Custody Proceedings Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael L. Kohler**

Senate Sponsor:

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**LONG TITLE**

**General Description:**

This bill addresses situations related to child custody.

**Highlighted Provisions:**

This bill:

- defines terms;
- 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;
- provides that in a proceeding where custody and parent-time of a minor child are at issue, the court may not apply a negative inference against a parent based on certain actions of the parent; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

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

29 **80-2a-101 . Definitions.**30 [~~(1)~~] As used in this chapter:31 (1) "Biological sex at birth" means the same as that term is defined in Section 58-1-603.

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

33 [~~(2)~~] (3) "Division" means the Division of Child and Family Services created in Section  
34 80-2-201.35 [~~(3)~~] (4) "Friend" means an adult who:

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

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

38 [~~(4)~~] (5) "Hormonal transgender treatment" means the same as that term is defined in  
39 Section 58-1-603.

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

41 (7) "Primary sex characteristic surgical procedure" means the same as that term is defined  
42 in Section 58-67-102.43 [~~(5)~~] (8) "Relative" means an adult who:44 (a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle,  
45 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling;

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

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

48 (d) in the case of a child who is an Indian child, is an extended family member as  
49 defined in the Indian Child Welfare Act, 25 U.S.C. Sec. 1903.50 [~~(6)~~] (9) "Secondary sex characteristic surgical procedure" means the same as that term is  
51 defined in Section 58-67-102.

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

53 [~~(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 --**  
56 **Search warrants -- Protective custody and temporary care of a child.**57 (1) A peace officer or child welfare caseworker may remove a child or take a child into  
58 protective custody, temporary custody, or custody in accordance with this section.59 (2)(a) Except as provided in Subsection (2)(b), a peace officer or a child welfare  
60 caseworker may not enter the home of a child whose case is not under the jurisdiction  
61 of the juvenile court, remove a child from the child's home or school, or take a child  
62 into protective custody unless:

- 63 (i) there exist exigent circumstances sufficient to relieve the peace officer or the child  
64 welfare caseworker of the requirement to obtain a search warrant under  
65 Subsection (3);
- 66 (ii) the peace officer or child welfare caseworker obtains a search warrant under  
67 Subsection (3);
- 68 (iii) the peace officer or child welfare caseworker obtains a court order after the  
69 child's parent or guardian is given notice and an opportunity to be heard; or
- 70 (iv) the peace officer or child welfare caseworker obtains the consent of the child's  
71 parent or guardian.
- 72 (b) A peace officer or a child welfare caseworker may not take action under Subsection  
73 (2)(a) solely on the basis of:
- 74 (i) educational neglect, truancy, or failure to comply with a court order to attend  
75 school;
- 76 (ii) the possession or use, in accordance with Title 26B, Chapter 4, Part 2,  
77 Cannabinoid Research and Medical Cannabis, of cannabis in a medicinal dosage  
78 form, a cannabis product in a medicinal dosage form, or a medical cannabis  
79 device, as those terms are defined in Section 26B-4-201; or
- 80 (iii) a parent's agreement or disagreement with a minor child of the couple's:
- 81 (A) assertion that the child's gender identity is different from the child's biological  
82 sex; or
- 83 (B) practice of having or expressing a different gender identity than the child's  
84 biological sex.
- 85 (c) A peace officer or a child welfare caseworker may not take action under Subsection  
86 (2)(a) on the sole or partial basis that, with regard to a parent's minor child, a parent:  
87 (i) asserts that the gender or gender identity of the minor child is the same as the  
88 minor child's biological sex at birth; or
- 89 (ii) does not allow, authorize, accommodate, or support:
- 90 (A) hormonal transgender treatment for the minor child; or
- 91 (B) a primary sex characteristic surgical procedure or secondary sex characteristic  
92 surgical procedure for the minor child.
- 93 (d) Subject to Subsection (2)(c), the bases described in Subsection (2)(c) may be  
94 included in an affidavit or verified petition submitted to the court for the purpose of  
95 identifying a potential underlying factor leading to the alleged abuse, neglect, or  
96 dependency, or for purposes of dispositional orders.

- 97 (3)(a) The juvenile court may issue a warrant authorizing a peace officer or a child  
98 welfare caseworker to search for a child and take the child into protective custody if  
99 it appears to the juvenile court upon a verified petition, recorded sworn testimony or  
100 an affidavit sworn to by a peace officer or another individual, and upon the  
101 examination of other witnesses if required by the juvenile court, that there is probable  
102 cause to believe that:
- 103 (i) there is a threat of substantial harm to the child's health or safety;
  - 104 (ii) it is necessary to take the child into protective custody to avoid the harm  
105 described in Subsection (3)(a)(i); and
  - 106 (iii) it is likely that the child will suffer substantial harm if the child's parent or  
107 guardian is given notice and an opportunity to be heard before the child is taken  
108 into protective custody.
- 109 (b) In accordance with Section 77-23-210, a peace officer making the search under  
110 Subsection (3)(a) may enter a house or premises by force, if necessary, in order to  
111 remove the child.
- 112 (4)(a) A child welfare caseworker may take action under Subsection (2) accompanied by  
113 a peace officer or without a peace officer if a peace officer is not reasonably available.
- 114 (b)(i) Before taking a child into protective custody, and if possible and consistent  
115 with the child's safety and welfare, a child welfare caseworker shall determine  
116 whether there are services available that, if provided to a parent or guardian of the  
117 child, would eliminate the need to remove the child from the custody of the child's  
118 parent or guardian.
- 119 (ii) In determining whether the services described in Subsection (4)(b)(i) are  
120 reasonably available, the child welfare caseworker shall consider the child's  
121 health, safety, and welfare as the paramount concern.
  - 122 (iii) If the child welfare caseworker determines the services described in Subsection  
123 (4)(b)(i) are reasonably available, the services shall be utilized.
- 124 (5)(a) If a peace officer or a child welfare caseworker takes a child into protective  
125 custody under Subsection (2), the peace officer or child welfare caseworker shall:
- 126 (i) notify the child's parent or guardian in accordance with Section 80-2a-203; and
  - 127 (ii) release the child to the care of the child's parent or guardian or another  
128 responsible adult, unless:
    - 129 (A) the child's immediate welfare requires the child remain in protective custody;
    - 130 or

131 (B) the protection of the community requires the child's detention in accordance  
132 with Chapter 6, Part 2, Custody and Detention.

133 (b)(i) If a peace officer or child welfare caseworker is executing a warrant under  
134 Subsection (3), the peace officer or child welfare caseworker shall take the child  
135 to:

136 (A) a shelter facility; or

137 (B) if the division makes an emergency placement under Section 80-2a-301, the  
138 emergency placement.

139 (ii) If a peace officer or a child welfare caseworker takes a child to a shelter facility  
140 under Subsection (5)(b)(i), the peace officer or the child welfare caseworker shall  
141 promptly file a written report that includes the child's information, on a form  
142 provided by the division, with the shelter facility.

143 (c) A child removed or taken into protective custody under this section may not be  
144 placed or kept in detention pending court proceedings, unless the child may be held  
145 in detention under Chapter 6, Part 2, Custody and Detention.

146 (6)(a) The juvenile court shall issue a warrant authorizing a peace officer or a child  
147 welfare worker to search for a child who is missing, has been abducted, or has run  
148 away, and take the child into physical custody if the juvenile court determines that  
149 the child is missing, has been abducted, or has run away from the protective custody,  
150 temporary custody, or custody of the division.

151 (b) If the juvenile court issues a warrant under Subsection (6)(a):

152 (i) the division shall notify the child's parent or guardian who has a right to  
153 parent-time with the child in accordance with Subsection 80-2a-203(5)(a);

154 (ii) the court shall order:

155 (A) the law enforcement agency that has jurisdiction over the location from which  
156 the child ran away to enter a record of the warrant into the National Crime  
157 Information Center database within 24 hours after the time in which the law  
158 enforcement agency receives a copy of the warrant; and

159 (B) the division to notify the law enforcement agency described in Subsection  
160 (6)(b)(ii)(A) of the order described in Subsection (6)(b)(ii)(A); and

161 (c) the court shall specify the location to which the peace officer or the child welfare  
162 caseworker shall transport the child.

163 Section 3. Section **81-9-101** is amended to read:

164 **81-9-101 . Definitions for chapter.**

165 As used in this chapter:

166 (1) "Abuse" means the same as that term is defined in Section 80-1-102.

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

168 [~~2~~] (3)(a) "Custodial responsibility" means all powers and duties relating to caretaking  
169 authority and decision-making authority for a minor child.

170 (b) "Custodial responsibility" includes physical custody, legal custody, parenting time,  
171 right to access, parent-time, and authority to grant limited contact with a minor child.

172 [~~3~~] (4) "Domestic violence" means the same as that term is defined in Section 77-36-1.

173 (5) "Hormonal transgender treatment" means the same as that term is defined in Section  
174 58-1-603.

175 [~~4~~] (6) "Joint legal custody" means the sharing of the rights, privileges, duties, and powers  
176 of a parent by both parents, where specified.

177 [~~5~~] (7) "Joint physical custody" means the minor child stays with each parent overnight for  
178 more than 30% of the year and both parents contribute to the expenses of the minor child  
179 in addition to paying child support.

180 [~~6~~] (8)(a) "Parenting functions" means those aspects of the parent-child relationship in  
181 which the parent makes decisions and performs functions necessary for the care and  
182 growth of the minor child.

183 (b) "Parenting functions" include:

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

186 (ii) attending to the daily needs of the minor child, such as feeding, clothing, physical  
187 care, grooming, supervision, health care, day care, and engaging in other activities  
188 which are appropriate to the developmental level of the minor child and that are  
189 within the social and economic circumstances of the particular family;

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

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

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

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

198 [~~7~~] (9)(a) "Parenting plan" means a plan for parenting a minor child.

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

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

204 [~~8~~] (11) "Protective order" means:

- 205 (a) a civil protective order, as that term is defined in Section 78B-7-102;
- 206 (b) an ex parte civil protective order, as that term is defined in Section 78B-7-102; or
- 207 (c) a foreign protection order, as that term is defined in Section 78B-7-302.

208 [~~9~~] (12) "Psychological maltreatment" means a repeated pattern or extreme incident of  
209 caretaker behavior that:

- 210 (a) intentionally thwarts a minor child's basic psychological needs, including physical  
211 and psychological safety, cognitive stimulation, and respect;
- 212 (b) conveys that a minor child is worthless, defective, or expendable; and
- 213 (c) may terrorize a minor child.

214 (13) "Secondary sex characteristic surgical procedure" means the same as that term is  
215 defined in Section 58-67-102.

216 [~~10~~] (14) "[~~-~~]Service member" means a member of a uniformed service.

217 [~~11~~] (15) "Sexual abuse" means the same as that term is defined in Section 80-1-102.

218 [~~12~~] (16) "Supervised parent-time" means parent-time that requires the noncustodial parent  
219 to be accompanied during parent-time by an individual approved by the court.

220 [~~13~~] (17) "Surrogate care" means care by any individual other than the parent of the minor  
221 child.

222 [~~14~~] (18) "Uniformed service" means:

- 223 (a) active and reserve components of the United States Armed Forces;
- 224 (b) the United States Merchant Marine;
- 225 (c) the commissioned corps of the United States Public Health Service;
- 226 (d) the commissioned corps of the National Oceanic and Atmospheric Administration of  
227 the United States; or
- 228 (e) the National Guard of a state.

229 [~~15~~] (19) "Uninterrupted time" means parent-time exercised by one parent without  
230 interruption at any time by the presence of the other parent.

231 [~~16~~] (20) "Virtual parent-time" means parent-time facilitated by tools such as telephone,  
232 email, instant messaging, video conferencing, and other wired or wireless technologies

233 over the Internet or other communication media, to supplement in-person visits between  
234 a noncustodial parent and a minor child or between a minor child and the custodial  
235 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 --**  
238 **Preferences.**

- 239 (1) In a proceeding between parents in which the custody and parent-time of a minor child  
240 is at issue, the court shall consider the best interests of the minor child in determining  
241 any form of custody and parent-time.
- 242 (2) The court shall determine whether an order for custody or parent-time is in the best  
243 interests of the minor child by a preponderance of the evidence.
- 244 (3) In determining any form of custody and parent-time under Subsection (1), the court  
245 shall consider:
- 246 (a) for each parent, and in accordance with Section 81-9-104, evidence of domestic  
247 violence, physical abuse, or sexual abuse involving the minor child, the parent, or a  
248 household member of the parent;
  - 249 (b) whether the parent has intentionally exposed the minor child to pornography or  
250 material harmful to minors, as "material" and "harmful to minors" are defined in  
251 Section 76-10-1201; and
  - 252 (c) whether custody and parent-time would endanger the minor child's health or physical  
253 or psychological safety.
- 254 (4) In determining the form of custody and parent-time that is in the best interests of the  
255 minor child, the court may consider, among other factors the court finds relevant, the  
256 following for each parent:
- 257 (a) evidence of psychological maltreatment;
  - 258 (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the  
259 developmental needs of the minor child, including the minor child's:
    - 260 (i) physical needs;
    - 261 (ii) emotional needs;
    - 262 (iii) educational needs;
    - 263 (iv) medical needs; and
    - 264 (v) any special needs;
  - 265 (c) the parent's capacity and willingness to function as a parent, including:
    - 266 (i) parenting skills;



- 267 (ii) co-parenting skills, including:
- 268 (A) ability to appropriately communicate with the other parent;
- 269 (B) ability to encourage the sharing of love and affection; and
- 270 (C) willingness to allow frequent and continuous contact between the minor child
- 271 and the other parent, except that, if the court determines that the parent is
- 272 acting to protect the minor child from domestic violence, neglect, or abuse, the
- 273 parent's protective actions may be taken into consideration; and
- 274 (iii) ability to provide personal care rather than surrogate care;
- 275 (d) the past conduct and demonstrated moral character of the parent as described in
- 276 Subsection (9);
- 277 (e) the emotional stability of the parent;
- 278 (f) the parent's inability to function as a parent because of drug abuse, excessive
- 279 drinking, or other causes;
- 280 (g) the parent's reason for having relinquished custody or parent-time in the past;
- 281 (h) duration and depth of desire for custody or parent-time;
- 282 (i) the parent's religious compatibility with the minor child;
- 283 (j) the parent's financial responsibility;
- 284 (k) the child's interaction and relationship with step-parents, extended family members
- 285 of other individuals who may significantly affect the minor child's best interests;
- 286 (l) who has been the primary caretaker of the minor child;
- 287 (m) previous parenting arrangements in which the minor child has been happy and
- 288 well-adjusted in the home, school, and community;
- 289 (n) the relative benefit of keeping siblings together;
- 290 (o) the stated wishes and concerns of the minor child, taking into consideration the
- 291 minor child's cognitive ability and emotional maturity;
- 292 (p) the relative strength of the minor child's bond with the parent, meaning the depth,
- 293 quality, and nature of the relationship between the parent and the minor child; and
- 294 (q) any other factor the court finds relevant.
- 295 (5)(a) A minor child may not be required by either party to testify unless the trier of fact
- 296 determines that extenuating circumstances exist that would necessitate the testimony
- 297 of the minor child be heard and there is no other reasonable method to present the
- 298 minor child's testimony.
- 299 (b)(i) The court may inquire and take into consideration the minor child's desires
- 300 regarding future custody or parent-time schedules, but the expressed desires are

- 301 not controlling and the court may determine the minor child's custody or  
302 parent-time otherwise.
- 303 (ii) The desires of a minor child who is 14 years old or older shall be given added  
304 weight, but is not the single controlling factor.
- 305 (c)(i) If an interview with a minor child is conducted by the court in accordance with  
306 Subsection (5)(b), the interview shall be conducted by the court in camera.
- 307 (ii) The prior consent of the parties may be obtained but is not necessary if the court  
308 finds that an interview with a minor child is the only method to ascertain the  
309 minor child's desires regarding custody.
- 310 (6)(a) Except as provided in Subsection (6)(b), a court may not discriminate against a  
311 parent due to a disability, as defined in Section 57-21-2, in awarding custody or  
312 determining whether a substantial change has occurred for the purpose of modifying  
313 an award of custody.
- 314 (b) The court may not consider the disability of a parent as a factor in awarding custody  
315 or modifying an award of custody based on a determination of a substantial change in  
316 circumstances, unless the court makes specific findings that:
- 317 (i) the disability significantly or substantially inhibits the parent's ability to provide  
318 for the physical and emotional needs of the minor child at issue; and
- 319 (ii) the parent with a disability lacks sufficient human, monetary, or other resources  
320 available to supplement the parent's ability to provide for the physical and  
321 emotional needs of the minor child at issue.
- 322 (c) Nothing in this section may be construed to apply to adoption proceedings under  
323 Title 78B, Chapter 6, Part 1, Utah Adoption Act.
- 324 (7) This section does not establish:
- 325 (a) a preference for either parent solely because of the gender of the parent; or  
326 (b) a preference for or against joint physical custody or sole physical custody, but allows  
327 the court and the family the widest discretion to choose a parenting plan that is in the  
328 best interest of the minor child.
- 329 (8) When an issue before the court involves custodial responsibility in the event of a  
330 deployment of a parent who is a service member and the service member has not yet  
331 been notified of deployment, the court shall resolve the issue based on the standards in  
332 Sections 78B-20-306 through 78B-20-309.
- 333 (9) In considering the past conduct and demonstrated moral standards of each party under  
334 Subsection (4)(d) or any other factor a court finds relevant, the court may not:

- 335 (a)(i) consider or treat a parent's lawful possession or use of cannabis in a medicinal  
 336 dosage form, a cannabis product in a medicinal dosage form, or a medical  
 337 cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production  
 338 Establishments and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid  
 339 Research and Medical Cannabis, or Subsection 58-37-3.7(2) or (3) any differently  
 340 than the court would consider or treat the lawful possession or use of any  
 341 prescribed controlled substance; or
- 342 (ii) ~~[discriminate]~~ apply any negative inference against a parent because of the  
 343 parent's status as a:
- 344 (A) cannabis production establishment agent, as that term is defined in Section  
 345 4-41a-102;
- 346 (B) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;
- 347 (C) medical cannabis courier agent, as that term is defined in Section ~~[26B-4-201]~~  
 348 4-41a-102; or
- 349 (D) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2,  
 350 Cannabinoid Research and Medical Cannabis;~~[-or]~~
- 351 (b) ~~[discriminate]~~ apply any negative inference against a parent based upon the parent's  
 352 agreement or disagreement with a minor child of the couple's:
- 353 (i) assertion that the minor child's gender identity is different from the minor child's  
 354 biological sex; or
- 355 (ii) practice of having or expressing a different gender identity than the minor child's  
 356 biological sex~~[-]~~ ; or
- 357 (c) apply any negative inference against a parent on the sole or partial basis that, with  
 358 regard to a parent's minor child, a parent:
- 359 (i) asserts that the minor child's gender identity is the same as the minor child's  
 360 biological sex; or
- 361 (ii) does not allow, authorize, accommodate, or support:
- 362 (A) hormonal transgender treatment for the minor child; or
- 363 (B) a primary sex characteristic surgical procedure or secondary sex characteristic  
 364 surgical procedure for the minor child.
- 365 (10)(a) The court shall consider evidence of domestic violence if evidence of domestic  
 366 violence is presented.
- 367 (b) The court shall consider as primary, the safety and well-being of the minor child and  
 368 the parent who experiences domestic violence.

- 369 (c) A court shall consider an order issued by a court in accordance with Title 78B,  
370 Chapter 7, Part 6, Cohabitant Abuse Protective Orders, as evidence of real harm or  
371 substantiated potential harm to the minor child.
- 372 (d) If a parent relocates because of an act of domestic violence or family violence by the  
373 other parent, the court shall make specific findings and orders with regards to the  
374 application of Section 81-9-209.
- 375 (11) Absent a showing by a preponderance of evidence of real harm or substantiated  
376 potential harm to the minor child:
- 377 (a) it is in the best interest of the minor child to have frequent, meaningful, and  
378 continuing access to each parent following separation or divorce;
- 379 (b) each parent is entitled to and responsible for frequent, meaningful, and continuing  
380 access with the parent's minor child consistent with the minor child's best interests;  
381 and
- 382 (c) it is in the best interest of the minor child to have both parents actively involved in  
383 parenting the minor child.
- 384 (12) Notwithstanding any other provision of this chapter, the court may not grant custody or  
385 parent-time of a minor child to a parent convicted of a sexual offense, as defined in  
386 Section 77-37-2, that resulted in the conception of the minor child unless:
- 387 (a) the nonconvicted biological parent, or the legal guardian of the minor child, consents  
388 to custody or parent-time and the court determines it is in the best interest of the  
389 minor child to award custody or parent-time to the convicted parent; or
- 390 (b) after the date of the conviction, the convicted parent and the nonconvicted parent  
391 cohabit and establish a mutual custodial environment for the minor child.
- 392 (13) A denial of custody or parent-time under Subsection (12) does not:
- 393 (a) terminate the parental rights of the parent denied parent-time or custody; or  
394 (b) affect the obligation of the convicted parent to financially support the minor child.

395 **Section 5. Effective Date.**

396 This bill takes effect on May 7, 2025.