

**Child Visitation Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:**

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**LONG TITLE****General Description:**

This bill modifies provisions related to custody and visitation for individuals other than a parent.

**Highlighted Provisions:**

This bill:

- modifies a standard required to support an award of non-parental custody or visitation;
- clarifies that a court that has received a petition seeking non-parent custody or visitation may, as part of the adjudication of the petition, make findings relating to a parent's ability to exercise primary physical custody, and make findings relating to a claim of parental abuse or neglect of a minor child; and
- clarifies the time period that is applicable to a court's findings.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**81-9-402**, 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 **81-9-402** is amended to read:

**81-9-402 . Custody and visitation for individuals other than a parent -- Venue.**

(1)(a) In accordance with Section 80-2a-201, it is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of a minor child of the parent.

(b) There is a rebuttable presumption that a parent's decisions are in the minor child's best interests.

(2) ~~[A court may find the]~~ The presumption in Subsection (1) is rebutted and a court may

grant custodial or visitation rights to an individual other than a parent ~~[who, by clear and convincing evidence, establishes that]~~ if the court finds, by clear and convincing evidence, that the individual seeking custodial or visitation rights has established that:

- (a) the individual has intentionally assumed the role and obligations of a parent;
- (b) the individual and the minor child have formed a substantial emotional bond and created a parent-child type relationship;
- (c) the individual substantially contributed emotionally or financially to the minor child's well being;
- (d) the assumption of the parental role is not the result of a financially compensated surrogate care arrangement;
- (e) the continuation of the relationship between the individual and the minor child is in the minor child's best interest;
- (f) the loss or cessation of the relationship between the individual and the minor child would substantially harm the minor child; and
- (g) the parent:
  - (i) is absent as of the time of filing of the petition;
  - (ii) does not have the ability to exercise primary physical custody of the minor child as of the time of filing of the petition; or
  - ~~[(ii)]~~ (iii) ~~[is found by a court to have-]~~ has abused or neglected the minor child, or that another court has found that the parent has abused or neglected the minor child.

(3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350, an individual shall file a verified petition, or a petition supported by an affidavit, for custodial or visitation rights to the minor child in the juvenile court if a matter is pending in the juvenile court, or in the district court in the county where the minor child:

- (a) currently resides; or
- (b) lived with a parent or an individual other than a parent who acted as a parent within six months before the commencement of the action.

(4) An individual may file a petition under this section in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court involving custody of or visitation with a minor child.

(5) The petition shall include detailed facts supporting the petitioner's right to file the petition including the criteria set forth in Subsection (2) and residency information described in Section 78B-13-209.

(6) An individual may not file a petition under this section against a parent who is actively

66 serving outside the state in any branch of the military.

67 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the  
68 Utah Rules of Civil Procedure on all of the following:

69 (a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;

70 (b) any individual who has court-ordered custody or visitation rights;

71 (c) the minor child's guardian;

72 (d) the guardian ad litem, if one has been appointed;

73 (e) an individual or agency that has physical custody of the minor child or that claims to  
74 have custody or visitation rights; and

75 (f) any other individual or agency that has previously appeared in any action regarding  
76 custody of or visitation with the minor child.

77 (8) The court may order a custody evaluation to be conducted in any proceeding brought  
78 under this section.

79 (9) The court may enter temporary orders in a proceeding brought under this section  
80 pending the entry of final orders.

81 (10) Except as provided in Subsection (11), a court may not grant custody of a minor child  
82 under this section to an individual:

83 (a) who is not the parent of the minor child; and

84 (b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no  
85 contest to a felony or attempted felony involving conduct that constitutes any of the  
86 following:

87 (i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and  
88 76-5-114;

89 (ii) child abuse homicide, as described in Section 76-5-208;

90 (iii) child kidnapping, as described in Section 76-5-301.1;

91 (iv) human trafficking of a child, as described in Section 76-5-308.5;

92 (v) sexual abuse of a minor, as described in Section 76-5-401.1;

93 (vi) rape of a child, as described in Section 76-5-402.1;

94 (vii) object rape of a child, as described in Section 76-5-402.3;

95 (viii) sodomy on a child, as described in Section 76-5-403.1;

96 (ix) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual  
97 abuse of a child, as described in Section 76-5-404.3;

98 (x) sexual exploitation of a minor, as described in Section 76-5b-201;

99 (xi) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or

(xii) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).

(11)(a) As used in this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).

(b) An individual described in Subsection (10) may only be considered for custody of a minor child if the following criteria are met by clear and convincing evidence:

(i) the individual is a relative, as defined in Section 80-3-102, of the minor child;

(ii) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(iii) during the 10 years before the day on which the individual files a petition with the court seeking custody the individual has not been convicted, plead guilty, or plead no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the minor child;

(iv) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(v) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the minor child currently or at any time in the future when considering all of the following:

(A) the minor child's age;

(B) the minor child's gender;

(C) the minor child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a minor child who is 12 years old or older;

(F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(vi) the individual can provide evidence of the following:

(A) the relationship with the minor child is of long duration;

(B) that an emotional bond exists with the minor child; and

(C) that custody by the individual who has committed the disqualifying offense ensures the best interests of the minor child are met;

(vii)(A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the minor child and does not have a disqualifying offense; or

(B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and

(viii) that the continuation of the relationship between the individual with the disqualifying offense and the minor child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

(c) The individual with the disqualifying offense bears the burden of proof regarding why placement with that individual is in the best interest of the minor child over another responsible relative or equally situated individual who does not have a disqualifying offense.

(d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:

(i) preference for custody is given to a relative who does not have a disqualifying offense; and

(ii) before the court may place custody with the individual who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final decision on custody has not been made and to a case filed on or after March 25, 2017.

## Section 2. **Effective date.**

This bill takes effect on May 7, 2025.

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