

**Effective 9/23/2019**

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**30-3-10 Custody of a child -- Custody factors.**

- (1) If a married couple having one or more minor children are separated, or the married couple's marriage is declared void or dissolved, the court shall enter, and has continuing jurisdiction to modify, an order of custody and parent-time.
- (2) In determining any form of custody and parent-time under Subsection (1), the court shall consider the best interest of the child and may consider among other factors the court finds relevant, the following for each parent:
  - (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, the parent, or a household member of the parent;
  - (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the child, including the child's:
    - (i) physical needs;
    - (ii) emotional needs;
    - (iii) educational needs;
    - (iv) medical needs; and
    - (v) any special needs;
  - (c) the parent's capacity and willingness to function as a parent, including:
    - (i) parenting skills;
    - (ii) co-parenting skills, including:
      - (A) ability to appropriately communicate with the other parent;
      - (B) ability to encourage the sharing of love and affection; and
      - (C) willingness to allow frequent and continuous contact between the child and the other parent, except that, if the court determines that the parent is acting to protect the child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and
    - (iii) ability to provide personal care rather than surrogate care;
  - (d) in accordance with Subsection (10), the past conduct and demonstrated moral character of the parent;
  - (e) the emotional stability of the parent;
  - (f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;
  - (g) whether the parent has intentionally exposed the child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;
  - (h) the parent's reasons for having relinquished custody or parent-time in the past;
  - (i) duration and depth of desire for custody or parent-time;
  - (j) the parent's religious compatibility with the child;
  - (k) the parent's financial responsibility;
  - (l) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the child's best interests;
  - (m) who has been the primary caretaker of the child;
  - (n) previous parenting arrangements in which the child has been happy and well-adjusted in the home, school, and community;
  - (o) the relative benefit of keeping siblings together;
  - (p) the stated wishes and concerns of the child, taking into consideration the child's cognitive ability and emotional maturity;

- (q) the relative strength of the child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the child; and
  - (r) any other factor the court finds relevant.
- (3) There is a rebuttable presumption that joint legal custody, as defined in Section 30-3-10.1, is in the best interest of the child, except in cases when there is:
- (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse involving the child, a parent, or a household member of the parent;
  - (b) special physical or mental needs of a parent or child, making joint legal custody unreasonable;
  - (c) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or
  - (d) any other factor the court considers relevant including those listed in this section and Section 30-3-10.2.
- (4)
- (a) The person who desires joint legal custody shall file a proposed parenting plan in accordance with Sections 30-3-10.8 and 30-3-10.9.
  - (b) A presumption for joint legal custody may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.
- (5)
- (a) A 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 child be heard and there is no other reasonable method to present the child's testimony.
  - (b)
    - (i) The court may inquire of the child's and take into consideration the child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the child's custody or parent-time otherwise.
    - (ii) The desires of a child 14 years of age or older shall be given added weight, but is not the single controlling factor.
  - (c)
    - (i) If an interview with a child is conducted by the court pursuant to Subsection (5)(b), the interview shall be conducted by the judge in camera.
    - (ii) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a child is the only method to ascertain the child's desires regarding custody.
- (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.
  - (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:
    - (i) the disability significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the child at issue; and
    - (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 child at issue.
  - (c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

- (7) This section does not establish a preference for either parent solely because of the gender of the parent.
- (8) This section establishes neither a preference nor a presumption 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 child.
- (9) When an issue before the court involves custodial responsibility in the event of a deployment of one or both parents who are servicemembers, and the servicemember 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.
- (10) In considering the past conduct and demonstrated moral standards of each party under Subsection (2)(d) or any other factor a court finds relevant, the court may not:
  - (a) 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, Title 26, Chapter 61a, Utah Medical Cannabis Act, 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
  - (b) discriminate against a parent because of the parent's status as a:
    - (i) cannabis production establishment agent, as that term is defined in Section 4-41a-102;
    - (ii) medical cannabis pharmacy agent, as that term is defined in Section 26-61a-102;
    - (iii) medical cannabis courier agent, as that term is defined in Section 26-61a-102; or
    - (iv) medical cannabis cardholder in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.