

**DIVORCE - CHILDREN'S TESTIMONY**

**LIMITED**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Terry R. Spencer**

**This act modifies the circumstances under which children may testify in a divorce.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**30-3-10**, as last amended by Chapter 255, Laws of Utah 2001

*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 custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. ~~[The]~~

(b) If a custody evaluation has been performed, the children 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 children be heard.

(c) If no custody evaluation has been performed and the children are age 12 or older, the court ~~[may inquire of the children and take into consideration]~~ shall give substantial weight to the children's desires regarding future custody or parent-time schedules, but the expressed desires of the children are not the single controlling factor and the court may determine the children's custody or parent-time otherwise.

(d) Interviews with the children may be conducted by the judge in camera only with the



28 prior consent of the parties.

29 (2) In awarding custody, the court shall consider, among other factors the court finds  
30 relevant, which parent is most likely to act in the best interests of the child, including allowing the  
31 child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

32 (3) If the court finds that one parent does not desire custody of the child, or has attempted  
33 to permanently relinquish custody to a third party, it shall take that evidence into consideration in  
34 determining whether to award custody to the other parent.

35 (4) (a) A court may not discriminate against a parent due to a disability, as defined in  
36 Section 57-21-2, in awarding custody or determining whether a substantial change has occurred  
37 for the purpose of modifying an award of custody.

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

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

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

47 (c) Nothing in this section may be construed to apply to:

48 (i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and  
49 Family Services, or Title 78, Chapter 3a, Juvenile ~~Courts~~ Court Act of 1996; or

50 (ii) adoption proceedings under Title 78, Chapter 30, Adoption.

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**Legislative Review Note**  
**as of 11-7-01 7:26 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**