

Representative James A. Ferrin proposes the following substitute bill:

PARENT-TIME AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Ferrin

This act modifies provisions relating to divorce and parent-time. It prohibits courts from considering gender when determining custody in a divorce and specifies considerations for the court in determining parent-time. In addition, this act creates an action for substantial noncompliance with parent-time, revises the parent-time sanctions found in the Judicial Code, and provides a filing fee for the action.

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

AMENDS:

30-3-10, as last amended by Chapter 302, Laws of Utah 2002

78-7-35, as last amended by Chapters 250 and 329, Laws of Utah 2002

REPEALS AND REENACTS:

78-32-12.2, 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~~].

(b) The children may not be required by either party to testify unless the trier of fact



26 determines that extenuating circumstances exist that would necessitate the testimony of the
27 children be heard and there is no other reasonable method to present their testimony.

28 (c) The court may inquire of the children and take into consideration the children's
29 desires regarding future custody or parent-time schedules, but the expressed desires are not
30 controlling and the court may determine the children's custody or parent-time otherwise. The
31 desires of a child 16 years of age or older shall be given added weight, but is not the single
32 controlling factor.

33 (d) Interviews with the children may be conducted by the judge in camera only with the
34 prior consent of the parties.

35 (2) In determining and awarding custody, the court shall consider~~[, among other factors~~
36 ~~the court finds relevant,];~~

37 (a) which parent is most likely to act in the best interests of the child, including
38 allowing the child frequent and continuing contact with the noncustodial parent ~~h~~ [f] **as the court**
39 **finds appropriate** [h] [-] ~~h~~ ;

40 (b) the past conduct and demonstrated moral standards of each of the parties;

41 ~~h~~ [~~(c)~~ ~~the financial stability of the parties;~~

42 ~~—~~ [~~(d)~~ ~~(c)~~ ~~h~~ past criminal convictions of either party;

43 ~~h~~ [~~(e)~~ ~~(d)~~ ~~h~~ past drug or alcohol abuse of either party; and

44 ~~h~~ [~~(f)~~ ~~(e)~~ ~~h~~ any other factors the court finds relevant.

45 (3) The court may not consider the gender of the parties in determining custody.

46 [~~(3)~~] (4) If the court finds that one parent does not desire custody of the child, or has
47 attempted to permanently relinquish custody to a third party, it shall take that evidence into
48 consideration in determining whether to award custody to the other parent.

49 [~~(4)~~] (5) (a) A court may not discriminate against a parent due to a disability, as defined
50 in Section 57-21-2, in awarding custody or determining whether a substantial change has
51 occurred for the purpose of modifying an award of custody.

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

56 (i) the disability does not significantly or substantially inhibit the parent's ability to

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

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

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

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

65 Section 2. Section **78-7-35** is amended to read:

66 **78-7-35. Civil fees of the courts of record -- Courts complex design.**

67 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
68 court of record not governed by another subsection is \$140.

69 (b) The fee for filing a complaint or petition is:

70 (i) \$45 if the claim for damages or amount in interpleader exclusive of court costs,
71 interest, and attorney fees is \$2,000 or less;

72 (ii) \$90 if the claim for damages or amount in interpleader exclusive of court costs,
73 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

74 (iii) \$140 if the claim for damages or amount in interpleader is \$10,000 or more; [~~and~~]

75 (iv) \$80 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
76 4, Separate Maintenance[-]; and

77 (v) \$150 if the petition is for a finding of substantial noncompliance under Section
78 78-32-12.2.

79 (c) The fee for filing a small claims affidavit is:

80 (i) \$45 if the claim for damages or amount in interpleader exclusive of court costs,
81 interest, and attorney fees is \$2,000 or less; and

82 (ii) \$70 if the claim for damages or amount in interpleader exclusive of court costs,
83 interest, and attorney fees is greater than \$2,000.

84 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
85 complaint, or other claim for relief against an existing or joined party other than the original
86 complaint or petition is:

87 (i) \$45 if the claim for relief exclusive of court costs, interest, and attorney fees is

88 \$2,000 or less;

89 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is
90 greater than \$2,000 and less than \$10,000;

91 (iii) \$90 if the original petition is filed under Subsection (1)(a), the claim for relief is
92 \$10,000 or more, or the party seeks relief other than monetary damages; and

93 (iv) \$70 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
94 Chapter 4, Separate Maintenance.

95 (e) The fee for filing a small claims counter affidavit is:

96 (i) \$35 if the claim for relief exclusive of court costs, interest, and attorney fees is
97 \$2,000 or less; and

98 (ii) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
99 greater than \$2,000.

100 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
101 action already before the court is determined under Subsection (1)(b) based on the amount
102 deposited.

103 (g) The fee for filing a petition is:

104 (i) \$70 for trial de novo of an adjudication of the justice court or of the small claims
105 department; and

106 (ii) \$40 for an appeal of a municipal administrative determination in accordance with
107 Section 10-3-703.7.

108 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
109 petition for writ of certiorari is \$190.

110 (i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee for filing a
111 petition for expungement is \$50.

112 (ii) There is no fee for a petition filed under Subsection 77-18-10(2).

113 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
114 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
115 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
116 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
117 Act.

118 (ii) Two dollars of the fees established by Subsections (1)(a) through (i) shall be

119 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
120 Defense Account, as provided in Section 63-63a-8.

121 (iii) One dollar of the fees established under Subsections (1)(a) through (e), (1)(g), and
122 (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as provided in
123 Section 78-31b-9.

124 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
125 United States is \$25.

126 (l) The fee for filing probate or child custody documents from another state is \$25.

127 (m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
128 Utah State Tax Commission is \$30.

129 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
130 or a judgment, order, or decree of an administrative agency, commission, board, council, or
131 hearing officer of this state or of its political subdivisions other than the Utah State Tax
132 Commission, is \$40.

133 (n) The fee for filing a judgment by confession without action under Section 78-22-3 is
134 \$25.

135 (o) The fee for filing an award of arbitration for confirmation, modification, or
136 vacation under Title 78, Chapter 31a, Utah Arbitration Act, that is not part of an action before
137 the court is \$25.

138 (p) The fee for filing a petition or counter-petition to modify a decree of divorce is \$40.

139 (q) The fee for filing any accounting required by law is:

140 (i) \$10 for an estate valued at \$50,000 or less;

141 (ii) \$20 for an estate valued at \$75,000 or less but more than \$50,000;

142 (iii) \$40 for an estate valued at \$112,000 or less but more than \$75,000;

143 (iv) \$80 for an estate valued at \$168,000 or less but more than \$112,000; and

144 (v) \$150 for an estate valued at more than \$168,000.

145 (r) The fee for filing a demand for a civil jury is \$75.

146 (s) The fee for filing a notice of deposition in this state concerning an action pending in
147 another state under Utah Rule of Civil Procedure 26 is \$25.

148 (t) The fee for filing documents that require judicial approval but are not part of an
149 action before the court is \$25.

- 150 (u) The fee for a petition to open a sealed record is \$25.
- 151 (v) The fee for a writ of replevin, attachment, execution, or garnishment is \$35 in
152 addition to any fee for a complaint or petition.
- 153 (w) The fee for a petition for authorization for a minor to marry required by Section
154 30-1-9 is \$5.
- 155 (x) The fee for a certificate issued under Section 26-2-25 is \$2.
- 156 (y) The fee for a certified copy of a document is \$4 per document plus 50 cents per
157 page.
- 158 (z) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
159 per page.
- 160 (aa) The Judicial Council shall by rule establish a schedule of fees for copies of
161 documents and forms and for the search and retrieval of records under Title 63, Chapter 2,
162 Government Records Access and Management Act. Fees under this subsection shall be
163 credited to the court as a reimbursement of expenditures.
- 164 (bb) There is no fee for services or the filing of documents not listed in this section or
165 otherwise provided by law.
- 166 (cc) Except as provided in this section, all fees collected under this section are paid to
167 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
168 accepts the pleading for filing or performs the requested service.
- 169 (dd) The filing fees under this section may not be charged to the state, its agencies, or
170 political subdivisions filing or defending any action. In judgments awarded in favor of the
171 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
172 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
173 collected under this subsection shall be applied to the fees after credit to the judgment, order,
174 fine, tax, lien, or other penalty and costs permitted by law.
- 175 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
176 shall transfer all revenues representing the difference between the fees in effect after May 2,
177 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
178 Facilities Construction and Management Capital Projects Fund.
- 179 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
180 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the

181 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
182 initiate the development of a courts complex in Salt Lake City.

183 (B) If the Legislature approves funding for construction of a courts complex in Salt
184 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
185 Management shall use the revenue deposited in the Capital Projects Fund under Subsection
186 (2)(a)(ii) to construct a courts complex in Salt Lake City.

187 (C) After the courts complex is completed and all bills connected with its construction
188 have been paid, the Division of Facilities Construction and Management shall use any monies
189 remaining in the Capital Projects Fund under Subsection (2)(a)(ii) to fund the Vernal District
190 Court building.

191 (iii) The Division of Facilities Construction and Management may enter into
192 agreements and make expenditures related to this project before the receipt of revenues
193 provided for under this Subsection (2)(a)(iii).

194 (iv) The Division of Facilities Construction and Management shall:

195 (A) make those expenditures from unexpended and unencumbered building funds
196 already appropriated to the Capital Projects Fund; and

197 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
198 under this Subsection (2).

199 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
200 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
201 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
202 account.

203 (c) The Division of Finance shall deposit all revenues received from the court
204 administrator into the restricted account created by this section.

205 (d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall
206 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
207 Vehicles, in a court of record to the Division of Facilities Construction and Management
208 Capital Projects Fund. The division of money pursuant to Section 78-3-14.5 shall be calculated
209 on the balance of the fine or bail forfeiture paid.

210 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
211 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in

212 a court of record or an administrative traffic proceeding in accordance with Section 10-3-703.5
213 to the Division of Finance for deposit in the restricted account created by this section. The
214 division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine
215 or bail forfeiture paid.

216 (3) (a) There is created within the General Fund a restricted account known as the State
217 Courts Complex Account.

218 (b) The Legislature may appropriate monies from the restricted account to the
219 administrator of the courts for the following purposes only:

220 (i) to repay costs associated with the construction of the court complex that were
221 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

222 (ii) to cover operations and maintenance costs on the court complex.

223 Section 3. Section **78-32-12.2** is repealed and reenacted to read:

224 **78-32-12.2. Definitions -- Sanctions.**

225 (1) For purposes of this section:

226 (a) "Make up parent-time" means parent-time which is:

227 (i) of the same type and duration of parent-time as that which was denied, including
228 parent-time during weekdays, weekends, holidays, and during extended parent-time periods;

229 (ii) to be made up within one year after the court has entered its order of make up
230 parent-time; and

231 (iii) in the manner chosen by the aggrieved parent if it is in the best interest of the
232 child.

233 (b) "Parent-time enforcement order" means an order to enforce compliance with a
234 parent-time order through the use of sanctions.

235 (c) "Substantial noncompliance" means:

236 (i) conduct which significantly interferes with a court-ordered parent-time schedule;

237 (ii) conduct which interferes with parent's right to frequent, meaningful, and continuing
238 access with his **h** OR HER **h** child and which significantly impairs the parent-child relationship; or

239 (iii) a conviction under Section 76-5-303.

240 (2) Either parent may petition the court for an order enforcing a parent-time order.

241 (3) Upon receipt of an initial petition, the court shall hold a hearing to determine by a
242 preponderance of the evidence whether there has been a substantial noncompliance with the

243 parent-time order.

244 (4) Upon a finding of substantial noncompliance, the court shall order:

245 (a) actual costs including actual attorney fees and court costs to the prevailing party;

246 (b) make up parent-time for the aggrieved parent and child;

247 (c) a minimum of ten hours of compensatory service as provided in Subsection

248 78-32-12.1(1)(a); and

249 (d) a permanent injunction enjoining the noncompliance with the court's parent-time
250 order.

251 (5) Upon a finding of substantial noncompliance, the court may order:

252 (a) mediation with the requirement to report back to the court on the results of

253 mediation within 30 days;

254 (b) participation in workshops, classes, or individual counseling to educate the parent
255 about the importance of providing the child with a continuing relationship with both parents as
256 provided in Subsection 78-32-12.1(1)(b); or

257 (c) a temporary change of custody for a duration to be determined by the court if it is in
258 the best interests of the child.

259 (6) If the court found substantial noncompliance in the first petition and a second
260 petition is filed within five years of the initial petition against the same party the initial petition
261 was filed against, the court may order increased sanctions that include:

262 (a) up to 20 hours of compensatory service as provided in Subsection 78-32-12.1(1)(a);

263 (b) make up parent-time for the aggrieved party and child at twice the amount of time
264 previously wrongfully denied and under the same conditions as provided in Subsection

265 78-32-12.2(1)(a);

266 (c) a permanent change of custody if it is in the best interests of the child; ~~h~~ OR ~~h~~

267 ~~h [(d) jail time or incarceration ~~h~~ [for up to ten days] AS DETERMINED BY THE COURT ~~h~~;~~
~~or~~ ~~h~~

268 ~~h [(e)] (d) ~~h~~ any other orders the court determines necessary to enforce a parent-time order.~~

269 (7) If the court found substantial noncompliance in the first and second petition and a
270 third petition is brought against the same party within five years of the second petition and the
271 court declines to issue an order with increased sanctions although the petitioner has met the
272 burden of proof, the court shall provide findings on the record explaining why increased
273 sanctions were not imposed.

274 (8) The noncustodial parent shall give the court and the custodial parent written notice
275 of his intention to exercise the make up parent-time at least seven days before the proposed
276 visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is
277 to be on a holiday or an extended parent-time period.

278 (9) The court shall suspend any proceedings under Section 78-32-12.2 if substantial
279 allegations against the petitioner of child abuse or child sexual abuse are under investigation or
280 a case is pending in the courts on the allegations.

281 (10) The filing of any petition under this section which is found to be without merit
282 and not asserted or defended against in good faith shall be subject to sanctions as determined
283 by the court, including payment of attorneys' fees and court costs.