

REVISIONS TO PARENT TIME

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies provisions concerning parent-time. It provides for the award of joint legal and physical custody according to the best interests of the child and defines joint physical custody.

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

30-3-10.1, as enacted by Chapter 106, Laws of Utah 1988

30-3-10.2, as last amended by Chapter 126, Laws of Utah 2001

30-3-32, as last amended by Chapter 255, Laws of Utah 2001

30-3-35, as last amended by Chapters 9 and 255, Laws of Utah 2001

30-3-38, 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 any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

(i) the past conduct and demonstrated moral standards of each of the parties[-];

(ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent; and



28 (iii) those factors outlined in Section 30-3-10.2.

29 (b) The court shall, in every case, consider joint custody but may award any form of
30 custody which is determined to be in the best interest of the child.

31 ~~[(b)]~~ (c) The children may not be required by either party to testify unless the trier of
32 fact determines that extenuating circumstances exist that would necessitate the testimony of the
33 children be heard and there is no other reasonable method to present their testimony.

34 ~~[(c)]~~ (d) The court may inquire of the children and take into consideration the children's
35 desires regarding future custody or parent-time schedules, but the expressed desires are not
36 controlling and the court may determine the children's custody or parent-time otherwise. The
37 desires of a child 16 years of age or older shall be given added weight, but is not the single
38 controlling factor.

39 ~~[(d)]~~ (e) Interviews with the children ~~[may]~~ shall be conducted by the judge in camera
40 ~~[only with the prior consent of the parties]. The prior consent of the parties may be obtained~~
41 but is not necessary if the court finds that an interview with the children is the only method to
42 ascertain the child's desires regarding custody.

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

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

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

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

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

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

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

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

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

66 (5) This section establishes neither a preference nor a presumption for or against joint
 67 legal custody, joint physical custody, or sole custody, but allows the court and the family the
 68 widest discretion to choose a parenting plan that is in the best interest of the child.

69 Section 2. Section **30-3-10.1** is amended to read:

70 **30-3-10.1. Joint legal custody defined.**

71 ~~[In]~~ As used in this chapter~~[-,"joint"]~~:

72 (1) "Joint legal custody":

73 ~~[(1)]~~ (a) means the sharing of the rights, privileges, duties, and powers of a parent by
 74 both parents, where specified;

75 ~~[(2)]~~ (b) may include an award of exclusive authority by the court to one parent to
 76 make specific decisions;

77 ~~[(3)]~~ (c) does not affect the physical custody of the child except as specified in the
 78 order of joint legal custody;

79 ~~[(4)]~~ (d) is not based on awarding equal or nearly equal periods of physical custody of
 80 and access to the child to each of the parents, as the best interest of the child often requires that
 81 a primary physical residence for the child be designated; and

82 ~~[(5)]~~ (e) does not prohibit the court from specifying one parent as the primary caretaker
 83 and one home as the primary residence of the child.

84 (2) "Joint physical custody":

85 (a) means the child stays with each parent overnight for more than 30% of the year, and
 86 both parents contribute to the expenses of the child in addition to paying child support;

87 (b) can mean equal or nearly equal periods of physical custody of and access to the
 88 child by each of the parents, as required to meet the best interest of the child;

89 (c) may require that a primary physical residence for the child be designated; and

90 (d) does not prohibit the court from specifying one parent as the primary caretaker and
91 one home as the primary residence of the child.

92 Section 3. Section **30-3-10.2** is amended to read:

93 **30-3-10.2. Joint legal or physical custody order -- Factors for court determination**
94 **-- Public assistance.**

95 (1) The court may order joint legal custody or joint physical custody or both if the
96 parents have filed a parenting plan in accordance with Section 30-3-10.8 and it determines that
97 joint legal custody or joint physical custody or both is in the best interest of the child.

98 (2) In determining whether the best interest of a child will be served by ordering joint
99 legal or physical custody, the court shall consider the following factors:

100 (a) whether the physical, psychological, and emotional needs and development of the
101 child will benefit from joint legal or physical custody;

102 (b) the ability of the parents to give first priority to the welfare of the child and reach
103 shared decisions in the child's best interest;

104 (c) whether each parent is capable of encouraging and accepting a positive relationship
105 between the child and the other parent, including the sharing of love, affection, and contact
106 between the child and the other parent;

107 (d) whether both parents participated in raising the child before the divorce;

108 (e) the geographical proximity of the homes of the parents;

109 (f) the preference of the child if the child is of sufficient age and capacity to reason so
110 as to form an intelligent preference as to joint legal or physical custody;

111 (g) the maturity of the parents and their willingness and ability to protect the child from
112 conflict that may arise between the parents; [~~and~~]

113 (h) the past and present ability of the parents to cooperate with each other and make
114 decisions jointly;

115 (i) any history of, or potential for, child abuse, spouse abuse, or kidnaping; and

116 [~~(h)~~] (j) any other factors the court finds relevant.

117 (3) The determination of the best interest of the child shall be by a preponderance of
118 the evidence.

119 (4) The court shall inform both parties that:

120 (a) an order for joint legal or physical custody may preclude eligibility for cash

121 assistance provided under Title 35A, Chapter 3, Employment Support Act; and

122 (b) if cash assistance is required for the support of children of the parties at any time
123 subsequent to an order of joint legal or physical custody, the order may be terminated under
124 Section 30-3-10.4.

125 (5) The court may order that where possible the parties attempt to settle future disputes
126 by a dispute resolution method before seeking enforcement or modification of the terms and
127 conditions of the order of joint legal custody or joint physical custody through litigation, except
128 in emergency situations requiring ex parte orders to protect the child.

129 Section 4. Section **30-3-32** is amended to read:

130 **30-3-32. Parent-time -- Intent -- Policy -- Definitions.**

131 (1) It is the intent of the Legislature to promote parent-time at a level consistent with
132 all parties' interests.

133 (2) Absent a showing by a preponderance of evidence of real harm or substantiated
134 potential harm to the child:

135 (a) it is in the best interests of the child of divorcing, divorced, or adjudicated parents
136 to have frequent, meaningful, and continuing access to each parent following separation or
137 divorce;

138 (b) each divorcing, separating, or adjudicated parent is entitled to and responsible for
139 frequent, meaningful, and continuing access with his child consistent with the child's best
140 interests; and

141 (c) it is in the best interests of the child to have both parents actively involved in
142 parenting the child.

143 (3) For purposes of Sections 30-3-32 through 30-3-37:

144 (a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

145 (b) "Christmas school vacation" means the time period beginning on the evening the
146 child gets out of school for the Christmas or winter school break until the evening before the
147 child returns to school, except for Christmas Eve[;] and Christmas Day[, ~~and New Year's Day~~].

148 (c) "Extended parent-time" means a period of parent-time other than a weekend,
149 holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in
150 Subsections 30-3-33[~~(4)~~](3) and [~~(16)~~] (15), and "Christmas school vacation."

151 Section 5. Section **30-3-35** is amended to read:

152 **30-3-35. Minimum schedule for parent-time for children 5 to 18 years of age.**

153 (1) The parent-time schedule in this section applies to children 5 to 18 years of age.

154 (2) If the parties do not agree to a parent-time schedule, the following schedule shall be
155 considered the minimum parent-time to which the noncustodial parent and the child shall be
156 entitled:

157 (a) (i) one weekday evening to be specified by the noncustodial parent or the court
158 from 5:30 p.m. until 8:30 p.m.; or

159 (ii) at the election of the noncustodial parent, one weekday from the time the child's
160 school is regularly dismissed until 8:30 p.m., unless the court directs the application of
161 Subsection (2)(a)(i);

162 (b) (i) alternating weekends beginning on the first weekend after the entry of the decree
163 from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

164 (ii) at the election of the noncustodial parent, from the time the child's school is
165 regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of
166 Subsection (2)(b)(i);

167 (c) holidays take precedence over the weekend parent-time, and changes shall not be
168 made to the regular rotation of the alternating weekend parent-time schedule;

169 (d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall
170 be responsible for the child's attendance at school for that school day;

171 (e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday
172 period extends beyond that time so that the child is free from school and the parent is free from
173 work, the noncustodial parent shall be entitled to this lengthier holiday period; or

174 (ii) at the election of the noncustodial parent, parent-time over a scheduled holiday
175 weekend may begin from the time the child's school is regularly dismissed at the beginning of
176 the holiday weekend until 7 p.m. on the last day of the holiday weekend;

177 (f) in years ending in an odd number, the noncustodial parent is entitled to the
178 following holidays:

179 (i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m.
180 until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for
181 the birthday;

182 (ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless

183 the holiday extends for a lengthier period of time to which the noncustodial parent is
184 completely entitled;

185 (iii) spring break or Easter holiday beginning at 6 p.m. on the day school lets out for the
186 holiday until 7 p.m. on the Sunday before school resumes;

187 (iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the
188 holiday extends for a lengthier period of time to which the noncustodial parent is completely
189 entitled;

190 (v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the
191 holiday;

192 (vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on
193 the holiday; and

194 (vii) the first portion of the Christmas school vacation as defined in Subsection
195 30-3-32(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday
196 is equally divided;

197 (g) in years ending in an even number, the noncustodial parent is entitled to the
198 following holidays:

199 (i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion
200 of the noncustodial parent, he may take other siblings along for the birthday;

201 (ii) Washington and Lincoln Day beginning at 6 p.m. on Friday until 7 p.m. on Monday
202 unless the holiday extends for a lengthier period of time to which the noncustodial parent is
203 completely entitled;

204 (iii) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the
205 holiday;

206 (iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday
207 extends for a lengthier period of time to which the noncustodial parent is completely entitled;

208 (v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning
209 at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period
210 of time to which the noncustodial parent is completely entitled;

211 (vi) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the
212 holiday;

213 (vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m; and

214 (viii) the second portion of the Christmas school vacation, including New Year's Day,
215 as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so
216 long as the entire Christmas holiday is equally divided;

217 (h) the custodial parent is entitled to the odd year holidays in even years and the even
218 year holidays in odd years;

219 [~~(h)~~] (i) Father's Day shall be spent with the natural or adoptive father every year
220 beginning at 9 a.m. until 7 p.m. on the holiday;

221 [~~(i)~~] (j) Mother's Day shall be spent with the natural or adoptive mother every year
222 beginning at 9 a.m. until 7 p.m. on the holiday;

223 [~~(j)~~] (k) extended parent-time with the noncustodial parent may be:

224 (i) up to four weeks consecutive at the option of the noncustodial parent;

225 (ii) two weeks shall be uninterrupted time for the noncustodial parent; and

226 (iii) the remaining two weeks shall be subject to parent-time for the custodial parent
227 consistent with these guidelines;

228 [~~(k)~~] (l) the custodial parent shall have an identical two-week period of uninterrupted
229 time during the children's summer vacation from school for purposes of vacation;

230 [~~(l)~~] (m) if the child is enrolled in year-round school, the noncustodial parent's
231 extended parent-time shall be 1/2 of the vacation time for year-round school breaks, provided
232 the custodial parent has holiday and phone visits;

233 [~~(m)~~] (n) notification of extended parent-time or vacation weeks with the child shall be
234 provided at least 30 days in advance to the other parent; and

235 [~~(n)~~] (o) telephone contact shall be at reasonable hours and for reasonable duration.

236 (3) Any elections required to be made in accordance with this section by either parent
237 concerning parent-time shall be made a part of the decree and made a part of the parent-time
238 order.

239 Section 6. Section **30-3-38** is amended to read:

240 **30-3-38. Pilot Program for Expedited Parent-time Enforcement.**

241 (1) There is established an Expedited Parent-time Enforcement Pilot Program in the
242 third judicial district to be administered by the Administrative Office of the Courts from July 1,
243 [~~1996~~] 2003, to July 1, [~~2003~~] 2007.

244 (2) As used in this section:

245 (a) "Mediator" means a person who:
246 (i) is qualified to mediate parent-time disputes under criteria established by the
247 Administrative Office of the Courts; and
248 (ii) agrees to follow billing guidelines established by the Administrative Office of the
249 Courts and this section.

250 (b) "Services to facilitate parent-time" or "services" means services designed to assist
251 families in resolving parent-time problems through:

- 252 (i) counseling;
- 253 (ii) supervised parent-time;
- 254 (iii) neutral drop-off and pick-up;
- 255 (iv) educational classes; and
- 256 (v) other related activities.

257 (3) (a) Under this pilot program, if a parent files a motion in the third district court
258 alleging that court-ordered parent-time rights are being violated, the clerk of the court, after
259 assigning the case to a judge, shall refer the case to the administrator of this pilot program for
260 assignment to a mediator.

- 261 (b) Upon receipt of a case, the mediator shall:
 - 262 (i) meet with the parents to address parent-time issues within 15 days of the motion
263 being filed;
 - 264 (ii) assess the situation;
 - 265 (iii) facilitate an agreement on parent-time between the parents; and
 - 266 (iv) determine whether a referral to a service provider under Subsection (3)(c) is
267 warranted.

268 (c) While a case is in mediation, a mediator may refer the parents to a service provider
269 designated by the Department of Human Services for services to facilitate parent-time if:

- 270 (i) the services may be of significant benefit to the parents; or
- 271 (ii) (A) a mediated agreement between the parents is unlikely; and
- 272 (B) the services may facilitate an agreement.

273 (d) At any time during mediation, a mediator shall terminate mediation and transfer the
274 case to the administrator of the pilot program for referral to the judge or court commissioner to
275 whom the case was assigned under Subsection (3)(a) if:

- 276 (i) a written agreement between the parents is reached; or
- 277 (ii) the parents are unable to reach an agreement through mediation and:
 - 278 (A) the parents have received services to facilitate parent-time;
 - 279 (B) both parents object to receiving services to facilitate parent-time; or
 - 280 (C) the parents are unlikely to benefit from receiving services to facilitate parent-time.
- 281 (e) Upon receiving a case from the administrator of the pilot program, a judge or court

282 commissioner may:

- 283 (i) review the agreement of the parents and, if acceptable, sign it as an order;
 - 284 (ii) order the parents to receive services to facilitate parent-time;
 - 285 (iii) proceed with the case; or
 - 286 (iv) take other appropriate action.
- 287 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a
- 288 child who is the subject of a parent-time order against the other parent or a member of the other
- 289 parent's household to a mediator or service provider, the mediator or service provider shall
- 290 immediately report that information to:

291 (i) the judge assigned to the case who may immediately issue orders and take other

292 appropriate action to resolve the allegation and protect the child; and

293 (ii) the Division of Child and Family Services within the Department of Human

294 Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect

295 Reporting Requirements.

296 (b) If an allegation under Subsection (4)(a) is made against a parent with parent-time

297 rights or a member of that parent's household, parent-time by that parent shall, pursuant to an

298 order of the court, be supervised until:

- 299 (i) the allegation has been resolved; or
- 300 (ii) a court orders otherwise.

301 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to

302 mediate parent-time problems and a service provider may continue to provide services to

303 facilitate parent-time unless otherwise ordered by a court.

304 (5) (a) The Department of Human Services may contract with one or more entities in

305 accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

- 306 (i) services to facilitate parent-time;

307 (ii) case management services; and

308 (iii) administrative services.

309 (b) An entity who contracts with the Department of Human Services under Subsection
310 (5)(a) shall:

311 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

312 (ii) agree to follow billing guidelines established by the Department of Human Services
313 and this section.

314 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

315 (i) reduced to a sum certain;

316 (ii) divided equally between the parents; and

317 (iii) charged against each parent taking into account the ability of that parent to pay
318 under billing guidelines adopted in accordance with this section.

319 (b) A judge may order a parent to pay an amount in excess of that provided for in
320 Subsection (6)(a) if the parent:

321 (i) failed to participate in good faith in mediation or services to facilitate parent-time;

322 or

323 (ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

324 (c) (i) The cost of mediation and services to facilitate parent-time may be charged to
325 parents at periodic intervals.

326 (ii) Mediation and services to facilitate parent-time may only be terminated on the
327 ground of nonpayment if both parents are delinquent.

328 (7) If a parent fails to cooperate in good faith in mediation or services to facilitate
329 parent-time, a court may order, in subsequent proceedings, a temporary change in custody or
330 parent-time.

331 (8) (a) The Judicial Council may make rules to implement and administer the
332 provisions of this pilot program related to mediation.

333 (b) The Department of Human Services may make rules to implement and administer
334 the provisions of this pilot program related to services to facilitate parent-time.

335 (9) (a) The Administrative Office of the Courts shall adopt outcome measures to
336 evaluate the effectiveness of the mediation component of this pilot program. Progress reports
337 shall be provided to the Judiciary Interim Committee as requested by the committee. At least

338 once during this pilot program, the Administrative Office of the Courts shall present to the
339 committee the results of a survey that measures the effectiveness of the program in terms of
340 increased compliance with parent-time orders and the responses of interested persons.

341 (b) The Department of Human Services shall adopt outcome measures to evaluate the
342 effectiveness of the services component of this pilot program. Progress reports shall be
343 provided to the Judiciary Interim Committee as requested by the committee.

344 (c) The Administrative Office of the Courts and the Department of Human Services
345 may adopt joint outcome measures and file joint reports to satisfy the requirements of
346 Subsections (8)(a) and (b).

347 (10) (a) The Department of Human Services shall apply for federal funds as available.

348 (b) This pilot program shall be funded through funds received under Subsection
349 (10)(a).

Legislative Review Note

as of 2-13-03 5:35 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0223

Revisions to Parent Time

24-Feb-03

10:18 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst