

1 **JOINT CUSTODY AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: David L. Thomas

7 **LONG TITLE**

8 **General Description:**

9 This bill allows for the modification ~~H→~~ or termination ~~←H~~ of joint custody orders and
9a creates specific
10 requirements to do so.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ allows a parent to file a motion for termination of joint custody under specific
- 14 circumstances;
- 15 ▶ sets conditions for the court to consider in modifying ~~H→~~ or terminating ~~←H~~ a joint
- 15a custody order;
- 16 ▶ requires that parents participate in a dispute resolution proceeding; and
- 17 ▶ requires the court to make specific findings when modifying or terminating a joint
- 18 custody order.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **30-3-10.3**, as last amended by Chapter 126, Laws of Utah 2001

26 **30-3-10.4**, as last amended by Chapter 142, Laws of Utah 2005



28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **30-3-10.3** is amended to read:

30 **30-3-10.3. Terms of joint legal custody order.**

31 (1) Unless the court orders otherwise, before a final order of joint legal custody is
32 entered both parties shall attend the mandatory course for divorcing parents, as provided in
33 Section 30-3-11.3, and present a certificate of completion from the course to the court.

34 (2) An order of joint legal custody shall provide terms the court determines
35 appropriate, which may include specifying:

36 (a) either the county of residence of the child, until altered by further order of the court,
37 or the custodian who has the sole legal right to determine the residence of the child;

38 (b) that the parents shall exchange information concerning the health, education, and
39 welfare of the child, and where possible, confer before making decisions concerning any of
40 these areas;

41 (c) the rights and duties of each parent regarding the child's present and future physical
42 care, support, and education;

43 (d) provisions to minimize disruption of the child's attendance at school and other
44 activities, his daily routine, and his association with friends; and

45 (e) as necessary, the remaining parental rights, privileges, duties, and powers to be
46 exercised by the parents solely, concurrently, or jointly.

47 (3) The court shall, where possible, include in the order the terms of the parenting plan
48 provided in accordance with Section 30-3-10.8.

49 (4) Any parental rights not specifically addressed by the court order may be exercised
50 by the parent having physical custody of the child the majority of the time.

51 (5) (a) The appointment of joint legal custodians does not impair or limit the authority
52 of the court to order support of the child, including payments by one custodian to the other.

53 (b) An order of joint legal custody, in itself, is not grounds for modifying a support
54 order.

55 (c) The ~~[agreement]~~ order shall ~~[contain]~~ require a parenting plan incorporating a
56 dispute resolution procedure the parties agree to use;

57 (i) in accordance with Section 30-3-10.9, or as ordered by the court in accordance with
58 Subsection 30-3-10.2(5); and

59 (ii) before seeking enforcement ~~it~~ [or] , ~~the~~ modification ~~it~~ , or termination ~~it~~ of
 59a the terms and conditions of the
 60 order of joint legal custody through litigation, except in emergency situations requiring ex parte
 61 orders to protect the child.

62 Section 2. Section **30-3-10.4** is amended to read:

63 **30-3-10.4. Modification or termination of order.**

64 (1) On the motion of one or both of the parents, or the joint legal custodians if they are
 65 not the parents, the court may, after a hearing, modify or terminate an order that established
 66 joint legal custody if:

67 (a) the circumstances of the child or one or both parents or joint legal custodians have
 68 materially and substantially changed since the entry of the order to be modified
 68a ~~it~~ or terminated ~~it~~ ; [and]

69 (b) a modification ~~it~~ or termination ~~it~~ of the terms and conditions of the order would
 69a be an improvement
 70 for and in the best interest of the child[-]; and

71 (c) (i) both parents have complied in good faith with the dispute resolution procedure
 72 in accordance with Subsection 30-3-10.3(5)(c); or

73 (ii) if no dispute resolution procedure is contained in the order that established joint
 74 legal custody, the court orders the parents to participate in a dispute resolution procedure in
 75 accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good faith, they
 76 have utilized a dispute resolution procedure to resolve their dispute.

77 (2) (a) In determining whether the best interest of a child will be served by either
 78 modifying or terminating the joint legal custody order, the court shall, in addition to other
 79 factors the court considers relevant, consider the factors outlined in Subsection 30-3-10.2(2).

80 (b) A court order modifying or terminating an existing joint legal custody order shall
 81 contain ~~it~~ [written] ~~it~~ findings that:

82 (i) a material and substantial change of circumstances has occurred; and

83 (ii) a modification ~~it~~ or termination ~~it~~ of the terms and conditions of the order would
 83a be an improvement
 84 for and in the best interest of the child.

85 (c) The court shall give substantial weight to the existing joint legal custody order
 86 when the child is thriving and well-adjusted.

87 (3) The court shall, in every case regarding a motion for termination of joint legal
 88 custody order, consider reasonable alternatives to preserve the existing joint legal custody order

89 in accordance with Subsection 30-3-10(1)(b). The court may modify the terms and conditions

90 of the existing joint legal custody order in accordance with Subsection 30-3-10(5) and may
91 order the parents to file a parenting plan in accordance with this chapter.

92 ~~[(2)] (4)~~ A parent requesting a modification from sole custody to joint legal custody or
93 joint physical custody or both, or any other type of shared parenting arrangement, shall file and
94 serve a proposed parenting plan with the petition to modify in accordance with Section
95 30-3-10.8.

96 ~~[(3)]~~ ~~The order of joint legal custody may be terminated by order of the court if one or~~
97 ~~both parents file a motion for termination and the court determines that the joint legal custody~~
98 ~~order is unworkable or inappropriate under existing circumstances. At the time of entry of an~~
99 ~~order terminating joint legal custody, the court shall enter an order of sole legal custody under~~
100 ~~Section 30-3-10. All related issues, including parent-time and child support, shall also be~~
101 ~~determined and ordered by the court.]~~

102 ~~[(4)] (5)~~ If the court finds that an action under this section is filed or answered
103 frivolously and in a manner designed to harass the other party, the court shall assess attorney's
104 fees as costs against the offending party.

Legislative Review Note
as of 2-2-06 8:13 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0398

Joint Custody Amendments

06-Feb-06

4:28 PM

State Impact

No fiscal impact.

Individual and Business Impact

Individual fiscal impact will vary according to circumstances.

Office of the Legislative Fiscal Analyst