

**JOINT LEGAL CUSTODY AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lorie D. Fowlke**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill allows for the modification of joint custody orders and creates specific requirements to do so.

**Highlighted Provisions:**

This bill:

- ▶ allows a parent to file a motion for termination of joint custody under specific circumstances;
- ▶ sets conditions for the court to consider in modifying a joint custody order;
- ▶ requires that parents participate in a dispute resolution proceeding; and
- ▶ requires the court to make specific findings when modifying or terminating a joint custody order.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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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 or physical custody order.**

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

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

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

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

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

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

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

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

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

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

55 (b) An order of joint legal or physical custody, in itself, is not grounds for modifying a  
56 support order.

57 (c) [~~The agreement shall contain~~] An order of joint legal or physical custody shall  
58 require a parenting plan incorporating a dispute resolution procedure the parties agree to use;

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

61 (ii) before seeking enforcement or modification of the terms and conditions of the  
62 order of joint legal or physical custody through litigation, except in emergency situations  
63 requiring ex parte orders to protect the child.

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

65 **30-3-10.4. Modification or termination of order.**

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

69 (a) the circumstances of the child or one or both parents or joint legal or physical  
70 custodians have materially and substantially changed since the entry of the order to be  
71 modified; ~~and~~

72 (b) a modification of the terms and conditions of the order would be an improvement  
73 for and in the best interest of the child[-]; and

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

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

80 (2) (a) In determining whether the best interest of a child will be served by either  
81 modifying or terminating the joint legal or physical custody order, the court shall, in addition to  
82 other factors the court considers relevant, consider the factors outlined in Subsection  
83 30-3-10.2(2).

84 (b) A court order modifying or terminating an existing joint legal or physical custody  
85 order shall contain written findings that:

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

87 (ii) a modification of the terms and conditions of the order would be an improvement  
88 for and in the best interest of the child.

89 (c) The court shall give substantial weight to the existing joint legal or physical custody

90 order when the child is thriving and well-adjusted.

91 (3) The court shall, in every case regarding a motion for termination of a joint legal or  
92 physical custody order, consider reasonable alternatives to preserve the existing order in  
93 accordance with Subsection 30-3-10(1)(b). The court may modify the terms and conditions of  
94 the existing order in accordance with Subsection 30-3-10(5) and may order the parents to file a  
95 parenting plan in accordance with this chapter.

96 [~~2~~] (4) A parent requesting a modification from sole custody to joint legal custody or  
97 joint physical custody or both, or any other type of shared parenting arrangement, shall file and  
98 serve a proposed parenting plan with the petition to modify in accordance with Section  
99 30-3-10.8.

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

106 [~~4~~] (5) If the court finds that an action under this section is filed or answered  
107 frivolously and in a manner designed to harass the other party, the court shall assess attorney's  
108 fees as costs against the offending party.

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**Legislative Review Note**  
as of 2-13-07 10:45 AM

**Office of Legislative Research and General Counsel**

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**H.B. 456 - Joint Legal Custody Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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