

JOINT LEGAL CUSTODY AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: _____

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



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

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

30-3-10.3. Terms of joint legal or physical custody order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

Office of Legislative Research and General Counsel

H.B. 456 - Joint Legal Custody Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
