

Representative Lorie D. Fowlke proposes the following substitute bill:

JOINT CUSTODY MODIFICATIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill creates a rebuttable presumption for joint legal custody in a divorce or separation action, allows for the modification of joint custody orders, and creates specific requirements to do so.

Highlighted Provisions:

This bill:

- ▶ creates a rebuttable presumption for joint legal custody in a divorce or separation action;
- ▶ provides that the presumption may be rebutted by certain circumstances, including domestic violence;
- ▶ 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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **30-3-10**, as last amended by Laws of Utah 2008, Chapter 3

31 **30-3-10.3**, as last amended by Laws of Utah 2001, Chapter 126

32 **30-3-10.4**, as last amended by Laws of Utah 2005, Chapter 142

33

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

35 Section 1. Section **30-3-10** is amended to read:

36 **30-3-10. Custody of children in case of separation or divorce -- Custody**
37 **consideration.**

38 (1) If a husband and wife having minor children are separated, or their marriage is
39 declared void or dissolved, the court shall make an order for the future care and custody of the
40 minor children as it considers appropriate.

41 (a) In determining any form of custody, the court shall consider the best interests of the
42 child and, among other factors the court finds relevant, the following:

43 (i) the past conduct and demonstrated moral standards of each of the parties;

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

46 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
47 and nature of the relationship between a parent and child; and

48 (iv) those factors outlined in Section 30-3-10.2.

49 ~~[(b) The court shall, in every case, consider joint custody but may award any form of~~
50 ~~custody which is determined to be]~~

51 (b) There shall be a rebuttable presumption that joint legal custody, as defined in
52 Section 30-3-10.1, is in the best interest of the child[-], so long as the party who desires joint
53 legal custody files a proposed parenting plan in accordance with Sections 30-3-10.8 and
54 30-3-10.9. The presumption may be rebutted by a showing by a preponderance of the
55 evidence that the following circumstances exist:

56 (i) the parents were not married to each other;

- 57 (ii) domestic violence in the home or in the presence of the child;
- 58 (iii) special physical or mental needs of a parent or child, making joint legal custody
- 59 unreasonable;
- 60 (iv) physical distance between the residences of the parents, making joint decision
- 61 making impractical in certain circumstances; or
- 62 (v) any other factor the court considers relevant, including those listed in Section
- 63 30-3-10.2.

64 (c) The children may not be required by either party to testify unless the trier of fact
65 determines that extenuating circumstances exist that would necessitate the testimony of the
66 children be heard and there is no other reasonable method to present their testimony.

67 (d) The court may inquire of the children and take into consideration the children's
68 desires regarding future custody or parent-time schedules, but the expressed desires are not
69 controlling and the court may determine the children's custody or parent-time otherwise. The
70 desires of a child 16 years of age or older shall be given added weight, but is not the single
71 controlling factor.

72 (e) If interviews with the children are conducted by the court pursuant to Subsection
73 (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be
74 obtained but is not necessary if the court finds that an interview with the children is the only
75 method to ascertain the child's desires regarding custody.

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

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

83 (4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a
84 parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining
85 whether a substantial change has occurred for the purpose of modifying an award of custody.

86 (b) If a court takes a parent's disability into account in awarding custody or determining
87 whether a substantial change has occurred for the purpose of modifying an award of custody,

88 the parent with a disability may rebut any evidence, presumption, or inference arising from the
89 disability by showing that:

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

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

95 (c) Nothing in this section may be construed to apply to adoption proceedings under
96 Title 78B, Chapter 6, Part 1, Utah Adoption Act.

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

100 Section 2. Section **30-3-10.3** is amended to read:

101 **30-3-10.3. Terms of joint legal custody order.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 **30-3-10.4. Modification or termination of order.**

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

140 (a) the verified petition or accompanying affidavit initially alleges that admissible
141 evidence will show that the circumstances of the child or one or both parents or joint legal or
142 physical custodians have materially and substantially changed since the entry of the order to be
143 modified; ~~[and]~~

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

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

148 (ii) if no dispute resolution procedure is contained in the order that established joint
149 legal or physical custody, the court orders the parents to participate in a dispute resolution

150 procedure in accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good
151 faith, they have utilized a dispute resolution procedure to resolve their dispute.

152 (2) (a) In determining whether the best interest of a child will be served by either
153 modifying or terminating the joint legal or physical custody order, the court shall, in addition to
154 other factors the court considers relevant, consider the factors outlined in Subsection
155 30-3-10.2(2).

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

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

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

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

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

168 ~~[(2)]~~ (4) A parent requesting a modification from sole custody to joint legal custody or
169 joint physical custody or both, or any other type of shared parenting arrangement, shall file and
170 serve a proposed parenting plan with the petition to modify in accordance with Section
171 30-3-10.8.

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

178 ~~[(4)]~~ (5) If the court finds that an action under this section is filed or answered
179 frivolously and in a manner designed to harass the other party, the court shall assess ~~[attorney's]~~
180 attorney fees as costs against the offending party.

H.B. 415 1st Sub. (Buff) - Joint Custody Modifications

Fiscal Note

2008 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.
