

**CUSTODY AND PARENT-TIME FOR  
NON-PARENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Kay L. McIff

---

---

**LONG TITLE**

**General Description:**

This bill allows persons who are related to a child and have assumed the role of parent to petition the court for custody or ~~§~~→ [parent-time] visitation ←~~§~~ .

**Highlighted Provisions:**

This bill:

- ▶ defines "person other than a parent" as a person who is related to a child;
- ▶ provides a procedure for a person other than a parent to gain custody or ~~§~~→ [parent-time] visitation ←~~§~~ ;
- ▶ requires notice to a parent, guardian, or state agency with an interest; and
- ▶ provides that it may not be used against a person serving in the military who is outside the state.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

- 30-5a-101**, Utah Code Annotated 1953
- 30-5a-102**, Utah Code Annotated 1953
- 30-5a-103**, Utah Code Annotated 1953



28

29 *Be it enacted by the Legislature of the state of Utah:*30 Section 1. Section **30-5a-101** is enacted to read:31 **CHAPTER 5a. CUSTODY AND  $\hat{S}\rightarrow$  [PARENT-TIME] VISITATION  $\leftarrow\hat{S}$  FOR PERSONS**32 **OTHER THAN PARENTS ACT**33 **Part 1. General Provisions**34 **30-5a-101. Title.**35 This chapter is known as the " **$\hat{S}\rightarrow$  [Parent-time] Visitation  $\leftarrow\hat{S}$  for Persons**35a Other than Parents36 Act."37 Section 2. Section **30-5a-102** is enacted to read:38 **30-5a-102. Definitions.**39 As used in this chapter:40 (1) "Parent" means a biological or adoptive parent.41 (2) "Person other than a parent" means a person related to the child by marriage or42 blood, including:43 (a) siblings;44 (b) aunts;45 (c) uncles;46 (d) grandparents; or47 (e)  $\hat{S}\rightarrow$  current or former  $\leftarrow\hat{S}$  step-parents, or any of the persons in Subsections (2)(a)47a through (d) in a step48 relationship to the child.49 Section 3. Section **30-5a-103** is enacted to read:50 **30-5a-103. Custody and  $\hat{S}\rightarrow$  [parent-time] visitation  $\leftarrow\hat{S}$  for persons other than a parent.**51 (1) In accordance with Section 62A-4a-201, it is the public policy of this state that52 parents retain the fundamental right and duty to exercise primary control over the care,53 supervision, upbringing, and education of their children. There is a rebuttable presumption that54 a parent's decisions are in the child's best interests.55 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or56  $\hat{S}\rightarrow$  [parent-time] visitation  $\leftarrow\hat{S}$  rights to a person other than a parent who, by clear and convincing evidence, has57 established all of the following:58 (a) the person has intentionally assumed the role and obligations of a parent;

59 (b) the person and the child have formed an emotional bond and created a parent-child  
60 type relationship;

61 (c) the person contributed emotionally or financially to the child's well being;

62 (d) assumption of the parental role is not the result of a financially compensated  
63 surrogate care arrangement;

64 (e) continuation of the relationship between the person and the child would be in the  
65 child's best interests;

66 (f) loss or cessation of the relationship between the person and the child would be  
67 detrimental to the child; and

68 (g) the parent:

69 (i) ~~§~~ → [has consented or acquiesced to the parental role of the person;

70 —— ~~(ii)~~ ← ~~§~~ is absent; or

71 ~~§~~ → [(iii)] (ii) ← ~~§~~ is found by a court to ~~§~~ → [be abusive, neglectful, or to have left] have  
71a abused or neglected ← ~~§~~ the child ~~§~~ → [dependent  
72 through the fault of the parent] ← ~~§~~ .

73 (3) A proceeding under this chapter may be commenced by filing a verified petition, or  
74 petition supported by an affidavit, in the ~~§~~ → juvenile court if a matter is pending, or in the ← ~~§~~  
74a district court in the county in which the child:

75 (a) currently resides; or

76 (b) lived with a parent or a person other than a parent who acted as a parent within six  
77 months before the commencement of the action.

78 (4) A proceeding under this chapter may be filed in a pending divorce, parentage  
79 action, or other proceeding ~~§~~ → , including a proceeding in the juvenile court, ← ~~§~~ involving  
79a custody ~~§~~ → [and parent-time issues] of or visitation with a child ← ~~§~~ .

80 (5) The petition shall include detailed facts supporting the petitioner's right to file the  
81 petition including the criteria set forth in Subsection (2) and residency information as set forth  
82 in Section ~~§~~ → [78-45c-209] 78B-13-209 ← ~~§~~ .

83 (6) A proceeding under this chapter may not be filed against a parent who is actively  
84 servicing outside the state in any branch of the military.

85 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with  
86 the rules of civil procedure on all of the following:

87 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

88 (b) any person who has court-ordered custody or ~~§~~ → [parent-time] visitation ← ~~§~~ rights;

89 (c) the child's guardian;

- 90           (d) the guardian ad litem, if one has been appointed;  
91           (e) a person or agency that has physical custody of the child or that claims to have  
92 custody or ~~§~~ [parent-time] visitation ~~←§~~ rights; and  
93           (f) any other person or agency that has previously appeared in any action regarding  
94 custody ~~§~~ of ~~←§~~ or ~~§~~ [parent-time-of] visitation with ~~←§~~ the child.  
95           (8) The court may order a custody evaluation to be conducted in any action brought  
96 under this chapter.  
97           (9) The court may enter temporary orders in an action brought under this chapter  
98 pending the entry of final orders.

---

**Legislative Review Note**  
**as of 1-30-08 8:56 AM**

**Office of Legislative Research and General Counsel**