

JOINT CUSTODY AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Lyle W. Hillyard

Cosponsors: Tim M. Cosgrove Susan Duckworth

LONG TITLE

General Description:

This bill requires a court to consider 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:

- ▶ requires a court to consider joint legal custody in every divorce or separation action;
- ▶ requires that the person seeking joint legal custody has filed a parenting plan;
- ▶ provides that the court may award any type of custody considered to be in the best interests of the children;
- ▶ 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

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **30-3-10**, as last amended by Laws of Utah 2008, Chapter 3

33 **30-3-10.3**, as last amended by Laws of Utah 2001, Chapter 126

34 **30-3-10.4**, as last amended by Laws of Utah 2005, Chapter 142



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

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

38 **30-3-10. Custody of children in case of separation or divorce -- Custody**
39 **consideration.**

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

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

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

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

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

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

51 (b) The court shall, in every case, consider joint custody but may award any form of
52 custody which is determined to be in the best interest of the child.

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

56 (d) The court may inquire of the children and take into consideration the children's
57 desires regarding future custody or parent-time schedules, but the expressed desires are not

58 controlling and the court may determine the children's custody or parent-time otherwise. The
59 desires of a child 16 years of age or older shall be given added weight, but is not the single
60 controlling factor.

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

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

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

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

75 (b) If a court takes a parent's disability into account in awarding custody or
76 determining whether a substantial change has occurred for the purpose of modifying an award
77 of custody, the parent with a disability may rebut any evidence, presumption, or inference
78 arising from the disability by showing that:

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

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

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

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

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

90 **30-3-10.3. Terms of joint legal custody order.**

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

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

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

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

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

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

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

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

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

112 (5) [~~(a)~~] The appointment of joint legal custodians does not impair or limit the
113 authority of the court to order support of the child, including payments by one custodian to the

114 other.

115 ~~[(b)] (6)~~ An order of joint legal custody, in itself, is not grounds for modifying a
 116 support order.

117 ~~[(c)] (7) [The agreement]~~ An order of joint legal or physical custody shall [contain]
 118 require a parenting plan incorporating a dispute resolution procedure the parties agree to use
 119 before seeking enforcement or modification of the terms and conditions of the order of joint
 120 legal or physical custody through litigation, except in emergency situations requiring ex parte
 121 orders to protect the child.

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

123 **30-3-10.4. Modification or termination of order.**

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

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

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

133 (c) (i) both parents have complied in good faith with the dispute resolution procedure
 134 in accordance with Subsection 30-3-10.3(7); or

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

139 (2) (a) In determining whether the best interest of a child will be served by either
 140 modifying or terminating the joint legal or physical custody order, the court shall, in addition
 141 to other factors the court considers relevant, consider the factors outlined in Section 30-3-10

142 and Subsection 30-3-10.2(2).

143 (b) The court shall make specific written findings on each of the factors relied upon
144 stating:

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

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

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

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

155 ~~[(2)]~~ (4) A parent requesting a modification from sole custody to joint legal custody or
156 joint physical custody or both, or any other type of shared parenting arrangement, shall file
157 and serve a proposed parenting plan with the petition to modify in accordance with Section
158 30-3-10.8.

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

165 ~~[(4)]~~ (5) If the court finds that an action under this section is filed or answered
166 frivolously and in a manner designed to harass the other party, the court shall assess
167 ~~[attorney's]~~ attorney fees as costs against the offending party.