

JOINT CUSTODY AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Lyle W. Hillyard

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



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



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 in the best interest of the child.

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

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

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

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

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

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

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

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

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

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

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

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

88 **30-3-10.3. Terms of joint legal custody order.**

89 (1) Unless the court orders otherwise, before a final order of joint legal custody or joint

90 physical custody is entered both parties shall attend the mandatory course for divorcing parents,
91 as provided in Section 30-3-11.3, and present a certificate of completion from the course to the
92 court.

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

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

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

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

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

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

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

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

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

113 ~~(b)~~ (6) An order of joint legal or physical custody, in itself, is not grounds for
114 modifying a support order.

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

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

121 **30-3-10.4. Modification or termination of order.**

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

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

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

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

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

137 (2) (a) In determining whether the best interest of a child will be served by either
138 modifying or terminating the joint legal or physical custody order, the court shall, in addition to
139 other factors the court considers relevant, consider the factors outlined in Section 30-3-10 and
140 Subsection 30-3-10.2(2).

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

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

144 (ii) 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 (iii) where each factor falls within the spectrum of relative importance and to accord
147 each factor its appropriate weight.

148 (c) The court shall give substantial weight to the existing joint legal or physical custody
149 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 and
157 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 [attorney's]
167 attorney fees as costs against the offending party.

Legislative Review Note
as of 1-20-09 8:39 AM

Office of Legislative Research and General Counsel

H.B. 251 - Joint Custody Amendments

Fiscal Note

2009 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.
