

PARENT-TIME SCHEDULE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill adds participation in religious activity and consideration of stay-at-home spouses to items a judge may take into consideration when creating orders in divorces.

Highlighted Provisions:

This bill:

▶ adds provisions to allow a court to take into consideration a parent's willingness to allow a child's continued participation in religious services and activities when ordering parent-time for non-custodial parents; and

▶ requires a judge to consider whether the custodial spouse was a stay-at-home spouse during the marriage.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Laws of Utah 2010, Chapter 285

30-3-33, as last amended by Laws of Utah 2008, Chapter 146

30-3-34, as last amended by Laws of Utah 2008, Chapter 146



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

29 Section 1. Section **30-3-5** is amended to read:

30 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
31 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
32 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

33 (1) When a decree of divorce is rendered, the court may include in it equitable orders
34 relating to the children, property, debts or obligations, and parties. The court shall include the
35 following in every decree of divorce:

36 (a) an order assigning responsibility for the payment of reasonable and necessary
37 medical and dental expenses of the dependent children including responsibility for health
38 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

39 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
40 purchase and maintenance of appropriate health, hospital, and dental care insurance for the
41 dependent children; and

42 (ii) a designation of which health, hospital, or dental insurance plan is primary and
43 which health, hospital, or dental insurance plan is secondary in accordance with the provisions
44 of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both
45 parents' health, hospital, or dental insurance plans;

46 (c) pursuant to Section 15-4-6.5:

47 (i) an order specifying which party is responsible for the payment of joint debts,
48 obligations, or liabilities of the parties contracted or incurred during marriage;

49 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
50 the court's division of debts, obligations, or liabilities and regarding the parties' separate,
51 current addresses; and

52 (iii) provisions for the enforcement of these orders; and

53 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,
54 Recovery Services.

55 (2) The court may include, in an order determining child support, an order assigning
56 financial responsibility for all or a portion of child care expenses incurred on behalf of the
57 dependent children, necessitated by the employment or training of the custodial parent. If the
58 court determines that the circumstances are appropriate and that the dependent children would

59 be adequately cared for, it may include an order allowing the noncustodial parent to provide
60 child care for the dependent children, necessitated by the employment or training of the
61 custodial parent.

62 (3) The court has continuing jurisdiction to make subsequent changes or new orders for
63 the custody of the children and their support, maintenance, health, and dental care, and for
64 distribution of the property and obligations for debts as is reasonable and necessary.

65 (4) Child support, custody, visitation, and other matters related to children born to the
66 mother and father after entry of the decree of divorce may be added to the decree by
67 modification.

68 (5) (a) In determining parent-time rights of parents and visitation rights of grandparents
69 and other members of the immediate family, the court shall consider the best interest of the
70 child.

71 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
72 court may include in an order establishing a parent-time or visitation schedule a provision,
73 among other things, authorizing any peace officer to enforce a court-ordered parent-time or
74 visitation schedule entered under this chapter.

75 (6) If a petition for modification of child custody or parent-time provisions of a court
76 order is made and denied, the court shall order the petitioner to pay the reasonable attorneys'
77 fees expended by the prevailing party in that action, if the court determines that the petition
78 was without merit and not asserted or defended against in good faith.

79 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a
80 visitation order by a grandparent or other member of the immediate family where a visitation or
81 parent-time right has been previously granted by the court, the court may award to the
82 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing
83 party because of the other party's failure to provide or exercise court-ordered visitation or
84 parent-time.

85 (8) (a) The court shall consider at least the following factors in determining alimony:

- 86 (i) the financial condition and needs of the recipient spouse;
- 87 (ii) the recipient's earning capacity or ability to produce income;
- 88 (iii) the ability of the payor spouse to provide support;
- 89 (iv) the length of the marriage;

90 (v) whether the recipient spouse has custody of minor children requiring support;
91 (vi) whether the recipient spouse worked in a business owned or operated by the payor
92 spouse; [~~and~~]

93 (vii) whether the recipient spouse directly contributed to any increase in the payor
94 spouse's skill by paying for education received by the payor spouse or allowing the payor
95 spouse to attend school during the marriage; and

96 (viii) whether the recipient spouse did not work outside the home, and should continue
97 to stay at home, while there are preschool age children in the home.

98 (b) The court may consider the fault of the parties in determining alimony.

99 (c) As a general rule, the court should look to the standard of living, existing at the
100 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the
101 court shall consider all relevant facts and equitable principles and may, in its discretion, base
102 alimony on the standard of living that existed at the time of trial. In marriages of short
103 duration, when no children have been conceived or born during the marriage, the court may
104 consider the standard of living that existed at the time of the marriage.

105 (d) The court may, under appropriate circumstances, attempt to equalize the parties'
106 respective standards of living.

107 (e) When a marriage of long duration dissolves on the threshold of a major change in
108 the income of one of the spouses due to the collective efforts of both, that change shall be
109 considered in dividing the marital property and in determining the amount of alimony. If one
110 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during
111 the marriage, the court may make a compensating adjustment in dividing the marital property
112 and awarding alimony.

113 (f) In determining alimony when a marriage of short duration dissolves, and no
114 children have been conceived or born during the marriage, the court may consider restoring
115 each party to the condition which existed at the time of the marriage.

116 (g) (i) The court has continuing jurisdiction to make substantive changes and new
117 orders regarding alimony based on a substantial material change in circumstances not
118 foreseeable at the time of the divorce.

119 (ii) The court may not modify alimony or issue a new order for alimony to address
120 needs of the recipient that did not exist at the time the decree was entered, unless the court

121 finds extenuating circumstances that justify that action.

122 (iii) In determining alimony, the income of any subsequent spouse of the payor may not
123 be considered, except as provided in this Subsection (8).

124 (A) The court may consider the subsequent spouse's financial ability to share living
125 expenses.

126 (B) The court may consider the income of a subsequent spouse if the court finds that
127 the payor's improper conduct justifies that consideration.

128 (h) Alimony may not be ordered for a duration longer than the number of years that the
129 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating
130 circumstances that justify the payment of alimony for a longer period of time.

131 (9) Unless a decree of divorce specifically provides otherwise, any order of the court
132 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
133 death of that former spouse. However, if the remarriage is annulled and found to be void ab
134 initio, payment of alimony shall resume if the party paying alimony is made a party to the
135 action of annulment and his rights are determined.

136 (10) Any order of the court that a party pay alimony to a former spouse terminates
137 upon establishment by the party paying alimony that the former spouse is cohabitating with
138 another person.

139 Section 2. Section **30-3-33** is amended to read:

140 **30-3-33. Advisory guidelines.**

141 In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5,
142 the following advisory guidelines are suggested to govern all parent-time arrangements
143 between parents.

144 (1) Parent-time schedules mutually agreed upon by both parents are preferable to a
145 court-imposed solution.

146 (2) The parent-time schedule shall be utilized to maximize the continuity and stability
147 of the child's life.

148 (3) Special consideration shall be given by each parent to make the child available to
149 attend family functions including funerals, weddings, family reunions, religious holidays,
150 important ceremonies, and other significant events in the life of the child or in the life of either
151 parent which may inadvertently conflict with the parent-time schedule.

152 (4) The responsibility for the pick up, delivery, and return of the child shall be
153 determined by the court when the parent-time order is entered, and may be changed at any time
154 a subsequent modification is made to the parent-time order.

155 (5) If the noncustodial parent will be providing transportation, the custodial parent
156 shall have the child ready for parent-time at the time the child is to be picked up and shall be
157 present at the custodial home or shall make reasonable alternate arrangements to receive the
158 child at the time the child is returned.

159 (6) If the custodial parent will be transporting the child, the noncustodial parent shall
160 be at the appointed place at the time the noncustodial parent is to receive the child, and have
161 the child ready to be picked up at the appointed time and place, or have made reasonable
162 alternate arrangements for the custodial parent to pick up the child.

163 (7) Regular school hours may not be interrupted for a school-age child for the exercise
164 of parent-time by either parent.

165 (8) The court may make alterations in the parent-time schedule to reasonably
166 accommodate the work schedule of both parents and may increase the parent-time allowed to
167 the noncustodial parent but shall not diminish the standardized parent-time provided in
168 Sections 30-3-35 and 30-3-35.5.

169 (9) The court may make alterations in the parent-time schedule to reasonably
170 accommodate the distance between the parties and the expense of exercising parent-time.

171 (10) Neither parent-time nor child support is to be withheld due to either parent's
172 failure to comply with a court-ordered parent-time schedule.

173 (11) The custodial parent shall notify the noncustodial parent within 24 hours of
174 receiving notice of all significant school, social, sports, and community functions in which the
175 child is participating or being honored, and the noncustodial parent shall be entitled to attend
176 and participate fully.

177 (12) The noncustodial parent shall have access directly to all school reports including
178 preschool and daycare reports and medical records and shall be notified immediately by the
179 custodial parent in the event of a medical emergency.

180 (13) Each parent shall provide the other with his current address and telephone
181 number, email address, and other virtual parent-time access information within 24 hours of any
182 change.

183 (14) Each parent shall permit and encourage, during reasonable hours, reasonable and
184 uncensored communications with the child, in the form of mail privileges and virtual
185 parent-time if the equipment is reasonably available, provided that if the parties cannot agree
186 on whether the equipment is reasonably available, the court shall decide whether the equipment
187 for virtual parent-time is reasonably available, taking into consideration:

- 188 (a) the best interests of the child;
189 (b) each parent's ability to handle any additional expenses for virtual parent-time; and
190 (c) any other factors the court considers material.

191 (15) Parental care shall be presumed to be better care for the child than surrogate care
192 and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if
193 willing and able to transport the children, to provide the child care. Child care arrangements
194 existing during the marriage are preferred as are child care arrangements with nominal or no
195 charge.

196 (16) Each parent shall provide all surrogate care providers with the name, current
197 address, and telephone number of the other parent and shall provide the noncustodial parent
198 with the name, current address, and telephone number of all surrogate care providers unless the
199 court for good cause orders otherwise.

200 (17) Each parent shall be entitled to an equal division of major religious holidays
201 celebrated by the parents, and the parent who celebrates a religious holiday that the other parent
202 does not celebrate shall have the right to be together with the child on the religious holiday.
203 Major religious holidays may include those days celebrated by a particular religion outside of
204 days on which the government has declared a holiday.

205 (18) If the child is on a different parent-time schedule than a sibling, based on Sections
206 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with
207 all the minor children so that parent-time is uniform between school aged and nonschool aged
208 children, is appropriate.

209 Section 3. Section **30-3-34** is amended to read:

210 **30-3-34. Best interests -- Rebuttable presumption.**

211 (1) If the parties are unable to agree on a parent-time schedule, the court may establish
212 a parent-time schedule consistent with the best interests of the child.

213 (2) The advisory guidelines as provided in Section 30-3-33 and the parent-time

214 schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be presumed to be in the best
215 interests of the child. The parent-time schedule shall be considered the minimum parent-time
216 to which the noncustodial parent and the child shall be entitled unless a parent can establish
217 otherwise by a preponderance of the evidence that more or less parent-time should be awarded
218 based upon any of the following criteria:

219 (a) parent-time would endanger the child's physical health or significantly impair the
220 child's emotional development;

221 (b) the distance between the residency of the child and the noncustodial parent;

222 (c) a substantiated or unfounded allegation of child abuse has been made;

223 (d) the lack of demonstrated parenting skills without safeguards to ensure the child's
224 well-being during parent-time;

225 (e) the financial inability of the noncustodial parent to provide adequate food and
226 shelter for the child during periods of parent-time;

227 (f) the preference of the child if the court determines the child to be of sufficient
228 maturity;

229 (g) the incarceration of the noncustodial parent in a county jail, secure youth
230 corrections facility, or an adult corrections facility;

231 (h) shared interests between the child and the noncustodial parent;

232 (i) the involvement or lack of involvement of the noncustodial parent in the school,
233 community, religious, or other related activities of the child;

234 (j) the availability of the noncustodial parent to care for the child when the custodial
235 parent is unavailable to do so because of work or other circumstances;

236 (k) a substantial and chronic pattern of missing, canceling, or denying regularly
237 scheduled parent-time;

238 (l) the minimal duration of and lack of significant bonding in the parents' relationship
239 prior to the conception of the child;

240 (m) the parent-time schedule of siblings;

241 (n) the lack of reasonable alternatives to the needs of a nursing child; ~~and~~

242 (o) the religious preference of either parent, if the child has been raised within and
243 participated in the services and activities of a particular denomination and a parent
244 demonstrates a willingness to continue to allow attendance at religious functions of that

245 denomination; and

246 [~~o~~] (p) any other criteria the court determines relevant to the best interests of the
247 child.

248 (3) The court shall enter the reasons underlying its order for parent-time that:

249 (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or

250 (b) provides more or less parent-time than a parent-time schedule provided in Section
251 30-3-35 or 30-3-35.5.

252 (4) Once the parent-time schedule has been established, the parties may not alter the
253 schedule except by mutual consent of the parties or a court order.

Legislative Review Note
as of 1-20-11 4:54 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 231

SHORT TITLE: **Parent-time Schedule Amendments**

SPONSOR: **Sandstrom, S.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.