

HB0231S01 compared with HB0231

~~{deleted text}~~ shows text that was in HB0231 but was deleted in HB0231S01.

inserted text shows text that was not in HB0231 but was inserted into HB0231S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

~~{PARENT-TIME}~~ Representative Stephen E. Sandstrom proposes the following substitute bill:

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

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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~~

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

Section 1. Section ~~{30-3-5}~~30-3-34 is amended to read:

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

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

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

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

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

~~—— (c) pursuant to Section 15-4-6.5:~~

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

~~—— (ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate,~~

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~~current addresses; and~~

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

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

~~—— (2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.~~

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

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

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

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

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

~~—— (7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court may award to the~~

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~~prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.~~

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

~~—— (i) the financial condition and needs of the recipient spouse;~~

~~—— (ii) the recipient's earning capacity or ability to produce income;~~

~~—— (iii) the ability of the payor spouse to provide support;~~

~~—— (iv) the length of the marriage;~~

~~—— (v) whether the recipient spouse has custody of minor children requiring support;~~

~~—— (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; [and]~~

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

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

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

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

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

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

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

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

~~—— (ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.~~

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

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

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

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

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

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

~~—— Section 2. Section ~~30-3-33~~ is amended to read:~~

~~—— **30-3-33. Advisory guidelines.**~~

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

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- ~~———(1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.~~
- ~~———(2) The parent-time schedule shall be utilized to maximize the continuity and stability of the child's life.~~
- ~~———(3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.~~
- ~~———(4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.~~
- ~~———(5) If the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.~~
- ~~———(6) If the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.~~
- ~~———(7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.~~
- ~~———(8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but shall not diminish the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5.~~
- ~~———(9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.~~
- ~~———(10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.~~
- ~~———(11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the~~

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~~child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.~~

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

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

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

~~—— (a) the best interests of the child;~~

~~—— (b) each parent's ability to handle any additional expenses for virtual parent-time; and~~

~~—— (c) any other factors the court considers material.~~

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

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

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

~~—— (18) If the child is on a different parent-time schedule than a sibling, based on Sections~~

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~~30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.~~

~~Section 3. Section 30-3-34 is amended to read:~~

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

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

(2) The advisory guidelines as provided in Section 30-3-33 and the parent-time schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be presumed to be in the best interests of the child. The parent-time schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon any of the following criteria:

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

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

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

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

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

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

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

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

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

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

(k) a substantial and chronic pattern of missing, canceling, or denying regularly

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scheduled parent-time;

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

(m) the parent-time schedule of siblings;

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

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

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

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

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

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

(4) Once the parent-time schedule has been established, the parties may not alter the 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}~~