

JOINT CUSTODY MODIFICATIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill creates a rebuttable presumption for joint custody in a divorce or separation action.

Highlighted Provisions:

This bill:

- ▶ creates a rebuttable presumption for joint custody in a divorce or separation action;
- ▶ provides that the presumption for joint custody may be rebutted by circumstances, including domestic violence;
- ▶ sets conditions for the court to consider in modifying a joint custody order;
- ▶ requires that parents participate in dispute resolution proceedings; and
- ▶ requires the court to make specific findings when modifying or terminating a joint custody order.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-10, as last amended by Laws of Utah 2010, Chapter 237

30-3-10.3, as last amended by Laws of Utah 2009, Chapter 179

30-3-10.4, as last amended by Laws of Utah 2010, Chapter 228

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

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

32 **30-3-10. Custody of children in case of separation or divorce -- Custody**
33 **consideration.**

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

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

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

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

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

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

45 (b) ~~[The court shall, in every case, consider joint custody but may award any form of~~
46 ~~custody which is determined to be]~~ There shall be a rebuttable presumption that joint legal
47 custody, as defined in Section 30-3-10.1, is in the best interest of the child[-], except in cases
48 where there is:

49 (i) domestic violence in the home or in the presence of the child;

50 (ii) special physical or mental needs of a parent or child, making joint legal custody
51 unreasonable;

52 (iii) physical distance between the residences of the parents, making joint decision
53 making impractical in certain circumstances; or

54 (iv) any other factor the court considers relevant including those listed in this section
55 and Section 30-3-10.2.

56 (c) The person who desires joint legal custody shall file a proposed parenting plan in
57 accordance with Sections 30-3-10.8 and 30-3-10.9. A presumption for joint legal custody may

58 be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of
59 the child.

60 [~~(c)~~] (d) The children may not be required by either party to testify unless the trier of
61 fact determines that extenuating circumstances exist that would necessitate the testimony of the
62 children be heard and there is no other reasonable method to present their testimony.

63 [~~(d)~~] (e) The court may inquire of the children and take into consideration the children's
64 desires regarding future custody or parent-time schedules, but the expressed desires are not
65 controlling and the court may determine the children's custody or parent-time otherwise. The
66 desires of a child 16 years of age or older shall be given added weight, but is not the single
67 controlling factor.

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

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

76 (3) If the court finds that one parent does not desire custody of the child, the court shall
77 take that evidence into consideration in determining whether to award custody to the other
78 parent.

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

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

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

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

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

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

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

97 **30-3-10.3. Terms of joint legal or physical custody order.**

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

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

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

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

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

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

113 (e) as necessary, the remaining parental rights, privileges, duties, and powers to be

114 exercised by the parents solely, concurrently, or jointly.

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

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

119 (5) The appointment of joint legal or physical custodians does not impair or limit the
120 authority of the court to order support of the child, including payments by one custodian to the
121 other.

122 (6) An order of joint legal custody, in itself, is not grounds for modifying a support
123 order.

124 (7) An order of joint legal or physical custody shall require a parenting plan
125 incorporating a dispute resolution procedure the parties agree to use;

126 (a) in accordance with Section 30-3-10.9, or as ordered by the court in accordance with
127 Subsection 30-3-10.2(5); and

128 (b) before seeking enforcement or modification of the terms and conditions of the order
129 of joint legal or physical custody through litigation, except in emergency situations requiring ex
130 parte orders to protect the child.

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

132 **30-3-10.4. Modification or termination of order.**

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

136 (a) the verified petition or accompanying affidavit initially alleges that admissible
137 evidence will show that the circumstances of the child or one or both parents or joint legal or
138 physical custodians have materially and substantially changed since the entry of the order to be
139 modified;

140 (b) a modification of the terms and conditions of the order would be an improvement
141 for and in the best interest of the child; and

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

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

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

152 (b) ~~[The court shall make specific]~~ A court order modifying or terminating an existing
153 joint legal or physical custody order shall contain written findings ~~[on each of the factors relied~~
154 ~~upon stating] that:~~

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

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

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

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

165 (4) A parent requesting a modification from sole custody to joint legal custody or joint
166 physical custody or both, or any other type of shared parenting arrangement, shall file and serve
167 a proposed parenting plan with the petition to modify in accordance with Section 30-3-10.8.

168 (5) If the court finds that an action under this section is filed or answered frivolously
169 and in a manner designed to harass the other party, the court shall assess attorney fees as costs

170 against the offending party.