

CHILD CUSTODY PROCEEDINGS AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Robles

House Sponsor: LaVar Christensen

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

General Description:

This bill reduces the age from 16 to 14 for children to express their opinion in custody cases.

Highlighted Provisions:

This bill:

reduces the age from 16 to 14 for children who wish to express their opinion during child custody proceedings which parent they would prefer to reside with.

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 2012, Chapters 269 and 271

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

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

30-3-10. Custody of children in case of separation or divorce -- Custody



28 **consideration.**

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

32 (a) In determining any form of custody, including a change in custody, the court shall
33 consider the best interests of the child without preference for either the mother or father solely
34 because of the biological sex of the parent and, among other factors the court finds relevant, the
35 following:

- 36 (i) the past conduct and demonstrated moral standards of each of the parties;
- 37 (ii) which parent is most likely to act in the best interest of the child, including
38 allowing the child frequent and continuing contact with the noncustodial parent;
- 39 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
40 and nature of the relationship between a parent and child; and
- 41 (iv) those factors outlined in Section 30-3-10.2.

42 (b) There shall be a rebuttable presumption that joint legal custody, as defined in
43 Section 30-3-10.1, is in the best interest of the child, except in cases where there is:

- 44 (i) domestic violence in the home or in the presence of the child;
- 45 (ii) special physical or mental needs of a parent or child, making joint legal custody
46 unreasonable;
- 47 (iii) physical distance between the residences of the parents, making joint decision
48 making impractical in certain circumstances; or
- 49 (iv) any other factor the court considers relevant including those listed in this section
50 and Section 30-3-10.2.

51 (c) The person who desires joint legal custody shall file a proposed parenting plan in
52 accordance with Sections 30-3-10.8 and 30-3-10.9. A presumption for joint legal custody may
53 be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of
54 the child.

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

58 (e) The court may inquire of the children and take into consideration the children's

59 desires regarding future custody or parent-time schedules, but the expressed desires are not
60 controlling and the court may determine the children's custody or parent-time otherwise. The
61 desires of a child [~~16~~] 14 years of age or older shall be given added weight, but is not [~~the~~
62 ~~single~~] a controlling factor.

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

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

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

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

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

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

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

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

88 (5) This section establishes neither a preference nor a presumption for or against joint
89 physical custody or sole physical custody, but allows the court and the family the widest

90 discretion to choose a parenting plan that is in the best interest of the child.

Legislative Review Note
as of 11-14-12 12:26 PM

Office of Legislative Research and General Counsel