

1 **EXPOSURE OF CHILDREN TO PORNOGRAPHY**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Curtis Oda

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to factors a court shall consider in a child custody
10 determination and in a termination of parental rights proceeding.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that a district court shall consider, when determining child custody in a
14 separation or divorce, whether the parent has ~~Š~~→ intentionally ←~~Š~~ exposed the child to
14a pornography or

15 material harmful to a child; and

16 ▶ provides that a juvenile court shall consider, when determining whether to terminate
17 a parent's rights, whether the parent has ~~Š~~→ intentionally ←~~Š~~ exposed the child to pornography or
18 material harmful to a minor.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **30-3-10**, as last amended by Laws of Utah 2013, Chapter 22

26 **78A-6-508**, as last amended by Laws of Utah 2009, Chapter 161



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

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

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

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

35 (a) In determining any form of custody, including a change in custody, the court shall
 36 consider the best interests of the child without preference for either the mother or father solely
 37 because of the biological sex of the parent and, among other factors the court finds relevant, the
 38 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) whether the parent has ~~intentionally~~ exposed the child to pornography or
 44a material harmful to a

45 minor, as defined in Section [76-10-1201](#); and

46 [~~(iv)~~] (v) those factors outlined in Section [30-3-10.2](#).

47 (b) There shall be a rebuttable presumption that joint legal custody, as defined in
 48 Section [30-3-10.1](#), is in the best interest of the child, except in cases 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 (d) The children may not be required by either party to testify unless the trier of fact
61 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 (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 14 years of age or older shall be given added weight, but is not the single
67 controlling factor.

68 (f) If interviews with the children are conducted by the court pursuant to Subsection
69 (1)(e), they shall be conducted by the judge in camera. The prior consent of the parties may be
70 obtained but is not necessary if the court finds that an interview with the children is the only
71 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 physical custody or sole physical custody, but allows the court and the family the widest
95 discretion to choose a parenting plan that is in the best interest of the child.

96 Section 2. Section **78A-6-508** is amended to read:

97 **78A-6-508. Evidence of grounds for termination.**

98 (1) In determining whether a parent or parents have abandoned a child, it is prima facie
99 evidence of abandonment that the parent or parents:

100 (a) although having legal custody of the child, have surrendered physical custody of the
101 child, and for a period of six months following the surrender have not manifested to the child
102 or to the person having the physical custody of the child a firm intention to resume physical
103 custody or to make arrangements for the care of the child;

104 (b) have failed to communicate with the child by mail, telephone, or otherwise for six
105 months;

106 (c) failed to have shown the normal interest of a natural parent, without just cause; or

107 (d) have abandoned an infant, as described in Subsection [78A-6-316\(1\)](#).

108 (2) In determining whether a parent or parents are unfit or have neglected a child the
109 court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

110 (a) emotional illness, mental illness, or mental deficiency of the parent that renders the
111 parent unable to care for the immediate and continuing physical or emotional needs of the child
112 for extended periods of time;

113 (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive
114 nature;

115 (c) habitual or excessive use of intoxicating liquors, controlled substances, or
116 dangerous drugs that render the parent unable to care for the child;

117 (d) repeated or continuous failure to provide the child with adequate food, clothing,
118 shelter, education, or other care necessary for the child's physical, mental, and emotional health
119 and development by a parent or parents who are capable of providing that care;

120 (e) whether the parent is incarcerated as a result of conviction of a felony, and the

121 sentence is of such length that the child will be deprived of a normal home for more than one
122 year; [or]

123 (f) a history of violent behavior[:]; or

124 (g) whether the parent has ~~§~~→ **intentionally** ←~~§~~ exposed the child to pornography or
124a material harmful to a
125 minor, as defined in Section 76-10-1201.

126 (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide
127 specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

128 (4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or
129 unfit because of a health care decision made for a child by the child's parent unless the state or
130 other party to the proceeding shows, by clear and convincing evidence, that the health care
131 decision is not reasonable and informed.

132 (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to
133 obtain a second health care opinion.

134 (5) If a child has been placed in the custody of the division and the parent or parents
135 fail to comply substantially with the terms and conditions of a plan within six months after the
136 date on which the child was placed or the plan was commenced, whichever occurs later, that
137 failure to comply is evidence of failure of parental adjustment.

138 (6) The following circumstances constitute prima facie evidence of unfitness:

139 (a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any
140 child, due to known or substantiated abuse or neglect by the parent or parents;

141 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to
142 indicate the unfitness of the parent to provide adequate care to the extent necessary for the
143 child's physical, mental, or emotional health and development;

144 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement
145 of the child;

146 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
147 commit murder or manslaughter of a child or child abuse homicide; or

148 (e) the parent intentionally, knowingly, or recklessly causes the death of another parent
149 of the child, without legal justification.

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Office of Legislative Research and General Counsel