

Representative Kyle R. Andersen proposes the following substitute bill:

CUSTODY AND VISITATION RIGHTS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kyle R. Andersen

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions related to custody and visitation rights of an individual other than a parent.

Highlighted Provisions:

This bill:

- addresses the Utah Supreme Court's decision in Jones v. Jones, 359 P.3d 603 (Utah 2015), by amending the factors that a court considers in granting visitation rights to grandparents;
- amends provisions regarding when a court may inquire, and take into account, a grandchild's desires with respect to visitation;
- amends provisions regarding custody and visitation rights for an individual other than a parent; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



AMENDS:

30-5-1, as last amended by Laws of Utah 2002, Chapter 85

30-5-2, as last amended by Laws of Utah 2005, Chapter 129

30-5a-101, as enacted by Laws of Utah 2008, Chapter 272

30-5a-102, as enacted by Laws of Utah 2008, Chapter 272

30-5a-103, as and further amended by Revisor Instructions, Laws of Utah 2018,
Chapter 446

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

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

30-5-1. Definitions.

As used in this act:

(1) "District court" means the district court with proper jurisdiction over the grandchild.

(2) "Grandchild" means the child with respect to whom a grandparent is seeking visitation rights under this chapter.

(3) "Grandparent" means ~~a person~~ an individual whose child, either by blood, marriage, or adoption, is the parent of the grandchild.

Section 2. Section **30-5-2** is amended to read:

30-5-2. Visitation rights of grandparents.

(1) In accordance with the provisions and requirements of this section:

(a) ~~[Grandparents have]~~ a grandparent has standing to bring an action requesting visitation in district court by petition~~[, requesting visitation in accordance with the provisions and requirements of this section. Grandparents may also]; and~~

(b) a grandparent may file a petition for visitation rights in ~~[a pending]~~ the juvenile court or district court where a divorce proceeding or other proceeding involving custody and visitation issues is pending.

~~[(2) There is a rebuttable presumption that a parent's decision with regard to grandparent visitation is in the grandchild's best interests. However, the court may override the parent's decision and grant the petitioner reasonable rights of visitation if the court finds that the petitioner has rebutted the presumption based upon factors which the court considers to be~~

relevant, such as whether:]

~~[(a) the petitioner is a fit and proper person to have visitation with the grandchild;]~~

~~[(b) visitation with the grandchild has been denied or unreasonably limited;]~~

~~[(c) the parent is unfit or incompetent;]~~

~~[(d) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has had a substantial relationship with the grandchild, and]~~

~~[the loss or cessation of that relationship is likely to cause harm to the grandchild;]~~

~~[(e) the petitioner's child, who is a parent of the grandchild, has died, or has become a noncustodial parent through divorce or legal separation;]~~

~~[(f) the petitioner's child, who is a parent of the grandchild, has been missing for an extended period of time; or]~~

~~[(g) visitation is in the best interest of the grandchild.]~~

(2) (a) In accordance with Section 62A-4a-201, it is the public policy of this state that a parent retains the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's children.

(b) A court shall presume that a parent's decision in regard to grandparent visitation is in the best interest of the parent's child.

(3) A court may find the presumption in Subsection (2)(b) rebutted if the grandparent, by clear and convincing evidence, establishes that:

(a) the grandparent has filled the role of custodian or caregiver to the grandchild that:

(i) is in a manner akin to a parent; and

(ii) the loss of the relationship between the grandparent and the grandchild would cause substantial harm to the grandchild; or

(b) both parents are unfit or incompetent in a manner that causes potential harm to the grandchild.

(4) (a) If the court finds the presumption in Subsection (2)(b) is rebutted, the court may consider whether grandparent visitation is in the best interest of the grandchild.

(b) If the court considers whether grandparent visitation is in the best interest of the child, the court shall take into account the totality of the circumstances, including:

(i) the reasonableness of the parent's decision to deny grandparent visitation;

(ii) the age of the grandchild;

(iii) the death or unavailability of a parent; and
(iv) if the grandchild is 14 years old or older, the grandchild's desires regarding visitation after the court inquires of the grandchild.

(5) If the court finds the presumption in Subsection (2)(b) is rebutted and grandparent visitation is in the best interest of the grandchild, the court may issue an order for grandparent visitation.

~~[(3)]~~ (6) The adoption of a grandchild by the grandchild's stepparent does not diminish or alter visitation rights previously ordered under this section.

~~[(4) Subject to the provisions of Subsections (2) and (3), the court may inquire of the grandchild and take into account the grandchild's desires regarding visitation.]~~

~~[(5)]~~ (7) On the petition of a grandparent or the legal custodian of a grandchild the court may, after a hearing, modify an order regarding grandparent visitation if:

(a) the circumstances of the grandchild, the grandparent, or the custodian have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and

(b) the court determines that a modification is appropriate based upon the factors set forth in ~~[Subsection (2)]~~ Subsections (3) and (4).

~~[(6)]~~ (8) ~~[Grandparents]~~ A grandparent may petition the court to remedy a parent's wrongful noncompliance with a visitation order.

Section 3. Section **30-5a-101** is amended to read:

CHAPTER 5a. CUSTODY AND VISITATION FOR INDIVIDUALS OTHER THAN PARENTS ACT

30-5a-101. Title.

This chapter is known as the "Custody and Visitation for ~~[Persons]~~ Individuals Other than Parents Act."

Section 4. Section **30-5a-102** is amended to read:

30-5a-102. Definitions.

As used in this chapter:

~~[(1) "Parent" means a biological or adoptive parent.]~~

~~[(2)]~~ (1) "Person Individual other than a parent" means ~~[a person]~~ an individual who is not a parent and is related to the child by marriage or blood, including:

119 (a) siblings;
120 (b) aunts;
121 (c) uncles;
122 (d) grandparents; or
123 (e) current or former step-parents, or any of the ~~[persons]~~ individuals described in
124 Subsections ~~[(2)]~~ (1)(a) through (d) in a step relationship to the child.

125 (2) "Parent" means a biological or adoptive parent.

126 Section 5. Section **30-5a-103** is amended to read:

127 **30-5a-103. Custody and visitation for individuals other than a parent.**

128 (1) (a) In accordance with Section ~~62A-4a-201~~, it is the public policy of this state that
129 ~~[parents]~~ a parent retain the fundamental right and duty to exercise primary control over the
130 care, supervision, upbringing, and education of ~~[their]~~ the parent's children.

131 (b) There is a rebuttable presumption that a parent's decisions are in the child's best
132 interests.

133 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or
134 visitation rights to ~~[a person]~~ an individual other than a parent who, by clear and convincing
135 evidence, ~~[has established all of the following]~~ establishes that:

136 (a) the ~~[person]~~ individual has intentionally assumed the role and obligations of a
137 parent;

138 (b) the ~~[person]~~ individual and the child have formed ~~[an]~~ a substantial emotional bond
139 and created a parent-child type relationship;

140 (c) the ~~[person]~~ individual substantially contributed emotionally ~~[or]~~ and financially to
141 the child's well being;

142 (d) the assumption of the parental role is not the result of a financially compensated
143 surrogate care arrangement;

144 (e) the continuation of the relationship between the ~~[person]~~ individual and the child
145 ~~[would be]~~ is in the child's best ~~[interests]~~ interest;

146 (f) the loss or cessation of the relationship between the ~~[person]~~ individual and the
147 child would ~~[be detrimental to]~~ substantially harm the child; and

148 (g) the parent:

149 (i) is absent; or

(ii) is found by a court to have abused or neglected the child.

(3) A proceeding under this chapter may be commenced by filing a verified petition, or petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district court in the county ~~[in which]~~ where the child:

(a) currently resides; or

(b) lived with a parent or ~~[a person]~~ an individual other than a parent who acted as a parent within six months before the commencement of the action.

(4) A proceeding under this chapter may be filed in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court~~;~~ involving custody of or visitation with a child.

(5) The petition shall include detailed facts supporting the petitioner's right to file the petition including the criteria set forth in Subsection (2) and residency information as set forth in Section [78B-13-209](#).

(6) A proceeding under this chapter may not be filed against a parent who is actively serving outside the state in any branch of the military.

(7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the rules of civil procedure on all of the following:

(a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

(b) any ~~[person]~~ individual who has court-ordered custody or visitation rights;

(c) the child's guardian;

(d) the guardian ad litem, if one has been appointed;

(e) ~~[a person]~~ an individual or agency that has physical custody of the child or that claims to have custody or visitation rights; and

(f) any other ~~[person]~~ individual or agency that has previously appeared in any action regarding custody of or visitation with the child.

(8) The court may order a custody evaluation to be conducted in any action brought under this chapter.

(9) The court may enter temporary orders in an action brought under this chapter pending the entry of final orders.

(10) Except as provided in Subsection (11), a court may not grant custody of a child under this section to an individual who is not the ~~[biological or adoptive]~~ parent of the child

and who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony involving conduct that constitutes any of the following:

- (a) child abuse, as described in Section 76-5-109;
- (b) child abuse homicide, as described in Section 76-5-208;
- (c) child kidnapping, as described in Section 76-5-301.1;
- (d) human trafficking of a child, as described in Section 76-5-308.5;
- (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- (f) rape of a child, as described in Section 76-5-402.1;
- (g) object rape of a child, as described in Section 76-5-402.3;
- (h) sodomy on a child, as described in Section 76-5-403.1;
- (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;
- (j) sexual exploitation of a minor, as described in Section 76-5b-201; or
- (k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).

(11) (a) ~~[For purpose of]~~ As used in this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).

(b) ~~[A person]~~ An individual described in Subsection (10) may only be considered for custody of a child if the following criteria are met by clear and convincing evidence:

- (i) the ~~[person]~~ individual is a relative, as defined in Section 78A-6-307, of the child;
- (ii) at least 10 years have elapsed from the day on which the ~~[person]~~ individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
- (iii) during the 10 years before the day on which the ~~[person]~~ individual files a petition with the court seeking custody the ~~[person]~~ individual has not been convicted, plead guilty, or plead no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;
- (iv) the ~~[person]~~ individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
- (v) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any

time in the future when considering all of the following:

(A) the child's age;

(B) the child's gender;

(C) the child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a child 12 years ~~[of age]~~ old or older;

(F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(vi) the ~~[person]~~ individual can provide evidence of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that custody by the ~~[person]~~ individual who has committed the disqualifying offense ensures the best interests of the child are met;

(vii) (A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the child and does not have a disqualifying offense; or

(B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and

(viii) that the continuation of the relationship between the ~~[person]~~ individual with the disqualifying offense and the child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

(c) The ~~[person]~~ individual with the disqualifying offense bears the burden of proof regarding why placement with that ~~[person]~~ individual is in the best interest of the child over another responsible relative or equally situated ~~[person]~~ individual who does not have a disqualifying offense.

(d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:

(i) preference for custody is given to a relative who does not have a disqualifying offense; and

(ii) before the court may place custody with the ~~[person]~~ individual who has the

243 disqualifying offense over another responsible, willing, and able relative:

244 (A) an impartial custody evaluation shall be completed; and

245 (B) a guardian ad litem shall be assigned.

246 (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a

247 final decision on custody has not been made and to a case filed on or after March 25, 2017.