

Senator Todd D. Weiler proposes the following substitute bill:

CUSTODY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Karianne Lisonbee

LONG TITLE

General Description:

This bill amends child custody provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ creates an equal parent-time schedule.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-34, as last amended by Laws of Utah 2019, Chapter 188

ENACTS:

30-3-35.2, Utah Code Annotated 1953

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

Section 1. Section **30-3-34** is amended to read:



26 **30-3-34. Parent-time -- Best interests -- Rebuttable presumption.**

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

29 (a) establish a parent-time schedule [~~consistent with the best interests of the child.~~]; or

30 (b) order a parent-time schedule described in Section 30-3-35, 30-3-35.1, 30-3-35.2,
31 30-3-35.5.

32 (2) The advisory guidelines as provided in Section 30-3-33 and the parent-time
33 schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be [~~presumed to be in the best~~
34 ~~interests of the child unless the court determines that Section 30-3-35.1 should apply. The~~
35 ~~parent-time schedule shall be~~] considered the minimum parent-time to which the noncustodial
36 parent and the child shall be entitled unless a parent can establish otherwise by a preponderance
37 of the evidence that more or less parent-time should be awarded based upon one or more of the
38 following criteria:

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

41 (b) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
42 abuse, involving the child, a parent, or a household member of the parent;

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

44 (d) a credible allegation of child abuse has been made;

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

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

49 (g) the preference of the child if the court determines the child is of sufficient maturity;

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

52 (i) shared interests between the child and the noncustodial parent;

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

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

- 57 (l) a substantial and chronic pattern of missing, canceling, or denying regularly
- 58 scheduled parent-time;
- 59 (m) the minimal duration of and lack of significant bonding in the parents' relationship
- 60 before the conception of the child;
- 61 (n) the parent-time schedule of siblings;
- 62 (o) the lack of reasonable alternatives to the needs of a nursing child; and
- 63 (p) any other criteria the court determines relevant to the best interests of the child.
- 64 (3) The court shall enter the reasons underlying the court's order for parent-time that:
- 65 (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or
- 66 (b) provides more or less parent-time than a parent-time schedule provided in Section
- 67 30-3-35 or 30-3-35.5.
- 68 (4) Once the parent-time schedule has been established, the parties may not alter the
- 69 schedule except by mutual consent of the parties or a court order.

70 Section 2. Section 30-3-35.2 is enacted to read:

71 **30-3-35.2. Equal parent-time schedule.**

72 (1) (a) A court may order the equal parent-time schedule described in this section if:

73 (i) each parent of the child resides within 10 miles of the other parent; and

74 (ii) the court determines that:

75 (A) the equal parent-time schedule is in the child's best interest;

76 (B) each parent has been actively involved in the child's life; and

77 (C) each parent can effectively facilitate the equal parent-time schedule.

78 (b) To determine whether each parent has been actively involved in the child's life, the
79 court shall consider:

80 (i) each parent's demonstrated responsibility in caring for the child;

81 (ii) each parent's involvement in child care;

82 (iii) each parent's presence or volunteer efforts in the child's school and at
83 extracurricular activities;

84 (iv) each parent's assistance with the child's homework;

85 (v) each parent's involvement in preparation of meals, bath time, and bedtime for the
86 child;

87 (vi) each parent's bond with the child; and

88 (vii) any other factor the court considers relevant.

89 (c) To determine whether each parent can effectively facilitate the equal parent-time
90 schedule, the court shall consider:

91 (i) each parent's ability to assist with the child's after school care;

92 (ii) the health of the child and each parent, consistent with Subsection [30-3-10\(6\)](#);

93 (iii) the flexibility of each parent's employment or other schedule;

94 (iv) each parent's ability to provide appropriate playtime with the child;

95 (v) each parent's history and ability to implement a flexible schedule for the child;

96 (vi) physical facilities of each parent's residence; and

97 (vii) any other factor the court considers relevant.

98 (2) (a) If the parties agree to or the court orders the equal parent-time schedule
99 described in this section, a parenting plan in accordance with Sections [30-3-10.7](#) through
100 [30-3-10.10](#) shall be filed with an order incorporating the equal parent-time schedule.

101 (b) An order under this section shall result in 182 overnights per year for one parent,
102 and 183 overnights per year for the other parent.

103 (c) Under the equal parent-time schedule, neither parent is considered to have the child
104 the majority of the time for the purposes of Subsection [30-3-10.3\(4\)](#) or [30-3-10.9\(5\)\(c\)\(ii\)](#).

105 (d) Child support for the equal parent-time schedule shall be consistent with
106 Subsection [78B-12-102\(15\)](#).

107 (3) (a) Unless the parents agree otherwise and subject to a holiday, the equal
108 parent-time schedule is as follows:

109 (i) one parent shall exercise parent time starting Monday morning and ending
110 Wednesday morning;

111 (ii) the other parent shall exercise parent time starting Wednesday morning and ending
112 Friday morning; and

113 (iii) each parent shall alternate weeks exercising parent time starting Friday morning
114 and ending Monday morning.

115 (b) The child exchange shall take place:

116 (i) at the time the child's school begins; or

117 (ii) if school is not in session, at 9 a.m.;

118 (4) (a) The parents may create a holiday schedule.

119 (b) If the parents are unable to create a holiday schedule under Subsection (4), the court
120 shall:

121 (i) order the holiday schedule described in Section 30-3-35; and

122 (ii) designate which parent shall exercise parent time for each holiday described in
123 Section 30-3-35.

124 (5) (a) Each year, a parent may designate two consecutive weeks to exercise
125 uninterrupted parent time during the summer when school is not in session.

126 (b) A parent shall make a designation on or before May 1, and the other parent shall
127 make a designation after May 1 and on or before May 15.

128 (c) The court shall designate which parent makes the first designation described in
129 Subsection (5)(b) for an even numbered year with the other parent making the first designation
130 in an odd numbered year.

131 (d) The two consecutive weeks described in Subsection (5)(a) take precedence over all
132 holidays except for Mother's Day and Father's Day.