

## SB0122S02 compared with SB0122S01

~~{deleted text}~~ shows text that was in SB0122S01 but was deleted in SB0122S02.

inserted text shows text that was not in SB0122S01 but was inserted into SB0122S02.

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Senator ~~{Jacob L}~~Todd D. ~~{Anderegg}~~Weiler proposes the following substitute bill:

### CUSTODY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends child custody provisions.

##### Highlighted Provisions:

This bill:

- ▶ ~~{creates a rebuttable presumption that joint physical custody, where the parenting time is equal or as equal as practicable, is in the best interest of the child;~~
- ▶ ~~modifies the factors for determining whether joint custody is in the best interest of a child; and~~
- ▶ ~~makes technical and conforming changes;~~ defines terms; and
- ▶ creates an equal parent-time schedule.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

- ~~{ 30-3-10, as last amended by Laws of Utah 2019, First Special Session, Chapter 5~~
- ~~30-3-10.2, as last amended by Laws of Utah 2019, Chapter 188~~
- ~~30-3-10.3, as last amended by Laws of Utah 2012, Chapter 271~~
- ~~30-3-10.4, as last amended by Laws of Utah 2019, Chapter 188~~
- ~~30-3-33, as last amended by Laws of Utah 2017, Chapter 224~~
- ~~30-3-35, as last amended by Laws of Utah 2020, Chapter 50~~
- ~~30-3-35.5, as last amended by Laws of Utah 2017, Chapter 120~~

#### REPEALS:

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

#### ENACTS:

[30-3-35.2, Utah Code Annotated 1953](#)

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

Section 1. Section ~~{30-3-10}~~30-3-34 is amended to read:

~~{ 30-3-10. Custody of a child == Custody factors:~~

~~———— (1) If a married or unmarried couple having one or more minor children are separated, or [the] a married couple's marriage is declared void or dissolved, the court shall enter, and has continuing jurisdiction to modify, an order of custody and parent-time:~~

~~———— (2) In determining any form of custody and parent-time under Subsection (1), the court shall consider the best interest of the child and may consider among other factors the court finds relevant, the following for each parent:~~

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

~~———— (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the child, including the child's:~~

~~———— (i) physical needs;~~

~~———— (ii) emotional needs;~~

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- ~~—— (iii) educational needs;~~
- ~~—— (iv) medical needs; and~~
- ~~—— (v) any special needs;~~
- ~~—— (c) the parent's capacity and willingness to function as a parent, including:~~
  - ~~—— (i) parenting skills;~~
  - ~~—— (ii) co-parenting skills, including[:] a parent's willingness and ability to:~~
    - ~~—— (A) [ability to] appropriately communicate with the other parent;~~
    - ~~—— (B) [ability to] allow and encourage the sharing of love and affection; [and]~~
    - ~~—— (C) refrain from influencing the child to denigrate or reject a parent, including indirectly through a third party; and~~
      - ~~—— [(C) willingness to allow]~~
      - ~~—— (D) allow and encourage frequent, meaningful, and continuous contact between the child and the other parent, except that, if the court determines that the parent is acting to protect the child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and~~
  - ~~—— (iii) ability to provide personal care rather than surrogate care;~~
  - ~~—— (d) in accordance with Subsection [(10)] (9), the past conduct and demonstrated moral character of the parent;~~
  - ~~—— (e) the emotional stability of the parent;~~
  - ~~—— (f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;~~
  - ~~—— (g) whether the parent has intentionally exposed the child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;~~
  - ~~—— (h) the parent's reasons for having relinquished custody or parent-time in the past;~~
  - ~~—— (i) duration and depth of desire for custody or parent-time;~~
  - ~~—— [(j) the parent's religious compatibility with the child;]~~
  - ~~—— [(k) the parent's financial responsibility;]~~
  - ~~—— [(l) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the child's best interests;]~~
  - ~~—— [(m) who has been the primary caretaker of the child;]~~
  - ~~—— (j) a parent's violation of previous or existing custody or parent-time orders;~~

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~~—— (k) evidence of a parent influencing the child to denigrate or reject a parent, including indirectly through a third party;~~

~~—— [(n)] (l) previous [parenting] living arrangements in which the child has been happy and well-adjusted in the home, school, and community;~~

~~—— [(o)] (m) the relative benefit of keeping siblings together;~~

~~—— [(p)] (n) the stated wishes and concerns of the child, [taking into consideration the child's cognitive ability and emotional maturity;] considering whether the child's wishes or concerns have been unduly influenced or whether the child has diminished capacity to express the child's authentic desire; and~~

~~—— [(q) the relative strength of the child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the child; and]~~

~~—— [(r)] (o) any other factor the court finds relevant.~~

~~—— (3) [There] Subject to the factors in Subsection (2), there is a rebuttable presumption that joint legal custody, as defined in Section 30-3-10.1, and joint physical custody where the parenting time is equal or as equal as practicable, is in the best interest of the child, except in cases when there is:~~

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

~~—— (b) special physical or mental needs of a parent or child, making joint legal custody unreasonable;~~

~~—— (c) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or~~

~~—— (d) any other factor the court considers relevant including those listed in this section and Section 30-3-10.2.~~

~~—— (4) (a) The person who desires joint legal custody shall file a proposed parenting plan in accordance with Sections 30-3-10.8 and 30-3-10.9.~~

~~—— (b) A presumption for joint legal custody may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.~~

~~—— (c) A presumption for joint physical custody, where the parenting time is equal or as equal as practicable, may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.~~

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~~—— (5) (a) A child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the child be heard and there is no other reasonable method to present the child's testimony.~~

~~—— [(b) (i) The court may inquire of the child's and take into consideration the child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the child's custody or parent-time otherwise.]~~

~~—— (b) Subject to Subsection (3), the court may:~~

~~—— (i) exercise discretion to determine the child's custody or parent-time schedule, including determining a child's custody or parent-time schedule in a manner that conflicts with the child's expressed desires;~~

~~—— (ii) inquire of the child's desires regarding future custody or parent-time schedules; and~~

~~—— (iii) consider the child's expressed desires, taking into consideration whether the child's preference has been unduly influenced or whether the child has diminished capacity to express the child's authentic desire.~~

~~—— [(ii) The desires of a child 14 years of age or older shall be given added weight, but is not the single controlling factor.]~~

~~—— (c) (i) If an interview with a child is conducted by the court pursuant to Subsection (5)(b), the interview shall be conducted by the judge in camera.~~

~~—— (i) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a child is the only method to ascertain the child's desires regarding custody.~~

~~—— (6) (a) Except as provided in Subsection (6)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.~~

~~—— (b) The court may not consider the disability of a parent as a factor in awarding custody or modifying an award of custody based on a determination of a substantial change in circumstances, unless the court makes specific findings that:~~

~~—— (i) the disability significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the child at issue; and~~

~~—— (ii) the parent with a disability lacks sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of~~

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~~the child at issue:~~

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

~~—— [(7) This section does not establish a preference for either parent solely because of the gender of the parent.]~~

~~—— [(8) This section establishes neither a preference nor a presumption for or against joint physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.]~~

~~—— (7) When awarding custody or modifying an award of custody under Section 30-3-10.4, the court may not:~~

~~—— (a) discriminate against a parent due to the parent's gender; or~~

~~—— (b) use the gender of a parent or child as a factor.~~

~~—— [(9)] (8) When an issue before the court involves custodial responsibility in the event of a deployment of one or both parents who are servicemembers, and the servicemember has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.~~

~~—— [(10)] (9) In considering the past conduct and demonstrated moral standards of each party under Subsection (2)(d) or any other factor a court finds relevant, the court may not:~~

~~—— (a) consider or treat a parent's lawful possession or use of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments, Title 26, Chapter 61a, Utah Medical Cannabis Act, or Subsection 58-37-3.7(2) or (3) any differently than the court would consider or treat the lawful possession or use of any prescribed controlled substance; or~~

~~—— (b) discriminate against a parent because of the parent's status as a:~~

~~—— (i) cannabis production establishment agent, as that term is defined in Section 4-41a-102;~~

~~—— (ii) medical cannabis pharmacy agent, as that term is defined in Section 26-61a-102;~~

~~—— (iii) medical cannabis courier agent, as that term is defined in Section 26-61a-102; or~~

~~—— (iv) medical cannabis cardholder in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.~~

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~~Section 2. Section 30-3-10.2 is amended to read:~~

~~30-3-10.2. Joint custody order -- Factors for court determination -- Public assistance:~~

~~(1) [The] Subject to the presumption described in Subsection 30-3-10(3), the court may order joint legal custody or joint physical custody or both if one or both parents have filed a parenting plan in accordance with Section 30-3-10.8 and the court determines that joint legal custody or joint physical custody or both is in the best interest of the child.~~

~~(2) In determining whether the best interest of a child will be served by ordering joint legal custody or joint physical custody or both, the court shall consider the custody factors in Section 30-3-10 and the following factors:~~

~~[(a) whether the physical, psychological, and emotional needs and development of the child will benefit from joint legal custody or joint physical custody or both;]~~

~~[(b)] (a) the ability and willingness of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;~~

~~[(c)] (b) co-parenting skills, including[:] a parent's ability and willingness to:~~

~~(i) [ability to] appropriately communicate with the other parent;~~

~~(ii) [ability to] allow and encourage the sharing of love and affection; [and]~~

~~(iii) refrain from influencing the child to denigrate or reject a parent, including indirectly through a third party; and~~

~~[(iii) willingness to allow]~~

~~(iv) allow and encourage frequent, meaningful, and continuous contact between the child and the other parent, except that, if the court determines that the parent is acting to protect the child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and~~

~~[(d) whether both parents participated in raising the child before the divorce;]~~

~~[(e)] (c) the geographical proximity of the homes of the parents;~~

~~(d) the ties the child has to the child's current school and community;~~

~~(e) the preference of the child, taking into consideration:~~

~~(i) whether the child is of sufficient age and capacity to reason and form an intelligent preference regarding the child's custody or parent-time schedule;~~

~~(ii) evidence of a parent influencing the child to denigrate or reject a parent, including~~

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indirectly through a third party; and

~~—— (iii) whether the child's preference has been unduly influenced or whether the child has diminished capacity to express the child's authentic desire;~~

~~—— [(f) the preference of the child if the child is of sufficient age and capacity to reason so as to form an intelligent preference as to joint legal custody or joint physical custody or both;]~~

~~—— [(g)] (f) the maturity of the parents and their willingness and ability to protect the child from conflict that may arise between the parents;~~

~~—— [(h)] (g) the past and present ability and willingness of the parents to cooperate with each other and make decisions jointly; and~~

~~—— [(i)] (h) any other factor the court finds relevant;~~

~~—— [(3) The determination of the best interest of the child shall be by a preponderance of the evidence.]~~

~~—— [(4) The court shall inform both parties that an order for joint physical custody may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment Support Act.]~~

~~—— (3) If the court determines that either of the presumptions described in Subsection 30-3-10(3) are rebutted by a preponderance of the evidence, the court shall make written findings of fact explaining the court's determination.~~

~~—— (4) If joint physical custody, where the parenting time is equal or as equal as practicable, is not in the best interest of the child, the court shall order a parent-time schedule that maximizes the time with each parent, consistent with the child's best interest.~~

~~—— (5) The court may order that when possible the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the order of joint legal custody or joint physical custody through litigation, except in emergency situations requiring ex parte orders to protect the child.~~

~~—— Section 3. Section **30-3-10.3** is amended to read:~~

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

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



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

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

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

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

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

~~—— (e) as necessary, the remaining parental rights, privileges, duties, and powers to be exercised by the parents solely, concurrently, or jointly.~~

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

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

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

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

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

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

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

~~—— Section 4. Section 30-3-10.4 is amended to read:~~

~~—— **30-3-10.4. Modification or termination of order.**~~

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

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

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

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

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

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

~~—— (b) A court order modifying or terminating an existing joint legal custody or joint physical custody order shall contain written findings that:~~

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

~~—— (ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child;~~

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

~~—— (3) The court shall, in every case regarding a petition for termination of a joint legal custody or joint physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Subsection 30-3-10(3). The court may modify the terms and conditions of the existing order [in accordance with Subsection 30-3-10(8)] and may order the parents to file a parenting plan in accordance with this chapter.~~

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

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

~~—— (6) If an issue before the court involves custodial responsibility in the event of deployment of one or both parents who are servicemembers, and the servicemember has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.~~

~~—— Section 5. Section ~~30-3-33~~ is amended to read:~~

~~—— **30-3-33. Advisory guidelines.**~~

~~—— [In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5, the] The following advisory guidelines are suggested to govern all parent-time arrangements between parents:~~

~~—— (1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.~~

~~—— (2) The parent-time schedule shall be used to maximize the continuity and stability of the child's life.~~

~~—— (3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.~~

~~—— (4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.~~

~~—— (5) If the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.~~

~~—— (6) If the custodial parent will be transporting the child, the noncustodial parent shall~~

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~~be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.~~

~~—— (7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.~~

~~—— (8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but may not diminish the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5.~~

~~—— (9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.~~

~~—— (10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.~~

~~—— (11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.~~

~~—— (12) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.~~

~~—— (13) Each parent shall provide the other with the parent's current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.~~

~~—— (14) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:~~

~~—— (a) the best interests of the child;~~

~~—— (b) each parent's ability to handle any additional expenses for virtual parent-time; and~~

~~—— (c) any other factors the court considers material.~~

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~~———— (15) Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the children, to provide the child care. Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.~~

~~———— (16) Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.~~

~~———— (17) Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.~~

~~———— (18) If the child is on a different parent-time schedule than a sibling, based on Sections 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.~~

~~———— (19) When one or both parents are servicemembers or contemplating joining a uniformed service, the parents should resolve issues of custodial responsibility in the event of deployment as soon as practicable through reaching a voluntary agreement pursuant to Section 78B-20-201 or through court order obtained pursuant to Section 30-3-10. Servicemembers shall ensure their family care plan reflects orders and agreements entered and filed pursuant to Title 78B, Chapter 20, Uniform Deployed Parents Custody, Parent-time, and Visitation Act.~~

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

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

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

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

(2) The advisory guidelines as provided in Section 30-3-33 and the parent-time schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be presumed to be in the best interests of the child unless the court determines that Section 30-3-35.1 should apply. The

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~~parent-time schedule shall be~~ considered the minimum parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon one or more of the following criteria:

- (a) parent-time would endanger the child's physical health or mental health, or significantly impair the child's emotional development;
  - (b) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, a parent, or a household member of the parent;
  - (c) the distance between the residency of the child and the noncustodial parent;
  - (d) a credible allegation of child abuse has been made;
  - (e) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during parent-time;
  - (f) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of parent-time;
  - (g) the preference of the child if the court determines the child is of sufficient maturity;
  - (h) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;
  - (i) shared interests between the child and the noncustodial parent;
  - (j) the involvement or lack of involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;
  - (k) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;
  - (l) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;
  - (m) the minimal duration of and lack of significant bonding in the parents' relationship before the conception of the child;
  - (n) the parent-time schedule of siblings;
  - (o) the lack of reasonable alternatives to the needs of a nursing child; and
  - (p) any other criteria the court determines relevant to the best interests of the child.
- (3) The court shall enter the reasons underlying the court's order for parent-time that:
- (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or

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(b) provides more or less parent-time than a parent-time schedule provided in Section 30-3-35 or 30-3-35.5.

(4) Once the parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

Section ~~{6}2~~. Section 30-3-35.2 is ~~{amended}~~enacted to read:

~~30-3-35.~~ **2. Minimum schedule for parent-time for children 5 to 18 years old.**

~~(1) The~~ **2. Equal parent-time schedule.**

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

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

(ii) the court determines that:

(A) the equal parent-time schedule ~~{in this section:~~

~~(a) applies to children 5 to 18 years old[.]; and~~

~~(b) shall only be ordered:~~

~~(i) if the parties do not agree to a ~~is~~ is in the child's best interest;~~

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

(C) each parent can effectively facilitate the equal parent-time schedule ~~{; and}~~.

~~{ii} after the court considers whether an alternative parent-time schedule that~~

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

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

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

(iii) each parent's ~~{parenting time is in the best interest of the child under Subsection 30-3-10.2(4):~~

~~(2) [If the parties do not agree to a parent-time schedule, the] The following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled:~~

~~(a) (i) (A) One weekday evening to be specified by the noncustodial parent or the court, or Wednesday evening if not specified, from 5:30 p.m. until 8:30 p.m.;~~

~~(B) at the election of the noncustodial parent, one weekday from the time ~~{presence or volunteer efforts in the child's school {is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i)(A); or~~~~

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~~—— (C) at the election of the noncustodial parent, if school is not in session, one weekday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 8:30 p.m. if the noncustodial parent is available to be} and at extracurricular activities;~~

~~—— (iv) each parent's assistance with the {child, unless the court directs the application of Subsection (2)(a)(i)(A) or (2)(a)(i)(B):~~

~~—— (ii) Once the election of the weekday for the weekday evening parent-time is made, it may not be changed except by mutual written agreement or court order:~~

~~—— (b) (i) (A) Alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until Sunday at 7 p.m. continuing each year;~~

~~—— (B) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until Sunday at 7 p.m., unless the court directs the application of Subsection (2)(b)(i)(A); or~~

~~—— (C) at the election of the noncustodial parent, if school is not in session, on Friday from approximately 9 a.m., accommodating the custodial parent's work schedule, until Sunday at 7 p.m., if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(b)(i)(A) or (2)(b)(i)(B):~~

~~—— (ii) A step-parent, grandparent, or other responsible adult designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.~~

~~—— (iii) An election should be made by the noncustodial parent at the time of entry of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule:~~

~~—— (iv) Weekends include any "snow" days, teacher development days, or other days when school is not scheduled and that are contiguous to the weekend period:~~

~~—— (c) Holidays include any "snow" days, teacher development days after the children begin the school year, or other days when school is not scheduled, contiguous to the holiday period, and take precedence over the weekend parent-time. Changes may not be made to the regular rotation of the alternating weekend parent-time schedule, however:~~

~~—— (i) birthdays take precedence over holidays and extended parent-time, except Mother's Day and Father's Day, and~~

~~—— (ii) birthdays do not take precedence over uninterrupted parent-time if the parent~~



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~~exercising uninterrupted time takes the child away from that parent's residence for the uninterrupted extended parent-time:~~

~~—— (d) If a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day.~~

~~—— (e) (i) If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period:~~

~~—— (ii) (A) At the election of the noncustodial parent, parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend; or~~

~~—— (B) at the election of the noncustodial parent, if school is not in session, parent-time over a scheduled holiday weekend may begin at approximately 9 a.m., accommodating the custodial parent's work schedule, the first day of the holiday weekend until 7 p.m. on the last day of the holiday weekend, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(c)(ii)(A):~~

~~—— (iii) A step-parent, grandparent, or other responsible individual designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.~~

~~—— (iv) An election should be made by the noncustodial parent at the time of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule:~~

~~—— (f) In years ending in an odd number, the noncustodial parent is entitled to the following holidays:~~

~~—— (i) the child's birthday on the day before or after the child's actual birthdate beginning at 3 p.m. until 9 p.m., and at the discretion of the noncustodial parent, the noncustodial parent may take other siblings along for the birthday;~~

~~—— (ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;~~

~~—— (iii) subject to Subsection (2)(i), spring break beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the evening before school resumes;~~

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- ~~—— (iv) July 4 beginning 6 p.m. on the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;~~
- ~~—— (v) Labor Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;~~
- ~~—— (vi) subject to Subsection (2)(i), the fall school break beginning at 6 p.m. on the day that school lets out for the holiday until 7 p.m. on the evening before school resumes;~~
- ~~—— (vii) Veterans Day holiday beginning 6 p.m. on the day before the holiday until 7 p.m. on the holiday; and~~
- ~~—— (viii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b), including Christmas Eve and Christmas Day, continuing until 1 p.m. on the day halfway through the holiday period, if there are an odd number of days for the holiday period or until 7 p.m. if there are an even number of days for the holiday period, so long as the entire holiday period is equally divided;~~
- ~~—— (g) In years ending in an even number, the noncustodial parent is entitled to the following holidays:~~
  - ~~—— (i) the child's birthday on the child's actual birthdate beginning at 3 p.m. until 9 p.m., and at the discretion of the noncustodial parent, the noncustodial parent may take other siblings along for the birthday;~~
  - ~~—— (ii) President's Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;~~
  - ~~—— (iii) Memorial Day beginning at 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;~~
  - ~~—— (iv) July 24 beginning at 6 p.m. on the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;~~
  - ~~—— (v) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;~~
  - ~~—— (vi) Halloween on October 31 or the day Halloween is traditionally celebrated in the local community from after school until 9 p.m. if on a school day, or from 4 p.m. until 9 p.m.;~~
  - ~~—— (vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m.; and~~

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~~—— (viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b), beginning 1 p.m. on the day halfway through the holiday period if there are an odd number of days for the holiday period, or at 7 p.m. if there are an even number of days for the holiday period, so long as the entire Christmas holiday period is equally divided;~~

~~—— (h) The custodial parent is entitled to the odd year holidays in even years and the even year holidays in odd years;~~

~~—— (i) If there is more than one child and the children's school schedules vary for purpose of a holiday, at the option of the parent exercising the holiday or the parent's half of the holiday, the children may remain together for the holiday period beginning the first evening that all children's schools are let out for the holiday and ending the evening before any child returns to school;~~

~~—— (j) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;~~

~~—— (k) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;~~

~~—— (l) Extended parent-time with the noncustodial parent may be:~~

~~—— (i) up to four consecutive weeks when school is not in session at the option of the noncustodial parent, including weekends normally exercised by the noncustodial parent, but not holidays;~~

~~—— (ii) two weeks shall be uninterrupted time for the noncustodial parent; and~~

~~—— (iii) the remaining two weeks shall be subject to parent-time for the custodial parent for weekday parent-time but not weekends, except for a holiday to be exercised by the other parent;~~

~~—— (m) The custodial parent shall have an identical two-week period of uninterrupted time when school is not in session for purposes of vacation;~~

~~—— (n) Both parents shall provide notification of extended parent-time or vacation weeks with the child at least 30 days before the end of the child's school year to the other parent and if notification is not provided timely the complying parent may determine the schedule for extended parent-time for the noncomplying parent;~~

~~—— (o) Telephone contact shall be at reasonable hours and for a reasonable duration;~~

~~—— (p) (i) Virtual parent-time, if the equipment is reasonably available and the parents~~

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~~reside at least 100 miles apart, shall be at reasonable hours and for reasonable duration:~~

~~(ii) If the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:~~

~~(A) the best interests of the child;~~

~~(B) each parent's ability to handle any additional expenses for virtual parent-time; and~~

~~(C) child's homework;~~

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

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

~~(vii) any other {factors}factor the court considers {material}.~~

~~(3) An election required to be made in accordance with this section by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order:~~

~~(4) Notwithstanding Subsection (2)(c)(i), the Halloween holiday may not be extended beyond the hours designated in Subsection (2)(g)(vi):~~

~~Section 7. Section 30-3-35.5 is amended to read:~~

~~**30-3-35.5. Minimum schedule for parent-time for children under five years of age:**~~

~~(1) [The] Subject to Subsection 30-3-10.2(4), the parent-time schedule in this section applies to children under five years old.~~

~~(2) All holidays in this section refer to the same holidays referenced in Section 30-3-35:~~

~~(3) If the parties do not agree to a relevant,~~

~~(c) To determine whether each parent can effectively facilitate the equal parent-time schedule, the {following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled:~~

~~(a) For children under five months of age:~~

~~(i) six hours of parent-time per week to be specified by the court or the noncustodial parent preferably:~~

~~(A) divided into three parent-time periods; and~~

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~~—— (B) in the custodial home, established child care setting, or other environment familiar to the child; and~~

~~—— (ii) two hours on holidays and in the years specified in Subsections 30-3-35(2)(f) through (k) preferably in the custodial home, the established child care setting, or other environment familiar to the child;~~

~~—— (b) For children five months of age or older, but younger than nine months of age:~~

~~—— (i) nine hours of parent-time per week to be specified by the court or the noncustodial parent preferably:~~

~~—— (A) divided into three parent-time periods; and~~

~~—— (B) in the custodial home, established child care setting, or other environment familiar to the child; and~~

~~—— (ii) two hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (k) preferably in the custodial home, the established child care setting, or other environment familiar to the child;~~

~~—— (c) For children nine months of age or older, but younger than 12 months of age:~~

~~—— (i) one eight hour visit per week to be specified by the noncustodial parent or court;~~

~~—— (ii) one three hour visit per week to be specified by the noncustodial parent or court;~~

~~—— (iii) eight hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (k); and~~

~~—— (iv) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:~~

~~—— (A) the best interests of the child;~~

~~—— (B) court shall consider:~~

~~(i) each parent's ability to handle any additional expenses for virtual parent-time; and~~

~~—— (C) assist with the child's after school care;~~

~~(ii) the health of the child and each parent, consistent with Subsection 30-3-10(6);~~

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

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

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

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

(vii) any other ~~{factors}~~ factor the court considers ~~{material}~~.

~~— (d) For children 12 months of age or older, but younger than 18 months of age:~~

~~— (i) one eight-hour visit per alternating weekend to be specified by the noncustodial parent or court;~~

~~— (ii) on opposite weekends from Subsection (3)(d)(i), from 6 p.m. on Friday until noon on Saturday;~~

~~— (iii) one three-hour visit per week to be specified by the noncustodial parent or court;~~

~~— (iv) eight hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (k); and~~

~~— (v) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, relevant.~~

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

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

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

(d) Child support for the equal parent-time schedule shall be consistent with Subsection 78B-12-102(15).

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

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

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

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

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(b) The child exchange shall take place:

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

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

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

(b) If the parents are unable to create a holiday schedule under Subsection (4), the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

~~—— (A) the best interests of the child;~~

~~—— (B) each parent's ability to handle any additional expenses for virtual parent-time; and~~

~~—— (C) any other factors the court considers material;~~

~~—— (c) For children 18 months of age or older, but younger than three years of age:~~

~~—— (i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;~~

~~—— (ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;~~

~~—— (iii) parent-time on holidays as specified in Subsections 30-3-35(2)(c) through (k);~~

~~—— (iv) extended parent-time may be:~~

~~—— (A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;~~

~~—— (B) one week shall be};~~

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

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

(5) (a) Each year, a parent may designate two consecutive weeks to exercise uninterrupted {time for the noncustodial parent;

~~—— (C) the remaining week shall be subject to parent-time for the custodial parent consistent with these guidelines; and~~

~~—— (D) the custodial parent shall have an identical one-week period of uninterrupted time~~

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~~for vacation; and~~

~~(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the~~ parent time during the summer when school is not in session.

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

(c) The court shall ~~decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:~~

~~(A) the best interests of the child;~~

~~(B) each parent's ability to handle any additional expenses for virtual parent-time; and~~

~~(C) any other factors the court considers material.~~

~~(f) For children three years of age or older, but younger than five years of age:~~

~~(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;~~

~~(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;~~

~~(iii) parent-time on holidays as specified~~ designate which parent makes the first designation described in ~~{Subsections 30-3-35(2)(c) through (k)};~~

~~(iv) extended parent-time with the noncustodial parent may be:~~

~~(A) two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;~~

~~(B) one two-week period shall be uninterrupted time for the noncustodial parent;~~

~~(C) the remaining two-week period shall be subject to parent-time for the custodial parent consistent with these guidelines; and~~

~~(D) the custodial parent shall have an identical two-week period of uninterrupted time for vacation; and~~

~~(v) brief telephone contact and virtual parent-time, if the equipment is reasonably~~



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~~available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:~~

~~—— (A) the best interests of the child;~~

~~—— (B) each parent's ability to handle any additional expenses for virtual parent-time; and~~

~~—— (C) any other factors the court considers material;~~

~~—— (4) A parent shall notify the other parent at least 30 days in advance of extended parent-time or vacation weeks.~~

~~—— (5) Virtual parent-time shall be at reasonable hours and for reasonable duration.~~

~~—— Section 8. **Repealer.**~~

~~—— This bill repeals:~~

~~—— Section 30-3-34, **Parent-time -- Best interests -- Rebuttable presumption.**~~

~~‡Subsection (5)(b) for an even numbered year with the other parent making the first designation in an odd numbered year.~~

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