

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

78B-12-208, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

30-3-35.2, Utah Code Annotated 1953

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



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

27 **30-3-34. Parent-time -- Best interests -- Rebuttable presumption.**

28 (1) If the parties are unable to agree on a parent-time schedule, 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](#), or
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~~
37 ~~preponderance of the evidence that more or less parent-time should be awarded based upon one~~
38 ~~or more of the following criteria:].~~

39 (3) A court may consider the following when ordering a parent-time schedule:

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

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

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

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

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

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

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

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

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

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

56 (k) the availability of the noncustodial parent to care for the child when the custodial

57 parent is unavailable to do so because of work or other circumstances;

58 (l) a substantial and chronic pattern of missing, canceling, or denying regularly
59 scheduled parent-time;

60 (m) the minimal duration of and lack of significant bonding in the parents' relationship
61 before the conception of the child;

62 (n) the parent-time schedule of siblings;

63 (o) the lack of reasonable alternatives to the needs of a nursing child; and

64 (p) any other criteria the court determines relevant to the best interests of the child.

65 [~~(3)~~] (4) The court shall enter the reasons underlying the court's order for parent-time
66 that:

67 (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or

68 (b) provides more or less parent-time than a parent-time schedule provided in Section
69 30-3-35 or 30-3-35.5.

70 (5) A court may not order a parent-time schedule unless the court determines by a
71 preponderance of the evidence that the parent-time schedule is in the best interest of the child.

72 [~~(4)~~] (6) Once the parent-time schedule has been established, the parties may not alter
73 the schedule except by mutual consent of the parties or a court order.

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

75 **30-3-35.2. Equal parent-time schedule.**

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

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

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

80 (iii) each parent can effectively facilitate the equal parent-time schedule.

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

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

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

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

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

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

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

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

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

94 (i) the geographic distance between the residence of each parent and the distance
95 between each residence and the child's school;

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

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

98 (iv) the flexibility of each parent's employment or other schedule;

99 (v) each parent's ability to provide appropriate playtime with the child;

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

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

102 (viii) any other factor the court considers relevant.

103 (2) (a) If the parties agree to or the court orders the equal parent-time schedule
104 described in this section, a parenting plan in accordance with Sections [30-3-10.7](#) through
105 [30-3-10.10](#) shall be filed with an order incorporating the equal parent-time schedule.

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

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

110 (d) Child support for the equal parent-time schedule shall be consistent with Section
111 [78B-12-208](#).

112 (e) (i) A court shall determine which parent receives 182 overnights and which parent
113 receives 183 overnights for parent-time.

114 (ii) For the purpose of calculating child support under Section [78B-12-208](#), the amount
115 of time to be spent with the parent who has the lower gross monthly income is considered 183
116 overnights, regardless of whether the parent receives 182 overnights or 183 overnights under
117 Subsection (2)(e)(i).

118 (3) (a) Unless the parents agree otherwise and subject to a holiday, the equal

119 parent-time schedule is as follows:

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

121 Wednesday morning;

122 (ii) the other parent shall exercise parent-time starting Wednesday morning and ending

123 Friday morning; and

124 (iii) each parent shall alternate weeks exercising parent-time starting Friday morning

125 and ending Monday morning.

126 (b) The child exchange shall take place:

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

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

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

130 (b) If the parents are unable to create a holiday schedule under Subsection (4)(a), the

131 court shall:

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

133 (ii) designate which parent shall exercise parent-time for each holiday described in

134 Section 30-3-35.

135 (5) (a) Each year, a parent may designate two consecutive weeks to exercise

136 uninterrupted parent-time during the summer when school is not in session.

137 (b) (i) One parent may make a designation at any time and the other parent may make a
138 designation after May 1.

139 (ii) A parent shall make a designation at least 30 days before the day on which the
140 designated two-week period beings.

141 (c) The court shall designate which parent may make the earlier designation described
142 in Subsection (5)(b)(i) for an even numbered year with the other parent allowed to make the
143 earlier designation in an odd numbered year.

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

146 Section 3. Section **78B-12-208** is amended to read:

147 **78B-12-208. Joint physical custody -- Obligation calculations.**

148 In cases of joint physical custody, the base child support award shall be determined as
149 follows:

150 (1) Combine the adjusted gross incomes of the parents and determine the base
151 combined child support obligation using the base combined child support obligation table.

152 (2) Calculate each parent's proportionate share of the base combined child support
153 obligation by multiplying the base combined child support obligation by each parent's
154 percentage of combined adjusted gross income. The amounts so calculated are the base child
155 support obligation due from each parent for support of the children.

156 (3) [H] Subject to Subsection 30-3-35.2(2)(e)(ii), if the obligor's time with the children
157 exceeds 110 overnights, the obligation shall be calculated further as follows:

158 (a) if the amount of time to be spent with the children is between 110 and 131
159 overnights, multiply the number of overnights over 110 by .0027, then multiply the result by
160 the base combined child support obligation, and then subtract the result from the obligor's
161 payment as determined by Subsection (2) to arrive at the obligor's payment; or

162 (b) if the amount of time to be spent with the children is 131 overnights or more,
163 multiply the number of overnights over 130 by .0084, then multiply the result by the base
164 combined child support obligation, and then subtract the result from the obligor's payment as
165 determined in Subsection (3)(a) to arrive at the obligor's payment.