

## SB0122S04 compared with SB0122S02

~~text~~ shows text that was in SB0122S02 but was deleted in SB0122S04.

text shows text that was not in SB0122S02 but was inserted into SB0122S04.

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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

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#### 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:

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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

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

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

**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, or 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 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:]~~

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

(a) whether 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;

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- (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)]~~ (4) 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
- (b) provides more or less parent-time than a parent-time schedule provided in Section 30-3-35 or 30-3-35.5.

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

~~[(4)]~~ (6) 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 2. Section **30-3-35.2** is enacted to read:

### **30-3-35.2. 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) i) the equal parent-time schedule is in the child's best interest;~~

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

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

(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 presence or volunteer efforts in the child's school and at extracurricular activities;

(iv) each parent's assistance with the 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 factor the court considers relevant.

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

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

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

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

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

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

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

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

~~(viii)~~ any other factor the court considers 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

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~~{Subsection 78B-12-102(15):~~

~~{Section 78B-12-208.~~

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

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

(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}~~parent-time starting Wednesday morning and ending Friday morning; and

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

(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)(a), the court shall:

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

(ii) designate which parent shall exercise ~~{parent time}~~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 ~~{parent time}~~parent-time during the summer when school is not in session.

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

(ii) 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}~~at least 30 days before the day on

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which the designated two-week period beings.

(c) The court shall designate which parent ~~{makes}~~may make the ~~{first}~~earlier designation described in Subsection (5)(b)(i) for an even numbered year with the other parent ~~{making}~~allowed to make the ~~{first}~~earlier 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.

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

### 78B-12-208. Joint physical custody -- Obligation calculations.

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

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

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

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

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

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