

**CHILD CUSTODY AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: Michael S. Kennedy

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**LONG TITLE**

**General Description:**

This bill addresses make-up parent-time.

**Highlighted Provisions:**

This bill:

- ▶ requires a court to award make-up parent-time under certain circumstances; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-3-5**, as last amended by Laws of Utah 2022, Chapter 263

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

Section 1. Section **30-3-5** is amended to read:

**30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Alimony -- Nonmeritorious petition for modification.**

(1) As used in this section:

(a) "Cohabit" means to live together, or to reside together on a regular basis, in the same residence and in a relationship of a romantic or sexual nature.

30 (b) "Fault" means any of the following wrongful conduct during the marriage that  
31 substantially contributed to the breakup of the marriage:

32 (i) engaging in sexual relations with an individual other than the party's spouse;

33 (ii) knowingly and intentionally causing or attempting to cause physical harm to the  
34 other party or a child;

35 (iii) knowingly and intentionally causing the other party or a child to reasonably fear  
36 life-threatening harm; or

37 (iv) substantially undermining the financial stability of the other party or the child.

38 (c) "Length of the marriage" means, for purposes of alimony, the number of years from  
39 the day on which the parties are legally married to the day on which the petition for divorce is  
40 filed with the court.

41 (2) When a decree of divorce is rendered, the court may include in the decree of  
42 divorce equitable orders relating to the children, property, debts or obligations, and parties.

43 (3) The court shall include the following in every decree of divorce:

44 (a) an order assigning responsibility for the payment of reasonable and necessary  
45 medical and dental expenses of a dependent child, including responsibility for health insurance  
46 out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

47 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the  
48 purchase and maintenance of appropriate health, hospital, and dental care insurance for a  
49 dependent child; and

50 (ii) a designation of which health, hospital, or dental insurance plan is primary and  
51 which health, hospital, or dental insurance plan is secondary in accordance with Section  
52 [30-3-5.4](#) that will take effect if at any time a dependent child is covered by both parents' health,  
53 hospital, or dental insurance plans;

54 (c) in accordance with Section [15-4-6.5](#):

55 (i) an order specifying which party is responsible for the payment of joint debts,  
56 obligations, or liabilities of the parties contracted or incurred during marriage;

57 (ii) an order requiring the parties to notify respective creditors or obligees, regarding

58 the court's division of debts, obligations, or liabilities and regarding the parties' separate,  
59 current addresses; and

60 (iii) provisions for the enforcement of these orders;

61 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,  
62 Recovery Services; and

63 (e) if either party owns a life insurance policy or an annuity contract, an  
64 acknowledgment by the court that the owner:

65 (i) has reviewed and updated, where appropriate, the list of beneficiaries;

66 (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries  
67 after the divorce becomes final; and

68 (iii) understands that if no changes are made to the policy or contract, the beneficiaries  
69 currently listed will receive any funds paid by the insurance company under the terms of the  
70 policy or contract.

71 (4) (a) The court may include, in an order determining child support, an order assigning  
72 financial responsibility for all or a portion of child care expenses incurred on behalf of a  
73 dependent child, necessitated by the employment or training of the custodial parent.

74 (b) If the court determines that the circumstances are appropriate and that the  
75 dependent child would be adequately cared for, the court may include an order allowing the  
76 noncustodial parent to provide child care for the dependent child, necessitated by the  
77 employment or training of the custodial parent.

78 (5) The court has continuing jurisdiction to make subsequent changes or new orders for  
79 the custody of a child and the child's support, maintenance, health, and dental care, and for  
80 distribution of the property and obligations for debts as is reasonable and necessary.

81 (6) Child support, custody, visitation, and other matters related to a child born to the  
82 parents after entry of the decree of divorce may be added to the decree by modification.

83 (7) (a) In determining parent-time rights of parents and visitation rights of grandparents  
84 and other members of the immediate family, the court shall consider the best interest of the  
85 child.

86 (b) Upon a specific finding by the court of the need for peace officer enforcement, the  
87 court may include in an order establishing a parent-time or visitation schedule a provision,  
88 among other things, authorizing any peace officer to enforce a court-ordered parent-time or  
89 visitation schedule entered under this chapter.

90 (8) If a petition for modification of child custody or parent-time provisions of a court  
91 order is made and denied, the court shall order the petitioner to pay the reasonable attorney fees  
92 expended by the prevailing party in that action, if the court determines that the petition was  
93 without merit and not asserted or defended against in good faith.

94 (9) If a motion or petition alleges noncompliance with a parent-time order by a parent,  
95 or a visitation order by a grandparent or other member of the immediate family where a  
96 visitation or parent-time right has been previously granted by the court, the court:

97 (a) may award to the prevailing party:

98 ~~(a)~~ (i) actual attorney fees incurred;

99 ~~(b)~~ (ii) the costs incurred by the prevailing party because of the other party's failure to  
100 provide or exercise court-ordered visitation or parent-time, which may include:

101 ~~(i)~~ (A) court costs;

102 ~~(ii)~~ (B) child care expenses;

103 ~~(iii)~~ (C) transportation expenses actually incurred;

104 ~~(iv)~~ (D) lost wages, if ascertainable; ~~and~~ or

105 ~~(v)~~ (E) counseling for a child or parent if ordered or approved by the court; or

106 ~~(c) make-up parent time consistent with the best interest of the child; and]~~

107 ~~(d)~~ (iii) any other appropriate equitable remedy[-]; and

108 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up  
109 parent-time is not in the best interest of the child.

110 (10) (a) The court shall consider at least the following factors in determining alimony:

111 (i) the financial condition and needs of the recipient spouse;

112 (ii) the recipient's earning capacity or ability to produce income, including the impact  
113 of diminished workplace experience resulting from primarily caring for a child of the payor

- 114 spouse;
- 115 (iii) the ability of the payor spouse to provide support;
- 116 (iv) the length of the marriage;
- 117 (v) whether the recipient spouse has custody of a minor child requiring support;
- 118 (vi) whether the recipient spouse worked in a business owned or operated by the payor
- 119 spouse; and
- 120 (vii) whether the recipient spouse directly contributed to any increase in the payor
- 121 spouse's skill by paying for education received by the payor spouse or enabling the payor
- 122 spouse to attend school during the marriage.
- 123 (b) The court may consider the fault of the parties in determining whether to award
- 124 alimony and the terms of the alimony.
- 125 (c) The court may, when fault is at issue, close the proceedings and seal the court
- 126 records.
- 127 (d) As a general rule, the court should look to the standard of living, existing at the
- 128 time of separation, in determining alimony in accordance with Subsection (10)(a). However,
- 129 the court shall consider all relevant facts and equitable principles and may, in the court's
- 130 discretion, base alimony on the standard of living that existed at the time of trial. In marriages
- 131 of short duration, when no child has been conceived or born during the marriage, the court may
- 132 consider the standard of living that existed at the time of the marriage.
- 133 (e) The court may, under appropriate circumstances, attempt to equalize the parties'
- 134 respective standards of living.
- 135 (f) When a marriage of long duration dissolves on the threshold of a major change in
- 136 the income of one of the spouses due to the collective efforts of both, that change shall be
- 137 considered in dividing the marital property and in determining the amount of alimony. If one
- 138 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during
- 139 the marriage, the court may make a compensating adjustment in dividing the marital property
- 140 and awarding alimony.
- 141 (g) In determining alimony when a marriage of short duration dissolves, and no child

142 has been conceived or born during the marriage, the court may consider restoring each party to  
143 the condition which existed at the time of the marriage.

144 (11) (a) The court has continuing jurisdiction to make substantive changes and new  
145 orders regarding alimony based on a substantial material change in circumstances not expressly  
146 stated in the divorce decree or in the findings that the court entered at the time of the divorce  
147 decree.

148 (b) A party's retirement is a substantial material change in circumstances that is subject  
149 to a petition to modify alimony, unless the divorce decree, or the findings that the court entered  
150 at the time of the divorce decree, expressly states otherwise.

151 (c) The court may not modify alimony or issue a new order for alimony to address  
152 needs of the recipient that did not exist at the time the decree was entered, unless the court  
153 finds extenuating circumstances that justify that action.

154 (d) (i) In determining alimony, the income of any subsequent spouse of the payor may  
155 not be considered, except as provided in Subsection (10) or this Subsection (11).

156 (ii) The court may consider the subsequent spouse's financial ability to share living  
157 expenses.

158 (iii) The court may consider the income of a subsequent spouse if the court finds that  
159 the payor's improper conduct justifies that consideration.

160 (e) (i) Except as provided in Subsection (11)(e)(iii), the court may not order alimony  
161 for a period of time longer than the length of the marriage.

162 (ii) If a party is ordered to pay temporary alimony during the pendency of the divorce  
163 action, the period of time that the party pays temporary alimony shall be counted towards the  
164 period of time for which the party is ordered to pay alimony.

165 (iii) At any time before the termination of alimony, the court may find extenuating  
166 circumstances or good cause that justify the payment of alimony for a longer period of time  
167 than the length of the marriage.

168 (12) (a) Except as provided in Subsection (12)(b), unless a decree of divorce  
169 specifically provides otherwise, any order of the court that a party pay alimony to a former

170 spouse automatically terminates upon the remarriage or death of that former spouse.

171 (b) If the remarriage of the former spouse is annulled and found to be void ab initio,  
172 payment of alimony shall resume if the party paying alimony is made a party to the action of  
173 annulment and the payor party's rights are determined.

174 (13) If a party establishes that a current spouse cohabits with another individual during  
175 the pendency of the divorce action, the court:

176 (a) may not order the party to pay temporary alimony to the current spouse; and

177 (b) shall terminate any order that the party pay temporary alimony to the current  
178 spouse.

179 (14) (a) Subject to Subsection (14)(b), the court shall terminate an order that a party  
180 pay alimony to a former spouse if the party establishes that, after the order for alimony is  
181 issued, the former spouse cohabits with another individual even if the former spouse is not  
182 cohabiting with the individual when the party paying alimony files the motion to terminate  
183 alimony.

184 (b) A party paying alimony to a former spouse may not seek termination of alimony  
185 under Subsection (14)(a), later than one year from the day on which the party knew or should  
186 have known that the former spouse has cohabited with another individual.