	CHILD CUSTODY PROCEEDINGS AMENDMENTS
	2024 GENERAL SESSION
	STATE OF UTAH
	Chief Sponsor: Paul A. Cutler
	Senate Sponsor: Michael K. McKell
LC	DNG TITLE
Ge	eneral Description:
	This bill concerns the protection of children in certain judicial proceedings.
Hi	ghlighted Provisions:
	This bill:
	<ul> <li>defines terms;</li> </ul>
	<ul> <li>in certain proceedings involving child custody:</li> </ul>
	• specifies requirements for the admission of expert evidence; and
	• requires a court to consider evidence relating to domestic violence or abuse by a
par	rent;
	<ul> <li>imposes certain requirements and limitations regarding orders to improve the</li> </ul>
rela	ationship between a parent and a child;
	<ul> <li>requires the state court administrator to make recommendations regarding the</li> </ul>
edı	ucation and training of court personnel involving child custody and related
pro	oceedings;
	<ul> <li>requires that certain protective order proceedings comply with specific standards;</li> </ul>
and	d
	<ul> <li>makes technical and conforming changes.</li> </ul>
Mo	oney Appropriated in this Bill:
	None
Ot	her Special Clauses:



28	None
29	Utah Code Sections Affected:
30	AMENDS:
31	<b>30-3-10</b> , as last amended by Laws of Utah 2023, Chapters 44, 327
32	30-3-10.10, as enacted by Laws of Utah 2006, Chapter 287
33	<b>30-3-34</b> , as last amended by Laws of Utah 2021, Chapter 399
34	30-3-34.5, as last amended by Laws of Utah 2022, Chapter 430
35	ENACTS:
36	30-3-41, Utah Code Annotated 1953
37	78A-2-232, Utah Code Annotated 1953
38	78B-7-121, Utah Code Annotated 1953
39	
40	Be it enacted by the Legislature of the state of Utah:
41	Section 1. Section <b>30-3-10</b> is amended to read:
42	<b>30-3-10.</b> Custody of a child Custody factors.
43	(1) If a married couple having one or more minor children are separated, or the married
44	couple's marriage is declared void or dissolved, the court shall enter, and has continuing
45	jurisdiction to modify, an order of custody and parent-time.
46	(2) In determining any form of custody and parent-time under Subsection (1), the court
47	shall consider the best interest of the child [and may consider among other factors the court
48	finds relevant, the following for each parent:].
49	(3) In determining any form of custody and parent-time under Subsection (1), the court
50	shall consider:
51	(a) for each parent, and in accordance with Section 30-3-41, evidence of domestic
52	violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, the
53	parent, or a household member of the parent; and
54	(b) a credible allegation of child abuse.
55	(4) In determining any form of custody and parent-time under Subsection (1), the court
56	may consider, among other factors the court finds relevant, the following for each parent:
57	[(a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
58	abuse, involving the child, the parent, or a household member of the parent;]

59	[(b)] (a) the parent's demonstrated understanding of, responsiveness to, and ability to
60	meet the developmental needs of the child, including the child's:
61	(i) physical needs;
62	(ii) emotional needs;
63	(iii) educational needs;
64	(iv) medical needs; and
65	(v) any special needs;
66	[(c)] (b) the parent's capacity and willingness to function as a parent, including:
67	(i) parenting skills;
68	(ii) co-parenting skills, including:
69	(A) ability to appropriately communicate with the other parent;
70	(B) ability to encourage the sharing of love and affection; and
71	(C) willingness to allow frequent and continuous contact between the child and the
72	other parent, except that, if the court determines that the parent is acting to protect the child
73	from domestic violence, neglect, or abuse, the parent's protective actions may be taken into
74	consideration; and
75	(iii) ability to provide personal care rather than surrogate care;
76	$\left[\frac{(d)}{(c)}\right]$ in accordance with Subsection $\left[\frac{(10)}{(12)}\right]$ , the past conduct and demonstrated
77	moral character of the parent;
78	[ <del>(c)</del> ] <u>(d)</u> the emotional stability of the parent;
79	[(f)] (e) the parent's inability to function as a parent because of drug abuse, excessive
80	drinking, or other causes;
81	$\left[\frac{f}{2}\right]$ whether the parent has intentionally exposed the child to pornography or
82	material harmful to minors, as "material" and "harmful to minors" are defined in Section
83	76-10-1201;
84	[(h)] (g) the parent's reasons for having relinquished custody or parent-time in the past;
85	[(i)] (h) duration and depth of desire for custody or parent-time;
86	[(j)] (i) the parent's religious compatibility with the child;
87	[(k)] (j) the parent's financial responsibility;
88	[(+)] (k) the child's interaction and relationship with step-parents, extended family
89	members of other individuals who may significantly affect the child's best interests;

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90 [(m)] (1) who has been the primary caretaker of the child; 91 [(m) previous parenting arrangements in which the child has been happy and 92 well-adjusted in the home, school, and community; 93  $\left[\frac{(n)}{(n)}\right]$  (n) the relative benefit of keeping siblings together; 94  $\left[\frac{(p)}{p}\right]$  (o) the stated wishes and concerns of the child, taking into consideration the 95 child's cognitive ability and emotional maturity; 96  $\left[\frac{d}{dt}\right]$  (p) the relative strength of the child's bond with the parent, meaning the depth, 97 quality, and nature of the relationship between the parent and the child; and 98  $\left[\frac{r}{r}\right]$  (q) any other factor the court finds relevant. 99  $\left[\frac{3}{3}\right]$  (5) There is a rebuttable presumption that joint legal custody, as defined in 100 Section 30-3-10.1, is in the best interest of the child, except in cases when there is: 101 (a) in accordance with Section 30-3-41, evidence of domestic violence, neglect, 102 physical abuse, sexual abuse, or emotional abuse involving the child, a parent, or a household member of the parent; 103 104 (b) special physical or mental needs of a parent or child, making joint legal custody 105 unreasonable; 106 (c) physical distance between the residences of the parents, making joint decision 107 making impractical in certain circumstances; or 108 (d) any other factor the court considers relevant including those listed in this section 109 and Section 30-3-10.2. 110  $\left[\frac{4}{4}\right]$  (6) (a) The person who desires joint legal custody shall file a proposed parenting 111 plan in accordance with Sections 30-3-10.8 and 30-3-10.9. 112 (b) A presumption for joint legal custody may be rebutted by a showing by a 113 preponderance of the evidence that it is not in the best interest of the child. 114  $\left[\frac{(5)}{(7)}\right]$  (7) (a) A child may not be required by either party to testify unless the trier of fact 115 determines that extenuating circumstances exist that would necessitate the testimony of the 116 child be heard and there is no other reasonable method to present the child's testimony. 117 (b) (i) The court may inquire of the child's and take into consideration the child's 118 desires regarding future custody or parent-time schedules, but the expressed desires are not 119 controlling and the court may determine the child's custody or parent-time otherwise. 120 (ii) The desires of a child 14 years old or older shall be given added weight, but is not

121 the single controlling factor.

- (c) (i) If an interview with a child is conducted by the court pursuant to Subsection
  [(5)(b)] (7)(b), the interview shall be conducted by the judge in camera.
- (ii) 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)] (8) (a) Except as provided in Subsection [(6)(b)] (8)(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 forthe 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
  the child at issue.
- (c) Nothing in this section may be construed to apply to adoption proceedings underTitle 78B, Chapter 6, Part 1, Utah Adoption Act.
- 141 [(7)] (9) This section does not establish a preference for either parent solely because of
  142 the gender of the parent.
- [<del>(8)</del>] <u>(10)</u> 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.
- [(9)] (11) When an issue before the court involves custodial responsibility in the event
  of a deployment of one or both parents who are service members and the service member 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.
- 150 [(10)] (12) In considering the past conduct and demonstrated moral standards of each 151 party under Subsection [(2)(d)] (4)(c) or any other factor a court finds relevant, the court may

152	not:
153	(a) consider or treat a parent's lawful possession or use of cannabis in a medicinal
154	dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in
155	accordance with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies,
156	Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or Subsection
157	58-37-3.7(2) or (3) any differently than the court would consider or treat the lawful possession
158	or use of any prescribed controlled substance; or
159	(b) discriminate against a parent because of the parent's status as a:
160	(i) cannabis production establishment agent, as that term is defined in Section
161	4-41a-102;
162	(ii) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;
163	(iii) medical cannabis courier agent, as that term is defined in Section 26B-4-201; or
164	(iv) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2,
165	Cannabinoid Research and Medical Cannabis.
166	Section 2. Section <b>30-3-10.10</b> is amended to read:
167	<b>30-3-10.10.</b> Parenting plan Domestic violence.
168	(1) In any proceeding regarding a parenting plan, the court shall consider evidence of
169	domestic violence in accordance with Section 30-3-41, if presented.
170	(2) If there is a protective order, civil stalking injunction, or the court finds that a
171	parent has committed domestic violence, the court shall consider the impact of domestic
172	violence in awarding parent-time, and make specific findings regarding the award of
173	parent-time.
174	(3) If the court orders parent-time and a protective order or civil stalking injunction is
175	still in place, it shall consider whether to order the parents to conduct parent-time pick-up and
176	transfer through a third party. The parent who is the stated victim in the order or injunction
177	may submit to the court, and the court shall consider, the name of a person considered suitable
178	to act as the third party.
179	(4) If the court orders the parents to conduct parent-time through a third party, the
180	parenting plan shall specify the time, day, place, manner, and the third party to be used to
181	implement the exchange.
182	Section 3. Section <b>30-3-34</b> is amended to read:

183	30-3-34. Parent-time Best interests Rebuttable presumption.
184	(1) If the parties are unable to agree on a parent-time schedule, the court may:
185	(a) establish a parent-time schedule; or
186	(b) order a parent-time schedule described in Section 30-3-35, 30-3-35.1, 30-3-35.2, or
187	30-3-35.5.
188	(2) The advisory guidelines as provided in Section $30-3-33$ and the parent-time
189	schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be considered the minimum
190	parent-time to which the noncustodial parent and the child shall be entitled.
191	(3) In accordance with Section <u>30-3-41</u> , when ordering a parent-time schedule a court
192	shall consider:
193	(a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
194	abuse, involving the child, a parent, or a household member of the parent; and
195	(b) a credible allegation of child abuse.
196	(4) A court may consider the following when ordering a parent-time schedule:
197	(a) whether parent-time would endanger the child's physical health or mental health, or
198	significantly impair the child's emotional development;
199	[(b) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
200	abuse, involving the child, a parent, or a household member of the parent;]
201	[(c)] (b) the distance between the residency of the child and the noncustodial parent;
202	[(d) a credible allegation of child abuse has been made;]
203	[(e)] (c) the lack of demonstrated parenting skills without safeguards to ensure the
204	child's well-being during parent-time;
205	[(f)] (d) the financial inability of the noncustodial parent to provide adequate food and
206	shelter for the child during periods of parent-time;
207	[(g)] (e) the preference of the child if the court determines the child is of sufficient
208	maturity;
209	[(h)] (f) the incarceration of the noncustodial parent in a county jail, secure youth
210	corrections facility, or an adult corrections facility;
211	[(i)] (g) shared interests between the child and the noncustodial parent;
212	[(j)] (h) the involvement or lack of involvement of the noncustodial parent in the
213	school, community, religious, or other related activities of the child;

214	$\left[\frac{k}{2}\right]$ (i) the availability of the noncustodial parent to care for the child when the
215	custodial parent is unavailable to do so because of work or other circumstances;
216	[(1)] (j) a substantial and chronic pattern of missing, canceling, or denying regularly
217	scheduled parent-time;
218	$\left[\frac{(m)}{(k)}\right]$ the minimal duration of and lack of significant bonding in the parents'
219	relationship before the conception of the child;
220	[(n)] (1) the parent-time schedule of siblings;
221	[(0)] (m) the lack of reasonable alternatives to the needs of a nursing child; and
222	[(p)] (n) any other criteria the court determines relevant to the best interests of the
223	child.
224	[(4)] (5) The court shall enter the reasons underlying the court's order for parent-time
225	that:
226	(a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or
227	(b) provides more or less parent-time than a parent-time schedule provided in Section
228	30-3-35 or 30-3-35.5.
229	[(5)] (6) A court may not order a parent-time schedule unless the court determines by a
230	preponderance of the evidence that the parent-time schedule is in the best interest of the child.
231	[(6)] (7) Once the parent-time schedule has been established, the parties may not alter
232	the schedule except by mutual consent of the parties or a court order.
233	Section 4. Section <b>30-3-34.5</b> is amended to read:
234	30-3-34.5. Supervised parent-time.
235	(1) Considering the fundamental liberty interests of parents and children, it is the
236	policy of this state that divorcing parents have unrestricted and unsupervised access to their
237	children. When necessary to protect a child and no less restrictive means is reasonably
238	available however, and in accordance with Section 30-3-41, a court may order supervised
239	parent-time if the court finds evidence that the child would be subject to physical or emotional
240	harm or child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114,
241	from the noncustodial parent if left unsupervised with the noncustodial parent.
242	(2) (a) A court that orders supervised parent-time shall give preference to supervision
243	by an individual trained in security and the avoidance of domestic and family violence.
244	(b) If an individual described in Subsection (2)(a) is not available, a court shall give

245	preference to persons suggested by the parties to supervise, including relatives. If the court
246	finds that the persons suggested by the parties are willing to supervise, and are capable of
247	protecting the children from physical or emotional harm, or child abuse, the court shall
248	authorize the persons to supervise parent-time.
249	(3) If the court is unable to authorize any persons to supervise parent-time pursuant to
250	Subsection (2), the court may require that the noncustodial parent seek the services of a
251	professional individual or agency to exercise their supervised parent-time.
252	(4) At the time supervised parent-time is imposed, the court shall consider:
253	(a) whether the cost of professional or agency services is likely to prevent the
254	noncustodial parent from exercising parent-time; and
255	(b) whether the requirement for supervised parent-time should expire after a set period
256	of time.
257	(5) [The] Except when the court makes a finding that, due to abuse by or the incapacity
258	of the noncustodial parent, supervised parent-time will be necessary indefinitely to ensure the
259	safety and protection of the child, the court shall, in its order for supervised parent-time,
260	provide specific goals and expectations for the noncustodial parent to accomplish before
261	unsupervised parent-time may be granted. The court shall schedule one or more follow-up
262	hearings to revisit the issue of supervised parent-time.
263	(6) A noncustodial parent may, at any time, petition the court to modify the order for
264	supervised parent-time if the noncustodial parent can demonstrate that the specific goals and
265	expectations set by the court in Subsection (5) have been accomplished.
266	Section 5. Section <b>30-3-41</b> is enacted to read:
267	<u>30-3-41.</u> Definitions Expert evidence Violence or abuse findings Child
268	relationship and reunification.
269	(1) As used in this section:
270	(a) "Abuse" means the same as that term is defined in Section 80-1-102.
271	(b) (i) "Child custody proceeding" means a civil proceeding between the parents of a
272	child that involves the care or custody of the child, including proceedings involving:
273	(A) divorce;
274	(B) separation;
275	(C) visitation;

276	(D) paternity;
277	(E) child support; or
278	(F) legal or physical custody of the child.
279	(ii) "Child custody proceeding" does not include:
280	(A) a child protective, abuse, or neglect proceeding;
281	(B) a juvenile justice proceeding; or
282	(C) a child placement proceeding in which a state, local, or tribal government, a
283	designee of such a government, or any contracted child welfare agency or child protective
284	services agency of such a government is a party to the proceeding.
285	(c) "Domestic violence" means the same as that term is defined in Section 77-36-1.
286	(d) "Forensic" means professional activities undertaken pursuant to a court order or for
287	use in litigation, including the evaluation or treatment of a parent, child, or other individual
288	who is involved in a child custody proceeding.
289	(e) "Protective order" means:
290	(i) a civil protective order, as that term is defined in Section 78B-7-102;
291	(ii) an ex parte civil protective order, as that term is defined in Section 78B-7-102; or
292	(iii) a foreign protection order, as that term is defined in Section 78B-7-302.
293	(f) "Reunification treatment" means a treatment or therapy aimed at reuniting or
294	reestablishing a relationship between a child and an estranged or rejected parent or other family
295	member of the child.
296	(g) "Sexual abuse" means the same as that term is defined in Section 80-1-102.
297	(2) In a child custody proceeding, if a parent is alleged to have committed domestic
298	violence or abuse, including sexual abuse:
299	(a) the court may admit expert evidence from a court-appointed or outside professional
300	relating to alleged domestic violence or abuse only if the professional possesses demonstrated
301	expertise and adequate experience in working with victims of domestic violence or abuse,
302	including sexual abuse, that is not solely of a forensic nature; and
303	(b) in making a finding regarding an allegation of domestic violence or abuse,
304	including sexual abuse, the court shall consider evidence of past domestic violence, sexual
305	violence, or abuse committed by the accused parent, including:
306	(i) any past or current protective order against the accused parent; or

307	(ii) any charge, arrest, or conviction of the accused parent for domestic violence, sexual
308	violence, or abuse.
309	(3) As part of a child custody proceeding, a court may not, solely in order to improve a
310	deficient relationship between the other parent and a child:
311	(a) remove the child from a parent or litigating party:
312	(i) who is competent, protective, and not physically or sexually abusive; and
313	(ii) with whom the child is bonded; or
314	(b) restrict reasonable contact between the child and a parent or litigating party:
315	(i) who is competent, protective, and not physically or sexually abusive; and
316	(ii) with whom the child is bonded.
317	(4) As part of a child custody proceeding:
318	(a) a court may not order a reunification treatment unless there is generally accepted
319	proof of the safety, effectiveness, and therapeutic value of the reunification treatment;
320	(b) a court may not order a reunification treatment that is predicated on cutting off a
321	child from a parent:
322	(i) who is competent, protective, and not physically or sexually abusive; and
323	(ii) with whom the child is bonded;
324	(c) any order to remediate the resistance of a child to have contact with a violent or
325	abusive parent shall primarily address the behavior of that parent or the contributions of that
326	parent to the resistance of the child; and
327	(d) any order to a parent who meets the criteria in Subsections (b)(i) and (ii), and that
328	requires the parent to take steps to potentially improve the child's relationship with a violent or
329	abusive parent, shall:
330	(i) prioritize the child's safety and psychological needs; and
331	(ii) be narrowly tailored to address specific behavior.
332	Section 6. Section <b>78A-2-232</b> is enacted to read:
333	78A-2-232. Child abuse and domestic abuse education and training for judges,
334	court commissioners, and court personnel.
335	(1) As used in this section:
336	(a) "Child custody proceeding" means a civil proceeding between the parents of a child
337	that involves the care or custody of the child including proceedings involving:

338	(i) divorce;
339	(ii) separation;
340	(iii) visitation;
341	(iv) paternity;
342	(v) child support;
343	(vi) legal or physical custody of a child; or
344	(vii) a civil protective order as that term is defined in Section 78B-7-102.
345	(b) "Victim service provider" means the same as that term is defined in 34 U.S.C. Sec.
346	<u>12291.</u>
347	(2) The state court administrator described in Section 78A-2-105 shall:
348	(a) study the training and education requirements in the Keeping Children Safe from
349	Family Violence Act, 34 U.S.C. Sec. 10446;
350	(b) develop or recommend a proposed training and education program that complies
351	with those requirements; and
352	(c) present the proposed or recommended training and education program to the
353	Judiciary Interim Committee on or before the committee's September 2024 interim meeting.
354	(3) The proposed or recommended training and education program described in
355	Subsection (2)(b):
356	(a) shall be designed to improve the ability of the courts to:
357	(i) recognize domestic violence and child abuse in child custody proceedings; and
358	(ii) make appropriate custody decisions that prioritize child safety and well-being, and
359	are culturally sensitive and appropriate for diverse communities;
360	(b) shall focus solely on domestic and sexual violence and child abuse, including:
361	(i) child sexual abuse;
362	(ii) physical abuse;
363	(iii) emotional abuse;
364	(iv) coercive control;
365	(v) implicit and explicit bias, including biases relating to parents with disabilities;
366	(vi) trauma;
367	(vii) long-term and short-term impacts of domestic violence and child abuse on
368	children; and

369	(viii) victim and perpetrator behavior patterns and relationship dynamics within the
370	cycle of violence;
371	(c) shall be based on evidence-based and peer-reviewed research by recognized experts
372	in the types of abuse described in Subsection (3)(b);
373	(d) shall require training to be provided by a professional with substantial experience in
374	assisting survivors of domestic violence or child abuse, including a victim service provider;
375	(e) may include input from a survivor of domestic violence or child physical or sexual
376	<u>abuse;</u>
377	(f) may incorporate curriculum, best practices, or other materials developed for or used
378	in similar training and education programs; and
379	(g) may not include theories, concepts, or belief systems unsupported by the research
380	described in Subsection (3)(c).
381	(4) The state court administrator's presentation described in Subsection (2)(c) shall
382	include:
383	(a) recommendations for the specific personnel positions that will be required to
384	participate in the program;
385	(b) recommendations for how the program will comply with the federal hourly
386	requirements;
387	(c) recommended performance metrics for the program and how those metrics may be
388	tracked; and
389	(d) an estimate of the costs to implement the program.
390	Section 7. Section <b>78B-7-121</b> is enacted to read:
391	78B-7-121. Requirements for proceedings between the parents of a child.
392	(1) (a) As used in this section, "relevant proceeding" means a civil proceeding under
393	this chapter:
394	(i) between the parents of a child;
395	(ii) that involves the care or custody of the child; and
396	(iii) that concerns a protective order under this chapter.
397	(b) "Relevant proceeding" does not include:
398	(i) any child protective, abuse, or neglect proceeding;
399	(ii) a juvenile justice proceeding; or

- 400 (iii) any child placement proceeding in which a state, local, or tribal government, a
- 401 designee of such a government, or any contracted child welfare agency or child protective
- 402 services agency of such a government is a party to the proceeding.
- 403 (2) In a relevant proceeding, the court shall comply with the standards described in
- 404 <u>Section 30-3-41.</u>
- 405 Section 8. Effective date.
- 406 <u>This bill takes effect on May 1, 2024.</u>