

Representative Paul A. Cutler proposes the following substitute bill:

CHILD CUSTODY PROCEEDINGS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul A. Cutler

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill concerns the protection of children in certain judicial proceedings.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ in certain proceedings involving child custody:
 - specifies requirements for the admission of expert evidence; and
 - requires a court to consider specific evidence when determining custody and parent-time;
 - ▶ amends provisions regarding supervised parent-time;
 - ▶ imposes certain requirements and limitations regarding orders to improve the relationship between a parent and a child;
 - ▶ requires the state court administrator to make recommendations regarding the education and training of court personnel involving child custody and related proceedings;
 - ▶ requires that certain protective order proceedings comply with specific standards;
- and
- ▶ makes technical and conforming changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **30-3-10**, as last amended by Laws of Utah 2023, Chapters 44, 327

33 **30-3-10.10**, as enacted by Laws of Utah 2006, Chapter 287

34 **30-3-34**, as last amended by Laws of Utah 2021, Chapter 399

35 **30-3-34.5**, as last amended by Laws of Utah 2022, Chapter 430

36 ENACTS:

37 **30-3-41**, Utah Code Annotated 1953

38 **78A-2-232**, Utah Code Annotated 1953

39 **78B-7-121**, Utah Code Annotated 1953



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

42 Section 1. Section **30-3-10** is amended to read:

43 **30-3-10. Custody of a child -- Custody factors.**

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

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

50 (3) In determining any form of custody and parent-time under Subsection (1), the court
51 shall consider:

52 (a) for each parent, and in accordance with Section **30-3-41**, credible evidence of
53 domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the
54 child, the parent, or a household member of the parent;

55 (b) whether the parent has intentionally exposed the child to pornography or material
56 harmful to minors, as "material" and "harmful to minors" are defined in Section **76-10-1201**;

57 and

58 (c) whether custody and parent-time would endanger the child's physical health or
59 mental health, or significantly impair the child's emotional development.

60 (4) In determining any form of custody and parent-time under Subsection (1), the court
61 may consider, among other factors the court finds relevant, the following for each parent:

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

64 ~~[(b)]~~ (a) the parent's demonstrated understanding of, responsiveness to, and ability to
65 meet the developmental needs of the child, including the child's:

66 (i) physical needs;

67 (ii) emotional needs;

68 (iii) educational needs;

69 (iv) medical needs; and

70 (v) any special needs;

71 ~~[(c)]~~ (b) the parent's capacity and willingness to function as a parent, including:

72 (i) parenting skills;

73 (ii) co-parenting skills, including:

74 (A) ability to appropriately communicate with the other parent;

75 (B) ability to encourage the sharing of love and affection; and

76 (C) willingness to allow frequent and continuous contact between the child and the
77 other parent, except that, if the court determines that the parent is acting to protect the child
78 from domestic violence, neglect, or abuse, the parent's protective actions may be taken into
79 consideration; and

80 (iii) ability to provide personal care rather than surrogate care;

81 ~~[(d)]~~ (c) in accordance with Subsection ~~[(10)]~~ (12), the past conduct and demonstrated
82 moral character of the parent;

83 ~~[(e)]~~ (d) the emotional stability of the parent;

84 ~~[(f)]~~ (e) the parent's inability to function as a parent because of drug abuse, excessive
85 drinking, or other causes;

86 ~~[(g) whether the parent has intentionally exposed the child to pornography or material~~
87 ~~harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;]~~

88 ~~[(h)]~~ (f) the parent's reasons for having relinquished custody or parent-time in the past;

89 ~~[(i)]~~ (g) duration and depth of desire for custody or parent-time;

90 ~~[(j)]~~ (h) the parent's religious compatibility with the child;

91 ~~[(k)]~~ (i) the parent's financial responsibility;

92 ~~[(l)]~~ (j) the child's interaction and relationship with step-parents, extended family
93 members of other individuals who may significantly affect the child's best interests;

94 ~~[(m)]~~ (k) who has been the primary caretaker of the child;

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

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

98 ~~[(p)]~~ (n) the stated wishes and concerns of the child, taking into consideration the
99 child's cognitive ability and emotional maturity;

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

102 ~~[(r)]~~ (p) any other factor the court finds relevant.

103 ~~[(3)]~~ (5) There is a rebuttable presumption that joint legal custody, as defined in
104 Section [30-3-10.1](#), is in the best interest of the child, except in cases when there is:

105 (a) in accordance with Section [30-3-41](#), evidence of domestic violence, neglect,
106 physical abuse, sexual abuse, or emotional abuse involving the child, a parent, or a household
107 member of the parent;

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

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

112 (d) any other factor the court considers relevant including those listed in this section
113 and Section [30-3-10.2](#).

114 ~~[(4)]~~ (6) (a) The person who desires joint legal custody shall file a proposed parenting
115 plan in accordance with Sections [30-3-10.8](#) and [30-3-10.9](#).

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

118 ~~[(5)]~~ (7) (a) A child may not be required by either party to testify unless the trier of fact

119 determines that extenuating circumstances exist that would necessitate the testimony of the
120 child be heard and there is no other reasonable method to present the child's testimony.

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

124 (ii) The desires of a child 14 years old or older shall be given added weight, but is not
125 the single controlling factor.

126 (c) (i) If an interview with a child is conducted by the court pursuant to Subsection
127 ~~[(5)(b)]~~ (7)(b), the interview shall be conducted by the judge in camera.

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

131 ~~[(6)]~~ (8) (a) Except as provided in Subsection ~~[(6)(b)]~~ (8)(b), a court may not
132 discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding
133 custody or determining whether a substantial change has occurred for the purpose of modifying
134 an award of custody.

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

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

140 (ii) the parent with a disability lacks sufficient human, monetary, or other resources
141 available to supplement the parent's ability to provide for the physical and emotional needs of
142 the child at issue.

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

145 ~~[(7)]~~ (9) This section does not establish a preference for either parent solely because of
146 the gender of the parent.

147 ~~[(8)]~~ (10) This section establishes neither a preference nor a presumption for or against
148 joint physical custody or sole physical custody, but allows the court and the family the widest
149 discretion to choose a parenting plan that is in the best interest of the child.

150 ~~[(9)]~~ (11) When an issue before the court involves custodial responsibility in the event
151 of a deployment of one or both parents who are service members and the service member has
152 not yet been notified of deployment, the court shall resolve the issue based on the standards in
153 Sections [78B-20-306](#) through [78B-20-309](#).

154 ~~[(10)]~~ (12) In considering the past conduct and demonstrated moral standards of each
155 party under Subsection ~~[(2)(d)]~~ [\(4\)\(c\)](#) or any other factor a court finds relevant, the court may
156 not:

157 (a) consider or treat a parent's lawful possession or use of cannabis in a medicinal
158 dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in
159 accordance with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies,
160 Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or Subsection
161 [58-37-3.7\(2\)](#) or (3) any differently than the court would consider or treat the lawful possession
162 or use of any prescribed controlled substance; or

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

164 (i) cannabis production establishment agent, as that term is defined in Section
165 [4-41a-102](#);

166 (ii) medical cannabis pharmacy agent, as that term is defined in Section [26B-4-201](#);

167 (iii) medical cannabis courier agent, as that term is defined in Section [26B-4-201](#); or

168 (iv) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2,
169 Cannabinoid Research and Medical Cannabis.

170 Section 2. Section **30-3-10.10** is amended to read:

171 **30-3-10.10. Parenting plan -- Domestic violence.**

172 (1) In any proceeding regarding a parenting plan, the court shall consider evidence of
173 domestic violence in accordance with Section [30-3-41](#), if presented.

174 (2) If there is a protective order, civil stalking injunction, or the court finds that a
175 parent has committed domestic violence, the court shall consider the impact of domestic
176 violence in awarding parent-time, and make specific findings regarding the award of
177 parent-time.

178 (3) If the court orders parent-time and a protective order or civil stalking injunction is
179 still in place, it shall consider whether to order the parents to conduct parent-time pick-up and
180 transfer through a third party. The parent who is the stated victim in the order or injunction

181 may submit to the court, and the court shall consider, the name of a person considered suitable
182 to act as the third party.

183 (4) If the court orders the parents to conduct parent-time through a third party, the
184 parenting plan shall specify the time, day, place, manner, and the third party to be used to
185 implement the exchange.

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

187 **30-3-34. Parent-time -- Best interests -- Rebuttable presumption.**

188 (1) If the parties are unable to agree on a parent-time schedule, the court may:

189 (a) establish a parent-time schedule; or

190 (b) order a parent-time schedule described in Section 30-3-35, 30-3-35.1, 30-3-35.2, or
191 30-3-35.5.

192 (2) The advisory guidelines as provided in Section 30-3-33 and the parent-time
193 schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be considered the minimum
194 parent-time to which the noncustodial parent and the child shall be entitled.

195 (3) In accordance with Section 30-3-41, when ordering a parent-time schedule a court
196 shall consider:

197 (a) credible evidence of domestic violence, neglect, physical abuse, sexual abuse, or
198 emotional abuse, involving the child, a parent, or a household member of the parent; and

199 (b) whether parent-time would endanger the child's physical health or mental health, or
200 significantly impair the child's emotional development.

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

202 [~~(a) whether parent-time would endanger the child's physical health or mental health,~~
203 ~~or significantly impair the child's emotional development;~~]

204 [~~(b) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional~~
205 ~~abuse, involving the child, a parent, or a household member of the parent;]~~

206 [~~(c)~~] (a) the distance between the residency of the child and the noncustodial parent;

207 [~~(d) a credible allegation of child abuse has been made;~~]

208 [~~(e)~~] (b) the lack of demonstrated parenting skills without safeguards to ensure the
209 child's well-being during parent-time;

210 [~~(f)~~] (c) the financial inability of the noncustodial parent to provide adequate food and
211 shelter for the child during periods of parent-time;

212 ~~[(g)]~~ (d) the preference of the child if the court determines the child is of sufficient
213 maturity;

214 ~~[(h)]~~ (e) the incarceration of the noncustodial parent in a county jail, secure youth
215 corrections facility, or an adult corrections facility;

216 ~~[(i)]~~ (f) shared interests between the child and the noncustodial parent;

217 ~~[(j)]~~ (g) the involvement or lack of involvement of the noncustodial parent in the
218 school, community, religious, or other related activities of the child;

219 ~~[(k)]~~ (h) the availability of the noncustodial parent to care for the child when the
220 custodial parent is unavailable to do so because of work or other circumstances;

221 ~~[(l)]~~ (i) a substantial and chronic pattern of missing, canceling, or denying regularly
222 scheduled parent-time;

223 ~~[(m)]~~ (j) the minimal duration of and lack of significant bonding in the parents'
224 relationship before the conception of the child;

225 ~~[(n)]~~ (k) the parent-time schedule of siblings;

226 ~~[(o)]~~ (l) the lack of reasonable alternatives to the needs of a nursing child; and

227 ~~[(p)]~~ (m) any other criteria the court determines relevant to the best interests of the
228 child.

229 ~~[(4)]~~ (5) The court shall enter the reasons underlying the court's order for parent-time
230 that:

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

232 (b) provides more or less parent-time than a parent-time schedule provided in Section
233 30-3-35 or 30-3-35.5.

234 ~~[(5)]~~ (6) A court may not order a parent-time schedule unless the court determines by a
235 preponderance of the evidence that the parent-time schedule is in the best interest of the child.

236 ~~[(6)]~~ (7) Once the parent-time schedule has been established, the parties may not alter
237 the schedule except by mutual consent of the parties or a court order.

238 Section 4. Section 30-3-34.5 is amended to read:

239 **30-3-34.5. Supervised parent-time.**

240 (1) Considering the fundamental liberty interests of parents and children, it is the
241 policy of this state that divorcing parents have unrestricted and unsupervised access to their
242 children. When necessary to protect a child and no less restrictive means is reasonably

243 available however, and in accordance with Section 30-3-41, a court may order supervised
244 parent-time if the court finds evidence that the child would be subject to physical or emotional
245 harm or child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, [and]
246 76-5-114, and 80-1-102, from the noncustodial parent if left unsupervised with the
247 noncustodial parent.

248 (2) (a) A court that orders supervised parent-time shall give preference to supervision
249 by an individual trained in security and the avoidance of domestic and family violence.

250 (b) If an individual described in Subsection (2)(a) is not available, affordable, or
251 practicable under the circumstances, a court shall give preference to persons suggested by the
252 parties to supervise, including relatives. If the court finds that the persons suggested by the
253 parties are willing to supervise, and are capable of protecting the children from physical or
254 emotional harm, or child abuse, the court shall authorize the persons to supervise parent-time.

255 (3) If the court is unable to authorize any persons to supervise parent-time pursuant to
256 Subsection (2), the court may require that the noncustodial parent seek the services of a
257 professional individual or agency to exercise their supervised parent-time.

258 (4) At the time supervised parent-time is imposed, the court shall consider:

259 (a) whether the cost of professional or agency services is likely to prevent the
260 noncustodial parent from exercising parent-time; and

261 (b) whether the requirement for supervised parent-time should expire after a set period
262 of time.

263 (5) [~~The~~] Except when the court makes a finding that, due to abuse by or the incapacity
264 of the noncustodial parent, supervised parent-time will be necessary indefinitely to ensure the
265 safety and protection of the child, the court shall, in its order for supervised parent-time,
266 provide specific goals and expectations for the noncustodial parent to accomplish before
267 unsupervised parent-time may be granted. The court shall schedule one or more follow-up
268 hearings to revisit the issue of supervised parent-time.

269 (6) A noncustodial parent may, at any time, petition the court to modify the order for
270 supervised parent-time if the noncustodial parent can demonstrate that the specific goals and
271 expectations set by the court in Subsection (5) have been accomplished.

272 Section 5. Section 30-3-41 is enacted to read:

273 **30-3-41. Definitions -- Expert evidence -- Violence or abuse findings -- Child**

274 **relationship and reunification.**

275 (1) As used in this section:

276 (a) "Abuse" means the same as that term is defined in Section [80-1-102](#).

277 (b) (i) "Child custody proceeding" means a civil proceeding between the parents of a

278 child that involves the care or custody of the child, including proceedings involving:

279 (A) divorce;

280 (B) separation;

281 (C) visitation;

282 (D) paternity;

283 (E) child support; or

284 (F) legal or physical custody of the child.

285 (ii) "Child custody proceeding" does not include:

286 (A) a child protective, abuse, or neglect proceeding;

287 (B) a juvenile justice proceeding; or

288 (C) a child placement proceeding in which a state, local, or tribal government, a

289 designee of such a government, or any contracted child welfare agency or child protective

290 services agency of such a government is a party to the proceeding.

291 (c) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

292 (d) "Forensic" means professional activities undertaken pursuant to a court order or for

293 use in litigation, including the evaluation or treatment of a parent, child, or other individual

294 who is involved in a child custody proceeding.

295 (e) "Protective order" means:

296 (i) a civil protective order, as that term is defined in Section [78B-7-102](#);

297 (ii) an ex parte civil protective order, as that term is defined in Section [78B-7-102](#); or

298 (iii) a foreign protection order, as that term is defined in Section [78B-7-302](#).

299 (f) "Reunification treatment" means a treatment or therapy aimed at reuniting or

300 reestablishing a relationship between a child and an estranged or rejected parent or other family

301 member of the child.

302 (g) "Sexual abuse" means the same as that term is defined in Section [80-1-102](#).

303 (2) In a child custody proceeding, if a parent is alleged to have committed domestic

304 violence or abuse, including sexual abuse:

305 (a) the court may admit expert evidence from a court-appointed or outside professional
306 relating to alleged domestic violence or abuse only if the professional possesses demonstrated
307 expertise and adequate experience in working with victims of domestic violence or abuse,
308 including sexual abuse, that is not solely of a forensic nature; and

309 (b) in making a finding regarding an allegation of domestic violence or abuse,
310 including sexual abuse, the court shall consider evidence of past domestic violence, sexual
311 violence, or abuse committed by the accused parent, including:

312 (i) any past or current protective order against the accused parent; or

313 (ii) any charge, arrest, or conviction of the accused parent for domestic violence, sexual
314 violence, or abuse.

315 (3) As part of a child custody proceeding, a court may not, solely in order to improve a
316 deficient relationship between the other parent and a child:

317 (a) remove the child from a parent or litigating party:

318 (i) who is competent, protective, and not physically or sexually abusive; and

319 (ii) with whom the child is bonded; or

320 (b) restrict reasonable contact between the child and a parent or litigating party:

321 (i) who is competent, protective, and not physically or sexually abusive; and

322 (ii) with whom the child is bonded.

323 (4) As part of a child custody proceeding:

324 (a) a court may not order a reunification treatment unless there is generally accepted
325 proof of the safety, effectiveness, and therapeutic value of the reunification treatment;

326 (b) a court may not order a reunification treatment that is predicated on cutting off a
327 child from a parent:

328 (i) who is competent, protective, and not physically or sexually abusive; and

329 (ii) with whom the child is bonded;

330 (c) any order to remediate the resistance of a child to have contact with a violent or
331 abusive parent shall primarily address the behavior of that parent or the contributions of that
332 parent to the resistance of the child; and

333 (d) any order to a parent who meets the criteria in Subsections (b)(i) and (ii), and that
334 requires the parent to take steps to potentially improve the child's relationship with a violent or
335 abusive parent, shall:

- 336 (i) prioritize the child's safety and psychological needs; and
- 337 (ii) be narrowly tailored to address specific behavior.

338 Section 6. Section **78A-2-232** is enacted to read:

339 **78A-2-232. Child abuse and domestic abuse education and training for judges,**
340 **court commissioners, and court personnel.**

341 (1) As used in this section:

342 (a) "Child custody proceeding" means a civil proceeding between the parents of a child
343 that involves the care or custody of the child including proceedings involving:

344 (i) divorce;

345 (ii) separation;

346 (iii) visitation;

347 (iv) paternity;

348 (v) child support;

349 (vi) legal or physical custody of a child; or

350 (vii) a civil protective order as that term is defined in Section [78B-7-102](#).

351 (b) "Victim service provider" means the same as that term is defined in 34 U.S.C. Sec.
352 12291.

353 (2) The state court administrator described in Section [78A-2-105](#) shall:

354 (a) study the training and education requirements in the Keeping Children Safe from
355 Family Violence Act, 34 U.S.C. Sec. 10446;

356 (b) develop or recommend a proposed training and education program that complies
357 with those requirements; and

358 (c) present the proposed or recommended training and education program to the
359 Judiciary Interim Committee on or before the committee's September 2024 interim meeting.

360 (3) The proposed or recommended training and education program described in
361 Subsection (2)(b):

362 (a) shall be designed to improve the ability of the courts to:

363 (i) recognize domestic violence and child abuse in child custody proceedings; and

364 (ii) make appropriate custody decisions that prioritize child safety and well-being, and
365 are culturally sensitive and appropriate for diverse communities;

366 (b) shall focus solely on domestic and sexual violence and child abuse, including:

367 (i) child sexual abuse;
368 (ii) physical abuse;
369 (iii) emotional abuse;
370 (iv) coercive control;
371 (v) implicit and explicit bias, including biases relating to parents with disabilities;
372 (vi) trauma;
373 (vii) long-term and short-term impacts of domestic violence and child abuse on
374 children; and
375 (viii) victim and perpetrator behavior patterns and relationship dynamics within the
376 cycle of violence;
377 (c) shall be based on evidence-based and peer-reviewed research by recognized experts
378 in the types of abuse described in Subsection (3)(b);
379 (d) shall require training to be provided by a professional with substantial experience in
380 assisting survivors of domestic violence or child abuse, including a victim service provider;
381 (e) may include input from a survivor of domestic violence or child physical or sexual
382 abuse;
383 (f) may incorporate curriculum, best practices, or other materials developed for or used
384 in similar training and education programs; and
385 (g) may not include theories, concepts, or belief systems unsupported by the research
386 described in Subsection (3)(c).
387 (4) The state court administrator's presentation described in Subsection (2)(c) shall
388 include:
389 (a) recommendations for the specific personnel positions that will be required to
390 participate in the program;
391 (b) recommendations for how the program will comply with the federal hourly
392 requirements;
393 (c) recommended performance metrics for the program and how those metrics may be
394 tracked; and
395 (d) an estimate of the costs to implement the program.
396 Section 7. Section **78B-7-121** is enacted to read:
397 **78B-7-121. Requirements for proceedings between the parents of a child.**

398 (1) (a) As used in this section, "relevant proceeding" means a civil proceeding under
399 this chapter:

400 (i) between the parents of a child;

401 (ii) that involves the care or custody of the child; and

402 (iii) that concerns a protective order under this chapter.

403 (b) "Relevant proceeding" does not include:

404 (i) any child protective, abuse, or neglect proceeding;

405 (ii) a juvenile justice proceeding; or

406 (iii) any child placement proceeding in which a state, local, or tribal government, a
407 designee of such a government, or any contracted child welfare agency or child protective
408 services agency of such a government is a party to the proceeding.

409 (2) In a relevant proceeding, the court shall comply with the standards described in
410 Section [30-3-41](#).

411 Section 8. **Effective date.**

412 This bill takes effect on May 1, 2024.