

**CUSTODY AMENDMENTS RELATED TO PARENTS WITH
DISABILITIES**

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies provisions related to custody of children in a divorce.

Highlighted Provisions:

This bill:

- ▶ addresses a court taking into consideration the disability of a parent in determining custody; and
- ▶ makes technical changes, including modifying references to husband and wife and mother or father.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-10, as last amended by Laws of Utah 2014, Chapter 409

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

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

30-3-10. Custody of children in case of separation or divorce -- Custody



28 **consideration.**

29 (1) If a [~~husband and wife having~~] married couple having one or more minor children
30 are separated, or their marriage is declared void or dissolved, the court shall make an order for
31 the future care and custody of the minor children as it considers appropriate.

32 (a) In determining any form of custody, including a change in custody, the court shall
33 consider the best interests of the child without preference for either [~~the mother or father~~]
34 parent solely because of the biological sex of the parent and, among other factors the court
35 finds relevant, the following:

- 36 (i) the past conduct and demonstrated moral standards of each of the parties;
37 (ii) which parent is most likely to act in the best interest of the child, including
38 allowing the child frequent and continuing contact with the noncustodial parent;
39 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
40 and nature of the relationship between a parent and child;
41 (iv) whether the parent has intentionally exposed the child to pornography or material
42 harmful to a minor, as defined in Section 76-10-1201; and
43 (v) those factors outlined in Section 30-3-10.2.

44 (b) There [~~shall be~~] is a rebuttable presumption that joint legal custody, as defined in
45 Section 30-3-10.1, is in the best interest of the child, except in cases where there is:

- 46 (i) domestic violence in the home or in the presence of the child;
47 (ii) special physical or mental needs of a parent or child, making joint legal custody
48 unreasonable;
49 (iii) physical distance between the residences of the parents, making joint decision
50 making impractical in certain circumstances; or
51 (iv) any other factor the court considers relevant including those listed in this section
52 and Section 30-3-10.2.

53 (c) The person who desires joint legal custody shall file a proposed parenting plan in
54 accordance with Sections 30-3-10.8 and 30-3-10.9. A presumption for joint legal custody may
55 be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of
56 the child.

57 (d) [~~The children~~] A child may not be required by either party to testify unless the trier
58 of fact determines that extenuating circumstances exist that would necessitate the testimony of

the ~~[children]~~ child be heard and there is no other reasonable method to present ~~[their]~~ the child's testimony.

(e) The court may inquire of ~~[the children]~~ a child and take into consideration the ~~[children's]~~ child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the ~~[children's]~~ child's custody or parent-time otherwise. The desires of a child 14 years of age or older shall be given added weight, but is not the single controlling factor.

(f) ~~[If interviews with the children are]~~ If an interview with a child is conducted by the court pursuant to Subsection (1)(e), ~~[they]~~ the interview shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with ~~[the children]~~ a child is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, the court shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(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) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:]~~

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

(i) the disability ~~[does not]~~ significantly or substantially ~~[inhibit]~~ inhibits the parent's ability to provide for the physical and emotional needs of the child at issue; ~~[or]~~ and

(ii) the parent with a disability ~~[has]~~ lacks sufficient human, monetary, or other

90 resources available to supplement the parent's ability to provide for the physical and emotional
91 needs of the child at issue.

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

94 (5) This section establishes neither a preference nor a presumption for or against joint
95 physical custody or sole physical custody, but allows the court and the family the widest
96 discretion to choose a parenting plan that is in the best interest of the child.

Legislative Review Note
Office of Legislative Research and General Counsel