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CHILD CUSTODY FACTOR AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Stephanie Gricius
Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill modifies factors used in determining custody for minor children in relation to a minor child's gender identity.

Highlighted Provisions:

This bill:

▸ provides that a parent's approval or disapproval, in itself, of a child's gender identity, is not a factor to be considered:

- in a Division of Child and Family Services determination regarding removal of a child from parental custody; and
- when determining child custody as part of a divorce or other family law proceeding.

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 2023, Chapters 44, 327

80-2a-202, as last amended by Laws of Utah 2023, Chapter 330

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 a child -- Custody factors.

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

- 29 (2) In determining any form of custody and parent-time under Subsection (1), the court
30 shall consider the best interest of the child and may consider among other factors the
31 court finds relevant, the following for each parent:
- 32 (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
33 abuse, involving the child, the parent, or a household member of the parent;
 - 34 (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the
35 developmental needs of the child, including the child's:
 - 36 (i) physical needs;
 - 37 (ii) emotional needs;
 - 38 (iii) educational needs;
 - 39 (iv) medical needs; and
 - 40 (v) any special needs;
 - 41 (c) the parent's capacity and willingness to function as a parent, including:
 - 42 (i) parenting skills;
 - 43 (ii) co-parenting skills, including:
 - 44 (A) ability to appropriately communicate with the other parent;
 - 45 (B) ability to encourage the sharing of love and affection; and
 - 46 (C) willingness to allow frequent and continuous contact between the child and
47 the other parent, except that, if the court determines that the parent is acting to
48 protect the child from domestic violence, neglect, or abuse, the parent's
49 protective actions may be taken into consideration; and
 - 50 (iii) ability to provide personal care rather than surrogate care;
 - 51 (d) in accordance with Subsection (10), the past conduct and demonstrated moral
52 character of the parent;
 - 53 (e) the emotional stability of the parent;
 - 54 (f) the parent's inability to function as a parent because of drug abuse, excessive
55 drinking, or other causes;
 - 56 (g) whether the parent has intentionally exposed the child to pornography or material
57 harmful to minors, as "material" and "harmful to minors" are defined in Section
58 76-10-1201;
 - 59 (h) the parent's reasons for having relinquished custody or parent-time in the past;
 - 60 (i) duration and depth of desire for custody or parent-time;
 - 61 (j) the parent's religious compatibility with the child;
 - 62 (k) the parent's financial responsibility;

- 63 (l) the child's interaction and relationship with step-parents, extended family members of
64 other individuals who may significantly affect the child's best interests;
- 65 (m) who has been the primary caretaker of the child;
- 66 (n) previous parenting arrangements in which the child has been happy and
67 well-adjusted in the home, school, and community;
- 68 (o) the relative benefit of keeping siblings together;
- 69 (p) the stated wishes and concerns of the child, taking into consideration the child's
70 cognitive ability and emotional maturity;
- 71 (q) the relative strength of the child's bond with the parent, meaning the depth, quality,
72 and nature of the relationship between the parent and the child; and
- 73 (r) any other factor the court finds relevant.
- 74 (3) There is a rebuttable presumption that joint legal custody, as defined in Section
75 30-3-10.1, is in the best interest of the child, except in cases when there is:
- 76 (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
77 abuse involving the child, a parent, or a household member of the parent;
- 78 (b) special physical or mental needs of a parent or child, making joint legal custody
79 unreasonable;
- 80 (c) physical distance between the residences of the parents, making joint decision
81 making impractical in certain circumstances; or
- 82 (d) any other factor the court considers relevant including those listed in this section and
83 Section 30-3-10.2.
- 84 (4) (a) The person who desires joint legal custody shall file a proposed parenting plan in
85 accordance with Sections 30-3-10.8 and 30-3-10.9.
- 86 (b) A presumption for joint legal custody may be rebutted by a showing by a
87 preponderance of the evidence that it is not in the best interest of the child.
- 88 (5) (a) A child may not be required by either party to testify unless the trier of fact
89 determines that extenuating circumstances exist that would necessitate the testimony
90 of the child be heard and there is no other reasonable method to present the child's
91 testimony.
- 92 (b) (i) The court may inquire of the child's and take into consideration the child's
93 desires regarding future custody or parent-time schedules, but the expressed
94 desires are not controlling and the court may determine the child's custody or
95 parent-time otherwise.
- 96 (ii) The desires of a child 14 years old or older shall be given added weight, but is not

97 the single controlling factor.

98 (c) (i) If an interview with a child is conducted by the court pursuant to Subsection
99 (5)(b), the interview shall be conducted by the judge in camera.

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

103 (6) (a) Except as provided in Subsection (6)(b), a court may not discriminate against a
104 parent due to a disability, as defined in Section 57-21-2, in awarding custody or
105 determining whether a substantial change has occurred for the purpose of modifying
106 an award of custody.

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

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

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

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

117 (7) This section does not establish a preference for either parent solely because of the
118 gender of the parent.

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

122 (9) When an issue before the court involves custodial responsibility in the event of a
123 deployment of one or both parents who are service members and the service member has
124 not yet been notified of deployment, the court shall resolve the issue based on the
125 standards in Sections 78B-20-306 through 78B-20-309.

126 (10) In considering the past conduct and demonstrated moral standards of each party under
127 Subsection (2)(d) or any other factor a court finds relevant, the court may not:

128 (a) (i) consider or treat a parent's lawful possession or use of cannabis in a medicinal
129 dosage form, a cannabis product in a medicinal dosage form, or a medical
130 cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production

- 131 Establishments and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid
 132 Research and Medical Cannabis, or Subsection 58-37-3.7(2) or (3) any differently
 133 than the court would consider or treat the lawful possession or use of any
 134 prescribed controlled substance; or
 135 ~~[(b)]~~ (ii) discriminate against a parent because of the parent's status as a:
 136 [(i)] (A) cannabis production establishment agent, as that term is defined in Section
 137 4-41a-102;
 138 [(ii)] (B) medical cannabis pharmacy agent, as that term is defined in Section
 139 26B-4-201;
 140 [(iii)] (C) medical cannabis courier agent, as that term is defined in Section
 141 26B-4-201; or
 142 [(iv)] (D) medical cannabis cardholder in accordance with Title 26B, Chapter 4,
 143 Part 2, Cannabinoid Research and Medical Cannabis[-] ; or
 144 (b) discriminate against a parent based upon the parent's agreement or disagreement with
 145 a minor child of the couple's:
 146 (i) assertion that the child's gender identity is different from the child's biological sex;
 147 or
 148 (ii) practice of having or expressing a different gender identity than the child's
 149 biological sex.

150 Section 2. Section **80-2a-202** is amended to read:

151 **80-2a-202 . Removal of a child by a peace officer or child welfare caseworker --**
 152 **Search warrants -- Protective custody and temporary care of a child.**

- 153 (1) A peace officer or child welfare caseworker may remove a child or take a child into
 154 protective custody, temporary custody, or custody in accordance with this section.
 155 (2) (a) Except as provided in Subsection (2)(b), a peace officer or a child welfare
 156 caseworker may not enter the home of a child whose case is not under the jurisdiction
 157 of the juvenile court, remove a child from the child's home or school, or take a child
 158 into protective custody unless:
 159 (i) there exist exigent circumstances sufficient to relieve the peace officer or the child
 160 welfare caseworker of the requirement to obtain a search warrant under
 161 Subsection (3);
 162 (ii) the peace officer or child welfare caseworker obtains a search warrant under
 163 Subsection (3);
 164 (iii) the peace officer or child welfare caseworker obtains a court order after the

- 165 child's parent or guardian is given notice and an opportunity to be heard; or
166 (iv) the peace officer or child welfare caseworker obtains the consent of the child's
167 parent or guardian.
- 168 (b) A peace officer or a child welfare caseworker may not take action under Subsection
169 (2)(a) solely on the basis of:
- 170 (i) educational neglect, truancy, or failure to comply with a court order to attend
171 school; [or]
172 (ii) the possession or use, in accordance with Title 26B, Chapter 4, Part 2,
173 Cannabinoid Research and Medical Cannabis, of cannabis in a medicinal dosage
174 form, a cannabis product in a medicinal dosage form, or a medical cannabis
175 device, as those terms are defined in Section 26B-4-201[-] ; or
176 (iii) a parent's agreement or disagreement with a minor child of the couple's:
177 (A) assertion that the child's gender identity is different from the child's biological
178 sex; or
179 (B) practice of having or expressing a different gender identity than the child's
180 biological sex.
- 181 (3) (a) The juvenile court may issue a warrant authorizing a peace officer or a child
182 welfare caseworker to search for a child and take the child into protective custody if
183 it appears to the juvenile court upon a verified petition, recorded sworn testimony or
184 an affidavit sworn to by a peace officer or another individual, and upon the
185 examination of other witnesses if required by the juvenile court, that there is probable
186 cause to believe that:
- 187 (i) there is a threat of substantial harm to the child's health or safety;
188 (ii) it is necessary to take the child into protective custody to avoid the harm
189 described in Subsection (3)(a)(i); and
190 (iii) it is likely that the child will suffer substantial harm if the child's parent or
191 guardian is given notice and an opportunity to be heard before the child is taken
192 into protective custody.
- 193 (b) In accordance with Section 77-23-210, a peace officer making the search under
194 Subsection (3)(a) may enter a house or premises by force, if necessary, in order to
195 remove the child.
- 196 (4) (a) A child welfare caseworker may take action under Subsection (2) accompanied
197 by a peace officer or without a peace officer if a peace officer is not reasonably
198 available.

- 199 (b) (i) Before taking a child into protective custody, and if possible and consistent
200 with the child's safety and welfare, a child welfare caseworker shall determine
201 whether there are services available that, if provided to a parent or guardian of the
202 child, would eliminate the need to remove the child from the custody of the child's
203 parent or guardian.
- 204 (ii) In determining whether the services described in Subsection (4)(b)(i) are
205 reasonably available, the child welfare caseworker shall consider the child's
206 health, safety, and welfare as the paramount concern.
- 207 (iii) If the child welfare caseworker determines the services described in Subsection
208 (4)(b)(i) are reasonably available, the services shall be utilized.
- 209 (5) (a) If a peace officer or a child welfare caseworker takes a child into protective
210 custody under Subsection (2), the peace officer or child welfare caseworker shall:
- 211 (i) notify the child's parent or guardian in accordance with Section 80-2a-203; and
212 (ii) release the child to the care of the child's parent or guardian or another
213 responsible adult, unless:
- 214 (A) the child's immediate welfare requires the child remain in protective custody;
215 or
216 (B) the protection of the community requires the child's detention in accordance
217 with Chapter 6, Part 2, Custody and Detention.
- 218 (b) (i) If a peace officer or child welfare caseworker is executing a warrant under
219 Subsection (3), the peace officer or child welfare caseworker shall take the child
220 to:
- 221 (A) a shelter facility; or
222 (B) if the division makes an emergency placement under Section 80-2a-301, the
223 emergency placement.
- 224 (ii) If a peace officer or a child welfare caseworker takes a child to a shelter facility
225 under Subsection (5)(b)(i), the peace officer or the child welfare caseworker shall
226 promptly file a written report that includes the child's information, on a form
227 provided by the division, with the shelter facility.
- 228 (c) A child removed or taken into protective custody under this section may not be
229 placed or kept in detention pending court proceedings, unless the child may be held
230 in detention under Chapter 6, Part 2, Custody and Detention.
- 231 (6) (a) The juvenile court shall issue a warrant authorizing a peace officer or a child
232 welfare worker to search for a child who is missing, has been abducted, or has run

233 away, and take the child into physical custody if the juvenile court determines that
234 the child is missing, has been abducted, or has run away from the protective custody,
235 temporary custody, or custody of the division.

236 (b) If the juvenile court issues a warrant under Subsection (6)(a):

237 (i) the division shall notify the child's parent or guardian who has a right to
238 parent-time with the child in accordance with Subsection 80-2a-203(5)(a);

239 (ii) the court shall order:

240 (A) the law enforcement agency that has jurisdiction over the location from which
241 the child ran away to enter a record of the warrant into the National Crime
242 Information Center database within 24 hours after the time in which the law
243 enforcement agency receives a copy of the warrant; and

244 (B) the division to notify the law enforcement agency described in Subsection
245 (6)(b)(ii)(A) of the order described in Subsection (6)(b)(ii)(A); and

246 (c) the court shall specify the location to which the peace officer or the child welfare
247 caseworker shall transport the child.

248 Section 3. **Effective date.**

249 This bill takes effect on May 1, 2024.