

CHILD CUSTODY PROCEEDINGS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul A. Cutler

Senate Sponsor: _____

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 evidence relating to domestic violence or abuse by a parent;
 - ▶ 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.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **30-3-10**, 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 **30-3-34**, 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 **30-3-10** is amended to read:

42 **30-3-10. 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 ~~[(d)]~~ (c) in accordance with Subsection ~~[(10)]~~ (12), the past conduct and demonstrated
77 moral character of the parent;

78 ~~[(e)]~~ (d) 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 ~~[(g)]~~ (f) 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 ~~[(l)]~~ (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;

90 ~~[(m)]~~ (l) who has been the primary caretaker of the child;

91 ~~[(m)]~~ (m) previous parenting arrangements in which the child has been happy and
92 well-adjusted in the home, school, and community;

93 ~~[(o)]~~ (n) the relative benefit of keeping siblings together;

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

96 ~~[(q)]~~ (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 ~~[(r)]~~ (q) any other factor the court finds relevant.

99 ~~[(3)]~~ (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
103 member of the parent;

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 ~~[(4)]~~ (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 ~~[(5)]~~ (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.

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

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

127 [~~(6)~~] (8) (a) Except as provided in Subsection [~~(6)(b)~~] (8)(b), a court may not
128 discriminate against a parent due to a disability, as defined in Section [57-21-2](#), in awarding
129 custody or determining whether a substantial change has occurred for the purpose of modifying
130 an award of custody.

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

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

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

139 (c) Nothing in this section may be construed to apply to adoption proceedings under
140 Title 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.

143 [~~(8)~~] (10) This section establishes neither a preference nor a presumption for or against
144 joint physical custody or sole physical custody, but allows the court and the family the widest
145 discretion to choose a parenting plan that is in the best interest of the child.

146 [~~(9)~~] (11) When an issue before the court involves custodial responsibility in the event
147 of a deployment of one or both parents who are service members and the service member has
148 not yet been notified of deployment, the court shall resolve the issue based on the standards in
149 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 30-3-10.10 is amended to read:

167 **30-3-10.10. 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 30-3-34 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 30-3-41, 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; and195 (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 ~~[(k)]~~ (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 ~~[(h)]~~ (j) a substantial and chronic pattern of missing, canceling, or denying regularly
217 scheduled parent-time;

218 ~~[(m)]~~ (k) the minimal duration of and lack of significant bonding in the parents'
219 relationship before the conception of the child;

220 ~~[(n)]~~ (l) the parent-time schedule of siblings;

221 ~~[(o)]~~ (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 30-3-34.5 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 **30-3-41** is enacted to read:

267 **30-3-41. 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 **78A-2-232** 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 12291.
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 abuse;

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 **78B-7-121** 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 Section [30-3-41](#).

405 Section 8. **Effective date.**

406 This bill takes effect on May 1, 2024.