

**PARENT-TIME AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Val L. Peterson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates an optional parent-time schedule that may result in joint physical custody.

**Highlighted Provisions:**

This bill:

- ▶ creates an optional parent-time schedule that may result in joint physical custody;
- ▶ provides a schedule of 145 nights;
- ▶ sets holiday schedules; and
- ▶ provides for specific elections by the noncustodial parent.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-3-34**, as last amended by Laws of Utah 2008, Chapter 146

ENACTS:

**30-3-35.1**, Utah Code Annotated 1953

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



28 Section 1. Section **30-3-34** is amended to read:

29 **30-3-34. Best interests -- Rebuttable presumption.**

30 (1) If the parties are unable to agree on a parent-time schedule, the court may establish  
31 a parent-time schedule consistent with the best interests of the child.

32 (2) The advisory guidelines as provided in Section 30-3-33 and the parent-time  
33 schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be presumed to be in the best  
34 interests of the child unless the court determines that Section 30-3-35.1 should apply. The  
35 parent-time schedule shall be considered the minimum parent-time to which the noncustodial  
36 parent and the child shall be entitled unless a parent can establish otherwise by a preponderance  
37 of the evidence that more or less parent-time should be awarded based upon any of the  
38 following criteria:

39 (a) parent-time would endanger the child's physical health or significantly impair the  
40 child's emotional development;

41 (b) the distance between the residency of the child and the noncustodial parent;

42 (c) a substantiated or unfounded allegation of child abuse has been made;

43 (d) the lack of demonstrated parenting skills without safeguards to ensure the child's  
44 well-being during parent-time;

45 (e) the financial inability of the noncustodial parent to provide adequate food and  
46 shelter for the child during periods of parent-time;

47 (f) the preference of the child if the court determines the child to be of sufficient  
48 maturity;

49 (g) the incarceration of the noncustodial parent in a county jail, secure youth  
50 corrections facility, or an adult corrections facility;

51 (h) shared interests between the child and the noncustodial parent;

52 (i) the involvement or lack of involvement of the noncustodial parent in the school,  
53 community, religious, or other related activities of the child;

54 (j) the availability of the noncustodial parent to care for the child when the custodial  
55 parent is unavailable to do so because of work or other circumstances;

56 (k) a substantial and chronic pattern of missing, canceling, or denying regularly  
57 scheduled parent-time;

58 (l) the minimal duration of and lack of significant bonding in the parents' relationship

59 prior to the conception of the child;

60 (m) the parent-time schedule of siblings;

61 (n) the lack of reasonable alternatives to the needs of a nursing child; and

62 (o) any other criteria the court determines relevant to the best interests of the child.

63 (3) The court shall enter the reasons underlying its order for parent-time that:

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

65 (b) provides more or less parent-time than a parent-time schedule provided in Section  
66 30-3-35 or 30-3-35.5.

67 (4) Once the parent-time schedule has been established, the parties may not alter the  
68 schedule except by mutual consent of the parties or a court order.

69 Section 2. Section **30-3-35.1** is enacted to read:

70 **30-3-35.1. Optional schedule for parent-time for children 5 to 18 years of age.**

71 (1) The optional parent-time schedule in this section applies to children 5 to 18 years of  
72 age. This schedule is 145 overnights, which may result in joint physical custody.

73 (2) The parents and the court may consider the following increased parent-time  
74 schedule as a minimum when the parties agree or the noncustodial parent can demonstrate the  
75 following:

76 (a) the noncustodial parent has been actively involved in the child's life;

77 (b) the parties are able to communicate effectively regarding the child, or the  
78 noncustodial parent has a plan to accomplish effective communications regarding the child;

79 (c) the noncustodial parent has the ability to facilitate the increased parent-time;

80 (d) the increased parent-time would be in the best interest of the child; and

81 (e) any other factor the court considers relevant.

82 (3) In determining whether a noncustodial parent has been actively involved in the  
83 child's life, the court shall consider:

84 (a) demonstrated responsibility in caring for the child;

85 (b) involvement in day care;

86 (c) presence or volunteer efforts in the child's school and at extra curricular activities;

87 (d) assistance with the child's homework;

88 (e) involvement in preparation of meals, bath time, and bed time for the child;

89 (f) bonding with the child; and

90 (g) any other factor the court considers relevant.

91 (4) In determining whether a noncustodial parent has the ability to facilitate the  
92 increased parent-time, the court shall consider:

93 (a) the geographic distance between the residences of the parents and the distance  
94 between the parents' residences and the child's school;

95 (b) the noncustodial parent's ability to assist with after school care;

96 (c) the health of the child and the noncustodial parent, consistent with Subsection  
97 30-3-10(4);

98 (d) flexibility of employment or other schedule of the parents;

99 (e) ability to provide appropriate play time with the child;

100 (f) history and ability of parents to implement a flexible schedule for the child;

101 (g) physical facilities of the noncustodial parent's residence; and

102 (h) any other factor the court considers relevant.

103 (5) Any elections required to be made in accordance with this section by either parent  
104 concerning parent-time shall be made a part of the decree and made a part of the parent-time  
105 order. Elections may only be changed by mutual agreement, court order, or by the noncustodial  
106 parent in the event of a change in the child's schedule.

107 (6) If the parties agree or the court enters an order for the optional parent-time schedule  
108 as set forth in this section, which may result in joint physical custody, a parenting plan in  
109 compliance with Sections 30-1-10.7 through 30-3-10.10 shall be filed with any order  
110 incorporating the following optional parent-time schedule.

111 (a) One weekday, to be specified by the noncustodial parent or the court, or on  
112 Wednesday, if not specified, from 5:30 p.m. until the following day when delivering the child  
113 to school, or until 8 a.m., if there is no school the following day. Once the election of the  
114 weekday is made, it may only be changed in accordance with Subsection (5). At the election of  
115 the noncustodial parent:

116 (i) one weekday parent-time may commence at the time the child's school is regularly  
117 dismissed; and

118 (ii) if school is not in session, and the parent is available to be with the child, weekday  
119 parent-time may commence at approximately 8 a.m., accommodating the custodial parent's  
120 work schedule.

121 (b) Alternating weekends beginning on the first weekend after the entry of the decree  
122 from 6 p.m. on Friday until Monday when delivering the child to school, or until 8 a.m. if there  
123 is no school on Monday. At the election of the noncustodial parent, parent-time may  
124 commence:

125 (i) from the time the child's school is regularly dismissed on Friday; or

126 (ii) if school is not in session, and if the noncustodial parent is available to be with the  
127 child, at approximately 8 a.m. Friday, accommodating the custodial parent's work schedule.

128 (c) The provisions of Subsections 30-3-35(2)(f) through (o) shall be incorporated here  
129 and constitute the parent-time schedule with the exception that all instances that require the  
130 noncustodial parent to return the child at any time after 6 p.m. be changed so that the  
131 noncustodial parent is required to return the child to school the next morning or at 8 a.m., if  
132 there is no school.

133 (7) A stepparent, grandparent, or other responsible adult designated by the noncustodial  
134 parent may pick up the child if the custodial parent is aware of the identity of the individual,  
135 and if the noncustodial parent will be with the child by 7 p.m.

136 (8) Weekends include any "snow" days, teacher development days, or other days when  
137 school is not scheduled and that are contiguous to the weekend period.

138 (9) Holidays include any "snow" days, teacher development days after the children  
139 begins the school year, or other days when school is not scheduled, contiguous to the holiday  
140 period, and take precedence over weekend parent-time. Changes may not be made to the  
141 regular rotation of the alternating weekend parent-time schedule.

142 (a) If a holiday falls on a school day, the noncustodial parent shall be responsible for  
143 the child's attendance at school for that school day.

144 (b) If a holiday falls on a weekend or on a Friday or Monday and the total holiday  
145 period extends beyond that time so that the child is free from school and the parent is free from  
146 work, the noncustodial parent shall be entitled to this lengthier holiday period.

147 (c) At the election of the noncustodial parent, parent-time over a scheduled holiday  
148 weekend may begin from the time the child's school is dismissed at the beginning of the  
149 holiday weekend or, if school is not in session, and if the noncustodial parent is available to be  
150 with the child, parent-time over a scheduled holiday weekend may begin at approximately 8  
151 a.m., accommodating the custodial parent's work schedule, unless the court directs the

152 application of Subsection (6)(a).

153 (10) Birthdays take precedence over holidays and extended parent-time, except  
154 Mother's Day and Father's Day. Birthdays do not take precedence over uninterrupted  
155 parent-time if the parent exercising uninterrupted time is out of town for the uninterrupted  
156 extended parent-time. At the discretion of the noncustodial parent, other siblings may be taken  
157 along for birthdays.

158 (11) Notwithstanding Subsection (9)(b), the Halloween holiday may not be extended  
159 beyond the hours designated in Subsection 30-3-35(2)(g)(vi).

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**Legislative Review Note**  
as of 2-12-13 6:55 PM

**Office of Legislative Research and General Counsel**