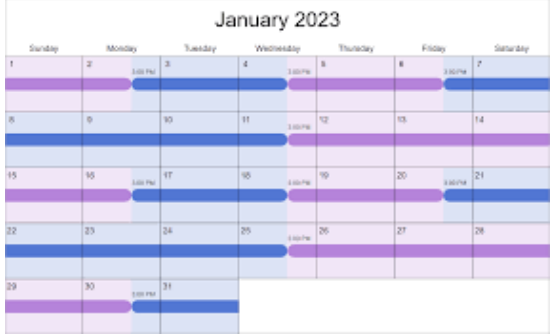


## CUSTODY ARRANGEMENTS

**PHYSICAL CUSTODY** is about where the children live and their daily care.

**LEGAL CUSTODY** is about who has the right to make important decisions about the children, including who can access the children's medical and school records. These decisions include those relating to religion, education, medical and dental treatment, decisions to get tattoos or piercings. Joint Legal custody does not affect the physical custody of the child and is not based on the amount of time the child spends with each parent.

A **PARENTING PLAN** is the plan for how the parents will raise their children. It becomes part of the final order. It governs the way parent time will work, how decisions will be made, and how to resolve differences.

Name	At a Glance	Explanation
<b>Sole Physical and Legal Custody</b>	The child(ren) live with one parent who makes all decisions. The other parent has parent-time.	<p>The children live primarily with one parent who makes both the day-to-day decisions and all legal custodial decisions. The noncustodial parent's permission is not needed for the custodial parent to take the kids out of the country and the noncustodial parent can't access records without permission.</p> <p>Unless there are special factors like abuse or homelessness, the non-custodial parent will have parent-time. Utah's <b>minimum parent-time schedule</b> (§30-3-35) includes every other weekend, one mid-week visit, split holidays, and 4 weeks of summer vacation. There is a separate schedule for <b>children under five</b> (§33-3-35.5).</p>
<b>Primary Physical Custody with Joint Legal Custody</b>	The child(ren) live primarily with one parent. The other parent has parent-time. The parents jointly make decisions about raising the child(ren).	There is a presumption that joint legal custody is in the best interests of the child (§30-3-10.1) except when there has been abuse, special physical or mental needs, or physical distance between the parties. Both parents share the rights to records and decision-making. The court may award each parent the right to make specific decisions and the court may designate one parent the primary caretaker and one home as the primary residence of the child.
<b>Joint Physical and Legal Custody</b>	The child(ren) live with each parent for more than 111 nights each year. The parents jointly make decisions about raising the child(ren).	<p>The child stays with each parent overnight for more than 111 nights per year. Child support is set at a lower amount because both parents have households that support the children, but both parents are to contribute to the expenses of the child <i>in addition to paying child support</i>. For example, the parents split payments for school expenses and co-curriculars, which is not expected in other custody arrangements. <i>Parents who have joint physical custody are not eligible for TANF or most public benefits.</i></p> <p>Parents may create their own schedule or use these schedules:</p> <p><b>Optional schedule</b> (§33-3-35.1): includes 145 overnights for one parent and 211 for the other. The court will consider a list of factors including whether the noncustodial parent was actively involved in the child's life, whether the parties can communicate effectively, the distance between the parties, and the flexibility of their schedules.</p> <p><b>Equal parent-time schedule</b> (§30-3-35.2): creates 182 nights with one parent and 183 for the other. Neither parent is considered to have the child for the majority of the time.</p> <div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <p><b>2-2-5-5 schedule:</b> is not adopted by statute, but has become popular for people wanting equal amounts of parent time. It is best understood with this visual created by <a href="http://custodyxchange.com">custodyxchange.com</a>.</p> </div> </div>
<b>Split Physical and Joint Legal Custody</b>	Each parent has sole physical custody of at least one child. The parents jointly make decisions about raising the child(ren).	This arrangement is for families with multiple children and each parent is awarded the sole physical custody of at least one child. The parents will want to create a parenting plan that allows the children to be together as often as possible. For example, the parents will alternate weekends with the children, but the children are all together at the same parent's home, and they are all together on the mid-week visit with each parent.

### **Factors a Court May Consider in Ordering Parent-time Schedule (§30-3-34)**

- (a) whether parent-time would endanger the child's physical health or mental health, or significantly impair the child's emotional development;
- (b) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, a parent, or a household member of the parent;
- (c) the distance between the residency of the child and the noncustodial parent;
- (d) a credible allegation of child abuse has been made;
- (e) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during parent-time;
- (f) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of parent-time;
- (g) the preference of the child if the court determines the child is of sufficient maturity;
- (h) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;
- (i) shared interests between the child and the noncustodial parent;
- (j) involvement or lack of involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;
- (k) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;
- (l) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;
- (m) the minimal duration of and lack of significant bonding in the parents' relationship before the conception of the child;
- (n) the parent-time schedule of siblings;
- (o) the lack of reasonable alternatives to the needs of a nursing child; and
- (p) any other criteria the court determines relevant to the best interests of the child.

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### **What Protections Exist in Abuse Cases?**

#### **Parenting Plans when there has been Domestic Violence (§30-3-10.10)**

- (1) In any proceeding regarding a parenting plan, the court shall consider evidence of domestic violence, if presented.
- (2) If there is a protective order, or the court finds that a parent has committed domestic violence, the court shall consider the impact of domestic violence in awarding parent-time.
- (3) If the court orders parent-time and a protective order is still in place, it shall consider whether pick-up and transfer should be through a third party. The stated victim may submit the name of a suitable person.
- (4) If the court orders the parents to conduct parent-time through a third party, the parenting plan shall specify the time, day, place, manner, and the third party to be used to implement the exchange.

#### **Supervised Parent-time (30-3-34.50)**

Parents have a constitutionally protected interest in parenting their children. Utah policy states that parents have unrestricted and unsupervised access to their children. When necessary to protect a child and no less restrictive means are available, a court may order supervised parent-time. The court must have evidence that the child would be subject to physical or emotional harm if left unsupervised with the noncustodial parent. The court will first look for a person suggested by the parties to supervise. If that fails, the court can require the services of a professional individual or agency. The court should provide goals for the noncustodial parent to accomplish before unsupervised parent-time may be granted. The noncustodial parent can petition the court to modify the order when the parent can demonstrate that the goals have been accomplished.

#### **Termination of Parental Rights (78B-6-111 for District Court; 80-4-301 for Juvenile Court)**

The only way to permanently legally end the ability of a parent to have parent-time to their child is through a termination of parental rights case. These are incredibly difficult cases and generally should not be undertaken without legal representation or an active DCFS case.

Updated 2/3/2023 by Susan Griffith, Timpanogos Legal Center. This information is not legal advice. We strongly recommend speaking to an attorney about your case. Call Timpanogos Legal Center at (801) 649-8895 or find free resources on the Utah Courts website.

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