

Tracy J. Miller proposes the following substitute bill:

Changes to Family Law Actions

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tracy J. Miller

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions related to family law actions.

Highlighted Provisions:

This bill:

- addresses an award of fees and costs in a family law action; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

81-1-203, as renumbered and amended by Laws of Utah 2024, Chapter 366

81-4-501, as enacted by Laws of Utah 2024, Chapter 366

81-9-208, as last amended by Laws of Utah 2025, Chapter 426

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

Section 1. Section **81-1-203** is amended to read:

81-1-203 . Award of costs and attorney and witness fees -- Temporary support and maintenance.

(1)[(a) In an action filed under Chapter 4, Dissolution of Marriage, Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, or in an action to establish an order of custody, parent-time, child support, alimony, or the division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action.]

30 (a) The court may order a party to pay the attorney fees, costs, and witness fees,
 31 including expert witness fees, of the other party to enable the other party to prosecute
 32 or defend:

33 (i) an action described in Chapter 4, Dissolution of Marriage;

34 (ii) an action described in Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective
 35 Orders; or

36 (iii) an action to establish or modify custody, parent-time, child support, alimony, or
 37 the division of property in a domestic case.

38 (b) [-]The order under Subsection (1)(a) may include a provision for costs of the action.

39 (c) The court may order a party to provide money under this Subsection (1), during the
 40 pendency of the action, for the separate support and maintenance of the other party
 41 and of a minor child in the custody of the other party.

42 [~~(2) In an action to enforce an order of custody, parent-time, child support, alimony, or~~
 43 ~~division of property in a domestic case, the court may award costs and attorney fees~~
 44 ~~upon determining that the party substantially prevailed upon the claim or defense.]~~

45 (2) Upon a party's motion or the court's own motion, the court shall enter specific findings
 46 as to the ability of the parties to pay the costs, attorney fees, and witness fees, including
 47 expert witness fees, for a temporary order in an action to establish or modify custody,
 48 parent-time, child support, alimony, or the division of property in a domestic case.

49 (3) Except as provided in Subsection (4), the court shall award reasonable attorney fees and
 50 costs to a party in an action to enforce an order of custody, parent-time, child support,
 51 alimony, or division of property in a domestic case if the court determines that the party
 52 substantially prevailed upon the claim or defense.

53 [~~(3)] (4) The court, in the court's discretion, may award no fees or limited fees against a party~~
 54 ~~under § → [this section] Subsection (3) ← § if the court [finds the party is indigent~~
 54a ~~or enters in the record the~~
 55 ~~reason for not awarding fees.] enters a specific finding that:~~

56 (a) the party is indigent; or

57 (b) the party did not bring the action, petition, or motion to harass, cause unreasonable
 58 delay, needlessly increase the cost of litigation, or abuse the judicial process.

59 [~~(4) In an action described in Subsection (1), the court may order a party to provide money,~~
 60 ~~during the pendency of the action, for the separate support and maintenance of the other~~
 61 ~~party and of a minor child in the custody of the other party.]~~

62 (5) The court may amend an order entered in accordance with this section before the entry

63 of the final order or judgment or in the final order or judgment.

64 Section 2. Section **81-4-501** is amended to read:

65 **81-4-501 . Definitions for part.**

66 As used in this part:

- 67 (1) "Child support guidelines" means the same as that term is defined in Section 81-6-101.
- 68 (2) "Cohabit" means to live together, or to reside together on a regular basis, in the same
69 residence and in a relationship of a romantic or sexual nature.
- 70 (3) "Fault" means any of the following wrongful conduct during the marriage that
71 substantially contributed to the breakup of the marriage:
- 72 (a) engaging in sexual relations with an individual other than the party's spouse;
- 73 (b) knowingly and intentionally causing or attempting to cause physical harm to the
74 other party or a minor child;
- 75 (c) knowingly and intentionally causing the other party or a minor child to reasonably
76 fear life-threatening harm; or
- 77 (d) substantially undermining the financial stability of the other party or the minor child.
- 78 (4) "Length of the marriage" means, for purposes of alimony, the number of years from the
79 day on which the parties are legally married to the day on which the petition for divorce
80 is filed with the court.
- 81 (5) "Payee" means the party who is or would receive alimony from the other party.
- 82 (6) "Payor" means the party who is paying, or would pay, alimony to the other party.
- 83 (7) "Temporary alimony" means money that the court orders a party to pay during the
84 pendency of an action under this chapter for the support and maintenance of a party as
85 described in Subsection [~~81-1-203(4)~~] 81-1-203(5).

86 Section 3. Section **81-9-208** is amended to read:

87 **81-9-208 . Modification or termination of a custody or parent-time order --**
88 **Noncompliance with a parent-time order.**

- 89 (1) The court has continuing jurisdiction to make subsequent changes to modify:
- 90 (a) custody of a minor child if there is a showing of a substantial and material change in
91 circumstances since the entry of the order; and
- 92 (b) parent-time for a minor child if there is a showing that there is a change in
93 circumstances since the entry of the order.
- 94 (2) A substantial and material change in circumstances under Subsection (1)(a) includes a
95 showing by a parent that the other parent:
- 96 (a) resides with an individual or provides an individual with access to the minor child;

97 and

98 (b) knows that the individual:

99 (i) is required to register as a sex offender, a kidnap offender, or a child abuse
100 offender for an offense committed against a minor child under Title 53, Chapter
100a 29,

101 Sex, Kidnap, and Child Abuse Offender Registry; or

102 (ii) has been convicted of:

103 (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3,
104 76-5-109.4, 76-5-114, or 76-5-208;

105 (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual
106 Offenses, other than an offense under Section 76-5-417, 76-5-418, or 76-5-419;

107 (C) an offense for kidnapping or human trafficking of a minor child under Title
108 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

109 (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b,
110 Sexual Exploitation Act; or

111 (E) an offense that is substantially similar to an offense under Subsections
112 (2)(b)(ii)(A) through (D).

113 (3) On the petition of one or both of the parents, or the joint legal or physical custodians if
114 they are not the parents, the court may, after a hearing, modify or terminate an order that
115 established joint legal custody or joint physical custody if:

116 (a) the verified petition or accompanying affidavit initially alleges that admissible
117 evidence will show that there has been a substantial and material change in the
118 circumstances of the minor child or one or both parents or joint legal or physical
119 custodians since the entry of the order to be modified;

120 (b) a modification of the terms and conditions of the order would be an improvement for
121 and in the best interest of the minor child; and

122 (c)(i) both parents have complied in good faith with the dispute resolution procedure
123 in accordance with Subsection 81-9-205(8); or

124 (ii) if no dispute resolution procedure is contained in the order that established joint
125 legal custody or joint physical custody, the court orders the parents to participate
126 in a dispute resolution procedure in accordance with Subsection 81-9-205(13)
127 unless the parents certify that, in good faith, they have used a dispute resolution
128 procedure to resolve their dispute.

129 (4)(a) In determining whether the best interest of a minor child will be served by either

- 130 modifying or terminating the joint legal custody or joint physical custody order, the
131 court shall, in addition to other factors the court considers relevant, consider the
132 factors described in Sections 81-9-204 and 81-9-205.
- 133 (b) A court order modifying or terminating an existing joint legal custody or joint
134 physical custody order shall contain written findings that:
- 135 (i) a substantial and material change of circumstance has occurred; and
136 (ii) a modification of the terms and conditions of the order would be an improvement
137 for and in the best interest of the minor child.
- 138 (c) The court shall give substantial weight to the existing joint legal custody or joint
139 physical custody order when the minor child is thriving, happy, and well-adjusted.
- 140 (5) The court shall, in every case regarding a petition for termination of a joint legal
141 custody or joint physical custody order, consider reasonable alternatives to preserve the
142 existing order in accordance with Section 81-9-204.
- 143 (6) The court may modify the terms and conditions of the existing order in accordance with
144 this chapter and may order the parents to file a parenting plan in accordance with
145 Section 81-9-203.
- 146 (7) A parent requesting a modification from sole custody to joint legal custody or joint
147 physical custody or both, or any other type of shared parenting arrangement, shall file
148 and serve a proposed parenting plan with the petition to modify in accordance with
149 Section 81-9-203.
- 150 (8) If an issue before the court involves custodial responsibility in the event of deployment
151 of one or both parents who are service members, and the service member has not yet
152 been notified of deployment, the court shall resolve the issue based on the standards in
153 Sections 81-10-306 through 81-10-309.
- 154 [~~(9) If the court finds that an action to modify custody or parent-time is filed or answered
155 frivolously and, in a manner, designed to harass the other party, the court shall assess
156 attorney fees as costs against the offending party.]~~
- 157 [~~(10) If a petition to modify custody or parent-time provisions of a court order is made and
158 denied, the court shall order the petitioner to pay the reasonable attorney fees expended
159 by the prevailing party in that action if the court determines that the petition was without
160 merit and not asserted or defended against in good faith.]~~
- 161 (9) If a petition to modify custody or parent-time is denied by a court, the court shall order
162 the petitioner to pay the respondent's reasonable attorney fees and costs if the court
163 determines that:

- 164 (a) the petition was frivolous or has no reasonable basis in law or fact; and
165 (b) the petitioner brought the petition to harass, cause unreasonable delay, needlessly
166 increase the cost of litigation, or abuse the judicial process.

167 [(11)] (10) If a motion or petition alleges noncompliance with a parent-time order by a
168 parent, or a visitation order by a grandparent or other member of the immediate family
169 where a visitation or parent-time right has been previously granted by the court, the
170 court:

- 171 (a) may award to the prevailing party:
- 172 (i) actual attorney fees incurred;
 - 173 (ii) the costs incurred by the prevailing party because of the other party's failure to
174 provide or exercise court-ordered visitation or parent-time, including:
 - 175 (A) court costs;
 - 176 (B) child care expenses;
 - 177 (C) transportation expenses actually incurred;
 - 178 (D) lost wages, if ascertainable; or
 - 179 (E) counseling for a parent or a minor child if ordered or approved by the court; or
 - 180 (iii) any other appropriate equitable remedy; and
- 181 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up
182 parent-time is not in the best interest of the minor child.

183 Section 4. **Effective Date.**

184 This bill takes effect on May 6, 2026.