Utah Guidelines

Establishing Court-Ordered Paternity: A Guide for Unmarried Parents

This information is provided for unmarried parents who seek paternity orders from the Court in Utah to establish parenting rights and responsibilities for their children. This information is intended to help you prepare for a discussion about the important issues to be included in your parenting plan.

Establishing Paternity

What is paternity?

Paternity means fatherhood. When a child is born to a married couple, the husband and wife are recognized as the parents of the child, and both mother and father have certain rights and responsibilities under the law. When a child is born outside of marriage, the father of the child does not automatically have these same rights and responsibilities until paternity is recognized by the Court.

How is paternity established for unmarried parents?

There are three ways to establish paternity in Utah when the father and mother of a child are not married.

- Both parents may sign and file a voluntary Declaration of Paternity form as described in Utah Code 78-45g-302.
- One parent may apply for child support services and obtain an Administrative Paternity Order through the Office of Recovery Services once paternity is verified.
- One or both parents, the child, or the State of Utah may file a petition in court requesting a judgment of paternity; if the petition is contested, then the court may order a blood or genetic marker test to determine paternity.

Do we need a paternity order from the Court if we have established paternity already by filing a voluntary Declaration of Paternity or by establishing a case through the Office of Recovery Services (ORS)?

By filing a Voluntary Declaration of Paternity form, or by establishing paternity through Office of Recovery Services (ORS), the father is legally obligated to support the child. However, Federal law prohibits ORS from establishing or enforcing custody and parent time (or visitation). To avoid disputes over these issues, unmarried parents are encouraged to ask the Court to enter a paternity order that describes each parent's rights and responsibilities regarding custody, visitation, and decision-making.

Why is it important to establish paternity?

Once paternity is established and legally recognized by court order, then both parents have the same rights and responsibilities under the law as a child born to parents who are married to each other, as provided in Utah statute UCA 78-45g-202. Establishing paternity has advantages for the child as well as both parents.

- The child will be supported financially by both parents.
- The child may have access to information about his or her medical history on both sides of the family.
- The child's citizenship and/or nationality is linked to the parent's place or origin; if one parent was not born in the United States, his or her place of origin may provide important rights to the child.
- The child will be entitled to receive benefits from the father's Social Security insurance, inheritance, and veteran's benefits only if paternity is established by Court order.

- The father has rights to address custody and visitation issues with the Court and to give input into decisions regarding the child when paternity is established.

Creating a Parenting Plan

What is a parenting plan and why do we need one?

A parenting plan describes how and when you will share time with your children and make decisions about your children's lives. By creating a detailed parenting plan, you may avoid conflicts in the future. Parents may alter the parenting plan if they agree to follow a different arrangement. However, a detailed plan helps you through periods of disagreement by defining a default plan that you will follow during times when you cannot agree to change the arrangement.

A good, detailed parenting plan should help you avoid conflicts based on different interpretations of a point of agreement. The more detailed the parenting plan, the better, because it can help you avoid future disputes about your children.

A parenting plan typically includes these important topics:

- Time-sharing Plan (how and when each parent will spend time with the children, including routine parent time, holiday time, and extended time)
- Virtual Parenting (how and when each parent will have virtual contact with the children using technology such as phone and Internet
- Decision-making Plan (who makes what decisions about the children and how these decisions will be made)
- Conflict Resolution Plan (how you will resolve disagreements regarding the children)
- Plan for Paying Child-Related Expenses (how much will be paid by whom for what expenses, and when and how will these payments be made)

What do we do if we can't agree about our parenting plan?

When people are unable to reach agreement on their own, *mediation* is an option. Mediation is a decision-making process that uses an impartial, third party to facilitate the negotiation. In mediation, the participants make all decisions; the mediator helps the parties identify and clarify their needs and interests. Mediation is a forum where you can work together in making the important decisions that affect your children's lives.

If you rely on the Court to make parenting decisions, you give up control over the outcome and hand over all final decisions to a judge who may not fully understand your child's needs or the circumstances surrounding your lives. Relying on a judge to make these important decisions for your family may result in one or both parents feeling as if they have "lost" rather than "won." Being able to reach agreement and share parenting responsibilities together will likely have a more positive effect on your children because they won't be caught in the middle of your dispute.

Should we include new spouses or significant others in the mediation?

New spouses or significant others may play an important role in co-parenting your children, and they may be helpful in defining a parenting plan. These people can be allies in helping you sort through the complexities of parenting. However, including these people may also affect the interaction between the two parents. As you prepare for mediation, consider who might contribute in positive ways in helping you create a parenting plan that will work.

Custody

What is custody?

The state of Utah defines two types of custody: physical and legal custody. Legal custody defines how you will make important decisions about your children, and it includes who has access to confidential information about the children. Physical custody is based on the number of overnights that the children spend with each parent throughout the year. There are several options regarding custody. One parent may have both physical and legal custody, both parents may share joint physical and legal custody, or one parent may have physical custody and both parents share joint legal custody.

How do we decide physical custody?

Rather than argue over physical custody, parents are encouraged to focus on creating a time-sharing plan that defines when the children will be spending time with each parent. This time-sharing plan should take into consideration the children's commitments and proximity between parental households. By definition, one parent is considered the primary caregiver and physical custodian when the children spend 111 or more overnights with one parent and fewer than 111 overnights with the other parent in a year. If the children spend 111 or more overnights with both parents in a year, then Utah considers this arrangement joint physical custody.

How do we decide legal custody?

Both parents are encouraged to create a plan that describes how you will make important decisions about your children and define the types of decisions you consider important. Similarly, you will want to include provisions for accessing confidential information such as school and medical records. If you decide to share in decision making, it is important that you include a plan for addressing disagreements.

Sharing Time with our Children

What is the best time-sharing plan?

There is no single time sharing plan that meets the needs of all families. For this reason, the Court encourages parents to work together in defining a plan that works for each family's situation. If parents are unable to agree, the Court will enforce a plan. In this instance, the Court is likely to order parents to follow the Utah statute for minimum parent time, unless there are unusual circumstances to establish another arrangement. Many experts in child development agree that this statute is not necessarily the best option for children; it is simply a tool that the Court can use to guide parents who cannot agree. The Court is usually happy to endorse a unique plan that you create to meet the needs of your family.

Should we create a set schedule in sharing time with our children?

Defining a schedule that describes when the children will be in each parent's care can help parents share parenting responsibilities without argument. The higher the animosity or disagreement between parents, the greater the need to establish a set schedule. Parents are always free to share time with their children on a flexible basis as they are able to agree. However, establishing a set schedule is helpful during times when parents disagree about time sharing. In this case, the defined schedule serves as a default plan that parents may follow as a way to avoid conflict.

It is important to create a time-sharing schedule that includes a plan for exchanging the children. Who will provide transportation and where will exchanges occur? When parents live in the same neighborhood, more frequent exchanges and shared parent time may be easier. When parents live farther apart, it becomes more challenging to share time frequently.

What about holidays?

Holidays allow families to share time and traditions together. The time that children share with parents and extended family during holidays can help cement family ties and parent-child bonds. Even if both parents decide to be flexible in defining holiday time, it is helpful to create a default plan in the event you both disagree at some point in the future.

In defining a holiday plan, begin by identifying the holidays that hold importance to you and your family. The following list includes some holidays of importance. In addition to these holidays, consider others that have meaning to you:

- New Years Eve and Day
- Civil Rights Day (3-day holiday in January)
- Presidents' Day (3-day holiday in February)
- Easter (Sunday holiday in March or April)
- Spring Break from school (time varies)
- Memorial Day (3-day holiday in May/ June)
- Independence Day (July 4)
- Mother's Day (May)
- Father's Day (June)
- Pioneer Day (July 24)
- Labor Day (3-day holiday in Aug/Sept)
- Columbus Day (3-day holiday in October)
- Halloween (October 31)
- Fall Break (or UEA weekend)
- Thanksgiving (4-day holiday in November)
- Christmas Eve and Day (December 24 & 25)
- Winter school holiday (includes Christmas)

How would the Court view holiday time if we can't reach agreement?

If parents are unable to create their own plan to share holidays, a judge will typically enforce the statutory minimum guidelines for visitation as described in Utah Code Annotate 30-3-35 and 30-3-35.5. Some parents voluntarily agree to follow this plan in the event they are unable to reach agreement for holidays. Other parents define a unique plan. The minimum guidelines essentially allow parents to alternate holidays, giving each parent half the holidays each year. You can view these Utah statutes online (see section below for the Web location).

How do we manage extended time for vacations?

Another issue you may want to include in your parenting plan is a provision for extended time. This would give each parent time to take the children on trips during summer vacation or off-track time from school. As you create a parenting plan, you will want to define how much extended time each parent may have with the children and when this time will occur.

When parents cannot agree on extended time, the Utah Court will typically enforce the minimum guidelines (UCA 30-3-35 and 30-3-35.5). This statute allows each parent up to four weeks of extended time with children over 5 years of age each year; two weeks are considered "uninterrupted," meaning the other parent has no visitation rights. The remaining two weeks are considered "interrupted," meaning the other parent may exercise parent time as provided to the non-custodial parent. The guidelines provide different amounts of extended time for children younger than five years of age. It is important to note that the Court generally accepts most arrangements that parents define, even when they veer from this standard.

Where can I read the Utah guidelines for parent time?

UCA 30-3-35 describes the minimum guidelines for children aged 5 to 18 and is available at: http://www.le.state.ut.us/~code/TITLE30/htm/30_03044.htm.

UCA 30-3-35.5 describes the minimum guidelines for children aged 0 to 5 and is available at: http://www.le.state.ut.us/~code/TITLE30/htm/30_03045.htm.

How will we exchange the children?

Another important topic for discussion is the plan for exchanging the children. Who will transport the children? Where and how will these transfers take place? You may define an option that works for your situation. Some options include:

- One parent may take full responsibility for all transportation.
- Both parents may share in transporting the children between households.
- Both parents alternate responsibility for transporting the children.
- Each parent transports the children one way for each visit. One parent picks up or drops off the children at the beginning of the parent time; the other parent picks up or drops off the children at the end of the parent time.
- Exchanges may occur at either parent's home or at another location.

Decision-Making Responsibilities

How will we make decisions about matters that affect our children's lives?

Children need the support of both parents in order to grow into happy, well-adjusted adults. A parenting plan should include your strategy for making decisions about issues that affect your children's lives. Some questions you will want to address as you create a parenting plan include:

- Who will make important decisions regarding your children?
- What are the types of decisions you want to share?
- What are the types of decisions each parent should make independently?
- How will you handle disagreements?
- What information do you each need in order to stay connected and informed about your children?
- How and when will you communicate in order to share information and decision-making?

Financial Responsibilities

How will we pay the costs to raise our children?

The state of Utah protects children by requiring parents to provide financial support. Child support is intended to cover the cost to feed, clothe, and shelter children. Costs beyond these basic needs, such as fees for extracurricular activities, may extend beyond basic living expenses. When parents share joint physical custody, Utah law requires that both parents share in these additional fees.

How do we calculate child support payments?

Child support is calculated by following a formula on an appropriate child support worksheet. The time-sharing plan you create determines the child support worksheet used to calculate payments. If both parents will have the children for 111 or more overnights each year, then the Joint Custody Worksheet may be used. If one parent has fewer than 111 overnights with the children, then the Sole Custody Worksheet is used. Sometimes, parents agree to split custody, giving each parent one or more children. In this situation, you would use the Split Custody Worksheet.

The calculation begins by entering the gross monthly income for each parent. It is important to exchange verification of income for this purpose. Adjustments are allowed when a parent pays child support to another parent or alimony to a previous spouse. The calculation also allows an adjustment if either parent has other natural or adopted children in the home. You may use an online calculator to determine the amount of child support by entering the appropriate information. This calculator is available at www.utcourts.gov/childsupport/calculator. Select the appropriate worksheet and enter all required information.

How do we make child support payments?

For some parents, working out payment arrangements on their own is a preferred option. In this case, it is important to define when payments are due, how they will be made, and what, if any, grace period will be allowed after the due date until payment is received.

Sometimes, it is helpful to arrange with the Office of Recovery Services (ORS) to collect and distribute child support payments. By Utah statute, either parent is entitled to arrange for collection of child support through ORS. Using ORS may help ensure collection through wage withholding. ORS may also delay payments slightly because this method involves an additional step. Also, ORS may retain an administration fee for services, which could reduce the amount of money received.

How will we pay for health-related costs for the children?

Raising children involves expenses to maintain physical and mental health. Expenses might include doctor and dentist visits, prescription drugs, glasses, braces, and mental health counseling. Health-related costs include health insurance premiums. Parents need to decide how to pay for these expenses.

The court typically asks parents to share equally in insurance premium costs and out-of-pocket expenses for health-related costs that are not covered by insurance. Sometimes one parent is better able to pay for such expenses than the other. In these situations, parents may decide to handle these costs differently. For example, they may share costs in proportion to their income, giving one parent greater responsibility than the other.

How can we protect our children for the future if one of us dies?

Your children will need financial support until they turn 18 years of age or until they graduate from high school, whichever happens later. You are encouraged to include a provision for financial support in the event one parent dies while the children are still minors. Many parents protect their children in this event by purchasing and maintaining life insurance, naming the children as beneficiaries. Many employers offer life insurance at reasonable cost. You might consider the option of obtaining life insurance for this purpose if it is available through your employer or elsewhere.

How do we pay the costs for education fees and special activity expenses?

During childhood, children incur many expenses and fees for education and special activities. As parents, you may want to talk about how you will pay for these costs. Utah courts require parents to share these costs in addition to child support if they share joint physical custody. Otherwise, the courts seldom require parents to share these costs. However, parents generally recognize the value of their children taking part in special activities, such as sporting events, music lessons, dance classes, etc. As you create your parenting plan, you may want to think about how you will pay for these extra costs.

How do we pay for childcare expenses for our children?

Most unmarried parents have to work in order to support themselves and their children. Working parents must find ways to care for the children while working or attending school to train for a job. Even if the children maintain their primary residence with one parent, it is the responsibility of both parents to ensure the children are cared for appropriately when neither parent is available.

Your parenting plan should include a provision that describes how you will provide and fund childcare. Utah courts typically ask parents to share equally in work-related or school-related childcare expenses. However, some parents create a different arrangement for childcare. Parents may have access to extended family members who can provide childcare at reduced rates or at no cost. Or, parents may agree to share this cost disproportionately, depending on each parent's ability to fund this cost.

What happens if one of us moves out of town or out of state?

In today's society, people are more mobile than in years past. Decisions to relocate often arise because of job opportunities or to be nearer to extended family. When one parent relocates a long distance away, it usually requires you to change your time-sharing arrangement. It is important for the relocating parent to provide the other parent with enough advance notice to allow you to design a new time-sharing plan. In addition to defining times when the children will visit the other parent, it is important to talk about travel costs. When parents cannot work out a new plan in this situation, the Utah Court will refer to the Relocation statute (UCA 30-3-37) for guidance in ordering parent time. This statute applies to situations where one parent moves 150 miles or more from the residence specified in the court order. You may read this statute online at http://www.le.state.ut.us/~code/TITLE30/htm/30_03047.htm.

How can we be good parents for our children even though we're not together?

Keeping your children's best interests as your highest priority is a helpful perspective. However, many parents in conflict believe they are acting in their children's best interests, but they don't see things the same way. When two people see things so differently, it is difficult to set aside your own viewpoint and accept another viewpoint as valid. Keep in mind how your disagreement with the other parent is affecting your children. Children can sense the tensions between their parents even when parents believe they are hiding their anxiety and frustration with the other parent. The advisory guidelines (UCA 30-3-33) provided in Utah statute may be helpful in keeping a positive perspective about your co-parenting relationship. You may access these guidelines at http://www.le.state.ut.us/~code/TITLE30/htm/30_03042.htm.

How do we declare our children on annual income tax returns?

Declaring dependents on state and federal income tax returns can result in reduced tax liability. You may want to include a provision in your parenting plan for declaring tax exemptions. Consulting with an expert in income tax might be helpful as you make this decision.

Often, parents alternate years claiming the children as exemptions. According to Utah statute, however, the non-custodial parent must be current with child support as of December 31st of the filing year in order to claim one or more children as dependents. Parents may divide the children for income tax purposes; in this instance, each parent claims some of the children as exemptions each year. As another option, parents may alternate years claiming the children as exemptions where one parent claims the children in even-numbered years and the other parent claims the children in odd-numbered years. Finally, parents may decide to give the exemption to one parent every year.

Sometimes parents agree to a buy out option for income tax filing purposes. In this situation, parents calculate income tax with exemptions and without exemptions. The parent who would receive the greatest advantage is the one who claims the children; that parent would then pay the other parent the amount of money he or she would have received if the children had been claimed.

Formalizing the Paternity Order

Once you have created a parenting plan, either on your own or with the help of a mediator, you need to file a legal document with the Court in order to make the agreement binding and enforceable. In Utah, you may draft and file a stipulation on your own, or you may hire an attorney to create the document.

How do I file a stipulation on my own?

Utah Legal Aid runs a Pro Se Clinic, which is located on the first floor of the Matheson Courthouse in Salt Lake City. Clinic staff can help you prepare and file a paternity order. You can access information about the Pro Se Clinic online at: http://www.utcourts.gov/howto/legalclinics.

Where can I get legal advice if I can't afford to hire an attorney?

Parents are encouraged to consult attorneys before finalizing paternity agreements. If you cannot afford to hire an attorney, there are several legal resources available. You can access more information online at: http://www.utcourts.gov/howto/legalassist.

The *Utah State Bar* holds a clinic on Tuesday evenings where parties may consult with an attorney at no charge. Reservations are required for this service—call on Monday afternoons to schedule an appointment: 801-531-9077. More information is available online at: http://www.utahbar.org/public/tuesday_night_bar.html.

Legal Aid Society of Salt Lake provides services to qualifying individuals in the Salt Lake metro area. You can reach them at 801-328-8849 or online at: http://www.lasslc.org.

Utah Legal Services provides services to qualifying individuals throughout Utah. You can reach them in Salt Lake City at 801-328-8891 or online at: http://www.andjusticeforall.org/uls.

There are also a number of *street law clinics* throughout the state where people can talk with an attorney or law student about their legal rights. Information is available at: http://www.utcourts.gov/howto/legalclinics.

Additional Resources

What resources can help us become great parents?

There are numerous resources available to help you become the best possible parents for your children. Divorcing parents in Utah are required by law to attend a parenting class before their divorce is granted. Anyone may attend this class, which provides good information about parenting. You may view dates and locations for this class online at: http://www.utcourts.gov/general, then click on "Divorce Education for Parents." Other parenting classes are available through local community colleges, continuing education departments of universities and local schools, mental health organizations, and private family therapists. In addition, your local librarian can help you find books on parenting.

Where can I find more information?

Information in this summary was drawn from these Internet sources:
http://www.paternitynet.com

http://www.utcourts.gov/howto/divorce

http://www.andjusticeforall.org (select *Utah Legal Services, Flyers, Domestic Law Handbook*)

http://www.le.state.ut.us

Access these statutes that apply to parenting issues:

UCA 30-3-32.	Parent-time – Intent – Policy -- Definitions
UCA 30-3-33.	Advisory guidelines.
UCA 30-3-35.	Minimum schedule for parent-time for children 5 to 18 years of age.
UCA 30-3-35.5.	Minimum schedule for parent-time for children under 5 years of age.
UCA 30-3-37.	Relocation
UCA 78-45g.	Utah Uniform Parentage Act

If you are a mother or a child interested in determining paternity, contact one of these resources:

- Utah State Department of Human Services: Family Support Office: 801-538-4100
- Utah State Department of Human Services: Recovery Services Office: 1-800-662-8525