

# Parent Time and Children’s Best Interests – “Rebuttal Presumption”

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Utah Code Title 30, Chapter 3, Section 34 (May 2021) addresses the best interests of a child in the establishment of a parent-time schedule. Application of Section 34 of the Utah Code depends upon a legal precept called “*rebuttable presumption*.”

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**If you are involved in a case for child custody or Parent Time in Utah, the experts at the Law Office of David Pedrazas PLLC can help you defend your rights. Call Now!**

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## What is a Rebuttal Presumption?

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This legal term refers to the rule of law – under which the *rule* may be assumed to be in force based on the presence of facts that are conclusive when there is not any evidence to the contrary.

The title of Utah 30-3 Section 34 *and* the statement of Subsection 34.1 together serve to clarify the relevance of the principle of rebuttable presumption to this section. They make clear that the rebuttable presumption is effectively applicable when divorced parents do not find a way to reach an agreement on a parent-time schedule. The judge may hand down a court-ordered parent-time schedule in such situations, per Section 30-3-35, 35.1, 35.2, or 35.5.

## Utah Parent Time Guidelines

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Utah Code Section 30-3-33 lays out advisory guidelines for creating a parent-time schedule. Section 30-3-35 and 30-3-35.5 layout a parent-time schedule for what must be considered the minimum amount of parent-time. Section 30-3-35.5 even stipulates the specific days of the year that the noncustodial parent shall be permitted to spend with the child.

However, before creating a parent time schedule, the judge will utilize the guidelines under Utah 30-3-34, as iterated below, to determine how to proceed. This section of the State statutes specifies the following considerations to be used in determining an appropriate order for a parent-time schedule:

- The child's sibling's parent-time schedule.
- A significant habit of canceling, denying, or missing routinely scheduled parent-time.
- There is a credible accusation of child abuse.
- Insufficiently demonstrated skills in parenting without protective measures in place during parent time to secure the child's well-being.
- The distance from the child's residence and the noncustodial parent's home.
- The noncustodial parent's financial inability to provide sufficient shelter and food for a child during parent-time.
- The child's preference, in cases in which the judge finds that a child is mature enough.
- If parent-time would put the mental or physical health of a child in danger, or have a significant negative impact on a child's emotional development.
- Incarceration of a noncustodial parent in an adult or youth correctional facility.
- Interests shared by the noncustodial parent and the child.
- Indicators of neglect, physical, emotional, or sexual abuse, or domestic abuse in which the child, or one of the child's parents, or a parent's household member were involved.
- The extent of the noncustodial parent's involvement in the child's school, religion, community, or other activities in which the child is engaged.
- The noncustodial parent's availability to provide care for the child when the custodial parent's working or at times when circumstances require the custodial parent to obtain childcare.
- Lack of available alternatives that can reasonably meet a nursing child's needs.
- Minimal bonding between the parents prior to the child's conception.
- Any other considerations that the judge decides are relevant to a child's interests.

## **Utah Courts' Options in Parent-Time Orders**

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A court order for a parent-time schedule is always grounded in evidence of what serves the child's best interest. The judge will provide the reasons for the inclusions in the order for parent-time governed by a parent-time schedule that is to be utilized as set forth in Utah 30-3-35 or 30-3-35.5.

If the court order stipulates less or more parent-time than typically included in the schedule under those provisions, the judge will also provide an explanation for that decision.

After a parent-time schedule is established, the parents are not legally allowed to change the parent time schedule unless there is mutual agreement to do so or a court order granting the change is obtained.

When approaching the court for alteration of the parent time order, you need the best Utah parent time lawyer, to ensure that your child's *best* interest and *all* your parental rights are *fully* protected.

## **Attorney David Pedrazas, Salt Lake City Utah**

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For more than 20 years, Attorney David Pedrazas has been helping people in Utah through the difficulties of divorce and child custody cases. He has been recognized as one of Salt Lake City's best divorce attorneys by the National Academy of Family Law Association, the American Institute of Family Law, and the American Academy of Trial Attorneys.

**If you are involved in a case for child custody or Parent Time in Utah, call the Law Office of David Pedrazas PLLC, Salt Lake City UT, at (801) 263-7078 or use our online option to schedule a review of your case.**

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