



28 determining whether to award custody to the other parent.

29 (4) (a) A court may not discriminate against a parent due to a disability, as defined in  
30 Section 57-21-2, in awarding custody or determining whether a substantial change has occurred  
31 for the purpose of modifying an award of custody.

32 (b) If a court takes a parent's disability into account in awarding custody or determining  
33 whether a substantial change has occurred for the purpose of modifying an award of custody, the  
34 parent with a disability may rebut any evidence, presumption, or inference arising therefrom by  
35 showing that:

36 (i) the disability does not significantly or substantially inhibit the parent's ability to provide  
37 for the physical and emotional needs of the child at issue; or

38 (ii) the parent with a disability has sufficient human, monetary, or other resources available  
39 to supplement the parent's ability to provide for the physical and emotional needs of the child at  
40 issue.

41 (c) Nothing in this section may be construed to apply to:

42 (i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and  
43 Family Services, or Title 78, Chapter 3a, Juvenile Courts; or

44 (ii) adoption proceedings under Title 78, Chapter 30, Adoption.

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**Legislative Review Note**  
**as of 11-4-98 2:28 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Judiciary Interim Committee recommended this bill.