Effective 5/6/2026

81-9-204 Custody and parent-time of a minor child -- Custody factors -- Preferences.

(1) In a proceeding between parents in which the custody and parent-time of a minor child is at issue, the court shall consider the best interests of the minor child in determining any form of custody and parent-time.

(2) The court shall determine whether an order for custody or parent-time is in the best interests of the minor child by a preponderance of the evidence.

(3) In determining any form of custody and parent-time under Subsection (1), the court shall consider:

(a) for each parent, and in accordance with Section 81-9-104, evidence of domestic violence, physical abuse, or sexual abuse involving the minor child, the parent, or a household member of the parent;

(b) whether the parent has intentionally exposed the minor child to:

(i) pornography; or

(ii) material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-5c-101; and

(c) whether custody and parent-time would endanger the minor child's health or physical or psychological safety.

(4) In determining the form of custody and parent-time that is in the best interests of the minor child, the court may consider, among other factors the court finds relevant, the following for each parent:

(a) evidence of coercive control;

(b) evidence of psychological maltreatment;

(c) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the minor child, including the minor child's:

(i) physical needs;

(ii) emotional needs;

(iii) educational needs;

(iv) medical needs; and

(v) any special needs;

(d) the parent's capacity and willingness to function as a parent, including:

(i) parenting skills;

(ii) co-parenting skills, including:

(A) ability to appropriately communicate with the other parent;

(B) ability to encourage the sharing of love and affection; and

(C) willingness to allow frequent and continuous contact between the minor child and the other parent, except that, if the court determines that the parent is acting to protect the minor child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and

(iii) ability to provide personal care rather than surrogate care;

(e) the past conduct and demonstrated moral character of the parent as described in Subsection (9);

(f) the emotional stability of the parent;

(g) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;

(h) the parent's reason for having relinquished custody or parent-time in the past;

(i) duration and depth of desire for custody or parent-time;

(j) the parent's religious compatibility with the minor child;

(k) the parent's financial responsibility;
(l) the child's interaction and relationship with step-parents, extended family members, or other individuals who may significantly affect the minor child's best interests;
(m) who has been the primary caretaker of the minor child;
(n) previous parenting arrangements in which the minor child has been happy and well-adjusted in the home, school, and community;
(o) the relative benefit of keeping siblings together;
(p) the stated wishes and concerns of the minor child, taking into consideration the minor child's cognitive ability and emotional maturity;
(q) the relative strength of the minor child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the minor child; and
(r) any other factor the court finds relevant.

(5)
(a) A minor child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the minor child be heard and there is no other reasonable method to present the minor child's testimony.
(b)
(i) The court may inquire and take into consideration the minor child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the minor child's custody or parent-time otherwise.
(ii) The desires of a minor child who is 14 years old or older shall be given added weight, but is not the single controlling factor.
(c)
(i) If an interview with a minor child is conducted by the court in accordance with Subsection (5)(b), the interview shall be conducted by the court in camera.
(ii) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a minor child is the only method to ascertain the minor child's desires regarding custody.

(6)
(a) Except as provided in Subsection (6)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.
(b) The court may not consider the disability of a parent as a factor in awarding custody or modifying an award of custody based on a determination of a substantial change in circumstances, unless the court makes specific findings that:
(i) the disability significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the minor child at issue; and
(ii) the parent with a disability lacks sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the minor child at issue.
(c) Nothing in this section may be construed to apply to adoption proceedings under Chapter 13, Adoption.

(7) This section does not establish:
(a) a preference for either parent solely because of the gender of the parent; or
(b) a preference for or against joint physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the minor child.

(8) When an issue before the court involves custodial responsibility in the event of a deployment of a parent who is a service member and the service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 81-10-306 through 81-10-309.

(9) In considering the past conduct and demonstrated moral standards of each party under Subsection (4)(e) or any other factor a court finds relevant, the court may not:

(a)

(i) consider or treat a parent's lawful possession or use of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or Subsection 58-37-404(2) or (3) any differently than the court would consider or treat the lawful possession or use of any prescribed controlled substance; or

(ii) discriminate against a parent because of the parent's status as a:

(A) cannabis production establishment agent, as that term is defined in Section 4-41a-102;

(B) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;

(C) medical cannabis courier agent, as that term is defined in Section 4-41a-102; or

(D) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

(b) discriminate against a parent based upon the parent's agreement or disagreement with a minor child of the couple's:

(i) assertion that the minor child's gender identity is different from the minor child's biological sex;

(ii) practice of having or expressing a different gender identity than the minor child's biological sex; or

(iii) sexual orientation.

(10)

(a) The court shall consider evidence of domestic violence if evidence of domestic violence is presented.

(b) The court shall consider as primary, the safety and well-being of the minor child and the parent who experiences domestic violence.

(c) A court shall consider an order issued by a court in accordance with Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, as evidence of real harm or substantiated potential harm to the minor child.

(d) If a parent relocates because of an act of domestic violence or family violence by the other parent:

(i) the court shall make specific findings and orders with regards to the application of Section 81-9-209; and

(ii) the court may not require the parent to disclose the parent's address to the other parent.

(11) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the minor child:

(a) it is in the best interest of the minor child to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(b) each parent is entitled to and responsible for frequent, meaningful, and continuing access with the parent's minor child consistent with the minor child's best interests; and

(c) it is in the best interest of the minor child to have both parents actively involved in parenting the minor child.

(12) Notwithstanding any other provision of this chapter, the court may not grant custody or parent-time of a minor child to a parent convicted of a sexual offense, as defined in Section 77-37-2, that resulted in the conception of the minor child unless:
  (a) the nonconvicted biological parent, or the legal guardian of the minor child, consents to custody or parent-time and the court determines it is in the best interest of the minor child to award custody or parent-time to the convicted parent; or
  (b) after the date of the conviction, the convicted parent and the nonconvicted parent cohabit and establish a mutual custodial environment for the minor child.
(13) A denial of custody or parent-time under Subsection (12) does not:
  (a) terminate the parental rights of the parent denied parent-time or custody; or
  (b) affect the obligation of the convicted parent to financially support the minor child.

Amended by Chapter 362, 2026 General Session