

**Effective 9/1/2024**

**81-9-205 Presumption of joint legal custody -- Joint custody factors -- Order for joint custody.**

- (1) The court may order joint legal custody or joint physical custody or both joint legal custody and joint physical custody if:
  - (a) one or both parents have filed a parenting plan as described in Section 81-9-203; and
  - (b) the court determines that, by a preponderance of the evidence, joint legal custody or joint physical custody or both joint legal custody and joint physical custody is in the best interest of the minor child in accordance with Subsection (5) and Section 81-9-204.
- (2)
  - (a) There is a rebuttable presumption that joint legal custody is in the best interest of the minor child, except in cases when there is:
    - (i) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse involving the minor child, a parent, or a household member of the parent in accordance with Section 81-9-104;
    - (ii) special physical or mental needs of a parent or minor child, making joint legal custody unreasonable;
    - (iii) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or
    - (iv) any other factor the court considers relevant, including the factors described in Subsection (5) and Section 81-9-204.
  - (b) A presumption for joint legal custody may be rebutted by showing by a preponderance of the evidence that it is not in the best interest of the minor child.
- (3)
  - (a) Joint legal custody does not affect the physical custody of the minor child except as specified in the order of joint legal custody.
  - (b) Joint legal custody is not based on awarding equal or nearly equal periods of physical custody of and access to the minor child to each of the parents because the best interest of the minor child often requires that a primary physical residence for the minor child be designated.
  - (c) In ordering joint legal custody, the court:
    - (i) may include an award of exclusive authority by the court to one parent to make specific decisions regarding the minor child; and
    - (ii) is not prohibited from specifying one parent as the primary caretaker and one home as the primary residence of the minor child.
- (4)
  - (a) Joint physical custody may result in equal or nearly equal periods of physical custody of and access to the minor child by each of the parents to meet the best interest of the minor child.
  - (b) Joint physical custody may require that a physical residence for the minor child be designated.
  - (c) In ordering joint physical custody, the court is not prohibited from specifying one parent as the primary caretaker and one home as the primary residence of the minor child.
- (5) In addition to the factors described in Section 81-9-204, the court shall consider the following factors in determining whether joint legal custody, joint physical custody, or both joint legal custody and joint physical custody, is in the best interest of the minor child:
  - (a) whether the physical, psychological, and emotional needs and development of the minor child will benefit from joint legal custody or joint physical custody or both joint legal custody and joint physical custody;

- (b) the ability of the parents to give first priority to the welfare of the minor child and reach shared decisions in the minor child's best interest;
  - (c) co-parenting skills, including:
    - (i) ability to appropriately communicate with the other parent;
    - (ii) ability to encourage the sharing of love and affection; and
    - (iii) 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;
  - (d) whether both parents participated in raising the minor child before the divorce;
  - (e) the geographical proximity of the homes of the parents;
  - (f) the preference of the minor child if the minor child is of sufficient age and capacity to reason so as to form an intelligent preference as to joint legal custody or joint physical custody or both joint legal custody and joint physical custody;
  - (g) the maturity of the parents and their willingness and ability to protect the minor child from conflict that may arise between the parents;
  - (h) the past and present ability of the parents to cooperate with each other and make decisions jointly; and
  - (i) any other factor the court finds relevant.
- (6) The court shall inform both parties that an order for joint physical custody may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment Support Act.
- (7) An order of joint legal custody or joint physical custody shall provide terms the court determines appropriate, which may include specifying:
- (a) the county of residence of the minor child, until altered by further order of the court, or the custodian who has the sole legal right to determine the residence of the minor child;
  - (b) that the parents shall exchange information concerning the health, education, and welfare of the minor child, and where possible, confer before making decisions concerning any of these areas;
  - (c) the rights and duties of each parent regarding the minor child's present and future physical care, support, and education;
  - (d) provisions to minimize disruption of the minor child's attendance at school and other activities, the minor child's daily routine, and the minor child's association with friends; and
  - (e) as necessary, the remaining parental rights, privileges, duties, and powers to be exercised by the parents solely, concurrently, or jointly.
- (8) An order of joint legal custody or joint physical custody shall require the parenting plan contain a dispute resolution procedure that the parties agree to use:
- (a) in accordance with Subsection 81-9-203(10); and
  - (b) before seeking enforcement or modification of the terms and conditions of the order of joint legal custody or joint physical custody through litigation, except in emergency situations requiring ex parte orders to protect the minor child.
- (9) The court shall, where possible, include in the order the terms of the parenting plan provided in accordance with Section 81-9-203.
- (10) Any parental rights not specifically addressed by the court order may be exercised by the parent having physical custody of the minor child the majority of the time.
- (11) The appointment of joint legal or physical custodians does not impair or limit the authority of the court to order support of the child, as defined in Section 81-6-101, including payments by one custodian to the other.
- (12) An order of joint legal custody, in itself, is not grounds for modifying a support order.

- (13) The court may order that when possible the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the order of joint legal custody or joint physical custody through litigation, except in emergency situations requiring ex parte orders to protect the minor child.

Renumbered and Amended by Chapter 366, 2024 General Session