

Effective 5/6/2026

Superseded 1/1/2027

81-9-208 Modification or termination of a custody or parent-time order -- Noncompliance with a parent-time order -- Denial of access due to investigation.

- (1) The court has continuing jurisdiction to make subsequent changes to modify:
 - (a) custody of a minor child if there is a showing of a substantial and material change in circumstances since the entry of the order; and
 - (b) parent-time for a minor child if there is a showing that there is a change in circumstances since the entry of the order.
- (2) A substantial and material change in circumstances under Subsection (1)(a) includes a showing by a parent that the other parent:
 - (a) resides with an individual or provides an individual with access to the minor child; and
 - (b) knows that the individual:
 - (i) is required to register as a sex offender, a kidnap offender, or a child abuse offender for an offense committed against a minor child under Title 53, Chapter 29, Sex, Kidnap, and Child Abuse Offender Registry; or
 - (ii) has been convicted of an offense described in:
 - (A) Section 76-5-109, child abuse;
 - (B) Section 76-6-109.2, aggravated child abuse;
 - (C) Section 76-5-109.3, child abandonment;
 - (D) Section 76-5-109.4, child torture;
 - (E) Section 76-5-114, commission of domestic violence in the presence of a child;
 - (F) Section 76-5-208, child abuse homicide;
 - (G) Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling, for which the victim was younger than 18 years old; or
 - (H) Title 76, Chapter 5, Part 4, Sexual Offenses, for which the victim was younger than 18 years old;
 - (I) Title 76, Chapter 5b, Sexual Exploitation Act, for which the victim was younger than 18 years old; or
 - (iii) has been convicted of an offense that is substantially similar to an offense under Subsection (2)(b)(ii).
- (3)
 - (a) For a custody order that is entered on or after May 6, 2026, a minor child turning five years old constitutes a substantial and material change in circumstances under Subsection (1)(a), unless the order addresses custody of the minor child upon the minor child turning five years old.
 - (b) For a parent-time order that is entered on or after May 6, 2026, a minor child turning five years old constitutes a change in circumstances under Subsection (1)(b), unless the order addresses parent-time for the minor child upon the minor child turning five years old.
- (4) On the petition of one or both of the parents, or the joint legal or physical custodians if they are not the parents, the court may, after a hearing, modify or terminate an order that established joint legal custody or joint physical custody if:
 - (a) the verified petition or accompanying affidavit initially alleges that admissible evidence will show that there has been a substantial and material change in the circumstances of the minor child or one or both parents or joint legal or physical custodians since the entry of the order to be modified;
 - (b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the minor child; and

- (c)
 - (i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection 81-9-205(8); or
 - (ii) if no dispute resolution procedure is contained in the order that established joint legal custody or joint physical custody, the court orders the parents to participate in a dispute resolution procedure in accordance with Subsection 81-9-205(13) unless the parents certify that, in good faith, they have used a dispute resolution procedure to resolve their dispute.
- (5)
 - (a) In determining whether the best interest of a minor child will be served by either modifying or terminating the joint legal custody or joint physical custody order, the court shall, in addition to other factors the court considers relevant, consider the factors described in Sections 81-9-204 and 81-9-205.
 - (b) A court order modifying or terminating an existing joint legal custody or joint physical custody order shall contain written findings that:
 - (i) a substantial and material change of circumstance has occurred; and
 - (ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the minor child.
 - (c) The court shall give substantial weight to the existing joint legal custody or joint physical custody order when the minor child is thriving, happy, and well-adjusted.
- (6) The court shall, in every case regarding a petition for termination of a joint legal custody or joint physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Section 81-9-204.
- (7) The court may modify the terms and conditions of the existing order in accordance with this chapter and may order the parents to file a parenting plan in accordance with Section 81-9-203.
- (8) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 81-9-203.
- (9) If an issue before the court involves custodial responsibility in the event of deployment of one or both parents who are service members, 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.
- (10) If the court finds that an action to modify custody or parent-time is filed or answered frivolously and, in a manner, designed to harass the other party, the court shall assess attorney fees as costs against the offending party.
- (11) If a petition to modify custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorney fees expended by the prevailing party in that action if the court determines that the petition was without merit and not asserted or defended against in good faith.
- (12) If a motion or petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court:
 - (a) may award to the prevailing party:
 - (i) actual attorney fees incurred;
 - (ii) the costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time, including:
 - (A) court costs;
 - (B) child care expenses;
 - (C) transportation expenses actually incurred;

- (D) lost wages, if ascertainable; or
 - (E) counseling for a parent or a minor child if ordered or approved by the court; or
 - (iii) any other appropriate equitable remedy; and
 - (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up parent-time is not in the best interest of the minor child.
- (13)
- (a) Except as provided in Subsection (13)(b), the court shall award make-up parent-time to a parent, upon a motion or petition from the parent, if:
 - (i) the parent was denied parent-time with a minor child due to an investigation by the Division of Child and Family Services and the investigation did not result in a finding of abuse, neglect, or dependency; or
 - (ii)
 - (A) the parent can show that a court determined the other parent knowingly falsified a material statement or material information during a protective order proceeding as described in Section 78B-7-208 and the court dismissed the underlying protective order on the merits after providing the parties to the protective order with notice and an opportunity to be heard;
 - (B) the parent lost parent-time as a result of the other parent's falsification of a material statement or material information during the protective order proceeding; and
 - (C) there has not been a finding of abuse or neglect against the parent.
 - (b) A court may deny a motion or petition for make-up parent-time based on Subsection (13)(a)(i) if:
 - (i) the parent did not diligently exercise parent-time with the child before the investigation by the Division of Child and Family Services; or
 - (ii) a party shows good cause for denying the motion or petition.
 - (c) When a court orders make-up parent-time under this Subsection (13):
 - (i) the court shall order:
 - (A) parent-time that is the same type and duration of the parent-time that was denied; and
 - (B) that the make-up parent-time occur within two years from the day on which the court enters the order for make-up parent-time; and
 - (ii) the court may include weekend or holiday parent-time or extended parent-time that was denied to the parent.
 - (d) This Subsection (13) does not create a right of action against the Division of Child and Family Services.

Amended by Chapter 155, 2026 General Session