

**Effective 9/1/2024**

## **Chapter 9 Custody, Parent-Time, and Visitation**

**Effective 9/1/2024**

### **Part 1 General Provisions**

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#### **81-9-101 Definitions for chapter.**

As used in this chapter:

- (1) "Abuse" means the same as that term is defined in Section 80-1-102.
- (2)
  - (a) "Custodial responsibility" means all powers and duties relating to caretaking authority and decision-making authority for a minor child.
  - (b) "Custodial responsibility" includes physical custody, legal custody, parenting time, right to access, parent-time, and authority to grant limited contact with a minor child.
- (3) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- (4) "Joint legal custody" means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified.
- (5) "Joint physical custody" means the minor child stays with each parent overnight for more than 30% of the year and both parents contribute to the expenses of the minor child in addition to paying child support.
- (6)
  - (a) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the minor child.
  - (b) "Parenting functions" include:
    - (i) maintaining a loving, stable, consistent, and nurturing relationship with the minor child;
    - (ii) attending to the daily needs of the minor child, such as feeding, clothing, physical care, grooming, supervision, health care, day care, and engaging in other activities which are appropriate to the developmental level of the minor child and that are within the social and economic circumstances of the particular family;
    - (iii) attending to adequate education for the minor child, including remedial or other education essential to the best interest of the minor child;
    - (iv) assisting the minor child in developing and maintaining appropriate interpersonal relationships;
    - (v) exercising appropriate judgment regarding the minor child's welfare, consistent with the minor child's developmental level and family social and economic circumstances; and
    - (vi) providing for the financial support of the minor child.
- (7)
  - (a) "Parenting plan" means a plan for parenting a minor child.
  - (b) "Parenting plan" includes the allocation of parenting functions that are incorporated in any final decree or decree of modification including an action for dissolution of marriage, annulment, legal separation, or paternity.
- (8) "Protective order" means:
  - (a) a civil protective order, as that term is defined in Section 78B-7-102;
  - (b) an ex parte civil protective order, as that term is defined in Section 78B-7-102; or

- (c) a foreign protection order, as that term is defined in Section 78B-7-302.
- (9) "Psychological maltreatment" means a repeated pattern or extreme incident of caretaker behavior that:
  - (a) intentionally thwarts a minor child's basic psychological needs, including physical and psychological safety, cognitive stimulation, and respect;
  - (b) conveys that a minor child is worthless, defective, or expendable; and
  - (c) may terrorize a minor child.
- (10) "Service member" means a member of a uniformed service.
- (11) "Sexual abuse" means the same as that term is defined in Section 80-1-102.
- (12) "Supervised parent-time" means parent-time that requires the noncustodial parent to be accompanied during parent-time by an individual approved by the court.
- (13) "Surrogate care" means care by any individual other than the parent of the minor child.
- (14) "Uniformed service" means:
  - (a) active and reserve components of the United States Armed Forces;
  - (b) the United States Merchant Marine;
  - (c) the commissioned corps of the United States Public Health Service;
  - (d) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or
  - (e) the National Guard of a state.
- (15) "Uninterrupted time" means parent-time exercised by one parent without interruption at any time by the presence of the other parent.
- (16) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media, to supplement in-person visits between a noncustodial parent and a minor child or between a minor child and the custodial parent when the minor child is staying with the noncustodial parent.

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**81-9-102 Expedited Parent-time Enforcement Program.**

- (1) As used in this section:
  - (a) "Mediator" means a person who:
    - (i) is qualified to mediate parent-time disputes under criteria established by the Administrative Office of the Courts; and
    - (ii) agrees to follow billing guidelines established by the Administrative Office of the Courts and this section.
  - (b) "Services to facilitate parent-time" or "services" means services designed to assist families in resolving parent-time problems through:
    - (i) counseling;
    - (ii) supervised parent-time;
    - (iii) neutral drop-off and pick-up;
    - (iv) educational classes; and
    - (v) other related activities.
- (2) The Administrative Office of the Courts shall administer an Expedited Parent-time Enforcement Program in the third judicial district.
- (3)

- (a) If a parent files a motion in the third district court alleging that court-ordered parent-time rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this program for assignment to a mediator, unless a parent is incarcerated or otherwise unavailable.
  - (b) Unless the court rules otherwise, a parent residing outside of the state is not unavailable.
  - (c) The director of the program for the courts, the court, or the mediator may excuse either party from the requirement to mediate for good cause.
  - (d) Upon receipt of a case, the mediator shall:
    - (i) meet with the parents to address parent-time issues within 15 days of the motion being filed;
    - (ii) assess the situation;
    - (iii) facilitate an agreement on parent-time between the parents; and
    - (iv) determine whether a referral to a service provider under Subsection (3)(e) is warranted.
  - (e) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Health and Human Services for services to facilitate parent-time if:
    - (i) the services may be of significant benefit to the parents; or
    - (ii)
      - (A) a mediated agreement between the parents is unlikely; and
      - (B) the services may facilitate an agreement.
  - (f) At any time during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the program for referral to the court to whom the case was assigned under Subsection (3)(a) if:
    - (i) a written agreement between the parents is reached; or
    - (ii) the parents are unable to reach an agreement through mediation and:
      - (A) the parents have received services to facilitate parent-time;
      - (B) both parents object to receiving services to facilitate parent-time; or
      - (C) the parents are unlikely to benefit from receiving services to facilitate parent-time.
  - (g) Upon receiving a case from the administrator of the program, a court may:
    - (i) review the agreement of the parents and, if acceptable, sign it as an order;
    - (ii) order the parents to receive services to facilitate parent-time;
    - (iii) proceed with the case; or
    - (iv) take other appropriate action.
- (4)
- (a) If a parent makes a particularized allegation of physical or sexual abuse of a minor child who is the subject of a parent-time order against the other parent or a member of the other parent's household to a mediator or service provider, the mediator or service provider shall immediately report that information to:
    - (i) the court, which may immediately issue orders and take other appropriate action to resolve the allegation and protect the minor child; and
    - (ii) the Division of Child and Family Services within the Department of Health and Human Services in the manner required by Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports.
  - (b) If an allegation under Subsection (4)(a) is made against a parent with parent-time rights or a member of that parent's household, parent-time by that parent shall, pursuant to an order of the court, be supervised until:
    - (i) the allegation has been resolved; or
    - (ii) a court orders otherwise.

- (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to mediate parent-time problems and a service provider may continue to provide services to facilitate parent-time unless otherwise ordered by a court.
- (5)
- (a) The Department of Health and Human Services may contract with one or more entities in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to provide:
    - (i) services to facilitate parent-time;
    - (ii) case management services; and
    - (iii) administrative services.
  - (b) An entity who contracts with the Department of Health and Human Services under Subsection (5)(a) shall:
    - (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and
    - (ii) agree to follow billing guidelines established by the Department of Health and Human Services and this section.
- (6)
- (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:
    - (i) reduced to a sum certain;
    - (ii) divided equally between the parents; and
    - (iii) charged against each parent taking into account the ability of that parent to pay under billing guidelines adopted in accordance with this section.
  - (b) A court may order a parent to pay an amount in excess of that provided for in Subsection (6)(a) if the parent:
    - (i) failed to participate in good faith in mediation or services to facilitate parent-time; or
    - (ii) made an unfounded assertion or claim of physical or sexual abuse of a minor child.
  - (c)
    - (i) The cost of mediation and services to facilitate parent-time may be charged to parents at periodic intervals.
    - (ii) Mediation and services to facilitate parent-time may only be terminated on the ground of nonpayment if both parents are delinquent.
- (7)
- (a) The Judicial Council may make rules to implement and administer the provisions of this program related to mediation.
  - (b) The Department of Health and Human Services may make rules to implement and administer the provisions of this program related to services to facilitate parent-time.
- (8)
- (a)
    - (i) The Administrative Office of the Courts shall adopt outcome measures to evaluate the effectiveness of the mediation component of this program.
    - (ii) The Administrative Office of the Courts shall provide progress reports to the Judiciary Interim Committee as requested by the committee.
  - (b)
    - (i) The Department of Health and Human Services shall adopt outcome measures to evaluate the effectiveness of the services component of this program.
    - (ii) The Department of Health and Human Services shall provide progress reports to the Judiciary Interim Committee as requested by the committee.
  - (c) The Administrative Office of the Courts and the Department of Health and Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections (8)(a) and (b).

- (9) The Department of Health and Human Services shall, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, apply for federal funds as available.

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**81-9-103 Mandatory parenting course for parties in a divorce or parentage action.**

- (1) The Judicial Council shall approve and implement:
- (a) a mandatory parenting course in all judicial districts for married parties in a divorce action determining issues of child custody and parent-time; and
  - (b) a mandatory parenting course in all judicial districts for unmarried parties in a parentage action determining issues of child custody and parent-time.
- (2) The Judicial Council shall adopt rules to implement and administer the mandatory parenting courses described in Subsection (1).
- (3) The mandatory parenting courses shall educate and sensitize parties to the needs of the parties' minor child during and after the court process, including instructing the parties:
- (a) about the impact of the court process, and its outcome, on:
    - (i) the minor child;
    - (ii) the family relationship; and
    - (iii) the financial responsibilities of the parties to the minor child; and
  - (b) that domestic violence has a harmful effect on a minor child and family relationships.
- (4)
- (a) The mandatory parenting course may be provided through live instruction, video instruction, or an online provider.
  - (b) The online and video options under Subsection (4)(a) must be formatted as interactive presentations that ensure active participation and learning by the party.
- (5)
- (a) The Administrative Office of the Courts shall administer the mandatory parenting courses, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts.
  - (b) The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties as described in Subsection (7).
- (6) A certificate of completion constitutes evidence to the court of completion of a parenting course under this section by the parties.
- (7)
- (a) Each party shall pay the cost of the parenting course to the independent contractor providing the course at the time and place of the course.
  - (b) A fee of \$8 shall be collected, as part of a parenting course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section 51-9-408.
  - (c) Each party who is unable to pay the cost of a parenting course may attend the parenting course, without payment, upon a prima facie showing of indigency as evidenced by an affidavit of indigency filed in the court in accordance with Section 78A-2-302.
  - (d) The Administrative Office of the Courts shall use appropriations from the Children's Legal Defense Account to reimburse an independent contractor for the costs of a party who is unable to pay for a parenting course under Subsection (7)(c).
- (8) The Administrative Office of the Courts shall:
- (a) adopt a program to evaluate the effectiveness of the mandatory parenting courses; and

- (b) provide progress reports to the Judiciary Interim Committee if requested.

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**81-9-104 Expert evidence -- Violence or abuse findings -- Child relationship and reunification.**

- (1) As used in this section:

- (a)

- (i) "Child custody proceeding" means a civil proceeding between the parents of a minor child that involves the care or custody of the minor child, including proceedings involving:

- (A) divorce;
      - (B) separation;
      - (C) parent-time;
      - (D) paternity;
      - (E) child support; or
      - (F) legal or physical custody of the minor child.

- (ii) "Child custody proceeding" does not include:

- (A) a child protective, abuse, or neglect proceeding;
      - (B) a juvenile justice proceeding; or
      - (C) a child placement proceeding in which a state, local, or tribal government, a designee of such a government, or any contracted child welfare agency or child protective services agency of such a government is a party to the proceeding.

- (b) "Forensic" means professional activities undertaken pursuant to a court order or for use in litigation, including the evaluation or treatment of a parent, minor child, or other individual who is involved in a child custody proceeding.

- (c) "Reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a relationship between a minor child and an estranged or rejected parent or other family member of the minor child.

- (2) In a child custody proceeding, if a parent is alleged to have committed domestic violence or abuse, including sexual abuse:

- (a) the court may admit expert evidence from a court-appointed or outside professional relating to alleged domestic violence or abuse only if the professional possesses demonstrated expertise and adequate experience in working with victims of domestic violence or abuse, including sexual abuse, that is not solely of a forensic nature; and

- (b) in making a finding regarding an allegation of domestic violence or abuse, including sexual abuse, the court shall consider evidence of past domestic violence, sexual violence, or abuse committed by the accused parent, including:

- (i) any past or current protective order against the accused parent; or
    - (ii) any charge, arrest, or conviction of the accused parent for domestic violence, sexual violence, or abuse.

- (3) Subsection (2) does not preclude the court from:

- (a) admitting expert evidence, subject to rules of evidence, from a court-appointed or outside professional relating to issues other than alleged domestic violence or abuse; or

- (b) admitting evidence, subject to rules of evidence, that is discovered or otherwise becomes available through treatment or therapy after the court enters an order of custody or parent-time.

- (4) As part of a child custody proceeding, a court may not, solely in order to improve a deficient relationship between a parent and a minor child, including in the context of reunification treatment:
  - (a) remove the minor child from a parent or litigating party:
    - (i) who is competent and not physically or sexually abusive; and
    - (ii) with whom the minor child is bonded; or
  - (b) restrict reasonable contact between the minor child and a parent or litigating party:
    - (i) who is competent and not physically or sexually abusive; and
    - (ii) with whom the minor child is bonded.
- (5) As part of a child custody proceeding where the court has reasonable cause to believe that there is domestic violence, child abuse, or an ongoing risk to the child:
  - (a) a court may not order a reunification treatment or program unless there is generally accepted proof:
    - (i) of the physical and psychological safety, effectiveness, and therapeutic value of the reunification treatment; and
    - (ii) that the reunification treatment is not associated with causing harm to a child;
  - (b) a court may not order a reunification treatment that is predicated on cutting off a minor child from a parent:
    - (i) who is competent and not physically or sexually abusive; and
    - (ii) with whom the minor child is bonded;
  - (c) any order to remediate the resistance of a minor child to have contact with a violent or abusive parent shall primarily address the behavior of that parent or the contributions of that parent to the resistance of the minor child; and
  - (d) any order to a parent who meets the criteria in Subsections (5)(b)(i) and (ii), and that requires the parent to take steps to potentially improve the minor child's relationship with a violent or abusive parent, shall:
    - (i) prioritize the minor child's physical and psychological safety and needs; and
    - (ii) be narrowly tailored to address specific behavior.
- (6) Subject to Subsection (4), Subsection (5) does not preclude the court from ordering mental health treatment by a licensed mental health professional that is generally accepted by and meets the standards of practice for mental health professions if:
  - (a) the court does not have reasonable cause to believe that there is domestic violence, child abuse, or an ongoing risk to the child; and
  - (b) the treatment does not pose a risk to the child or parent.

Enacted by Chapter 453, 2024 General Session

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## **Part 2 Custody and Parent-time Between Parents**

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**81-9-201 Definitions for part.**

Reserved.

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**81-9-202 Advisory guidelines for a custody and parent-time arrangement.**

- (1) In addition to the parent-time schedules provided in Sections 81-9-302 and 81-9-304, the following advisory guidelines are suggested to govern a custody and parent-time arrangement between parents.
- (2) A parent-time schedule mutually agreed upon by both parents is preferable to a court-imposed solution.
- (3) A parent-time schedule shall be used to maximize the continuity and stability of the minor child's life.
- (4) Each parent shall give special consideration to make the minor child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the minor child or in the life of either parent which may inadvertently conflict with the parent-time schedule.
- (5)
  - (a) The court shall determine the responsibility for the pick up, delivery, and return of the minor child when the parent-time order is entered.
  - (b) The court may change the responsibility described in Subsection (5)(a) at any time a subsequent modification is made to the parent-time order.
  - (c) If the noncustodial parent will be providing transportation, the custodial parent shall:
    - (i) have the minor child ready for parent-time at the time the minor child is to be picked up ; and
    - (ii) be present at the custodial home or make reasonable alternate arrangements to receive the minor child at the time the minor child is returned.
  - (d) If the custodial parent will be transporting the minor child, the noncustodial parent shall:
    - (i) be at the appointed place at the time the noncustodial parent is to receive the minor child; and
    - (ii) have the minor child ready to be picked up at the appointed time and place or have made reasonable alternate arrangements for the custodial parent to pick up the minor child.
- (6) A parent may not interrupt regular school hours for a school-age minor child for the exercise of parent-time.
- (7) The court may:
  - (a) make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents; and
  - (b) increase the parent-time allowed to the noncustodial parent but may not diminish the standardized parent-time provided in Sections 81-9-302 and 81-9-304.
- (8) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.
- (9) A parent may not withhold parent-time or child support due to the other parent's failure to comply with a court-ordered parent-time schedule.
- (10)
  - (a) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the minor child is participating or being honored.
  - (b) The noncustodial parent is entitled to attend and participate fully in the functions described in Subsection (10)(a).
  - (c) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records.
  - (d) A parent shall immediately notify the other parent in the event of a medical emergency.

- (11) Each parent shall provide the other with the parent's current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.
- (12)
- (a) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the minor child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available.
  - (b) If the parents cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available by taking into consideration:
    - (i) the best interests of the minor child;
    - (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
    - (iii) any other factors the court considers material.
- (13)
- (a) Parental care is presumed to be better care for the minor child than surrogate care.
  - (b) The court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the minor child, to provide the child care.
  - (c) Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.
- (14) Each parent shall:
- (a) provide all surrogate care providers with the name, current address, and telephone number of the other parent; and
  - (b) provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.
- (15)
- (a) Each parent is entitled to an equal division of major religious holidays celebrated by the parents.
  - (b) The parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the minor child on the religious holiday.
- (16) If the minor child is on a different parent-time schedule than a sibling, based on Sections 81-9-302 and 81-9-304, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.
- (17)
- (a) When one or both parents are servicemembers or contemplating joining a uniformed service, the parents should resolve issues of custodial responsibility in the event of deployment as soon as practicable through reaching a voluntary agreement pursuant to Section 78B-20-201 or through court order obtained pursuant to this part.
  - (b) Service members shall ensure their family care plan reflects orders and agreements entered and filed pursuant to Title 78B, Chapter 20, Uniform Deployed Parents Custody, Parent-time, and Visitation Act.
- (18) A parent shall immediately notify the other parent if:
- (a) the parent resides with an individual or provides an individual with access to the minor child; and
  - (b) the parent knows that the individual:
    - (i) is required to register as a sex offender or a kidnap offender for an offense against a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;
    - (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child Abuse Offender Registry; or

- (iii) has been convicted of:
  - (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-114, or 76-5-208;
  - (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual Offenses;
  - (C) an offense for kidnapping or human trafficking of a minor child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
  - (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b, Sexual Exploitation Act; or
  - (E) an offense that is substantially similar to an offense under Subsections (18)(b)(iii)(A) through (D).
- (19)
  - (a) For emergency purposes, whenever the minor child travels with a parent, the parent shall provide the following information to the other parent:
    - (i) an itinerary of travel dates;
    - (ii) destinations;
    - (iii) places where the minor child or traveling parent can be reached; and
    - (iv) the name and telephone number of an available third person who would be knowledgeable of the minor child's location.
  - (b) Unchaperoned travel of a minor child under the age of five years is not recommended.

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**81-9-203 Custody and parent-time proceedings -- Requirements for parenting plan.**

- (1) In a custody or parent-time proceeding that is not a divorce action, the court may require the parents to attend the mandatory educational course described in Section 81-4-106.
- (2)
  - (a) In a proceeding between parents regarding the custody or parent-time for a minor child, the parent shall file and serve a proposed parenting plan at the time of the filing of the parent's original petition or at the time of filing the parent's answer or counterclaim.
  - (b) In a proceeding in which a parent seeks to modify custody provisions or a parenting plan, the parent shall file the proposed parenting plan with the petition to modify or the answer or counterclaim to the petition to modify.
  - (c) A parent who desires joint legal custody shall file a proposed parenting plan in accordance with this section.
- (3) If a parent files a proposed parenting plan in compliance with this section, the parent may move the court for an order of default to adopt the plan if the other parent fails to file a proposed parenting plan as required by this section.
- (4) A parent may file and serve an amended proposed parenting plan according to the Utah Rules of Civil Procedure.
- (5) The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.
- (6)
  - (a) Both parents may submit a parenting plan which has been agreed upon.
  - (b) The parents shall attach a verified statement to the parenting plan that is signed by both parents.

- (7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad litem to represent the best interests of the minor child, who may, if necessary, file a separate parenting plan reflecting the best interests of the minor child.
- (8)
- (a) If a parent is a service member, the parenting plan shall be consistent with Subsection (16).
  - (b) If a parent becomes a service member after a parenting plan is adopted, the parents shall amend the existing parenting plan as soon as practical to comply with Subsection (16).
- (9) The objectives of a parenting plan are to:
- (a) provide for the minor child's physical care;
  - (b) maintain the minor child's emotional stability;
  - (c) provide for the minor child's changing needs as the minor child grows and matures in a way that minimizes the need for future modifications to the parenting plan;
  - (d) set forth the authority and responsibilities of each parent with respect to the minor child consistent with the definitions outlined in this chapter;
  - (e) minimize the minor child's exposure to harmful parental conflict;
  - (f) encourage the parents, where appropriate, to meet the responsibilities to their minor child through agreements in the parenting plan rather than relying on judicial intervention; and
  - (g) protect the best interests of the minor child.
- (10)
- (a) The parenting plan shall contain:
    - (i) provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the minor child;
    - (ii) provisions addressing notice and parent-time responsibilities in the event of the relocation of a party; and
    - (iii) a process for resolving disputes, unless precluded or limited by statute.
  - (b) A dispute resolution process under Subsection (10)(a)(iii) may include:
    - (i) counseling;
    - (ii) mediation or arbitration by a specified individual or agency; or
    - (iii) court action.
  - (c) In the dispute resolution process under Subsection (10)(b):
    - (i) preference shall be given to the provisions in the parenting plan;
    - (ii) parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;
    - (iii) a written record shall be prepared of any agreement reached in counseling or mediation and provided to each party;
    - (iv) if arbitration becomes necessary, a written record shall be prepared and a copy of the arbitration award shall be provided to each party;
    - (v) if the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court may award attorney fees and financial sanctions to the prevailing parent;
    - (vi) the district court has the right of review from the dispute resolution process; and
    - (vii) the provisions of this Subsection (10)(c) shall be set forth in any final decree or order.
- (11)
- (a) Subject to the other provisions of this Subsection (11), the parenting plan shall allocate decision-making authority to one or both parties regarding the minor child's education, healthcare, and religious upbringing.

- (b) The parties may incorporate an agreement related to the care and growth of the minor child in these specified areas or in other areas into the plan that are consistent with parenting functions and the criteria outlined in Subsection (9).
- (c) Regardless of the allocation of decision-making in the parenting plan, a parent may make emergency decisions affecting the health or safety of the minor child.
- (d) A minor child's education plan shall designate the following:
  - (i) the home residence for purposes of identifying the appropriate school or another specific plan that provides for where the minor child will attend school;
  - (ii) which parent has authority to make education decisions for the minor child if the parents cannot agree; and
  - (iii) whether one or both parents have access to the minor child during school and authority to check the minor child out of school.
- (e) If an education provision is not included in the parenting plan:
  - (i) a parent with sole physical custody shall make the decisions listed in Subsection (11)(d);
  - (ii) in the event of joint physical custody when one parent has custody a majority of the times as described in Subsection 81-9-205(10):
    - (A) the parent having the minor child the majority of the time shall make the decisions listed in Subsections (11)(d)(i) and (ii); and
    - (B) both parents with joint physical custody shall have access to the minor child during school and authority to check the child out of school; or
  - (iii) in the event of joint physical custody when the parents have custody an equal amount of time:
    - (A) the court shall determine how the decisions listed in Subsections (11)(d)(i) and (ii) are made; and
    - (B) both parents with joint physical custody shall have access to the minor child during school and authority to check the minor child out of school.
- (12) Each parent may make decisions regarding the day-to-day care and control of the minor child while the minor child is residing with that parent.
- (13) When mutual decision-making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.
- (14) The parenting plan shall include a residential schedule that designates in which parent's home a minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions.
- (15)
  - (a) If a parent fails to comply with a provision of the parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected.
  - (b) Failure to comply with a provision of the parenting plan or a child support order may result in a finding of contempt of court.
- (16)
  - (a) If a parent is a service member, the parenting plan shall contain provisions that address the foreseeable parenting and custodial issues likely to arise in the event of notification of deployment or other contingency, including long-term deployments, short-term deployments, death, incapacity, and noncombatant evacuation operations.
  - (b) The provisions in the parenting plan described in Subsection (16)(a) shall comport substantially with the requirements of an agreement made pursuant to Section 78B-20-201.

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**Effective 9/1/2024**

**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 pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201; 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 psychological maltreatment;
  - (b) 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;
  - (c) 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;
  - (d) the past conduct and demonstrated moral character of the parent as described in Subsection (9);
  - (e) the emotional stability of the parent;
  - (f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;
  - (g) the parent's reason for having relinquished custody or parent-time in the past;
  - (h) duration and depth of desire for custody or parent-time;
  - (i) the parent's religious compatibility with the minor child;
  - (j) the parent's financial responsibility;

- (k) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the minor child's best interests;
  - (l) who has been the primary caretaker of the minor child;
  - (m) previous parenting arrangements in which the minor child has been happy and well-adjusted in the home, school, and community;
  - (nn) the relative benefit of keeping siblings together;
  - (oo) the stated wishes and concerns of the minor child, taking into consideration the minor child's cognitive ability and emotional maturity;
  - (pp) 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
  - (qq) 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 Title 78B, Chapter 6, Part 1, Utah Adoption Act.
- (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 78B-20-306 through 78B-20-309.

- (9) In considering the past conduct and demonstrated moral standards of each party under Subsection (4)(d) 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 58-37-3.7(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 26B-4-201; 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; or
    - (ii) practice of having or expressing a different gender identity than the minor child's biological sex.
- (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, the court shall make specific findings and orders with regards to the application of Section 81-9-209.
- (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.

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**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.

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**81-9-206 Determination of parent-time schedule -- Parent-time factors.**

- (1) If the parties are unable to agree on a parent-time schedule, the court may:
  - (a) establish a parent-time schedule; or
  - (b) order a parent-time schedule described in Part 3, Parent-time Schedules.
- (2) There is a presumption that the advisory guidelines described in Section 81-9-202 and the parent-time schedules described in Part 3, Parent-time Schedules, are the minimum parent-time to which the noncustodial parent and the minor child are entitled.
- (3) In accordance with Section 81-9-104, when ordering a parent-time schedule a court shall consider:
  - (a) evidence of domestic violence, physical abuse, or sexual abuse involving the minor child, a parent, or a household member of the parent; and
  - (b) whether parent-time would endanger the minor child's health or physical or psychological safety.
- (4) A court may consider the following when ordering a parent-time schedule:
  - (a) evidence of psychological maltreatment;
  - (b) the distance between the residency of the minor child and the noncustodial parent;
  - (c) the lack of demonstrated parenting skills without safeguards to ensure the minor child's well-being during parent-time;
  - (d) the financial inability of the noncustodial parent to provide adequate food and shelter for the minor child during periods of parent-time;
  - (e) the preference of the minor child if the court determines the minor child is of sufficient maturity;
  - (f) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;
  - (g) shared interests between the minor child and the noncustodial parent;
  - (h) the involvement or lack of involvement of the noncustodial parent in the school, community, religious, or other related activities of the minor child;
  - (i) the availability of the noncustodial parent to care for the minor child when the custodial parent is unavailable to do so because of work or other circumstances;
  - (j) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;

- (k) the minimal duration of and lack of significant bonding in the parents' relationship before the conception of the minor child;
  - (l) the parent-time schedule of siblings;
  - (m) the lack of reasonable alternatives to the needs of a nursing minor child; and
  - (nn) any other criteria the court determines relevant to the best interests of the minor child.
- (5) The court shall enter the reasons underlying the court's order for parent-time that:
- (a) incorporates a parent-time schedule described in Section 81-9-302 or 81-9-304; or
  - (b) provides more or less parent-time than a parent-time schedule described in Section 81-9-302 or 81-9-304.
- (6) A court may not order a parent-time schedule unless the court determines by a preponderance of the evidence that the parent-time schedule is in the best interest of the minor child.
- (7) Once the parent-time schedule has been established, the parties may not alter the parent-time schedule except by mutual consent of the parties or a court order.
- (8)
- (a) If the court orders parent-time and a protective order or stalking injunction is still in place, the court shall consider whether to order the parents to conduct parent-time pick-up and transfer through a third party.
  - (b) The parent who is the stated victim in the protective order or stalking injunction may submit to the court, and the court shall consider, the name of a person considered suitable to act as the third party.
  - (c) If the court orders the parents to conduct parent-time through a third party, the parenting plan shall specify the time, day, place, manner, and the third party to be used to implement the exchange.
- (9) If there is a protective order, stalking injunction, or the court finds that a parent has committed domestic violence, the court shall:
- (a) consider the impact of domestic violence in awarding parent-time; and
  - (b) make specific findings regarding the award of parent-time.
- (10) Upon a specific finding by the court of the need for peace officer enforcement, the court may include a provision in an order for parent-time that authorizes a peace officer to enforce the order for parent-time.
- (11) When parent-time has not taken place for an extended period of time and the minor child lacks an appropriate bond with the noncustodial parent, both parents shall consider the possible adverse effects upon the minor child and gradually reintroduce an appropriate parent-time plan for the noncustodial parent.

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**81-9-207 Supervised parent-time.**

- (1) If it is necessary to protect a minor child and there is no less restrictive means reasonably available, and in accordance with Section 81-9-104, a court may order supervised parent-time if the court finds evidence that the minor child would be subject to physical or emotional harm or child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-114, and 80-1-102, from the noncustodial parent if left unsupervised with the noncustodial parent.
- (2) If the court finds evidence of domestic violence, child abuse, or an ongoing risk to a child, and orders supervised parent-time, the court shall give preference to supervision by a professional individual or private agency trained in child abuse reporting laws, the developmental needs of a child, and the dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.

- (3) If a professional individual or private agency described in Subsection (2) is not available, affordable, or practicable under the circumstances, a court shall give preference to supervision by an individual who is:
  - (a) capable and willing to provide physical and psychological safety and security to the minor child, and to assist in the avoidance and prevention of domestic and family violence; and
  - (b) is trained in child abuse reporting laws, the developmental needs of a child, and the dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.
- (4) If an individual described in Subsection (2) or (3) is not available, affordable, or practicable under the circumstances, or if the court does not find evidence of domestic violence, child abuse, or an ongoing risk to a minor child, a court may order supervised parent-time that is supervised by an individual who is willing to supervise, and is capable of protecting the minor child from physical or emotional harm, or child abuse, and the court shall give preference to individuals suggested by the parties, including relatives.
- (5) At the time supervised parent-time is imposed, the court shall consider:
  - (a) whether the cost of professional or agency services is likely to prevent the noncustodial parent from exercising parent-time; and
  - (b) whether the requirement for supervised parent-time should expire after a set period of time.
- (6)
  - (a) Except when the court makes a finding that, due to abuse by or the incapacity of the noncustodial parent, supervised parent-time will be necessary indefinitely to ensure the physical or psychological safety and protection of the minor child, the court shall, in its order for supervised parent-time, provide specific goals and expectations for the noncustodial parent to accomplish before unsupervised parent-time may be granted.
  - (b) The court shall schedule one or more follow-up hearings to revisit the issue of supervised parent-time.
- (7) A noncustodial parent may, at any time, petition the court to modify the order for supervised parent-time if the noncustodial parent can demonstrate that the specific goals and expectations set by the court as described in Subsection (6) have been accomplished.

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**81-9-208 Modification or termination of a custody or parent-time order -- Noncompliance with a parent-time order.**

- (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 or a kidnap offender for an offense against a minor child under Title 77, Chapter 41, Sex and Kidnap Offender Registry;
    - (ii) is required to register as a child abuse offender under Title 77, Chapter 43, Child Abuse Offender Registry; or
    - (iii) has been convicted of:

- (A) a child abuse offense under Section 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-114, or 76-5-208;
  - (B) a sexual offense against a minor child under Title 76, Chapter 5, Part 4, Sexual Offenses;
  - (C) an offense for kidnapping or human trafficking of a minor child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
  - (D) a sexual exploitation offense against a minor child under Title 76, Chapter 5b, Sexual Exploitation Act; or
  - (E) an offense that is substantially similar to an offense under Subsections (2)(b)(iii)(A) through (D).
- (3) 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.
- (4)
- (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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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 78B-20-306 through 78B-20-309.

- (9) 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.
- (10) 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.
- (11) 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.

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**81-9-209 Notice of relocation -- Effect of relocation on parent-time schedule.**

- (1) As used in this section, "relocation" means moving 150 miles or more from the residence of the other parent.
- (2) The relocating parent shall provide written notice to the other parent at least 60 days before the day on which the relocating parent intends to relocate.
- (3) The written notice of relocation under Subsection (2) shall contain statements affirming :
  - (a) the parent-time provisions in Subsection (9) or a parent-time schedule approved by both parties will be followed; and
  - (b) that a parent will not interfere with the other's parental rights pursuant to court ordered parent-time arrangements or the parent-time schedule approved by both parties.
- (4) The court shall, upon motion of any party or upon the court's own motion, schedule a hearing with notice to:
  - (a) review the notice of relocation and the relevant parent-time schedule under Section 81-8-302 or 81-8-304; and
  - (b) make appropriate orders regarding the parent-time schedule and costs for parent-time transportation.
- (5) In a hearing to review the notice of relocation, the court shall, in determining if the relocation of a custodial parent is in the best interest of the minor child, consider any other factors that the court considers relevant to the determination.

- (6) If the court determines that relocation is not in the best interest of the minor child, and the custodial parent relocates, the court may order a change of custody.
- (7)
  - (a) If the court finds that the relocation is in the best interest of the minor child, the court shall determine the parent-time schedule and allocate the transportation costs that will be incurred for the minor child to visit the noncustodial parent.
  - (b) In making a determination under Subsection (7)(a), the court shall consider:
    - (i) the reason for the parent's relocation;
    - (ii) the additional costs or difficulty to both parents in exercising parent-time;
    - (iii) the economic resources of both parents; and
    - (iv) other factors the court considers necessary and relevant.
- (8) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regard to the application of this section.
- (9) Unless otherwise ordered by the court, upon the relocation of one of the parties, the following schedule is the minimum parent-time the noncustodial parent is entitled to a minor child who is five to 18 years old:
  - (a) in years ending in an odd number, the minor child shall spend the following holidays with the noncustodial parent:
    - (i) Thanksgiving holiday beginning Wednesday until Sunday; and
    - (ii) Spring break, if applicable, beginning the last day of school before the holiday until the day before school resumes;
  - (b) in years ending in an even number, the minor child shall spend the following holidays with the noncustodial parent:
    - (i) the entire winter school break period; and
    - (ii) the Fall school break beginning the last day of school before the holiday until the day before school resumes;
  - (c) extended parent-time equal to 1/2 of the summer or off-track time for consecutive weeks; and
  - (d) one weekend per month, at the option and expense of the noncustodial parent.
- (10) For extended parent-time under Subsection (9)(c), the minor child should be returned to the custodial home no later than seven days before school begins, except that this week is counted when determining the amount of parent-time to be divided between the parents for the summer or off-track period.
- (11)
  - (a) The court may also set a parent-time schedule for a minor child who is younger than five years old.
  - (b) The schedule shall take into consideration the following:
    - (i) the age of the minor child;
    - (ii) the developmental needs of the minor child;
    - (iii) the distance between the parents' homes;
    - (iv) the travel arrangements and cost;
    - (v) the level of attachment between the minor child and the noncustodial parent; and
    - (vi) any other factors relevant to the best interest of the minor child.
- (12) The noncustodial parent's monthly weekend entitlement is subject to the following restrictions.
  - (a)
    - (i) If the noncustodial parent has not designated a specific weekend for parent-time, the noncustodial parent shall receive the last weekend of each month unless a holiday assigned to the custodial parent falls on that particular weekend.

- (ii) If a holiday assigned to the custodial parent falls on the last weekend of the month, the noncustodial parent is entitled to the next to the last weekend of the month.
  - (b) If a noncustodial parent's extended parent-time or parent-time over a holiday extends into or through the first weekend of the next month, that weekend shall be considered the noncustodial parent's monthly weekend entitlement for that month.
  - (c) If a minor child is out of school for teacher development days or snow days after the minor child begins the school year, or other days not included in the list of holidays in Subsection (9) and those days are contiguous with the noncustodial parent's monthly weekend parent-time, those days shall be included in the weekend parent-time.
- (13) The custodial parent is entitled to all parent-time not specifically allocated to the noncustodial parent.
- (14) In the event finances and distance preclude the exercise of minimum parent-time for the noncustodial parent during the school year, the court should consider awarding more time for the noncustodial parent during the summer time if it is in the best interests of the the minor child.
- (15)
- (a) Upon the motion of any party, the court may order uninterrupted parent-time with the noncustodial parent for a minimum of 30 days during extended parent-time, unless the court finds it is not in the best interest of the minor child.
  - (b) If the court orders uninterrupted parent-time during a period not covered by this section, the court shall specify in its order which parent is responsible for the minor child's travel expenses.
- (16)
- (a) Unless otherwise ordered by the court the relocating party shall be responsible for all the minor child's travel expenses relating to Subsections (9)(a) and (b) and 1/2 of the minor child's travel expenses relating to Subsection (9)(c), provided the noncustodial parent is current on all support obligations.
  - (b) If the noncustodial parent has been found in contempt for not being current on all support obligations, the noncustodial parent is responsible for all of the minor child's travel expenses under Subsection (9), unless the court rules otherwise.
  - (c) A responsible party shall make a reimbursement to the other for the minor child's travel expenses within 30 days of receipt of documents detailing those expenses.
- (17) The court may apply this provision to any preexisting decree of divorce.
- (18) Any action under this section may be set for an expedited hearing.
- (19) A parent who fails to comply with the notice of relocation in Subsection (2) is in contempt of the court's order.

Renumbered and Amended by Chapter 366, 2024 General Session

***Effective 9/1/2024***

### **Part 3 Parent-time Schedules**

***Effective 9/1/2024***

**81-9-301 Definitions for part.**

As used in this part:

- (1) "Juneteenth National Freedom Day" means the day on which the Juneteenth National Freedom Day holiday is celebrated in this state in accordance with Section 63G-1-301.
- (2) "Weekends" include, for a parent-time schedule under Sections 81-9-302 and 81-9-303, any snow days, teacher development days, or other days when school is not scheduled and that are contiguous to the weekend period.

Enacted by Chapter 366, 2024 General Session

**Effective 9/1/2024**

**81-9-302 Minimum schedule for parent-time for a minor child five to 18 years old.**

- (1) The parent-time schedule in this section applies to a minor child who is five to 18 years old.
- (2) If the parties do not agree to a parent-time schedule for a minor child described in Subsection (1), the following schedule is considered the minimum parent-time to which the noncustodial parent is entitled to the minor child:
  - (a)
    - (i) one weekday evening to be specified by the noncustodial parent or the court or Wednesday evening if not specified, beginning at 5:30 p.m. and ending at 8:30 p.m.; or
    - (ii) at the election of the noncustodial parent, one weekday to be specified by the noncustodial parent or the court:
      - (A) beginning at the time that the minor child's school is regularly dismissed and ending at 8:30 p.m.; or
      - (B) if school is not in session, the noncustodial parent is available to be with the minor child, and in accommodation with the custodial parent's work schedule, beginning at 9 a.m. and ending at 8:30 p.m.;
  - (b)
    - (i) beginning on the first weekend after entry of the decree, alternating weekends beginning at 6 p.m. on Friday and ending on Sunday at 7 p.m.; or
    - (ii) at the election of the noncustodial parent and beginning on the first weekend after the entry of the decree, alternating weekends:
      - (A) beginning at the time that the minor child's school is regularly dismissed on Friday and ending on Sunday at 7 p.m.; or
      - (B) if school is not in session, the noncustodial parent is available to be with the minor child, and in accommodation with the custodial parent's work schedule, beginning on Friday at 9 a.m. and ending on Sunday at 7 p.m.;
  - (c) each holiday granted to the noncustodial parent in accordance with the holiday schedule described in Subsection (12); and
  - (d) extended parent-time with the minor child when school is not in session for summer break in accordance with Subsection (3).
- (3)
  - (a) For extended parent-time with the minor child under Subsection (2)(d) and at the election of the noncustodial parent, the noncustodial parent is entitled up to four weeks of parent-time with the minor child, which may be consecutive, when school is not in session for summer break.
  - (b) For the four weeks of extended parent-time for a noncustodial parent under Subsection (3)(a):
    - (i) two weeks, which may be consecutive, shall be uninterrupted parent-time for the noncustodial parent; and

- (ii) two weeks, which may be consecutive, may be interrupted by the custodial parent for a weekday visit on the same day on which the noncustodial parent is granted weekday day parent-time.
  - (c) A custodial parent is entitled to uninterrupted parent-time with the minor child for two weeks, which may be consecutive, when school is not in session for summer break.
- (4)
- (a) Each parent shall provide notification to the other parent of the parent's plans for the exercise of extended parent-time for summer break under Subsection (3).
  - (b) For the notification requirement under Subsection (4)(a):
    - (i) in odd-numbered years:
      - (A) the noncustodial parent shall provide notice to the custodial parent by May 1; and
      - (B) the custodial parent shall provide notice to the noncustodial parent by May 15; and
    - (ii) in even-numbered years:
      - (A) the custodial parent shall provide notice to the noncustodial parent by May 1; and
      - (B) the noncustodial parent shall provide notice to the custodial parent by May 15.
  - (c)
    - (i) If a parent fails to provide a notification within the time periods described in Subsection (4)(b), the complying parent may determine the schedule for summer break for the noncomplying parent.
    - (ii) If both parents fail to provide notice within the time periods described in Subsection (4)(b), the first parent to provide notice may determine the schedule for summer break for the other parent.
  - (d) If a custodial parent intends to interrupt a noncustodial parent's parent-time under Subsection (3)(b)(ii), the custodial parent shall provide notification to the noncustodial parent of the intent to interrupt parent-time within 10 days after the day on which the custodial parent receives notification of the noncustodial parent's plans for the exercise of interrupted extended parent-time.
- (5)
- (a) An election should be made by the noncustodial parent at the time of entry of the divorce decree or court order, except that the election may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the minor child's schedule.
  - (b) An election by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order.
- (6)
- (a) Changes may not be made to the parent-time schedule under this section, except that if a conflict arises in the parent-time schedule, the following order of precedence shall be applied when determining which parent is entitled to parent-time:
    - (i) the holiday schedule for Mother's Day or Father's Day under Subsection (12);
    - (ii) the holiday schedule for the minor child's birthday, unless a parent is exercising uninterrupted extended parent-time under Subsection (3) and takes the minor child away from that parent's residence during the uninterrupted extended parent-time;
    - (iii) the holiday schedule for any holiday under Subsection (12) that is not Father's Day, Mother's Day, or the minor child's birthday;
    - (iv) extended parent-time under Subsection (3); and
    - (v) the schedule for weekday or weekend parent-time.
  - (b) A parent exercising parent-time for the minor child's birthday may bring other siblings along for the minor child's birthday.

- (7) A stepparent, grandparent, or other responsible adult designated by the noncustodial parent, may pick up the minor child for parent-time if the custodial parent is aware of the identity of the individual and the noncustodial parent will be with the minor child by 7 p.m.
- (8) If a holiday falls on a regularly scheduled school day, the parent exercising parent-time shall be responsible for the minor child's attendance at school for that school day.
- (9) If there is more than one minor child and the minor children's school schedules vary for purpose of a holiday, at the option of the parent exercising the holiday or the parent's half of the holiday, the minor children may remain together for the holiday period beginning the first evening that all minor children's schools are dismissed for the holiday and ending the evening before any minor child returns to school.
- (10)
  - (a) Telephone contact shall be at reasonable hours and for a reasonable duration.
  - (b)
    - (i) Virtual parent-time, if the equipment is reasonably available and the parents reside at least 100 miles apart, shall be at reasonable hours and for reasonable duration.
    - (ii) If the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:
      - (A) the best interests of the minor child;
      - (B) each parent's ability to handle any additional expenses for virtual parent-time; and
      - (C) any other factors the court considers material.
    - (c) Virtual parent-time supplements, but does not replace, in-person parent-time.
- (11) If there is a minor child five to 18 years old and a minor child under five years old and both minor children are the children of the parties, the parents and the court should consider an upward deviation for parent-time with all the minor children so that parent-time is uniform based on a schedule under this section.
- (12) The following table is the holiday schedule for parent-time under this section.

Holiday	Holiday Time Period	Years Noncustodial Parent is Granted Holiday	Years Custodial Parent is Granted Holiday
Dr. Martin Luther King Jr. Day	(1) Holiday begins Friday at:(a) 9 a.m. if school is not in session and the parent can be with the minor child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on Dr. Martin Luther King Jr. Day.	Odd years	Even years
President's Day	(1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the minor child;	Even years	Odd years

	(b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on the day before school resumes.		
Spring Break	(1) Holiday begins at 6 p.m. on the day that school dismisses for spring break. (2) Holiday ends at 7 p.m. on the day before school resumes.	Odd years	Even years
Memorial Day	(1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the minor child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on Memorial Day.	Even years	Odd years
Mother's Day	(1) Holiday begins on Mother's Day at 9 a.m. (2) Holiday ends on Mother's Day at 7 p.m.	All years if noncustodial parent is the mother or other parent granted the holiday in the order.	All years if custodial parent is the mother or other parent granted the holiday in the order.
Father's Day	(1) Holiday begins on Father's Day at 9 a.m. (2) Holiday ends on Father's Day at 7 p.m.	All years if noncustodial parent is the father or other parent granted the holiday in the order.	All years if custodial parent is the father or other parent granted the holiday in the order.
Juneteenth National Freedom Day	(1) Holiday begins at: (a) 6 p.m. on the day before Juneteenth National Freedom Day if the day before Juneteenth National Freedom Day is not Father's Day; or (b) 9 a.m. on Juneteenth National Freedom Day if the day before Juneteenth National Freedom Day is Father's Day.	Even years	Odd years

	(2) Holiday ends at 6 p.m. on the day following Juneteenth National Freedom Day.		
Independence Day	(1) Holiday begins on July 3rd at 6 p.m. (2) Holiday ends on July 5th at 6 p.m.	Odd years	Even years
Pioneer Day	(1) Holiday begins on July 23rd at 6 p.m. (2) Holiday ends on July 25th at 6 p.m.	Even years	Odd years
Labor Day	(1) Holiday begins on Friday at: (a) 9 a.m. if school is not in session and the parent can be with the minor child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on Labor Day.	Odd years	Even years
Columbus Day	(1) Holiday begins at 6 p.m. on the day before Columbus Day. (2) Holiday ends at 7 p.m. on Columbus Day.	Even years	Odd years
Fall Break	(1) Holiday begins at 6 p.m. on the day school is dismissed for fall break. (2) Holiday ends at 7 p.m. on the day before school resumes.	Odd years	Even years
Halloween	(1) Holiday begins on October 31st or the day that Halloween is traditionally celebrated in the local community: (a) at the time that school is dismissed; or (b) at 4 p.m. if there is no school. (2) Holiday ends at 9 p.m. on the same day the holiday begins.	Even years	Odd years
Veterans Day	(1) Holiday begins at 6 p.m. on the day before Veterans Day. (2) Holiday ends at 7 p.m. on Veterans Day.	Odd years	Even years

Thanksgiving	(1) Holiday begins on Wednesday at: (a) 6 p.m.; or (b) the time school is regularly dismissed for Thanksgiving at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on the day before school resumes.	Even years	Odd years
Winter Break (First Half)	(1) Holiday begins at: (a) 6 p.m. on the day on that school dismisses for winter break; or (b) the time school is regularly dismissed on the day that school dismisses for winter break at the election of the parent granted the holiday. (2) Holiday ends on December 27th at 7 p.m.	Odd years	Even years
Winter Break (Second Half)	(1) Holiday begins on December 27th at 7 p.m. (2) Holiday ends at 7 p.m. on the day before school resumes.	Even years	Odd years
Day of Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Even years	Odd years
Day Before or After Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Odd years	Even years

Renumbered and Amended by Chapter 366, 2024 General Session

**Effective 9/1/2024**

**81-9-303 Optional schedule for parent-time for a minor child five to 18 years old.**

- (1)
- (a) The optional parent-time schedule in this section applies to a minor child who is five to 18 years old.
  - (b) For purposes of calculating child support, the optional parent-time schedule in this section is 145 overnights.
  - (c) Any impact on child support shall be consistent with joint physical custody.
- (2) The parents and the court may consider the increased parent-time schedule in this section as a minimum parent-time schedule when the parties agree or the noncustodial parent can demonstrate:
- (a) the noncustodial parent has been actively involved in the minor child's life;
  - (b) the parties can communicate effectively regarding the minor child or the noncustodial parent has a plan to accomplish effective communications regarding the minor child;

- (c) the noncustodial parent has the ability to facilitate the increased parent-time;
  - (d) the increased parent-time would be in the best interest of the minor child; and
  - (e) any other factor the court considers relevant.
- (3) In determining whether a noncustodial parent has been actively involved in the minor child's life, the court shall consider:
- (a) demonstrated responsibility in caring for the minor child;
  - (b) involvement in childcare;
  - (c) presence or volunteer efforts in the minor child's school and at extracurricular activities;
  - (d) assistance with the minor child's homework;
  - (e) involvement in preparation of meals, bath time, and bedtime for the minor child;
  - (f) bonding with the minor child; and
  - (g) any other factor the court considers relevant.
- (4) In determining whether a noncustodial parent has the ability to facilitate the increased parent-time, the court shall consider:
- (a) the geographic distance between the residences of the parents and the distance between the parents' residences and the minor child's school;
  - (b) the noncustodial parent's ability to assist with after school care;
  - (c) the health of the minor child and the noncustodial parent in accordance with Subsection 81-9-204(5);
  - (d) flexibility of employment or another schedule of the noncustodial parent;
  - (e) ability to provide appropriate playtime with the minor child;
  - (f) history and ability of the noncustodial parent to implement a flexible schedule for the minor child;
  - (g) physical facilities of the noncustodial parent's residence; and
  - (h) any other factor the court considers relevant.
- (5) If the parties agree or the court enters an order for the optional parent-time schedule under this section, a parenting plan in compliance with Section 81-9-203 shall be filed with any order incorporating the optional parent-time schedule described in Subsection (6).
- (6) The following schedule is considered the optional parent-time to which the noncustodial parent is entitled to the minor child:
- (a)
    - (i) one weekday evening to be specified by the noncustodial parent or the court or Wednesday evening if not specified, beginning at 5:30 p.m. and ending the following day upon delivering the minor child to school or at 8 a.m. if there is no school; or
    - (ii) at the election of the noncustodial parent, one weekday specified by the noncustodial parent or the court:
      - (A) beginning at the time the minor child's school is regularly dismissed until the following day upon delivering the minor child to school or at 8 a.m. if there is no school; or
      - (B) if there is no school, the noncustodial parent is available to be with the minor child, and in accommodation with the custodial parent's work schedule, beginning at 8 a.m. and ending on the following day upon delivering the minor child to school or at 8 a.m. if there is no school;
  - (b)
    - (i) beginning the first weekend after the entry of the decree, alternating weekends beginning at 6 p.m. on Friday and ending on Monday upon delivering the minor child to school or at 8 a.m. if there is no school; or
    - (ii) at the election of the noncustodial parent, beginning the first weekend after the entry of the decree, alternating weekends:

- (A) beginning at the time the minor child's school is regularly dismissed on Friday and ending on Monday upon delivering the minor child to school or at 8 a.m. if there is no school; or
  - (B) if there is no school, the noncustodial parent is available to be with the minor child, and in accommodation with the custodial parent's work schedule, beginning on Friday at 9 a.m. and ending on Monday upon delivering the minor child to school or at 8 a.m. if there is no school;
  - (c) each holiday granted to the noncustodial parent in accordance with the holiday schedule described in Subsection (15); and
  - (d) extended parent-time with the minor child when school is not in session for summer break in accordance with Subsection (7).
- (7)
- (a) For extended parent-time with the minor child under Subsection (6)(d) and at the election of the noncustodial parent, the noncustodial parent is entitled up to four weeks of parent-time with the minor child, which may be consecutive, when school is not in session for summer break.
  - (b) For the four weeks of extended parent-time for a noncustodial parent under Subsection (7)(a):
    - (i) two weeks, which may be consecutive, shall be uninterrupted parent-time for the noncustodial parent; and
    - (ii) two weeks, which may be consecutive, may be interrupted by the custodial parent for a weekday visit on the same day on which the noncustodial parent is granted weekday day parent-time.
  - (c) A custodial parent is entitled to uninterrupted parent-time with the minor child for two weeks, which may be consecutive, when school is not in session for summer break.
- (8)
- (a) Each parent shall provide notification to the other parent of the parent's plans for the exercise of parent-time for summer break under Subsection (7).
  - (b) For the notification requirement under Subsection (8)(a):
    - (i) in odd-numbered years:
      - (A) the noncustodial parent shall provide notice to the custodial parent by May 1; and
      - (B) the custodial parent shall provide notice to the noncustodial parent by May 15; and
    - (ii) in even-numbered years:
      - (A) the custodial parent shall provide notice to the noncustodial parent by May 1; and
      - (B) the noncustodial parent shall provide notice to the custodial parent by May 15.
  - (c)
    - (i) If a parent fails to provide a notification within the time periods described in Subsection (8)(b), the complying parent may determine the schedule for summer break for the noncomplying parent.
    - (ii) If both parents fail to provide notice within the time periods described in Subsection (8)(b), the first parent to provide notice may determine the schedule for summer break for the other parent.
  - (d) If a custodial parent intends to interrupt a noncustodial parent's parent-time under Subsection (7)(b)(ii), the custodial parent shall provide notification to the noncustodial parent of the intent to interrupt parent-time within 10 days after the day on which the custodial parent receives notification of the noncustodial parent's plans for the exercise of interrupted extended parent-time.
- (9)

- (a) An election should be made by the noncustodial parent at the time of entry of the divorce decree or court order, except that the election may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the minor child's schedule.
  - (b) An election by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order.
- (10)
- (a) Changes may not be made to the parent-time schedule under this section, except that if a conflict arises in the parent-time schedule, the following order of precedence shall be applied when determining which parent is entitled to parent-time:
    - (i) the holiday schedule for Mother's Day or Father's Day under Subsection (15);
    - (ii) the holiday schedule for the minor child's birthday, unless a parent is exercising uninterrupted extended parent-time under Subsection (7) and takes the minor child away from that parent's residence during the uninterrupted extended parent-time;
    - (iii) the holiday schedule for any holiday under Subsection (15) that is not Father's Day, Mother's Day, or the minor child's birthday;
    - (iv) extended parent-time under Subsection (7); and
    - (v) the schedule for weekday or weekend parent-time.
  - (b) A parent exercising parent-time for the minor child's birthday may bring other siblings along for the minor child's birthday.
- (11) A stepparent, grandparent, or other responsible adult designated by the noncustodial parent, may pick up the minor child for parent-time if the custodial parent is aware of the identity of the individual and the noncustodial parent will be with the minor child by 7 p.m.
- (12) If a holiday falls on a regularly scheduled school day, the parent exercising parent-time shall be responsible for the minor child's attendance at school for that school day.
- (13) If there is more than one minor child and the minor children's school schedules vary for purpose of a holiday, at the option of the parent exercising the holiday or the parent's half of the holiday, the minor children may remain together for the holiday period beginning the first evening that all minor children's schools are dismissed for the holiday and ending the evening before any minor child returns to school.
- (14) If there is a minor child five to 18 years old and a minor child under five years old and both minor children are the children of the parties, the parents and the court should consider an upward deviation for parent-time with all the minor children so that parent-time is uniform based on a schedule under this section.
- (15) The following table is the holiday schedule for parent-time under this section.

Holiday	Holiday Time Period	Years Noncustodial Parent is Granted Holiday	Years Custodial Parent is Granted Holiday
Dr. Martin Luther King Jr. Day	(1) Holiday begins Friday at:(a) 9 a.m. if school is not in session and the parent can be with the minor child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday.	Odd years	Even years

	<p>(2) Holiday ends:</p> <p>(a) upon delivering of the minor child to school on the day following Dr. Martin Luther King Jr. Day; or</p> <p>(b) at 8 a.m. on the day following Dr. Martin Luther King Jr. Day if there is no school.</p>		
President's Day	<p>(1) Holiday begins Friday at:</p> <p>(a) 9 a.m. if school is not in session and the parent can be with the minor child;</p> <p>(b) the time that school is regularly dismissed; or</p> <p>(c) 6 p.m. at the election of the parent granted the holiday.</p> <p>(2) Holiday ends:</p> <p>(a) upon delivering the minor child to school on the day following President's Day; or</p> <p>(b) at 8 a.m. on the day following President's Day if there is no school.</p>	Even years	Odd years
Spring Break	<p>(1) Holiday begins at 6 p.m. on the day that school dismisses for spring break.</p> <p>(2) Holiday ends:</p> <p>(a) upon delivering the minor child to school on the day following the end of spring break; or</p> <p>(b) at 8 a.m. on the day following the end of spring break if there is no school.</p>	Odd years	Even years
Memorial Day	<p>(1) Holiday begins Friday at:</p> <p>(a) 9 a.m. if school is not in session and the parent can be with the minor child;</p> <p>(b) the time that school is regularly dismissed; or</p> <p>(c) 6 p.m. at the election of the parent granted the holiday.</p> <p>(2) Holiday ends:</p> <p>(a) upon delivering the minor child to school on the day following Memorial Day; or</p> <p>(b) at 8 a.m. on the day following Memorial Day if there is no school.</p>	Even years	Odd years

Mother's Day	(1) Holiday begins on Mother's Day at 9 a.m. (2) Holiday ends on Mother's Day at 7 p.m.	All years if noncustodial parent is the mother or other parent designated in the order.	All years if custodial parent is the mother or other parent designated in the order.
Father's Day	(1) Holiday begins on Father's Day at 9 a.m. (2) Holiday ends on Father's Day at 7 p.m.	All years if noncustodial parent is the father or other parent designated in the order.	All years if custodial parent is the father or other parent designated in the order.
Juneteenth National Freedom Day	(1) Holiday begins at: (a) 6 p.m. on the day before Juneteenth National Freedom Day if the day before Juneteenth National Freedom Day is not Father's Day; or (b) 9 a.m. on Juneteenth National Freedom Day if the day before Juneteenth National Freedom Day is Father's Day. (2) Holiday ends at 6 p.m. on the day following Juneteenth National Freedom Day.	Even years	Odd years
Independence Day	(1) Holiday begins on July 3rd at 6 p.m. (2) Holiday ends on July 5th at 6 p.m.	Odd years	Even years
Pioneer Day	(1) Holiday begins on July 23rd at 6 p.m. (2) Holiday ends on July 25th at 6 p.m.	Even years	Odd years
Labor Day	(1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the minor child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends:	Odd years	Even years

	(a) upon delivering the minor child to school on the day following Labor Day; or (b) at 8 a.m. on the day following Labor Day if there is no school.		
Columbus Day	(1) Holiday begins at 6 p.m. on the day before Columbus Day. (2) Holiday ends at 7 p.m. on Columbus Day.	Even years	Odd years
Fall Break	(1) Holiday begins at 6 p.m. on the day school is dismissed for fall break. (2) Holiday ends: (a) upon delivering the minor child to school on the day following the end of fall break; or (b) at 8 a.m. on the day following the end of fall break if there is no school.	Odd years	Even years
Halloween	(1) Holiday begins on October 31st or the day that Halloween is traditionally celebrated in the local community: (a) at the time that school is dismissed; or (b) at 4 p.m. if there is no school. (2) Holiday ends at 9 p.m. on the same day the holiday begins.	Even years	Odd years
Veterans Day	(1) Holiday begins at 6 p.m. on the day before Veterans Day. (2) Holiday ends at 7 p.m. on Veterans Day.	Odd years	Even years
Thanksgiving	(1) Holiday begins on Wednesday at: (a) 6 p.m.; or (b) the time school is regularly dismissed for Thanksgiving at the election of the parent granted the holiday. (2) Holiday ends: (a) upon delivering the minor child to school on the Monday following Thanksgiving; or (b) at 8 a.m. on the Monday following Thanksgiving if there is no school.	Even years	Odd years

Winter Break (First Half)	(1) Holiday begins at: (a) 6 p.m. on the day that school dismisses for winter break; or (b) the time school is regularly dismissed on the day that school dismisses for winter break at the election of the parent granted the holiday. (2) Holiday ends on December 27th at 7 p.m.	Odd years	Even years
Winter Break (Second Half)	(1) Holiday begins on December 27th at 7 p.m. (2) Holiday ends upon delivering the minor child to school on the day that school resumes after the winter break.	Even years	Odd years
Day of Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Even years	Odd years
Day Before or After Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Odd years	Even years

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**81-9-304 Minimum schedule for parent-time for a minor child under five years old.**

- (1) The parent-time schedule in this section applies to a minor child who is younger than five years old.
- (2) If the parties do not agree to a parent-time schedule, the schedules in Subsections (3) through (8) are considered the minimum parent-time to which the noncustodial parent is entitled to the minor child.
- (3) For a minor child who is younger than five months old, the noncustodial parent is entitled to:
  - (a) three two-hour visits every week; and
  - (b) two hours for each holiday granted to the noncustodial parent in the holiday schedule under Subsection (15).
- (4) For a minor child who is at least five months old but younger than nine months old, the noncustodial parent is entitled to:
  - (a) three three-hour visits every week; and
  - (b) two hours for each holiday granted to the noncustodial parent in the holiday schedule under Subsection (15).
- (5) For a minor child who is at least nine months old but younger than 12 months old, the noncustodial parent is entitled to:
  - (a) one eight-hour visit every week;
  - (b) one three-hour visit every week; and

- (c) eight hours for each holiday granted to the noncustodial parent in accordance with the holiday schedule under Subsection (15).
- (6) For a minor child who is at least 12 months old but younger than 18 months old, the noncustodial parent is entitled to:
  - (a) one three-hour visit every week;
  - (b) one eight-hour visit on alternating weekends to be specified by the noncustodial parent or court;
  - (c) an overnight visit on opposite weekends from Subsection (6)(b) beginning at 6 p.m. on Friday and ending at noon on Saturday; and
  - (d) eight hours for each holiday granted to the noncustodial parent in the holiday schedule under Subsection (15).
- (7) For a minor child who is at least 18 months old but younger than three years old, the noncustodial parent is entitled to:
  - (a) one weekday evening to be specified by the noncustodial parent or the court:
    - (i) beginning at 5:30 p.m. and ending at 8:30 p.m.; or
    - (ii) if the minor child is being cared for during the day outside the minor child's regular place of residence and with advance notice to the custodial parent, beginning at the time that the minor child is picked up from the caregiver and ending at 8:30 p.m.;
  - (b) beginning on the first weekend after the entry of the decree, alternating weekends beginning at 6 p.m. on Friday and ending at 7 p.m. on Sunday;
  - (c) each holiday granted to the noncustodial parent in accordance with the holiday schedule described in Subsection (15); and
  - (d) extended parent-time for two one-week periods, separated by at least four weeks, at the option of the noncustodial parent, as follows:
    - (i) one week of uninterrupted parent-time for the noncustodial parent; and
    - (ii) one week of interrupted parent-time where the custodial parent may have an equal amount of weekday parent-time as the noncustodial parent on the same day on which the noncustodial parent is granted weekday parent-time under Subsection (7)(a).
- (8) For a minor child who is at least three years old but younger than five years old, the noncustodial parent is entitled to:
  - (a) one weekday evening to be specified by the noncustodial parent or the court:
    - (i) beginning at 5:30 p.m. and ending at 8:30 p.m.; or
    - (ii) if the minor child is being cared for during the day outside the minor child's regular place of residence and with advance notice to the custodial parent, beginning at the time that the minor child is picked up from the caregiver and ending at 8:30 p.m.;
  - (b) beginning on the first weekend after the entry of the decree, alternating weekends beginning at 6 p.m. on Friday and ending at 7 p.m. on Sunday;
  - (c) each holiday granted to the noncustodial parent in accordance with the holiday schedule described in Subsection (15); and
  - (d) extended parent-time for two two-week periods, separated by at least four weeks, at the option of the noncustodial parent, as follows:
    - (i) two weeks of uninterrupted parent-time, which may be consecutive, for the noncustodial parent; and
    - (ii) two weeks of interrupted parent-time, which may be consecutive, where the custodial parent may have an equal amount of weekday parent-time as the noncustodial parent on the same day on which the noncustodial parent is granted weekday parent-time under Subsection (8)(a).

- (9) For a minor child who is at least 18 months old but younger than five years old, the custodial parent is entitled to one week of uninterrupted extended parent-time.
- (10)
  - (a) For a minor child who is nine months old or older, the noncustodial parent shall have at least two times a week:
    - (i) brief telephone contact at reasonable hours and for a reasonable duration; and
    - (ii) virtual parent-time, if the equipment is reasonably available and the parents reside at least 100 miles apart, at reasonable hours and for reasonable duration.
  - (b) If the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:
    - (i) the best interests of the minor child;
    - (ii) each parent's ability to handle any additional expenses for virtual parent-time; and
    - (iii) any other factors the court considers material.
  - (c) Virtual parent-time supplements, but does not replace, in-person parent-time.
- (11) For a minor child who is younger than nine months old, unless the parents agree otherwise, parent-time should take place in the home of the custodial parent, an established child-care setting, or other environment familiar to the minor child.
- (12)
  - (a) Changes may not be made to the parent-time schedule under this section, except that if a conflict arises in the parent-time schedule, the following order of precedence shall be applied when determining which parent is entitled to parent-time:
    - (i) the holiday schedule for Mother's Day or Father's Day under Subsection (15);
    - (ii) the holiday schedule for the minor child's birthday, unless a parent is exercising uninterrupted extended parent-time under Subsection (7)(d), (8)(d), or (9) and takes the minor child away from that parent's residence during the uninterrupted extended parent-time;
    - (iii) the holiday schedule for any holiday under Subsection (15) that is not Father's Day, Mother's Day, or the minor child's birthday;
    - (iv) extended parent-time under Subsection (7)(d), (8)(d), or (9); and
    - (v) the schedule for weekday or weekend parent-time.
  - (b) A parent exercising parent-time for the minor child's birthday may bring other siblings along for the minor child's birthday.
- (13) If a holiday falls on a regularly scheduled school day, the parent exercising parent-time shall be responsible for the minor child's attendance at school for that school day.
- (14) A parent shall notify the other parent at least 30 days in advance of the parent's plans for the exercise of extended parent-time under Subsection (7)(d), (8)(d), or (9).
- (15) The following table is the holiday schedule for parent-time under this section.

Holiday	Holiday Time Period	Years Noncustodial Parent is Granted Holiday	Years Custodial Parent is Granted Holiday
Dr. Martin Luther King Jr. Day	(1) Holiday begins on Friday at:(a) 9 a.m. if the parent is available to be with the minor child; or	Odd years	Even years

	(b) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on Dr. Martin Luther King Jr. Day.		
President's Day	(1) Holiday begins on Friday at: (a) 9 a.m. if the parent is available to be with the minor child; or (b) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on President's Day.	Even years	Odd years
Spring Break	(1) Holiday begins at 6 p.m. on the day that school dismisses for spring break. (2) Holiday ends at 7 p.m. on the day before school resumes.	Odd years	Even years
Memorial Day	(1) Holiday begins on Friday at: (a) 9 a.m. if the parent is available to be with the minor child; or (b) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on Memorial Day.	Even years	Odd years
Mother's Day	(1) Holiday begins on Mother's Day at 9 a.m. (2) Holiday ends on Mother's Day at 7 p.m.	All years if noncustodial parent is the mother or other parent designated in the order.	All years if custodial parent is the mother or other parent designated in the order.
Father's Day	(1) Holiday begins on Father's Day at 9 a.m. (2) Holiday ends on Father's Day at 7 p.m.	All years if noncustodial parent is the father or other parent designated in the order.	All years if custodial parent is the father or other parent designated in the order.
Juneteenth National Freedom Day	(1) Holiday begins at: (a) 6 p.m. on the day before Juneteenth National Freedom Day if the day before Juneteenth National Freedom Day is not Father's Day; or (b) 9 a.m. on Juneteenth National Freedom Day if the day before	Even years	Odd years

	<p>Juneteenth National Freedom Day is Father's Day.</p> <p>(2) Holiday ends at 6 p.m. on the day following Juneteenth National Freedom Day.</p>		
Independence Day	<p>(1) Holiday begins on July 3rd at 6 p.m.</p> <p>(2) Holiday ends on July 5th at 6 p.m.</p>	Odd years	Even years
Pioneer Day	<p>(1) Holiday begins on July 23rd at 6 p.m.</p> <p>(2) Holiday ends on July 25th at 6 p.m.</p>	Even years	Odd years
Labor Day	<p>(1) Holiday begins on Friday at:</p> <p>(a) 9 a.m. if the parent is available to be with the minor child; or</p> <p>(b) 6 p.m. at the election of the parent granted the holiday.</p> <p>(2) Holiday ends at 7 p.m. on Labor Day.</p>	Odd years	Even years
Columbus Day	<p>(1) Holiday begins at 6 p.m. on the day before Columbus Day.</p> <p>(2) Holiday ends at 7 p.m. on Columbus Day.</p>	Even years	Odd years
Fall Break	<p>(1) Holiday begins at 6 p.m. on the day school is dismissed for fall break.</p> <p>(2) Holiday ends at 7 p.m. on the day before school resumes.</p>	Odd years	Even years
Halloween	<p>(1) Holiday begins on October 31st or the day that Halloween is traditionally celebrated in the local community:</p> <p>(a) at the time that school is dismissed; or</p> <p>(b) at 4 p.m. if there is no school.</p> <p>(2) Holiday ends at 9 p.m. on the same day the holiday begins.</p>	Even years	Odd years
Veterans Day	<p>(1) Holiday begins at 6 p.m. on the day before Veterans Day.</p> <p>(2) Holiday ends at 7 p.m. on Veterans Day.</p>	Odd years	Even years

Thanksgiving	(1) Holiday begins at 6 p.m. on the day that school dismisses for Thanksgiving. (2) Holiday ends at 7 p.m. on day before school resumes.	Even years	Odd years
Winter Break (First Half)	(1) Holiday begins at 6 p.m. on the day on that school dismisses for winter break. (2) Holiday ends on December 27th at 7 p.m.	Odd years	Even years
Winter Break (Second Half)	(1) Holiday begins on December 27th at 7 p.m. (2) Holiday ends at 7 p.m. on the day before school resumes.	Even years	Odd years
Day of Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Even years	Odd years
Day Before or After Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Odd years	Even years

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**81-9-305 Equal parent-time schedule.**

- (1)
- (a) A court may order the equal parent-time schedule described in this section if the court determines that:
- (i) the equal parent-time schedule is in the minor child's best interest;
  - (ii) each parent has been actively involved in the minor child's life; and
  - (iii) each parent can effectively facilitate the equal parent-time schedule.
- (b) To determine whether each parent has been actively involved in the minor child's life, the court shall consider:
- (i) each parent's demonstrated responsibility in caring for the minor child;
  - (ii) each parent's involvement in child care;
  - (iii) each parent's presence or volunteer efforts in the minor child's school and at extracurricular activities;
  - (iv) each parent's assistance with the minor child's homework;
  - (v) each parent's involvement in preparation of meals, bath time, and bedtime for the minor child;
  - (vi) each parent's bond with the minor child; and
  - (vii) any other factor the court considers relevant.
- (c) To determine whether each parent can effectively facilitate the equal parent-time schedule, the court shall consider:

- (i) the geographic distance between the residence of each parent and the distance between each residence and the minor child's school;
  - (ii) each parent's ability to assist with the minor child's after school care;
  - (iii) the health of the minor child and each parent, consistent with Subsection 81-9-204(5);
  - (iv) the flexibility of each parent's employment or other schedule;
  - (v) each parent's ability to provide appropriate playtime with the minor child;
  - (vi) each parent's history and ability to implement a flexible schedule for the minor child;
  - (vii) physical facilities of each parent's residence; and
  - (viii) any other factor the court considers relevant.
- (2)
- (a) If the parties agree to or the court orders the equal parent-time schedule described in this section, a parenting plan in accordance with Section 81-9-203 shall be filed with an order incorporating the equal parent-time schedule.
  - (b) An order under this section shall result in 182 overnights per year for one parent, and 183 overnights per year for the other parent.
  - (c) Under the equal parent-time schedule, a parent is not considered to have the minor child the majority of the time for the purposes of Subsection 81-9-203(11)(e)(ii) or 81-9-205(10).
  - (d) Child support for the equal parent-time schedule shall be consistent with Section 81-6-206.
  - (e) A court shall determine which parent receives 182 overnights and which parent receives 183 overnights for parent-time.
- (3)
- (a) Unless the parents agree otherwise and subject to a holiday, the equal parent-time schedule is as follows:
    - (i) one parent shall exercise parent-time starting Monday morning and ending Wednesday morning;
    - (ii) the other parent shall exercise parent-time starting Wednesday morning and ending Friday morning; and
    - (iii) each parent shall alternate weeks exercising parent-time starting Friday morning and ending Monday morning.
  - (b) The child exchange shall take place:
    - (i) at the time the minor child's school begins; or
    - (ii) if school is not in session, at 9 a.m.
- (4)
- (a) The parents may create a holiday schedule.
  - (b) If the parents are unable to create a holiday schedule under Subsection (4)(a), the court shall:
    - (i) order the holiday schedule described in Section 81-9-302 or 81-9-304; and
    - (ii) designate which parent shall exercise parent-time for each holiday described in Section 81-9-302 or 81-9-304.
- (5)
- (a) Each year, a parent may designate two consecutive weeks to exercise uninterrupted parent-time during the summer when school is not in session.
  - (b)
    - (i) One parent may make a designation at any time and the other parent may make a designation after May 1.
    - (ii) A parent shall make a designation at least 30 days before the day on which the designated two-week period begins.

- (c) The court shall designate which parent may make the earlier designation described in Subsection (5)(b)(i) for an even numbered year with the other parent allowed to make the earlier designation in an odd numbered year.
- (d) The two consecutive weeks described in Subsection (5)(a) take precedence over all holidays except for Mother's Day and Father's Day.

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## **Part 4 Custody and Visitation by Individual Other than a Parent**

**Effective 9/1/2024**

### **81-9-401 Definitions for part.**

As used in this part:

- (1) "District court" means the district court with proper jurisdiction over the minor child.
- (2) "Grandchild" means the minor child with respect to whom a grandparent is seeking visitation rights under this part.
- (3) "Grandparent" means an individual whose child, either by blood, marriage, or adoption, is the parent of the grandchild.
- (4) "Individual other than a parent" means an individual who is not a parent and is related to the minor child by marriage or blood, including:
  - (a) siblings;
  - (b) aunts;
  - (c) uncles;
  - (d) grandparents;
  - (e) current or former step-parents; or
  - (f) any of the individuals described in Subsections (4)(a) through (d) in a step relationship to the minor child.

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### **81-9-402 Custody and visitation for individuals other than a parent -- Venue.**

- (1)
  - (a) In accordance with Section 80-2a-201, it is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of a minor child of the parent.
  - (b) There is a rebuttable presumption that a parent's decisions are in the minor child's best interests.
- (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or visitation rights to an individual other than a parent who, by clear and convincing evidence, establishes that:
  - (a) the individual has intentionally assumed the role and obligations of a parent;
  - (b) the individual and the minor child have formed a substantial emotional bond and created a parent-child type relationship;

- (c) the individual substantially contributed emotionally or financially to the minor child's well being;
- (d) the assumption of the parental role is not the result of a financially compensated surrogate care arrangement;
- (e) the continuation of the relationship between the individual and the minor child is in the minor child's best interest;
- (f) the loss or cessation of the relationship between the individual and the minor child would substantially harm the minor child; and
- (g) the parent:
  - (i) is absent; or
  - (ii) is found by a court to have abused or neglected the minor child.
- (3) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, or Section 78A-6-350, an individual shall file a verified petition, or a petition supported by an affidavit, for custodial or visitation rights to the minor child in the juvenile court if a matter is pending in the juvenile court, or in the district court in the county where the minor child:
  - (a) currently resides; or
  - (b) lived with a parent or an individual other than a parent who acted as a parent within six months before the commencement of the action.
- (4) An individual may file a petition under this section in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court involving custody of or visitation with a minor child.
- (5) The petition shall include detailed facts supporting the petitioner's right to file the petition including the criteria set forth in Subsection (2) and residency information described in Section 78B-13-209.
- (6) An individual may not file a petition under this section against a parent who is actively serving outside the state in any branch of the military.
- (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the Utah Rules of Civil Procedure on all of the following:
  - (a) the minor child's biological, adopted, presumed, declarant, and adjudicated parents;
  - (b) any individual who has court-ordered custody or visitation rights;
  - (c) the minor child's guardian;
  - (d) the guardian ad litem, if one has been appointed;
  - (e) an individual or agency that has physical custody of the minor child or that claims to have custody or visitation rights; and
  - (f) any other individual or agency that has previously appeared in any action regarding custody of or visitation with the minor child.
- (8) The court may order a custody evaluation to be conducted in any proceeding brought under this section.
- (9) The court may enter temporary orders in a proceeding brought under this section pending the entry of final orders.
- (10) Except as provided in Subsection (11), a court may not grant custody of a minor child under this section to an individual:
  - (a) who is not the parent of the minor child; and
  - (b) who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony involving conduct that constitutes any of the following:
    - (i) child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114;
    - (ii) child abuse homicide, as described in Section 76-5-208;
    - (iii) child kidnapping, as described in Section 76-5-301.1;
    - (iv) human trafficking of a child, as described in Section 76-5-308.5;

- (v) sexual abuse of a minor, as described in Section 76-5-401.1;
- (vi) rape of a child, as described in Section 76-5-402.1;
- (vii) object rape of a child, as described in Section 76-5-402.3;
- (viii) sodomy on a child, as described in Section 76-5-403.1;
- (ix) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual abuse of a child, as described in Section 76-5-404.3;
- (x) sexual exploitation of a minor, as described in Section 76-5b-201;
- (xi) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1; or
- (xii) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).

## (11)

- (a) As used in this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).
- (b) An individual described in Subsection (10) may only be considered for custody of a minor child if the following criteria are met by clear and convincing evidence:
  - (i) the individual is a relative, as defined in Section 80-3-102, of the minor child;
  - (ii) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
  - (iii) during the 10 years before the day on which the individual files a petition with the court seeking custody the individual has not been convicted, plead guilty, or plead no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the minor child;
  - (iv) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
  - (v) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 80-1-102, or potential harm to the minor child currently or at any time in the future when considering all of the following:
    - (A) the minor child's age;
    - (B) the minor child's gender;
    - (C) the minor child's development;
    - (D) the nature and seriousness of the disqualifying offense;
    - (E) the preferences of a minor child who is 12 years old or older;
    - (F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and
    - (G) any other relevant information;
  - (vi) the individual can provide evidence of the following:
    - (A) the relationship with the minor child is of long duration;
    - (B) that an emotional bond exists with the minor child; and
    - (C) that custody by the individual who has committed the disqualifying offense ensures the best interests of the minor child are met;
  - (vii)
    - (A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the minor child and does not have a disqualifying offense; or
    - (B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and
  - (viii) that the continuation of the relationship between the individual with the disqualifying offense and the minor child could not be sufficiently maintained through any type of

visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

- (c) The individual with the disqualifying offense bears the burden of proof regarding why placement with that individual is in the best interest of the minor child over another responsible relative or equally situated individual who does not have a disqualifying offense.
  - (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:
    - (i) preference for custody is given to a relative who does not have a disqualifying offense; and
    - (ii) before the court may place custody with the individual who has the disqualifying offense over another responsible, willing, and able relative:
      - (A) an impartial custody evaluation shall be completed; and
      - (B) a guardian ad litem shall be assigned.
- (12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final decision on custody has not been made and to a case filed on or after March 25, 2017.

Renumbered and Amended by Chapter 366, 2024 General Session

**Effective 9/1/2024**

**81-9-403 Visitation rights of grandparents.**

- (1) In accordance with the provisions and requirements of this section:
  - (a) a grandparent has standing to bring an action requesting visitation in district court by petition; and
  - (b) a grandparent may file a petition for visitation rights in the juvenile court or district court where a divorce proceeding or other proceeding involving custody and visitation issues is pending.
- (2)
  - (a) In accordance with Section 80-2a-201, it is the public policy of this state that a parent retains the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of a minor child of the parent.
  - (b) A court shall presume that a parent's decision in regard to grandparent visitation is in the best interest of the parent's minor child.
- (3) A court may find the presumption in Subsection (2)(b) rebutted if the grandparent, by clear and convincing evidence, establishes that:
  - (a) the grandparent has filled the role of custodian or caregiver to the grandchild that:
    - (i) is in a manner akin to a parent; and
    - (ii) the loss of the relationship between the grandparent and the grandchild would cause substantial harm to the grandchild; or
  - (b) both parents are unfit or incompetent in a manner that causes potential harm to the grandchild.
- (4)
  - (a) If the court finds the presumption in Subsection (2)(b) is rebutted, the court may consider whether grandparent visitation is in the best interest of the grandchild.
  - (b) If the court considers whether grandparent visitation is in the best interest of the child, the court shall take into account the totality of the circumstances, including:
    - (i) the reasonableness of the parent's decision to deny grandparent visitation;
    - (ii) the age of the grandchild;
    - (iii) the death or unavailability of a parent; and
    - (iv) if the grandchild is 14 years old or older, the grandchild's desires regarding visitation after the court inquires of the grandchild.

- (5) If the court finds the presumption in Subsection (2)(b) is rebutted and grandparent visitation is in the best interest of the grandchild, the court may issue an order for grandparent visitation.
- (6) Notwithstanding Section 81-9-404, the adoption of a grandchild by the grandchild's stepparent does not diminish or alter visitation rights previously ordered under this section.
- (7) On the petition of a grandparent or the legal custodian of a grandchild the court may, after a hearing, modify an order regarding grandparent visitation if:
  - (a) the circumstances of the grandchild, the grandparent, or the custodian have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and
  - (b) the court determines that a modification is appropriate based upon the factors set forth in Subsections (3) and (4).
- (8) A grandparent may petition the court to remedy a parent's wrongful noncompliance with a visitation order.

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***Effective 9/1/2024***

**81-9-404 Exceptions to visitation by nonparent.**

This part may not be used to seek, obtain, maintain or continue custody of, or visitation with, a minor child who has been relinquished for adoption, or adopted in accordance with a court order.

Renumbered and Amended by Chapter 366, 2024 General Session