

CHILD CUSTODY AND VISITATION

AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Bryan D. Holladay

AN ACT RELATING TO THE JUDICIAL CODE; CREATING THE COURT-ORDERED EDUCATION COURSE ON VISITATION RIGHTS; REQUIRING A COURT TO PROVIDE THE BASIS FOR A CUSTODY DETERMINATION; PROVIDING SANCTIONS FOR SUBSTANTIAL OR CHRONIC NONCOMPLIANCE WITH VISITATION ORDERS; AMENDING THE CHILDREN'S LEGAL DEFENSE ACCOUNT TO PROVIDE FUNDING FOR IMPECUNIOUS PARTICIPANTS IN COURT-ORDERED MEDIATION OR EDUCATION COURSES; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

30-3-5, as last amended by Chapter 232, Laws of Utah 1997

30-3-10, as last amended by Chapter 43, Laws of Utah 1997

63-63a-8, as last amended by Chapters 134, 215, 235 and 365, Laws of Utah 1997

78-32-12.2, as enacted by Chapter 152, Laws of Utah 1993

REPEALS AND REENACTS:

78-32-12.1, as last amended by Chapter 152, Laws of Utah 1993

78-32-12.3, as enacted by Chapter 152, Laws of Utah 1993

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **30-3-5** is amended to read:

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and visitation -- Determination of alimony -- Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders

1 relating to the children, property, debts or obligations, and parties. The court shall include the
2 following in every decree of divorce:

3 (a) an order assigning responsibility for the payment of reasonable and necessary medical
4 and dental expenses of the dependent children;

5 (b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase
6 and maintenance of appropriate health, hospital, and dental care insurance for the dependent
7 children;

8 (c) pursuant to Section 15-4-6.5:

9 (i) an order specifying which party is responsible for the payment of joint debts,
10 obligations, or liabilities of the parties contracted or incurred during marriage;

11 (ii) an order requiring the parties to notify respective creditors or obligees, regarding the
12 court's division of debts, obligations, or liabilities and regarding the parties' separate, current
13 addresses; and

14 (iii) provisions for the enforcement of these orders; and

15 (d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery
16 Services.

17 (2) The court may include, in an order determining child support, an order assigning
18 financial responsibility for all or a portion of child care expenses incurred on behalf of the
19 dependent children, necessitated by the employment or training of the custodial parent. If the court
20 determines that the circumstances are appropriate and that the dependent children would be
21 adequately cared for, it may include an order allowing the noncustodial parent to provide child care
22 for the dependent children, necessitated by the employment or training of the custodial parent.

23 (3) The court has continuing jurisdiction to make subsequent changes or new orders for
24 the custody of the children and their support, maintenance, health, and dental care, and for
25 distribution of the property and obligations for debts as is reasonable and necessary.

26 (4) (a) In determining visitation rights of parents[;] or grandparents, [~~and other members~~
27 ~~of the immediate family;~~] the court shall consider the best interest of the child.

28 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
29 court may include in an order establishing a visitation schedule a provision, among other things,
30 authorizing any peace officer to enforce a court ordered visitation schedule entered under this
31 chapter.

1 (5) If a petition for modification of child custody or visitation provisions of a court order
2 is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees
3 expended by the prevailing party in that action, if the court determines that the petition was
4 without merit and not asserted or defended against in good faith.

5 (6) If a petition alleges substantial or chronic noncompliance with a visitation order by a
6 parent[, a] or grandparent~~[, or other member of the immediate family]~~ pursuant to Section
7 78-32-12.2 where a visitation right has been previously granted by the court, the court may award
8 to the prevailing party costs, including [actual] attorney fees and court costs incurred by the
9 prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

10 (7) (a) The court shall consider at least the following factors in determining alimony:

- 11 (i) the financial condition and needs of the recipient spouse;
12 (ii) the recipient's earning capacity or ability to produce income;
13 (iii) the ability of the payor spouse to provide support; and
14 (iv) the length of the marriage.

15 (b) The court may consider the fault of the parties in determining alimony.

16 (c) As a general rule, the court should look to the standard of living, existing at the time
17 of separation, in determining alimony in accordance with Subsection (7)(a). However, the court
18 shall consider all relevant facts and equitable principles and may, in its discretion, base alimony
19 on the standard of living that existed at the time of trial. In marriages of short duration, when no
20 children have been conceived or born during the marriage, the court may consider the standard of
21 living that existed at the time of the marriage.

22 (d) The court may, under appropriate circumstances, attempt to equalize the parties'
23 respective standards of living.

24 (e) When a marriage of long duration dissolves on the threshold of a major change in the
25 income of one of the spouses due to the collective efforts of both, that change shall be considered
26 in dividing the marital property and in determining the amount of alimony. If one spouse's earning
27 capacity has been greatly enhanced through the efforts of both spouses during the marriage, the
28 court may make a compensating adjustment in dividing the marital property and awarding
29 alimony.

30 (f) In determining alimony when a marriage of short duration dissolves, and no children
31 have been conceived or born during the marriage, the court may consider restoring each party to

1 the condition which existed at the time of the marriage.

2 (g) (i) The court has continuing jurisdiction to make substantive changes and new orders
3 regarding alimony based on a substantial material change in circumstances not foreseeable at the
4 time of the divorce.

5 (ii) The court may not modify alimony or issue a new order for alimony to address needs
6 of the recipient that did not exist at the time the decree was entered, unless the court finds
7 extenuating circumstances that justify that action.

8 (iii) In determining alimony, the income of any subsequent spouse of the payor may not
9 be considered, except as provided in this subsection.

10 (A) The court may consider the subsequent spouse's financial ability to share living
11 expenses.

12 (B) The court may consider the income of a subsequent spouse if the court finds that the
13 payor's improper conduct justifies that consideration.

14 (h) Alimony may not be ordered for a duration longer than the number of years that the
15 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating
16 circumstances that justify the payment of alimony for a longer period of time.

17 (8) Unless a decree of divorce specifically provides otherwise, any order of the court that
18 a party pay alimony to a former spouse automatically terminates upon the remarriage of that
19 former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of
20 alimony shall resume if the party paying alimony is made a party to the action of annulment and
21 his rights are determined.

22 (9) Any order of the court that a party pay alimony to a former spouse terminates upon
23 establishment by the party paying alimony that the former spouse is cohabitating with another
24 person.

25 Section 2. Section **30-3-10** is amended to read:

26 **30-3-10. Custody of children in case of separation or divorce -- Custody**
27 **consideration.**

28 (1) If a husband and wife having minor children are separated, or their marriage is declared
29 void or dissolved, the court shall make an order for the future care and custody of the minor
30 children as it considers appropriate. In determining custody, the court shall consider the best
31 interests of the child and the past conduct and demonstrated moral standards of each of the parties.

1 The court may inquire of the children and take into consideration the children's desires regarding
2 the future custody, but the expressed desires are not controlling and the court may determine the
3 children's custody otherwise.

4 (2) In awarding custody, the court shall consider, among other factors the court finds
5 relevant, which parent is most likely to act in the best interests of the child, including allowing the
6 child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

7 (3) If the court finds that one parent does not desire custody of the child, or has attempted
8 to permanently relinquish custody to a third party, it shall take that evidence into consideration in
9 determining whether to award custody to the other parent.

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

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

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

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

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

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

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

26 (5) The court shall enter findings as to the underlying reasons for its award of custody.

27 Section 3. Section **63-63a-8** is amended to read:

28 **63-63a-8. Children's Legal Defense Account.**

29 (1) There is created a restricted account within the General Fund known as the Children's
30 Legal Defense Account.

31 (2) The purpose of the Children's Legal Defense Account is to provide for programs that

1 protect and defend the rights, safety, and quality of life of children.

2 (3) The Legislature shall appropriate money from the account for the administrative and
3 related costs of the following programs:

4 (a) implementing the Mandatory Educational Course on Children's Needs for Divorcing
5 Parents relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7,
6 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child Custody
7 or Visitation as provided in Sections 30-3-15.3 and 30-3-18;

8 (b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2,
9 78-3a-318, 78-3a-912, 78-11-6, and 78-7-9; the training of guardian ad litem and volunteers as
10 provided in Section 78-3a-912; and termination of parental rights as provided in Sections
11 78-3a-118, 78-3a-119, 78-3a-903, and Title 78, Chapter 3a, Part 4, Termination of Parental Rights
12 Act. This account may not be used to supplant funding for the guardian ad litem program in the
13 juvenile court as provided in Section 78-3a-912; [and]

14 (c) implementing and administering the Expedited Visitation Enforcement Pilot Program
15 as provided in Section 30-3-38; and

16 (d) implementing the court-ordered education course on visitation rights as provided in
17 Section 78-21-12.1.

18 (4) The following withheld fees shall be allocated only to the Children's Legal Defense
19 Account and used only for the purposes provided in Subsections (3)(a) through ~~(c)~~(d):

20 (a) the additional \$10 fee withheld on every marriage license issued in the state of Utah
21 as provided in Section 17-5-214; and

22 (b) a fee of \$2 shall be withheld from the existing civil filing fee collected on any
23 complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

24 (5) The Division of Finance shall allocate the monies described in Subsection (4) from the
25 General Fund to the Children's Legal Defense Account.

26 (6) Any funds in excess of \$200,000 remaining in the restricted account as of June 30 of
27 any fiscal year shall lapse into the General Fund.

28 Section 4. Section **78-32-12.1** is repealed and reenacted to read:

29 **78-32-12.1. Educational course on visitation rights -- Purpose -- Curriculum.**

30 (1) There is established an Education Course on Visitation Rights for divorced parents or
31 grandparents, as provided in Section 30-5-2, in all judicial districts to be administered by the

1 Administrative Office of the Courts. The education course is designed to educate parents or
2 grandparents of the right to maintain a meaningful and ongoing relationship with the child through
3 the use of court-ordered visitation.

4 (2) Upon a finding that the defendant in a first petition is substantially or chronically
5 noncompliant with a visitation order as provided in Section 78-32-12.2, the court may order the
6 defendant to attend an Education Course on Visitation Rights.

7 (3) The course shall instruct the noncompliant parent about visitation rights and:

8 (a) the importance of visitation with their child or children;

9 (b) the need for meaningful contact to ensure a continuing relationship with the child or
10 children and both parents;

11 (c) the harmful impact of conflict between parents over visitation access; and

12 (d) the importance of complying with the court order.

13 (4) The Administrative Office of the Courts shall administer the course pursuant to Title
14 63, Chapter 56, Utah Procurement Code, through private or public contracts and implement the
15 course in each of the judicial districts. The contracts shall provide for recoupment of
16 administrative expenses through the costs charged to individual parties pursuant to Subsection
17 (16).

18 (5) The Judicial Council shall appoint a committee to oversee and monitor the education
19 course on visitation rights, whose membership shall include judges, court administrators,
20 attorneys, and members of the public.

21 (6) The state court administrator shall assign the responsibility to direct the course to an
22 administrator in the Administrative Office of the Courts.

23 (7) The course administrator shall establish uniform specifications and standards for the
24 curriculum and provision of the visitation rights education course, in consultation with the
25 committee.

26 (8) The Administrative Office shall issue a request for proposals to providers of visitation
27 rights education, setting forth the uniform established specifications and standards.

28 (9) The committee shall review the proposals submitted and make recommendations for
29 award of contracts.

30 (10) The program administrator, in consultation with the state court administrator and the
31 judges in each district, shall award the contracts.

1 (11) Each party ordered to attend the course shall contact the court or the course provider
2 and register to attend the course. No further notice of the date and time of the course need be
3 provided to any party.

4 (12) A certificate of completion constitutes evidence to the court of course completion by
5 the parties. The defendant shall file a copy of the certificate to the court within 90 days of the
6 court's order to attend the course. The course provider shall complete a certificate of completion
7 and provide the same to each party who:

8 (a) attends and completes the course;

9 (b) either pays the course fee or presents a copy of an Affidavit of Impecuniosity filed with
10 the court; and

11 (c) completes the course evaluation form.

12 (13) The course provider shall, within 72 hours of each course, provide the court with an
13 alphabetized list of each party who attended and completed the course.

14 (14) If a party does not attend the course within 45 days of having been notified of the
15 course requirement, the court may hold the party who did not timely attend in contempt or may
16 waive course attendance for good cause shown.

17 (15) The court may waive the attendance requirement at any time if it determines that
18 course attendance and completion are not necessary, feasible, or in the best interest of the parties.

19 (16) (a) Each attendee shall pay the costs of the course to the independent contractor
20 providing the course at the time and place of the course. A fee of \$8 shall be collected as part of
21 the course fee paid by each attendee and deposited into the Children's Legal Defense Account as
22 provided in Section 63-63a-8.

23 (b) Each attendee who is unable to pay the costs of the course may attend the course
24 without payment upon a prima facie showing of impecuniosity as evidenced by an Affidavit of
25 Impecuniosity filed in the district court. In those situations, the independent contractor shall be
26 reimbursed for its costs from the appropriation to the Administrative Office of the Courts for the
27 Education Course on Visitation Rights.

28 (17) The appropriation from the Children's Legal Defense Account to the Administrative
29 Office of the Courts for the Education Course on Visitation Rights shall be used to pay the costs
30 of the indigent attendee who makes a showing as provided in Subsection (16)(b).

31 (18) The Administrative Office of the Courts shall adopt a program to evaluate the

1 effectiveness of the court-ordered education course on visitation rights. Progress reports shall
2 be provided annually to the Judiciary Interim Committee.

3 Section 5. Section **78-32-12.2** is amended to read:

4 **78-32-12.2. Definitions -- Sanctions.**

5 (1) For purposes of this section:

6 (a) "Make up visitation" means visitation which is:

7 (i) of the same type and duration of visitation as that which was denied, including
8 visitation during weekdays, weekends, holidays, and during extended visitation periods;

9 (ii) to be made up within one year after the court has entered its order of make up
10 visitation; and

11 (iii) in the manner chosen by the aggrieved parent if it is in the best interest of the child.

12 (b) "Mediation" means court-ordered participation by the parties with a mediator to pursue
13 mediation and settlement of visitation matters.

14 (c) "Parent" means a parent or grandparent as provided in Section 30-5-2 who is subject
15 to a visitation order pursuant to a divorce decree, separate maintenance decree, or death.

16 ~~[(b)]~~ (d) "Petition" means a petition brought by a parent~~[,]~~ or a grandparent as provided
17 in Section 30-5-2~~[, by other immediate family members,]~~ or upon the court's own motion alleging
18 that a parent is not complying with a visitation order in a decree of divorce or a subsequent
19 visitation enforcement order which may be brought at different stages in the alleged pattern of
20 chronic noncompliance:

21 (i) a first petition is a petition to enforce an original order of visitation or a petition filed
22 after three years from the last visitation enforcement order;

23 (ii) a second petition is a petition filed within three years following entry of the first
24 visitation enforcement order; and

25 (iii) a third petition is a petition filed within three years following entry of the second
26 visitation enforcement order.

27 ~~[(c)]~~ (e) "Substantial or chronic noncompliance" means conduct which:

28 (i) substantially or repeatedly interferes with a court-ordered visitation schedule; or

29 (ii) substantially or repeatedly interferes with a parent's right to frequent, meaningful, and
30 continuing access with his child and which ~~[substantially]~~ impairs that parent-child relationship.

31 ~~[(d)]~~ (f) "Visitation enforcement order" means an order to enforce compliance with an

1 original visitation order through the use of sanctions.

2 [~~(2) Upon a first petition, the court shall order:~~]

3 [~~(a) if the first petition is uncontested, by default:~~]

4 [~~(i) a permanent injunction enjoining the noncompliance with the court's visitation order;~~]

5 [~~(ii) make up visitation for the aggrieved parent and child; and]~~

6 [~~(iii) participation in workshops, classes, or individual counseling to educate the parent~~
7 ~~about the importance of complying with the court order and providing the child with a continuing~~
8 ~~relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or]~~

9 [~~(b) if the first petition is contested, the court shall hold a hearing to determine by a~~
10 ~~preponderance of the evidence whether there has been a substantial noncompliance with the~~
11 ~~visitation order.~~]

12 [(3)] (2) Upon a first petition and a finding of substantial or chronic noncompliance, the
13 court [shall] may order[:] the noncompliant parent to attend an Education Course on Visitation
14 Rights as provided in Section 78-32-12.1.

15 [(a) actual costs including actual attorney fees and court costs to the prevailing party;]

16 [(b) make up visitation for the aggrieved parent and child;]

17 [(c) a minimum of 10 hours of community service as provided in Subsection 78-32-12.1
18 (1) (a); and]

19 [(d) a permanent injunction enjoining the noncompliance with the court's visitation order.]

20 [(4)] (3) (a) Upon a second petition and a finding of substantial or chronic noncompliance,
21 the court may order[:] the noncompliant parent to participate in [(a)] mediation with the
22 requirement to report back to the court on the results of mediation within [30] 60 days[:].

23 (b) Each party who is unable to pay the costs of mediation may attend mediation without
24 payment upon a prima facie showing of impecuniosity as evidenced by an Affidavit of
25 Impecuniosity filed in the district court. In those instances, the mediator shall be reimbursed for
26 its costs from the Children's Legal Defense Account as provided in Subsection 63-63a-8(3).

27 [(b) participation in workshops, classes, or individual counseling to educate the parent
28 about the importance of complying with the court order and providing the child with a continuing
29 relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or]

30 [(c) a fine or jail sentence or other appropriate sanctions as provided under contempt of
31 court in Section 78-32-10.]

1 ~~[(5)]~~ (4) Upon a ~~[second]~~ third petition and a finding of substantial or chronic
 2 noncompliance, the court ~~[shall]~~ may order[-] a temporary change of custody based upon the best
 3 interest of the child. There is no requirement to show a substantial change of circumstances under
 4 this Subsection (4) before the court may order the temporary change of custody.

5 ~~[(a) if the second petition is uncontested, by default:]~~

6 ~~[(i) actual costs including actual attorney fees and court costs;]~~

7 ~~[(ii) make up visitation to be provided for the aggrieved parent and child;]~~

8 ~~[(iii) a minimum of 10 hours of community service as provided in Subsection~~
 9 ~~78-32-12.1(1)(a); and]~~

10 ~~[(iv) impose a fine or jail sentence or other appropriate sanctions as provided under~~
 11 ~~contempt of court in Section 78-32-10; or]~~

12 ~~[(b) if the second petition is contested, the court shall hold a hearing to determine by a~~
 13 ~~preponderance of the evidence whether there has been a substantial noncompliance with the~~
 14 ~~visitation orders;-]~~

15 ~~[(6)]~~ (5) ~~[Upon a finding of a substantial noncompliance, the]~~ The court shall ~~[order]~~
 16 consider the following sanctions at any stage in any separate maintenance or divorce proceedings,
 17 in subsequent petitions, or upon a finding of chronic noncompliance on any petition including:

18 (a) ~~[actual]~~ ordering the defendant to:

19 ~~(i)~~ pay costs including actual attorney fees and court costs to the prevailing party;

20 ~~[(b)]~~ ~~(ii)~~ provide make up visitation ~~[to be provided]~~ for the aggrieved party and child ~~[at~~
 21 ~~twice the amount of time previously wrongfully denied and]~~ under the same conditions as provided
 22 in ~~[Subsections 78-32-12.2(3)(a) through (c)]~~ Subsections (1)(a) and (6);

23 ~~[(c) a minimum of 20 hours of community service as provided in Subsection~~
 24 ~~78-32-12.1(1)(a);]~~

25 ~~[(d)]~~ ~~(iii)~~ participate in mediation with the requirement to report back to the court on the
 26 results of mediation within 60 days;

27 ~~(iv)~~ comply with a contempt order which imposes a fine or jail sentence as provided in
 28 Section 78-32-10; ~~[and]~~

29 ~~[(e) the violator to]~~ ~~(v)~~ post bond or security in the amount determined by the court to
 30 insure future compliance[-];

31 ~~[(7) The court may impose additional sanctions which may include any additional~~

1 remedies, terms, or conditions which are consistent with the court's previous order.]

2 [~~(8)~~ Upon a third petition, the court shall order:]

3 [~~(a)~~ if the third petition is uncontested, by default:]

4 [~~(i)~~ actual costs including actual attorney fees and court costs;]

5 [~~(ii)~~ make up visitation to be provided for the aggrieved party and child at twice the
6 amount of time previously denied and under the same conditions as provided in Subsections
7 78-32-12.2(3)(a) through (c);]

8 [~~(iii)~~ a minimum of ten hours of community service as provided in Subsection
9 78-32-12.1(1)(a); and]

10 [~~(iv)~~ impose a fine or jail sentence or other appropriate sanctions as provided under
11 contempt of court in Section 78-32-10; or]

12 [~~(b)~~ if the third petition is contested, the court shall hold a hearing to determine by a
13 preponderance of the evidence whether there has been a substantial noncompliance with the
14 visitation orders:]

15 [~~(9)~~ Upon a finding of substantial noncompliance, the court shall order:]

16 [~~(a)~~ actual costs including actual attorney fees and court costs to the prevailing party;]

17 [~~(b)~~ a finding that there has been a prima facie showing of a substantial change of
18 circumstances which is against the best interest of the child for purposes of modification of
19 custody and order a temporary change of custody for a duration to be determined by the court; and]

20 (vi) pay the actual costs of reimbursement for transportation, child care, or other related
21 expenses because of the other parent's noncompliance with the visitation order;

22 (vii) attend an Education Course on Visitation Rights as provided in Section 78-32-12.1;

23 and

24 (viii) comply with an order of a temporary change of custody; or

25 [~~(c)~~ a] (b) finding that there has been a probable cause showing of custodial interference
26 as provided in Section 76-5-303 and [order] ordering the case to be referred to the county attorney
27 for prosecution.

28 [~~(10)~~ The court may decline to issue an order with the alternative sanctions as provided
29 in Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the
30 court provides findings on the record explaining why a sanction or sanctions were not imposed.]

31 [~~(H)~~] (6) The noncustodial parent shall give the court and the custodial parent written

1 notice of his intention to exercise the make up visitation at least seven days before the proposed
2 visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is
3 to be on a holiday or an extended visitation period.

4 ~~[(12)]~~ (7) The court shall suspend any proceedings under ~~[Section 78-32-12.2]~~ this section
5 if substantial allegations of child abuse or child sexual abuse are under investigation or a case is
6 pending in the courts on the allegations.

7 ~~[(13)]~~ (8) The filing of any petition under this section which is found to be without merit
8 and not asserted or defended against in good faith shall be subject to sanctions as determined by
9 the court.

10 ~~[(14)] This section shall be implemented only as a pilot program in the first judicial district~~
11 ~~as provided in Section 78-32-12.3.]~~

12 Section 6. Section **78-32-12.3** is repealed and reenacted to read:

13 **78-32-12.3. Education Course on Visitation Rights for violation of visitation order.**

14 (1) Upon a finding by a preponderance of the evidence that a parent, as defined in Section
15 78-32-12.2, has substantially or chronically refused to comply with the minimum amount of
16 visitation ordered in a decree of divorce, the court may order the parent to attend an Education
17 Course on Visitation Rights to be educated about the importance of complying with the court order
18 and of providing a child a continuing relationship with both parents.

19 (2) If a noncompliant parent is ordered to attend this court-ordered education, there is a
20 rebuttable presumption that the compliant parent be granted visitation by the court to provide child
21 care during the time the noncompliant parent is complying with the education course order.

22 (3) The person ordered to participate in court-ordered education is responsible for expenses
23 as provided in Section 78-32-12.1.

24 Section 7. **Effective date.**

25 This act takes effect on July 1, 1998.

Legislative Review Note

as of 2-2-98 4:52 PM

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

Office of Legislative Research and General Counsel