

28 (a) which parent is most likely to act in the best interests of the child, including allowing
29 the child frequent and continuing contact with the noncustodial parent [~~as the court finds~~
30 ~~appropriate~~];

31 (b) the past conduct and demonstrated moral standards of each of the parties;

32 (c) the financial stability of the parties;

33 (d) past ~~h~~ [felony] CRIMINAL ~~h~~ convictions of either party;

34 (e) past drug or alcohol abuse of either party; and

35 (f) any other factors the court finds relevant.

36 (3) The court may not consider the gender of the parties in determining custody.

37 [~~(3)~~] (4) If the court finds that one parent does not desire custody of the child, or has
38 attempted to permanently relinquish custody to a third party, it shall take that evidence into
39 consideration in determining whether to award custody to the other parent.

40 [~~(4)~~] (5) (a) A court may not discriminate against a parent due to a disability, as defined
41 in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred
42 for the purpose of modifying an award of custody.

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

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

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

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

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

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

56 Section 2. Section **78-32-12.2** is repealed and reenacted to read:

57 **78-32-12.2. Definitions -- Sanctions.**

58 (1) For purposes of this section:

59 (a) "Make up parent-time" means parent-time which is:

60 (i) of the same type and duration of parent-time as that which was denied, including
 61 parent-time during weekdays, weekends, holidays, and during extended parent-time periods;

62 (ii) to be made up within one year after the court has entered its order of make up
 63 parent-time; and

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

65 (b) "Parent-time enforcement order" means an order to enforce compliance with a
 66 parent-time order through the use of sanctions.

67 (c) "Substantial noncompliance" means:

68 (i) conduct which significantly interferes with a court-ordered parent-time schedule;

69 (ii) conduct which interferes with parent's right to frequent, meaningful, and continuing
 70 access with his child and which significantly impairs the parent-child relationship; or

71 (iii) a conviction under Section 76-5-303.

72 (2) Either parent may petition the court for an order enforcing a parent-time order

72a h [-without

73 the need to attend mediation prior to approaching the court] h .

74 (3) Upon receipt of an initial petition, the court shall hold a hearing to determine by a
 75 preponderance of the evidence whether there has been a substantial noncompliance with the
 76 parent-time order.

77 (4) Upon a finding of substantial noncompliance, the court shall order:

78 (a) actual costs including actual attorney fees and court costs to the prevailing party;

79 (b) make up parent-time for the aggrieved parent and child;

80 (c) a minimum of ten hours of compensatory service as provided in Subsection

81 78-32-12.1(1)(a); and

82 (d) a permanent injunction enjoining the noncompliance with the court's parent-time order.

83 (5) Upon a finding of substantial noncompliance, the court may order:

84 (a) mediation with the requirement to report back to the court on the results of mediation
 85 within 30 days;

86 (b) participation in workshops, classes, or individual counseling to educate the parent
 87 about the importance of h [complying with the court order and] h providing the child with a

87a continuing

88 relationship with both parents as provided in Subsection 78-32-12.1(1)(b); or

89 (c) a temporary change of custody for a duration to be determined by the court if it is in

90 the best interests of the child.

91 (6) If the court found substantial noncompliance in the first petition and a second petition
92 is filed within five years of the initial petition against the same party the initial petition was filed
93 against, the court may order increased sanctions that include:

94 (a) up to 20 hours of compensatory service as provided in Subsection 78-32-12.1(1)(a);

95 (b) make up parent-time for the aggrieved party and child at twice the amount of time
96 previously wrongfully denied and under the same conditions as provided in Subsection
97 78-32-12.2(1)(a);

98 (c) a permanent change of custody if it is in the best interests of the child;

99 (d) jail time or incarceration for up to ten days; or

100 (e) any other orders the court determines necessary to enforce a parent-time order.

101 (7) If the court found substantial noncompliance in the first and second petition and a third
102 petition is brought against the same party within five years of the second petition and the court
103 declines to issue an order with increased sanctions although the petitioner has met the burden of
104 proof, the court shall provide findings on the record explaining why increased sanctions were not
105 imposed.

106 (8) The noncustodial parent shall give the court and the custodial parent written notice of
107 his intention to exercise the make up parent-time at least seven days before the proposed visit if
108 it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is to be on
109 a holiday or an extended parent-time period.

110 (9) The court shall suspend any proceedings under Section 78-32-12.2 if substantial
111 allegations **h** AGAINST THE PETITIONER **h** of child abuse or child sexual abuse are under
111a investigation or a case is pending in the
112 courts on the allegations.

113 (10) The filing of any petition under this section which is found to be without merit and
114 not asserted or defended against in good faith shall be subject to sanctions as determined by the
115 court **h** , INCLUDING PAYMENT OF ATTORNEYS' FEES AND COURT COSTS **h** .

Legislative Review Note
as of 11-15-01 1:35 PM

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

Office of Legislative Research and General Counsel

Committee Note

The Judiciary Interim Committee recommended this bill.